

JOURNAL

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OF THE

EIGHTY-SECOND LEGISLATURE

OF THE

STATE OF TEXAS

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VOLUME V

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SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

SIXTY-NINTH DAY

(Friday, May 27, 2011)

The Senate met at 10:31 a.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 Eric Louis Jordan, A Breath of Praise Community Church, Round Rock, offered the invocation as follows:

Most gracious God, creator of heaven and Earth, our high tower that oversees this turbulent land, our shelter in the time of storm, I ask You to lead these men and women, these dignitaries and emissaries of freedom. I ask that Your wisdom abide with them, I pray that Your mercy stirs the compassion in them, that Your grace is sufficient for them, and Your love motivates them to love one another even as You have loved them. I ask in troubled times of economic uncertainty: restore hope, restore hope that You are able to supply our every need. I pray, despite these times of divisiveness, You are able to bring about unity. I pray that even though the threat of terrorism is still great, You are greater and able to protect this great state and country. Give our lawmakers the wisdom and ability to hear Your voice when the voice of righteousness is suppressed. Remind us that You are not the author of confusion but the progenitor of harmony. Now unto Him who is able to keep us from falling and to present us before Your glory with exceeding joy, to the only wise God and savior be glory and majesty, power and dominion, both now and forevermore. 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.

PHYSICIAN OF THE DAY

Senator Watson was recognized and presented Dr. Jim Brown of Austin as the Physician of the Day.

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

SENATE RESOLUTION 1125

Senator Davis offered the following resolution:

SR 1125, Recognizing John F. Carter for his entrepreneurial success.

The resolution was again read.

The resolution was previously adopted on Monday, May 23, 2011.

GUESTS PRESENTED

Senator Davis was recognized and introduced to the Senate John Carter, accompanied by members of his family: wife, Maria; son, James; mother, Francie Cobb; stepfather, Lance Cobb; family au pair, Amanda Melin; father-in-law and mother-in-law, Juan and Mary Hernandez; and aunt, Adelita Acosta.

The Senate welcomed its guests.

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 20, SB 167, SB 176, SB 181, SB 218, SB 220, SB 229, SB 349, SB 438, SB 548, SB 683, SB 701, SB 761, SB 802, SB 804, SB 810, SB 812, SB 917, SB 1386, SB 1477, SB 1504, SB 1686, SB 1714, SCR 56.

SENATE RESOLUTION 1221

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in recognizing Ian Randolph for over 20 years of outstanding service to Senator Eddie Lucio, Jr., and to the state; and

WHEREAS, A longtime Senate employee who has built a strong reputation as a dedicated and highly effective staff member, Ian Randolph has brought his keen understanding of the legislative process and his thorough knowledge of complex policy issues to bear while working to ensure that the best interests of the people of Texas are represented in the Capitol at all times; and

WHEREAS, After almost a decade of service at The University of Texas Faculty Center, Mr. Randolph began his involvement in legislative affairs in 1990 as a research assistant for the Texas Task Force on State and Local Drug Control Policy; and

WHEREAS, Over the course of his distinguished career, he has become known for his warm and outgoing nature, his friendly demeanor, and the depth and breadth of his knowledge and experience; he has performed practically all of the jobs available in a legislative office, including policy analyst, committee director, legislative director, and chief of staff; and

WHEREAS, He has worked through 11 regular sessions and 16 special sessions as a valued staff member for Senators Ted Lyon, David Cain, and Eddie Lucio, Jr.; even during the longest hours and latest nights of a legislative session, he has been noted for his generosity of spirit and his ability to see all sides of an issue; and

WHEREAS, He has worked on key legislation that has made a real difference in the lives of Texas citizens, including: Senate Bill 8, passed by the 77th Legislature, which established parity in health insurance reimbursements for women's health procedures; Senate Bill 60, passed by the 79th Legislature, which established the sentencing option of life without parole for capital offenses, previously only punishable by death or a life sentence under which the defendant would eventually become eligible for parole; and the Senate's Committee Substitute for House Bill 323, passed by the 80th Legislature, which created the requirement that school buses be equipped with three-point seat belts; and

WHEREAS, A familiar figure in the halls of the Capitol, Ian Randolph has been a valuable resource to all who seek to draw on his knowledge, whether they be veteran staffers or newcomers to the process; he goes out of his way to be friendly to everyone, regardless of their position, status, or connections, and he always gives credit where credit is due, never accepting a compliment without sharing it with his co-workers; and

WHEREAS, He is devoted to his family and encourages his fellow employees to attend to their families as well; his wife, Jane, to whom he has been married since 2006, and his daughter, Gracie, have enriched his life immeasurably, and he has been able to count on their loving support in all of his endeavors; an exceptional public servant and an even better human being, he is respected and admired by all who know him, and his presence in the Capitol will be greatly missed; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby commend Ian Randolph on his outstanding service to the people of Texas and extend to him best wishes for continued success in all his future endeavors; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as an expression of gratitude and esteem from the Texas Senate.

SR 1221 was read.

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

On motion of Senator Lucio, the resolution was adopted without objection.

REMARKS ORDERED PRINTED

On motion of Senator Ellis and by unanimous consent, the remarks by Senator Lucio regarding **SR 1221** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Mr. President and Members, thank you very much for allowing me to bring this resolution to the floor today. It's an important morning for me to be able to have the opportunity to reflect on a great Texan. This resolution recognizes someone I consider one of the best public servants I've ever worked with. Ian Randolph, my chief of staff, is moving on after 21 years of service in the Texas Senate. As you know, Members, the Senate is a place governed by rules and traditions, and Ian's knowledge of these rules and traditions has made him a valuable resource to my office over the years. And yet, as one of my staff said yesterday, Ian is not the kind of person to hoard knowledge, instead he always has time for people. He is always willing to help others, and he goes out of his way to be friendly to everyone regardless of their position. Ian will be sorely missed by my staff and me. His patience and kindness shine through when you see him working with others as he shepherds them through the process, and I've seen this over the years, and I'm always so happy to see someone do this. To summarize, Ian is a lot like one of those holding midfielder captains you see on those English soccer teams like Aston Villa, that's Ian's favorite team. Ian plays that holding midfielder role extremely well, he sets others up to succeed, he tackles back when the pressure is on, and he leads his teammates through his tireless example. In addition to his work here at the Capitol, Ian is a dedicated family man. We are joined here today by Ian's very lovely wife, Jane, and his daughter, Graciella, "Gracie." They will surely testify to how wonderful a father and husband Ian truly is. There are so many stories that I could reflect on, but one that brought a smile to my face was back when Senator Cain, who joins us here in the west gallery, Senator David Cain, assistant, and the only way he was able to kill my GARVEE bonds is because he had Ian by his side, very knowledgeable of what these represented, and I thought for sure we were finding enough to build some infrastructure down in South Texas. But the only consolation I get is that now they want to use GARVEE bonds to do that. But Ian single-handedly, I think, helped kill that legislation, so it was very hard for me when Paul Cowan, my former chief of staff, Patsy, brought Ian to me and I said, this is the guy that killed my bills not too long ago. But I knew that he had an extremely kind heart, very compassionate man. And I got to know that even better when I met his dad, an outstanding American who got to be with his son for a few years before he passed on. And I can tell you one thing, Ian is more than a chief of staff to me. He's family, and he's my little brother, and I just respect and admire all of the things that he has done in the course of his life. He served with an open heart, and that's the kind of person I really care to see here in the Capitol. I always ask people, Wendy, and tell my assistants, I really don't care how much you know, I want to know how much you care, as you work in this building that represents the people of our great state. I could talk all morning about many things we accomplished together, some of those have been mentioned this morning, but there's so much more than a resolution in the life of Ian Randolph, who I consider one of the top employees ever in state government.

GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate Ian Randolph, his wife, Jane, and his daughter, Gracie.

The Senate welcomed its guests.

ACKNOWLEDGMENT

The President Pro Tempore acknowledged the presence of former Senator David Cain.

The Senate welcomed its guest.

GUEST PRESENTED

Senator West was recognized and introduced to the Senate Tom Bohanan of Boy Scouts of America, Circle 10 Council.

The Senate welcomed its guest.

HOUSE CONCURRENT RESOLUTION 165

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

WHEREAS, The Texas Commission on the Arts has announced the 2011 and 2012 appointments for the positions of State Poet Laureate, State Musician, State Two-Dimensional Artist, and State Three-Dimensional Artist; and

WHEREAS, Honorees are chosen for the exceptional quality of their work and for their outstanding commitment to the arts in Texas; nominees must either be native Texans or have resided in the state for at least five years; in addition, they must have received critical recognition from state, regional, and national publications, and they must have attained the highest levels of excellence in their respective disciplines; and

WHEREAS, David M. Parsons is the 2011 Texas State Poet Laureate; inducted into the Texas Institute of Letters in 2009, Mr. Parsons is the recipient of numerous awards, among them a National Endowment for the Humanities Dante Fellowship to the State University of New York and the French/American Legation Poetry Prize; he has published two collections of poems, and his work has appeared in numerous journals and magazines, including *Gulf Coast*, *The Texas Review*, and *Louisiana Literature*; and

WHEREAS, The 2011 Texas State Musician is singer-songwriter Lyle Lovett, who has blurred genre boundaries over the course of 14 albums that deftly combine elements of country, swing, jazz, folk, gospel, and blues; a four-time Grammy Award winner, Mr. Lovett has logged significant time at the top of the *Billboard* charts; he has branched successfully into acting as well, appearing in 13 feature films, including several noteworthy Robert Altman pictures, and he is active in many philanthropic causes; and

WHEREAS, Melissa W. Miller has been selected as the 2011 Texas State Two-Dimensional Artist; acclaimed for her bold, imaginative, allegorical paintings of animals, she has pursued an iconoclastic path since the mid-1970s; her works have been exhibited at many major museums across the nation, including the Corcoran Museum in Washington, D.C., and the Brooklyn Museum of Fine Arts, and they have

been featured in the Whitney and Venice Biennials; an associate professor of art at The University of Texas at Austin, Ms. Miller has also been a visiting lecturer and guest artist at more than 40 universities, colleges, and art institutes; and

WHEREAS, Corpus Christi native and Rockport resident Jesus Moroles is the 2011 Texas State Three-Dimensional Artist; more than 2,000 of his works have found a place in museums and corporate, public, and private collections; his "Lapstrake," a massive 22-foot, 64-ton abstract sculpture, is located across from the Museum of Modern Art in New York, and his work was featured in the landmark traveling exhibition Contemporary Hispanic Art in the United States; Mr. Moroles has also served on the board of the Smithsonian American Art Museum and received the 2008 National Medal of Arts; and

WHEREAS, The 2012 Texas Poet Laureate is Jan Seale, the author of six poetry volumes and several books of short fiction and essays; her writing has appeared in *Texas Monthly*, *The Yale Review*, and other periodicals, as well as numerous anthologies, and her work has been featured on National Public Radio; a popular presenter, she has given readings and workshops around the country, and she is the recipient of a National Endowment for the Arts fellowship; and

WHEREAS, Billy F Gibbons of ZZ Top fame has been selected as the 2012 Texas State Musician; a much-imitated guitarist, he is also the lead singer of the iconic band, which was inducted into the Rock and Roll Hall of Fame in 2004, and he wrote many of its blockbuster hits; he has collaborated with a wide range of artists, among them B. B. King, Queens of the Stone Age, Roky Erickson, and Les Paul; in addition, he is a car customizer and actor and plays a recurring role on the television series *Bones* as a fictionalized version of himself; and

WHEREAS, The 2012 Texas State Two-Dimensional Artist is Karl Umlauf, who grew up in Austin; after completing his master of fine arts degree at Cornell University in 1963, he began teaching at the University of Pennsylvania, and his paintings were exhibited in a number of prominent East Coast galleries and museums; his long career in higher education eventually brought him to East Texas State University and then Baylor University; he has won many prizes and purchase awards for reliefs in a variety of materials, including fiberglass and cast paper; fascinated with geological substrata and archeological burial sites as well as salvage yards and abandoned industrial sites, he has concentrated on imaginative facades since 2000; and

WHEREAS, Bill FitzGibbons has been selected as the 2012 Texas State Three-Dimensional Artist; a former Fulbright Scholar, he is known for large-scale light sculptures that transform building walls into elaborately programmed spectrums of constantly moving light; he has received more than 30 public art commissions in five countries; since 2002, he has served as the executive director of the Blue Star Contemporary Art Center in San Antonio, and he is a member of the board of the International Sculpture Center; and

WHEREAS, The men and women who have been selected to hold these prestigious posts for the next two years have all greatly contributed to the vibrant cultural life of the Lone Star State, and Texas is indeed fortunate to be home to these talented artists; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby honor the 2011 and 2012 appointees to the positions of State Poet Laureate, State Musician, State Two-Dimensional Artist, and State Three-Dimensional Artist and extend to each of them sincere best wishes for continued creativity and achievement.

ELTIFE

HCR 165 was read.

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

On motion of Senator Eltife, the resolution was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

GUESTS PRESENTED

Senator Eltife was recognized and introduced to the Senate a Texas State Artists delegation: Musicians, Lyle Lovett and Billy F Gibbons; Poets Laureate, Jan Epton Seale and David M. Parsons; Two-Dimensional Artists, Karl Umlauf and Melissa Miller; and Three-Dimensional Artists, Jesus Moroles and Bill FitzGibbons.

The Senate welcomed its guests.

SENATE BILL 5 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 5** 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 5** (house committee printing) as follows:

(1) In SECTION 1.01 of the bill, in added Section 51.003(f), Education Code (page 1, line 17), strike "institution's operations in a foreign country" and substitute "institution's academic and research operations in the foreign country in which the bank is located, provided that no appropriated or tuition funds other than those collected from students enrolled in the affected programs are deposited".

(2) In SECTION 1.05 of the bill, in amended Section 1231.041, Government Code (page 6, lines 16 and 17), strike "unless the general revenue of the state is pledged to the payment of the security." and substitute the following:
if:

(1) the institution or the university system of which the institution is a component has an unenhanced long-term debt rating of at least AA- or its equivalent; and

(2) the general revenue of this state is not pledged to the payment of the security.

(3) In SECTION 4.01 of the bill, in the heading to added Section 61.0573, Education Code (page 15, line 21), strike "PROJECTS EXEMPT FROM BOARD APPROVAL" and substitute "EXPEDITED PROCESS FOR CERTAIN PROJECTS".

(4) In SECTION 4.01 of the bill, in added Section 61.0573(d), Education Code (page 16, line 24), strike "or a new higher education center" and substitute ", a new off-campus educational unit, or a new higher education center".

Floor Amendment No. 2

Amend **SB 5** (house committee printing) as follows:

(1) In SECTION 1.02 of the bill, in added Section 51.012, Education Code (page 4, line 24), strike "including a payment of salary or wages,".

(2) In SECTION 3.01 of the bill, at the end of added Section 51.9611, Education Code (page 13, between lines 26 and 27), add the following subsection:

(e) This section does not authorize a payroll deduction for dues or membership fees payable to a labor union or employees association.

(3) In ARTICLE 3 of the bill, add the following appropriately numbered SECTION to the ARTICLE and renumber the SECTIONS of that ARTICLE appropriately:

SECTION 3.____. Subchapter E, Chapter 1601, Insurance Code, is amended by adding Section 1601.2041 to read as follows:

Sec. 1601.2041. EMPLOYEE DEDUCTION FOR AUTOMATIC COVERAGE. Each individual automatically enrolled in a uniform program under Section 1601.104 is considered to have authorized a deduction from the participant's monthly compensation in an amount equal to the difference between:

(1) the total cost of the employee's basic coverage; and

(2) the amount contributed by the system for the employee's basic coverage.

Floor Amendment No. 3

Amend **SB 5** (house committee printing) as follows:

(1) In ARTICLE 6 of the bill, add the following appropriately numbered SECTION to the ARTICLE and renumber the SECTIONS of that ARTICLE appropriately:

SECTION 6.____. Section 51.3062(n), Education Code, is amended to read as follows:

(n) Each institution of higher education, other than a medical and dental unit, shall report annually to the board on the success of its students and the effectiveness of its Success Initiative.

(2) In SECTION 6.02 of the bill, in added Section 51.406(b), Education Code, strike Subdivision (3) (page 23, line 15, referencing Section 51.0051, Education Code), Subdivision (11) (page 23, line 23, referencing Section 2101.011, Government Code), and Subdivision (12) (page 23, line 24, referencing Section 2102.009, Government Code) and renumber the subdivisions of added Section 51.406(b) accordingly.

(3) In SECTION 6.03 of the bill, in added Section 51.914(b), Education Code (page 26, lines 2 and 3), strike "commercialization or research, or that consists of unpublished research results or data" and substitute "commercialization or a proposed research agreement, contract, or grant, or that consists of unpublished research or data that may be commercialized".

(4) Strike SECTION 6.04 of the bill (page 26, lines 9-24, amending Section 61.051(h), Education Code) and SECTION 6.05 of the bill (page 26, line 25, through page 27, line 2, adding Section 61.0582(f), Education Code) and renumber the SECTIONS of ARTICLE 6 of the bill accordingly.

(5) In SECTION 7.01 of the bill, in Subsection (a) (page 32, lines 2-17), insert the following appropriately numbered subdivisions:

() Section 61.9685, Education Code;

() Section 2056.011, Government Code;

(6) In SECTION 7.01 of the bill, in Subsection (a), strike Subdivision (7) (page 32, line 11, referencing Section 62.098, Education Code) and renumber the other subdivisions accordingly.

(7) In SECTION 7.01 of the bill, in Subsection (b) (page 32, line 18, through page 33, line 10), insert the following appropriately numbered subdivision and renumber the other subdivisions accordingly:

() Section 61.0582;

Floor Amendment No. 4

Amend **SB 5** (amended version) as follows:

(1) In Section 2.03 of the bill, in the introductory language (page 10, line 24) strike "Sections 51.9336 and 51.9337" and insert "Section 51.9336"

(2) In Section 2.03 of the bill (page 11, lines 10-19) strike proposed Section 51.9337 in its entirety

Floor Amendment No. 5

Amend **SB 5** (house committee printing) in ARTICLE 3 of the bill, by striking SECTION 3.02 (page 13, line 27, through page 14, line 21), and renumbering subsequent SECTIONS of ARTICLE 3 of the bill appropriately.

Floor Amendment No. 6

Amend **SB 5** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9741 to read as follows:

Sec. 51.9741. INTERNET ACCESS TO FINANCIAL TRANSACTIONS. (a) Each institution of higher education, as defined by Section 61.003, shall post on the institution's Internet website a copy of the institution's financial transactions to the extent necessary to provide, for each payment drawn from money appropriated from the state general revenue fund or received as student tuition or fee payments:

(1) the amount of the payment;

(2) the date of the payment;

(3) a brief description of the purpose of the payment; and

(4) the name of the payee.

(b) An institution of higher education may comply with this section by providing on the institution's Internet website an easily noticeable direct link, the purpose of which is clearly identifiable, to an Internet website maintained by the comptroller that provides information concerning the institution that is substantially similar to the information required under Subsection (a).

Floor Amendment No. 7

Amend **SB 5** by adding the following appropriately numbered SECTION and by renumbering the existing SECTIONS as appropriate

SECTION _____. Subchapter X, Chapter 54, Education Code, is amended by adding Section 54.552 to read as follows:

Sec. 54.552. STUDENT FEES ADVISORY COMMITTEES; OPEN MEETINGS. Any student fee advisory committee established under this chapter shall be subject to Chapter 551, Government Code.

Floor Amendment No. 1 on Third Reading

Amend **SB 5** on third reading by striking the text added to the bill by Floor Amendment No. 7 by Hughes, substituting the following appropriately numbered ARTICLE, and renumbering the ARTICLES and SECTIONS of the bill accordingly:

ARTICLE _____. STUDENT FEE ADVISORY COMMITTEES

SECTION _____.01. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5033 to read as follows:

Sec. 54.5033. STUDENT FEE ADVISORY COMMITTEE MEETINGS OPEN TO PUBLIC. (a) A student fee advisory committee established under this chapter shall conduct meetings at which a quorum is present in a manner that is open to the public and in accordance with procedures prescribed by the president of the institution.

(b) The procedures prescribed by the president must:

(1) provide for notice of the date, hour, place, and subject of the meeting at least 72 hours before the meeting is convened; and

(2) require that the notice be:

(A) posted on the Internet; and

(B) published in a student newspaper of the institution, if an issue of the newspaper is published between the time of the Internet posting and the time of the meeting.

(c) The final recommendations made by a student fee advisory committee must be recorded and made public.

Floor Amendment No. 2 on Third Reading

Amend **SB 5**, on third reading, in added Subsection (b), Section 51.9741, Education Code, by striking "substantially similar" and substituting "similar".

Floor Amendment No. 3 on Third Reading

Amend **SB 5** on third reading as follows:

In Section 51.406(b), Education Code, as added by SECTION 6.02 of the bill, strike Subdivision (9) referencing Section 2052.103, Education Code, (page 23, line 21, house committee printing) and renumber the remaining subdivisions accordingly.

Floor Amendment No. 4 on Third Reading

Amend **SB 5** on third reading as follows:

(1) Add the following appropriately numbered SECTION to the bill, renumbering the other sections of the bill accordingly:

SECTION _____. Subtitle D, Title 3, Education Code, is amended by adding Chapter 89 to read as follows:

CHAPTER 89. THE TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 89.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of regents of The Texas A&M University System.

(2) "Health science center" means The Texas A&M University System Health Science Center.

Sec. 89.002. COMPOSITION. (a) The Texas A&M University System Health Science Center is composed of the following component institutions, agencies, and programs under the management and control of the board:

(1) The Texas A&M University System Health Science Center College of Medicine;

(2) The Texas A&M University System Health Science Center Baylor College of Dentistry;

(3) The Texas A&M University System Health Science Center School of Rural Public Health;

(4) The Texas A&M University System Health Science Center Irma Lerma Rangel College of Pharmacy;

(5) The Texas A&M University System Health Science Center College of Nursing;

(6) The Texas A&M University System Health Science Center School of Graduate Studies;

(7) The Texas A&M University System Health Science Center Institute of Biosciences and Technology;

(8) The Texas A&M University System Health Science Center Coastal Bend Health Education Center;

(9) The Texas A&M University System Health Science Center South Texas Health Center; and

(10) The Texas A&M University System Health Science Center Rural and Community Health Institute;

(b) The Texas A&M University System Health Science Center Baylor College of Dentistry may use the name "Baylor" only:

(1) in accordance with:

(A) a license agreement between the health science center and Baylor University; or

(B) other written approval from Baylor University; or

(2) as otherwise permitted by law.

Sec. 89.003. MANDATORY VENUE. (a) Venue for a suit filed against the health science center, any component institution, agency, or program of the health science center, or any officer or employee of the health science center is in Brazos County.

(b) This section does not waive any defense to or immunity from suit or liability that may be asserted by an entity or individual described by this section.

(c) In case of a conflict between this section and any other law, this section controls.

Sec. 89.004. EXPENDITURE OF STATE FUNDS. The board is authorized to expend funds appropriated to it by the legislature for all lawful purposes of the health science center and its component institutions, agencies, and programs as well as funds available under the authority of Section 18, Article VII, Texas Constitution, for the purposes expressed in that section for the support of the health science center and its component institutions, agencies, and programs.

[Sections 89.005-89.050 reserved for expansion]

SUBCHAPTER B. THE TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER IRMA LERMA RANGEL COLLEGE OF PHARMACY

Sec. 89.051. THE TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER IRMA LERMA RANGEL COLLEGE OF PHARMACY. (a) The board shall maintain a college of pharmacy as a component of the health science center.

(b) The college shall be known as The Texas A&M University System Health Science Center Irma Lerma Rangel College of Pharmacy, and the primary building in which the school is operated in Kleberg County must include "Irma Rangel" in its official name.

(2) Add the following appropriately numbered SECTION to the bill, renumbering the other sections of the bill accordingly:

SECTION _____. Section 61.003(5), Education Code, is amended to read as follows:

(5) "Medical and dental unit" means The Texas A&M University System Health Science Center and its component institutions, agencies, and programs; The University of Texas Medical Branch at Galveston; The University of Texas Southwestern Medical Center at Dallas; The University of Texas Medical School at San Antonio; The University of Texas Dental Branch at Houston; The University of Texas M. D. Anderson Cancer Center; The University of Texas Graduate School of Biomedical Sciences at Houston; The University of Texas Dental School at San Antonio; The University of Texas Medical School at Houston; The University of Texas Health Science Center–South Texas and its component institutions, if established under Subchapter N, Chapter 74; the nursing institutions of The Texas A&M University System and The University of Texas System; and The University of Texas School of Public Health at Houston; and such other medical or dental schools as may be established by statute or as provided in this chapter.

(3) Add the following appropriately numbered SECTION to the bill, renumbering the other sections of the bill accordingly:

SECTION _____. The following are repealed:

- (1) Subchapters D, F, G, and H, Chapter 86, Education Code; and
- (2) Subchapter I, Chapter 87, Education Code.

(4) Add the following appropriately numbered SECTION to the bill, renumbering the other sections of the bill accordingly:

SECTION _____. Section 89.003, Education Code, as added by this Act, applies only to an action brought against The Texas A&M University System Health Science Center, a component institution, agency, or program of that center, or an officer or employee of that center on or after the effective date of this Act.

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **SB 5**.

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

SENATE BILL 859 WITH HOUSE AMENDMENT

Senator Duncan called **SB 859** 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. 3 on Third Reading

Amend **SB 859** on third reading by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS accordingly:

ARTICLE _____. EMPLOYER CONTRIBUTIONS TO INDIVIDUAL HEALTH
INSURANCE POLICIES

SECTION ____,01. Subtitle A, Title 8, Insurance Code, is amended by adding Chapter 1221 to read as follows:

CHAPTER 1221. EMPLOYER CONTRIBUTIONS TO INDIVIDUAL HEALTH
INSURANCE POLICIES

Sec. 1221.001. RULES; EMPLOYER CONTRIBUTIONS. The commissioner by rule, unless it would violate state or federal law, may develop procedures to allow an employer to make financial contributions to or premium payments for an employee or retiree's individual consumer directed health insurance policy in a manner that eliminates or minimizes the state or federal tax consequences, or provides positive state or federal tax consequences, to the employer.

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 859**.

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

SENATE BILL 1271 WITH HOUSE AMENDMENT

Senator Duncan called **SB 1271** 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 1271** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to alternative dispute resolution systems established by counties.

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

SECTION 1. Section 152.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 152.001. DEFINITION. In this chapter, "alternative dispute resolution system" means an informal forum in which mediation, conciliation, or arbitration is used to resolve disputes among individuals, entities, and units of government, including those having an ongoing relationship such as relatives, neighbors, landlords and tenants, employees and employers, and merchants and consumers.

SECTION 2. Subsection (a), Section 152.002, Civil Practice and Remedies Code, is amended to read as follows:

(a) The commissioners court of a county by order may establish an alternative dispute resolution system for the peaceable and expeditious resolution of [~~citizen~~] disputes.

SECTION 3. The changes in law made by this Act apply only to a case referred to a county alternative dispute resolution system on or after the effective date of this Act. A case referred before the effective date of this Act is governed by the law in effect when the case is referred, and the former law is continued in effect for that purpose.

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 Duncan moved to concur in the House amendment to **SB 1271**.

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

SENATE BILL 1233 WITH HOUSE AMENDMENTS

Senator West called **SB 1233** 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 1233** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the promotion of efficiencies in and the administration of certain district court and county services and functions.

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

SECTION 1. Section 144.041, Agriculture Code, is amended by adding Subsection (h) to read as follows:

(h) A county clerk may accept electronic filing or rerecording of an earmark, brand, tattoo, electronic device, or other type of mark for which a recording is required under this chapter or other law.

SECTION 2. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.31 to read as follows:

Art. 2.31. COUNTY JAILERS. A jailer licensed under Chapter 1701, Occupations Code, may execute lawful process issued to the jailer by any magistrate or court on a person confined in the jail at which the jailer is employed to the same extent that a peace officer is authorized to execute process under Article 2.13(b)(2), including:

- (1) a warrant under Chapter 15, 17, or 18;
- (2) a capias under Chapter 17 or 23;
- (3) a subpoena under Chapter 20 or 24; or
- (4) an attachment under Chapter 20 or 24.

SECTION 3. Article 20.011(a), Code of Criminal Procedure, is amended to read as follows:

(a) Only the following persons may be present in a grand jury room while the grand jury is conducting proceedings:

- (1) grand jurors;
- (2) bailiffs;
- (3) the attorney representing the state;
- (4) witnesses while being examined or when necessary to assist the attorney representing the state in examining other witnesses or presenting evidence to the grand jury;
- (5) interpreters, if necessary; ~~and~~
- (6) a stenographer or person operating an electronic recording device, as provided by Article 20.012; and
- (7) a person operating a video teleconferencing system for use under Article 20.151.

SECTION 4. Article 20.02(b), Code of Criminal Procedure, is amended to read as follows:

(b) A grand juror, bailiff, interpreter, stenographer or person operating an electronic recording device, ~~or~~ person preparing a typewritten transcription of a stenographic or electronic recording, or person operating a video teleconferencing system for use under Article 20.151 who discloses anything transpiring before the grand jury, regardless of whether the thing transpiring is recorded, in the course of the official duties of the grand jury, is ~~shall be~~ liable to a fine as for contempt of the court, not exceeding \$500 ~~[five hundred dollars]~~, imprisonment not exceeding 30 ~~[thirty]~~ days, or both the ~~[such]~~ fine and imprisonment.

SECTION 5. Chapter 20, Code of Criminal Procedure, is amended by adding Article 20.151 to read as follows:

Art. 20.151. CERTAIN TESTIMONY BY VIDEO TELECONFERENCING.

(a) With the consent of the foreman of the grand jury and the attorney representing the state, a peace officer summoned to testify before the grand jury may testify through the use of a closed circuit video teleconferencing system that provides an encrypted, simultaneous, compressed full motion video and interactive communication of image and sound between the peace officer, the attorney representing the state, and the grand jury.

(b) In addition to being administered the oath described by Article 20.16(a), before being interrogated, a peace officer testifying through the use of a closed circuit video teleconferencing system under this article shall affirm that:

(1) no person other than a person in the grand jury room is capable of hearing the peace officer's testimony; and

(2) the peace officer's testimony is not being recorded or otherwise preserved by any person at the location from which the peace officer is testifying.

(c) Testimony received from a peace officer under this article shall be recorded and preserved.

SECTION 6. Article 27.18, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (c-1) and (c-2) to read as follows:

(c) A recording of the communication shall be made and preserved until all appellate proceedings have been disposed of. A court reporter or court recorder is not required to transcribe or make a separate recording of a plea taken under this article unless an appeal is taken in the case and a party requests a transcript.

(c-1) The defendant may obtain a copy of a ~~the~~ recording made under Subsection (c) 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.

(c-2) The loss or destruction of or failure to make a video recording of a plea entered under this article is not alone sufficient grounds for a defendant to withdraw the defendant's plea or to request the court to set aside a conviction, sentence, or plea.

SECTION 7. Article 38.073, Code of Criminal Procedure, is amended to read as follows:

Art. 38.073. TESTIMONY OF INMATE WITNESSES. In a proceeding in the prosecution of a criminal offense in which an inmate in the custody of the Texas Department of Criminal Justice is required to testify as a witness, any deposition or testimony of the inmate witness may be conducted by a video teleconferencing system in the manner described by Article 27.18 ~~[electronic means, in the same manner as permitted in civil cases under Section 30.012, Civil Practice and Remedies Code].~~

SECTION 8. Article 49.25, Code of Criminal Procedure, is amended by adding Section 13A to read as follows:

Sec. 13A. FEES. (a) A medical examiner may charge reasonable fees for services provided by the office of medical examiner under this article, including cremation approvals, court testimonies, consultations, and depositions.

(b) The commissioners court must approve the amount of the fee before the fee may be assessed. The fee may not exceed the amount necessary to provide the services described by Subsection (a).

(c) The fee may not be assessed against the county's district attorney or a county office.

SECTION 9. Section 31.037, Election Code, is amended to read as follows:

Sec. 31.037. SUSPENSION OR TERMINATION OF EMPLOYMENT. The employment of the county elections administrator may be suspended, with or without pay, or terminated at any time for good and sufficient cause on the four-fifths vote of the county election commission and approval of that action by a majority vote of the commissioners court.

SECTION 10. Section 43.007(i), Election Code, is amended to read as follows:

(i) The secretary of state may only select to participate in the program six ~~three~~ counties with a population of 100,000 or more and four ~~two~~ counties with a population of less than 100,000.

SECTION 11. Section 203.005(b), Family Code, is amended to read as follows:

(b) The first payment of a fee under Subsection (a)(5) ~~[(a)(4)]~~ is due on the date that the person required to pay support is ordered to begin child support, alimony, or separate maintenance payments. Subsequent payments of the fee are due annually and in advance.

SECTION 12. Sections 51.318(b) and (e), Government Code, are amended to read as follows:

(b) The fees are:

- (1) for issuing a subpoena, including one copy \$8
- (2) 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 \$8
- (3) for searching files or records to locate a cause when the docket number is not provided \$5
- (4) for searching files or records to ascertain the existence of an instrument or record in the district clerk's office \$5
- (5) for abstracting a judgment \$8
- (6) for approving a bond \$4
- (7) 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 not to exceed \$1
- (8) for a noncertified copy, for each page or part of a page. not to exceed \$1.

(e) The district clerk may not charge ~~the~~ United States Immigration and Customs Enforcement or United States Citizenship and Immigration Services [Naturalization Service] a fee for a copy of any document on file or of record in the clerk's office relating to an individual's criminal history, regardless of whether the document is certified.

SECTION 13. Section 57.002, Government Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) Subject to Subsection (e), a court in a county to which Section 21.021, Civil Practice and Remedies Code, applies may appoint a spoken language interpreter who is not a licensed court interpreter.

SECTION 14. 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;
 - (F) Ninth Court of Appeals District (Sec. 22.2101, Government Code) . . . \$5;
 - (G) Eleventh Court of Appeals District (Sec. 22.2121, 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; 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;
- (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;

(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) . . . not to exceed \$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;

(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.

SECTION 15. Section 551.0415, Government Code, is amended to read as follows:

Sec. 551.0415. GOVERNING BODY OF MUNICIPALITY OR COUNTY: REPORTS ABOUT ITEMS OF COMMUNITY INTEREST REGARDING WHICH NO ACTION WILL BE TAKEN. (a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality or county may receive from

municipal or county staff and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

(b) For purposes of Subsection (a), "items of community interest" includes:

- (1) expressions of thanks, congratulations, or condolence;
- (2) information regarding holiday schedules;
- (3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;
- (4) a reminder about an upcoming event organized or sponsored by the governing body;
- (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality or county; and
- (6) announcements involving an imminent threat to the public health and safety of people in the municipality or county that has arisen after the posting of the agenda.

SECTION 16. Section 551.0725(a), Government Code, is amended to read as follows:

(a) The commissioners court of a county [~~with a population of 400,000 or more~~] may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

- (1) the commissioners court votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person; and
- (2) the attorney advising the commissioners court issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person.

SECTION 17. Section 61.002(5), Health and Safety Code, is amended to read as follows:

(5) "General revenue levy" means:

- (A) the property taxes imposed by a county that are not dedicated to:
 - (i) the construction and maintenance of farm-to-market roads under Article VIII, Section 1-a, Texas Constitution;
 - (ii) [~~or to~~] flood control under Article VIII, Section 1-a, [~~of the~~] Texas Constitution;
 - (iii) [~~or that are not dedicated to~~] the further maintenance of the public roads under Article VIII, Section 9, [~~of the~~] Texas Constitution; or
 - (iv) the payment of principal or interest on county debt; and
- (B) the sales and use tax revenue to be received by the county during the calendar year in which the state fiscal year begins under Chapter 323, Tax Code, as determined under Section 26.041(d), Tax Code.

SECTION 18. Section 132.002(a), Local Government Code, is amended to read as follows:

(a) The commissioners court of a county may authorize a county or precinct officer who collects fees, fines, court costs, or other charges on behalf of the county or the state to accept payment by credit card or by the electronic processing of checks of a fee, fine, court costs, or other charge. The commissioners court may also authorize a county or precinct officer to collect and retain a fee for processing the payment by credit card or by the electronic processing of checks.

SECTION 19. Subchapter Z, Chapter 157, Local Government Code, is amended by adding Section 157.9031 to read as follows:

Sec. 157.9031. AUTHORITY TO REQUIRE REIMBURSEMENT FOR CERTAIN COVERAGE. A self-insuring county or the intergovernmental pool operating under Chapter 119, under policies concerning the provision of coverages adopted by the county's commissioners court or the pool's governing body, may require reimbursement for the provision of punitive damage coverage from a person to whom the county or intergovernmental pool provides coverage.

SECTION 20. Sections 270.007(b) and (f), Local Government Code, are amended to read as follows:

(b) A ~~[Notwithstanding the provisions of Subsections (f) and (g), a]~~ county may exclusively contract with a person to market the application or system. If the original contract for development of the application or system under Subsection (a) does not include a provision for marketing the application or system, a [A] contract under this subsection shall be awarded [only] in compliance with Section 262.030, [Local Government Code,] concerning the alternative competitive procedure for insurance or high technology items.

(f) Except as provided by Subsection (b), ~~[upon request of any person,]~~ a county may ~~[shall]~~ sell or license software under this section for a price negotiated between the county and the purchaser or licensee, including another governmental entity ~~[person, not to exceed the developmental cost to the county. Developmental cost shall only include costs incurred under a contract to procure the software or direct employee costs incurred to develop the software. This subsection does not apply to any county software that protects county computer systems from unauthorized use or access].~~

SECTION 21. Section 352.081(e), Local Government Code, is amended to read as follows:

(e) An order adopted under this section expires, as applicable, on the date:

(1) a determination is made under Subsection (b) that drought conditions no longer exist; or

(2) a determination is made by the commissioners court, or the county judge or fire marshal if designated for that purpose by the commissioners court, that the circumstances identified under Subsection (c)(2) no longer exist.

SECTION 22. Section 387.003, Local Government Code, is amended by amending Subsections (a), (b), (b-1), (c), (e), (f), and (h) and adding Subsections (a-1), (i), and (j) to read as follows:

(a) The commissioners court of the county may call an election on the question of creating a county assistance district under this chapter. More than one county assistance district may be created in a county, but not more than one district may be created in a commissioners precinct.

(a-1) A district may [to] perform the following functions in the district:

- (1) the construction, maintenance, or improvement of roads or highways;
- (2) the provision of law enforcement and detention services;
- (3) the maintenance or improvement of libraries, museums, parks, or other recreational facilities;
- (4) the provision of services that benefit the public health or welfare, including the provision of firefighting and fire prevention services; or
- (5) the promotion of economic development and tourism.

(b) The order calling the election must:

(1) define the boundaries of the district to include any portion of the county in which the combined tax rate of all local sales and use taxes imposed, including the rate to be imposed by the district if approved at the election, would not exceed the maximum combined rate of sales and use taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code [two percent]; and

(2) call for the election to be held within those boundaries.

(b-1) If the proposed district includes any territory of a municipality, the commissioners court shall send notice by certified mail to the governing body of the municipality of the commissioners court's intent to create the district. If the municipality has created a development corporation under Chapter 504 or 505, the commissioners court shall also send the notice to the board of directors of the corporation. The commissioners court must send the notice not later than the 60th day before the date the commissioners court orders the election. The governing body of the municipality may exclude the territory of the municipality from the proposed district by sending notice by certified mail to the commissioners court of the governing body's desire to exclude the municipal territory from the district. The governing body must send the notice not later than the 45th day after the date the governing body receives notice from the commissioners court under this subsection. The territory of a municipality that is excluded under this subsection may subsequently be included in:

(1) the district in an election held under Subsection (f) with the consent of the municipality; or

(2) another district after complying with the requirements of this subsection and after an election under Subsection (f).

(c) The ballot at the election must be printed to permit voting for or against the proposition: "Authorizing the creation of the ____ County Assistance District No. ____ (insert name of district) and the imposition of a sales and use tax at the rate of ____ [~~of one~~] percent (insert [~~one eighth, one fourth, three eighths, or one half, as~~] appropriate rate) for the purpose of financing the operations of the district."

(e) If a majority of the votes received at the election are against the creation of the district, the district is not created and the county at any time may call one or more elections ~~[another election]~~ on the question of creating one or more ~~[a]~~ county assistance districts ~~[district may not be held in the county before the first anniversary of the most recent election concerning the creation of a district].~~

(f) The commissioners court may call an election to be held in an area of the county that is not located in a district created under this section to determine whether the area should be included in the district and whether the district's sales and use tax should be imposed in the area. An election may not be held in an area in which the combined tax rate of all local sales and use taxes imposed, including the rate to be imposed by the district if approved at the election, would exceed the maximum combined rate of sales and use taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code ~~[two percent].~~

(h) If more than one election to authorize a local sales and use tax is held on the same day in the area of a proposed district or an area proposed to be added to a district and if the resulting approval by the voters would cause the imposition of a local sales and use tax in any area to exceed the maximum combined rate of sales and use taxes of political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code ~~[two percent]~~, only a tax authorized at an election under this section may be imposed.

(i) In addition to the authority to include an area in a district under Subsection (f), the governing body of a district by order may include an area in the district on receipt of a petition or petitions signed by the owner or owners of the majority of the land in the area to be included in the district. If there are no registered voters in the area to be included in the district, no election is required.

(j) The commissioners court by order may exclude an area from the district if the district has no outstanding bonds payable wholly or partly from sales and use taxes and the exclusion does not impair any outstanding district debt or contractual obligation.

SECTION 23. Section 387.005, Local Government Code, is amended to read as follows:

Sec. 387.005. GOVERNING BODY. (a) The commissioners court of the county in which the district is created by order shall provide that:

(1) the commissioners court is the governing body of the district; or

(2) the commissioners court shall appoint a governing body of the district.

(b) A member of the governing body of the district ~~[commissioners court]~~ is not entitled to compensation for service ~~[on the governing body of the district]~~ but is entitled to reimbursement for actual and necessary expenses.

(c) A board of directors appointed by the commissioners court under this section shall consist of five directors who serve staggered terms of two years. To be eligible to serve as a director, a person must be at least 18 years of age and a resident of the county in which the district is located. The initial directors shall draw lots to achieve staggered terms, with three of the directors serving one-year terms and two of the directors serving two-year terms.

SECTION 24. Section 387.006(a), Local Government Code, is amended to read as follows:

(a) A district may:

- (1) perform any act necessary to the full exercise of the district's functions;
- (2) accept a grant or loan from:
 - (A) the United States;
 - (B) an agency or political subdivision of this state; or
 - (C) a public or private person;
- (3) acquire, sell, lease, convey, or otherwise dispose of property or an interest in property under terms determined by the district;
- (4) employ necessary personnel; ~~and~~
- (5) adopt rules to govern the operation of the district and its employees and property; and
- (6) enter into agreements with municipalities necessary or convenient to achieve the district's purposes, including agreements regarding the duration, rate, and allocation between the district and the municipality of sales and use taxes.

SECTION 25. Section 387.007(b), Local Government Code, is amended to read as follows:

(b) A district may not adopt a sales and use tax under this chapter if the adoption of the tax would result in a combined tax rate of all local sales and use taxes that would exceed the maximum combined rate prescribed by Sections 321.101 and 323.101, Tax Code, [of more than two percent] in any location in the district.

SECTION 26. Section 387.009, Local Government Code, is amended to read as follows:

Sec. 387.009. TAX RATE. The rate of a tax adopted under this chapter must be in increments of one-eighth~~[, one fourth, three eighths, or one half]~~ of one percent.

SECTION 27. Sections 387.010(a), (b), and (c), Local Government Code, are amended to read as follows:

(a) A district that has adopted a sales and use tax under this chapter may, by order and subject to Section 387.007(b):

(1) reduce [change] the rate of the tax or repeal the tax without an election, except that the district may not repeal the sales and use tax or reduce the rate of the sales and use tax below the amount pledged to secure payment of an outstanding district debt or contractual obligation;

(2) increase the rate of the sales and use tax, if the increased rate of the sales and use tax will not exceed the rate approved at an election held under Section 387.003; or

(3) increase the rate of the sales and use tax to a rate that exceeds the rate approved at an election held under Section 387.003 after [if] the increase [change or repeal] is approved by a majority of the votes received in the district at an election held for that purpose.

(b) The tax may be changed under Subsection (a) in one or more increments of one-eighth of one percent ~~[to a maximum of one half of one percent]~~.

(c) The ballot for an election to increase [change] the tax shall be printed to permit voting for or against the proposition: "The increase [change] of a sales and use tax for the ___ County Assistance District No. ___ (insert name of district) from the

rate of ____ [~~of one~~] percent (insert [~~one fourth, three eighths, or one half, as~~] appropriate rate) to the rate of ____ [~~of one~~] percent (insert [~~one fourth, three eighths, or one half, as~~] appropriate rate)."

SECTION 28. Section 387.012, Local Government Code, is amended to read as follows:

Sec. 387.012. EFFECTIVE DATE OF TAX. The adoption of the tax, the increase or reduction [~~change~~] of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives a copy of the order of the district's governing body [~~notice of the results of the election~~] adopting, increasing, reducing [~~changing~~], or repealing the tax.

SECTION 29. Chapter 51, Property Code, is amended by adding Section 51.0022 to read as follows:

Sec. 51.0022. FORECLOSURE DATA COLLECTION. (a) In this section, "department" means the Texas Department of Housing and Community Affairs.

(b) A person filing a notice of sale of residential property under Section 51.002(b) must submit to the county clerk a completed form that provides the zip code for the property.

(c) On completion of a sale of real property, the trustee or sheriff shall submit to the county clerk a completed form that contains information on whether the property is residential and the zip code of the property.

(d) Not later than the 30th day after the date of receipt of a form under this section, the county clerk shall transmit the form to the department.

(e) The board of the department shall prescribe the forms required under this section. The forms may only request information on whether the property is residential and the zip code of the property.

(f) The department shall report the information received under this section quarterly to the legislature in a format established by the board of the department by rule.

SECTION 30. Sections 86.022, 112.008, and 387.010(d), Local Government Code, are repealed.

SECTION 31. (a) Articles 20.011(a) and 20.02(b), Code of Criminal Procedure, as amended by this Act, and Article 20.151, Code of Criminal Procedure, as added by this Act, apply only to testimony before a grand jury that is impaneled on or after the effective date of this Act.

(b) Article 27.18, Code of Criminal Procedure, as amended by this Act, applies 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.

(c) Article 38.073, Code of Criminal Procedure, as amended by this Act, applies only to the testimony of an inmate witness that is taken on or after the effective date of this Act.

(d) Section 13A, Article 49.25, Code of Criminal Procedure, as added by this Act, applies only to a service provided by a medical examiner's office on or after the effective date of this Act. A service provided before the effective date of this Act is covered by the law in effect on the date the service was provided, and the former law is continued in effect for that purpose.

(e) Sections 51.318(b) and 101.0611, Government Code, as amended by this Act, apply only to a request 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, made on or after the effective date of this Act. A request made before the effective date of this Act is covered by the law in effect when the request was made, and the former law is continued in effect for that purpose.

(f) Section 57.002(d-1), Government Code, as added by this Act, applies only to the appointment of a court interpreter under Chapter 57, Government Code, as amended by this Act, on or after the effective date of this Act. The appointment of a court interpreter before the effective date of this Act is governed by the law in effect when the interpreter was appointed, and the former law is continued in effect for that purpose.

(g) Section 551.0725(a), Government Code, as amended by this Act, applies only to a meeting held on or after the effective date of this Act. A meeting held before the effective date of this Act is governed by the law in effect on the date the meeting is held, and the former law is continued in effect for that purpose.

(h) Sections 270.007(b) and (f), Local Government Code, as amended by this Act, apply 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 when the contract was entered into, and the former law is continued in effect for that purpose.

(i) The board of the Texas Department of Housing and Community Affairs shall adopt the forms and rules required by Section 51.0022, Property Code, as added by this Act, not later than January 1, 2012.

(j) The change in law made by Section 51.0022, Property Code, as added by this Act, applies only to a notice of sale filed on or after January 1, 2012. A notice of sale filed before January 1, 2012, 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.

SECTION 32. 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 1233** (house committee report) by striking SECTION 10 of the bill, amending Section 43.007(i), Election Code (page 5, lines 15 through 20), and renumbering the remaining SECTIONS of the bill accordingly.

The amendments were read.

Senator West moved to concur in the House amendments to **SB 1233**.

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

SENATE BILL 78 WITH HOUSE AMENDMENT

Senator Nelson called **SB 78** 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 78** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

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

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

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter W to read as follows:

SUBCHAPTER W. ADVERSE LICENSING, LISTING, OR REGISTRATION DECISIONS

Sec. 531.951. APPLICABILITY. (a) This subchapter applies only to the final licensing, listing, or registration decisions of a health and human services agency with respect to a person under the law authorizing the agency to regulate the following types of persons:

(1) a youth camp licensed under Chapter 141, Health and Safety Code;

(2) a home and community support services agency licensed under Chapter 142, Health and Safety Code;

(3) a hospital licensed under Chapter 241, Health and Safety Code;

(4) an institution licensed under Chapter 242, Health and Safety Code;

(5) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(6) a special care facility licensed under Chapter 248, Health and Safety Code;

(7) an intermediate care facility licensed under Chapter 252, Health and Safety Code;

(8) a chemical dependency treatment facility licensed under Chapter 464, Health and Safety Code;

(9) a mental hospital or mental health facility licensed under Chapter 577, Health and Safety Code;

(10) a child-care facility or child-placing agency licensed under or a family home listed or registered under Chapter 42, Human Resources Code; or

(11) an adult day-care facility licensed under Chapter 103, Human Resources Code.

(b) This subchapter does not apply to an agency decision that did not result in a final order or that was reversed on appeal.

Sec. 531.952. RECORD OF FINAL DECISION. (a) Each health and human services agency that regulates a person described by Section 531.951 shall in accordance with this section and executive commissioner rule maintain a record of:

(1) each application for a license, including a renewal license or a license that does not expire, a listing, or a registration that is denied by the agency under the law authorizing the agency to regulate the person; and

(2) each license, listing, or registration that is revoked, suspended, or terminated by the agency under the applicable law.

(b) The record of an application required by Subsection (a)(1) must be maintained until the 10th anniversary of the date the application is denied. The record of the license, listing, or registration required by Subsection (a)(2) must be maintained until the 10th anniversary of the date of the revocation, suspension, or termination.

(c) The record required under Subsection (a) must include:

(1) the name and address of the applicant for a license, listing, or registration that is denied as described by Subsection (a)(1);

(2) the name and address of each person listed in the application for a license, listing, or registration that is denied as described by Subsection (a)(1);

(3) the name of each person determined by the applicable regulatory agency to be a controlling person of an entity for which an application, license, listing, or registration is denied, revoked, suspended, or terminated as described by Subsection (a);

(4) the specific type of license, listing, or registration that was denied, revoked, suspended, or terminated by the agency;

(5) a summary of the terms of the denial, revocation, suspension, or termination; and

(6) the period the denial, revocation, suspension, or termination was effective.

(d) Each health and human services agency that regulates a person described by Section 531.951 each month shall provide a copy of the records maintained under this section to each other health and human services agency that regulates a person described by Section 531.951.

Sec. 531.953. DENIAL OF APPLICATION BASED ON ADVERSE AGENCY DECISION. A health and human services agency that regulates a person described by Section 531.951 may deny an application for a license, including a renewal license or a license that does not expire, a listing, or a registration included in that section if:

(1) any of the following persons are listed in a record maintained under Section 531.952:

(A) the applicant;

(B) a person listed on the application; or

(C) a person determined by the applicable regulating agency to be a controlling person of an entity for which the license, including a renewal license or a license that does not expire, the listing, or the registration is sought; and

(2) the agency's action that resulted in the person being listed in a record maintained under Section 531.952 is based on:

(A) an act or omission that resulted in physical or mental harm to an individual in the care of the applicant or person;

(B) a threat to the health, safety, or well-being of an individual in the care of the applicant or person;

(C) the physical, mental, or financial exploitation of an individual in the care of the applicant or person; or

(D) a determination by the agency that the applicant or person has committed an act or omission that renders the applicant unqualified or unfit to fulfill the obligations of the license, listing, or registration.

Sec. 531.954. REQUIRED APPLICATION INFORMATION. An applicant submitting an initial or renewal application for a license, including a renewal license or a license that does not expire, a listing, or a registration described under Section 531.951 must include with the application a written statement of:

(1) the name of any person who is or will be a controlling person, as determined by the applicable agency regulating the person, of the entity for which the license, listing, or registration is sought; and

(2) any other relevant information required by executive commissioner rule.

SECTION 2. (a) Not later than March 1, 2012, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement Subchapter W, Chapter 531, Government Code, as added by this Act.

(b) Notwithstanding Section 531.952, Government Code, as added by this Act, a health and human services agency is not required to maintain the records as required under that section until March 1, 2012.

SECTION 3. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 78**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 725

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 725** 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 725** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Eltife, Deuell, Watson, and Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 3275

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 3275** 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 3275** 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 Ellis, Chair; Jackson, Watson, Eltife, and West.

CONFERENCE COMMITTEE ON HOUSE BILL 628

Senator Eltife, on behalf of 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 628** 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 628** 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; Duncan, Seliger, Van de Putte, and Fraser.

SENATE BILL 100 WITH HOUSE AMENDMENTS

Senator Van de Putte called **SB 100** 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 100** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the adoption of voting procedures necessary to implement the federal Military and Overseas Voter Empowerment Act.

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

SECTION 1. Chapter 101, Election Code, is amended to read as follows:

CHAPTER 101. VOTING BY RESIDENT FEDERAL POSTCARD APPLICANT SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. ELIGIBILITY. A person is eligible for early voting by mail as provided by this chapter if:

- (1) the person is qualified to vote in this state or, if not registered to vote in this state, would be qualified if registered; and
- (2) the person is:
 - (A) a member of the armed forces of the United States, or the spouse or a dependent of a member;

(B) a member of the merchant marine of the United States, or the spouse or a dependent of a member; or

(C) domiciled in this state but temporarily living outside the territorial limits of the United States and the District of Columbia.

Sec. 101.002. GENERAL CONDUCT OF VOTING. Voting under this chapter shall be conducted and the results shall be processed as provided by Subtitle A for early voting by mail, except as otherwise provided by this chapter.

Sec. 101.003. DEFINITIONS. ~~[FORM AND CONTENTS OF APPLICATION.~~

~~(a) An application for a ballot to be voted under this chapter must:~~

~~[(1) be submitted on an official federal postcard application form; and~~

~~[(2) include the information necessary to indicate that the applicant is eligible to vote in the election for which the ballot is requested.~~

~~[(b)] In this chapter:~~

~~(1) "Federal [~~,"~~ "federal"] postcard application" means an application for a ballot to be voted under this chapter submitted on the official federal form prescribed under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.).~~

~~(2) "FPCA registrant" means a person registered to vote under Section 101.055.~~

Sec. 101.004. NOTING FPCA REGISTRATION ON POLL LIST. For each FPCA registrant accepted to vote, a notation shall be made beside the voter's name on the early voting poll list indicating that the voter is an FPCA registrant.

Sec. 101.005. NOTING FPCA REGISTRATION AND E-MAIL ON EARLY VOTING ROSTER. The entry on the early voting roster pertaining to a voter under this chapter who is an FPCA registrant must include a notation indicating that the voter is an FPCA registrant. The early voting clerk shall note on the early voting by mail roster each e-mail of a ballot under Subchapter C.

Sec. 101.006. EXCLUDING FPCA REGISTRANT FROM PRECINCT EARLY VOTING LIST. A person to whom a ballot is provided under this chapter is not required to be included on the precinct early voting list if the person is an FPCA registrant.

Sec. 101.007. DESIGNATION OF SECRETARY OF STATE. (a) The secretary of state is designated as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.).

(b) The secretary of state is designated as the state coordinator between military and overseas voters and county election officials. A county election official shall:

(1) cooperate with the secretary of state to ensure that military and overseas voters timely receive accurate balloting materials that a voter is able to cast in time for the election; and

(2) otherwise comply with the federal Military and Overseas Voter Empowerment Act (Pub. L. No. 111-84, Div. A, Title V, Subt. H).

(c) The secretary of state may adopt rules as necessary to implement this section.

Sec. 101.008. STATUS OF APPLICATION OR BALLOT VOTED. The secretary of state, in coordination with local election officials, shall implement an electronic free-access system by which a person eligible for early voting by mail under this chapter or Chapter 114 may determine by telephone, by e-mail, or over the Internet whether:

(1) the person's federal postcard application or other registration or ballot application has been received and accepted; and

(2) the person's ballot has been received and the current status of the ballot.

SUBCHAPTER B. SUBMISSION OF FEDERAL POSTCARD APPLICATION

Sec. 101.051. FORM AND CONTENTS OF APPLICATION. An application for a ballot to be voted under this subchapter must:

(1) be submitted on an official federal postcard application form; and

(2) include the information necessary to indicate that the applicant is eligible to vote in the election for which the ballot is requested.

Sec. 101.052 [101.004]. SUBMITTING APPLICATION. (a) A federal postcard application must be submitted to the early voting clerk for the election who serves the election precinct of the applicant's residence.

(a-1) A federal postcard application must be submitted by:

(1) mail; or

(2) electronic transmission of an image of the application under procedures prescribed by the secretary of state.

(b) A federal postcard application may be submitted at any time during the calendar year in which the election for which a ballot is requested occurs, but not later than the deadline for submitting a regular application for a ballot to be voted by mail.

(c) A federal postcard application requesting a ballot for an election to be held in January or February may be submitted in the preceding calendar year but not earlier than the earliest date for submitting a regular application for a ballot to be voted by mail.

(d) A timely application that is addressed to the wrong early voting clerk shall be forwarded to the proper early voting clerk not later than the day after the date it is received by the wrong clerk.

(e) An applicant who otherwise complies with applicable requirements is entitled to receive a full ballot to be voted by mail under this chapter if:

(1) the applicant submits a federal postcard application to the early voting clerk on or before the 20th day before election day; and

(2) the application contains the information that is required for registration under Title 2.

(f) The applicant is entitled to receive only a federal ballot to be voted by mail under Chapter 114 if:

(1) the applicant submits the federal postcard application to the early voting clerk after the date provided by Subsection (e)(1) and before the sixth day before election day; and

(2) the application contains the information that is required for registration under Title 2.

(g) An applicant who submits a federal postcard application to the early voting clerk on or after the sixth day before election day is not entitled to receive a ballot by mail for that election.

(h) If the applicant submits the federal postcard application within the time prescribed by Subsection (f)(1) and is a registered voter at the address contained on the application, the applicant is entitled to receive a full ballot to be voted by mail under this chapter.

(i) Except as provided by Subsections (l) and (m), for purposes of determining the date a federal postcard application is submitted to the early voting clerk, an application is considered to be submitted on the date it is placed and properly addressed in the United States mail. An application mailed from an Army/Air Force Post Office (APO) or Fleet Post Office (FPO) is considered placed in the United States mail. The date indicated by the post office cancellation mark, including a United States military post office cancellation mark, is considered to be the date the application was placed in the mail unless proven otherwise. For purposes of an application made under Subsection (e):

(1) an application that does not contain a cancellation mark is considered to be timely if it is received by the early voting clerk on or before the 15th day before election day; and

(2) if the 20th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is considered to be timely if it is submitted to the early voting clerk on or before the next regular business day.

(j) If the early voting clerk determines that an application that is submitted before the time prescribed by Subsection (e)(1) does not contain the information that is required for registration under Title 2, the clerk shall notify the applicant of that fact. If the applicant has provided a telephone number or an address for receiving mail over the Internet, the clerk shall notify the applicant by that medium.

(k) If the applicant submits the missing information before the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail under this chapter. If the applicant submits the missing information after the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail for the next election that occurs:

(1) in the same calendar year; and

(2) after the 30th day after the date the information is submitted.

(l) For purposes of determining the end of the period that an application may be submitted under Subsection (f)(1), an application is considered to be submitted at the time it is received by the early voting clerk.

(m) The secretary of state by rule shall establish the date on which a federal postcard application is considered to be electronically submitted to the early voting clerk.

Sec. 101.053 [~~101.004~~]. ACTION BY EARLY VOTING CLERK ON CERTAIN APPLICATIONS. The early voting clerk shall notify the voter registrar of a federal postcard application submitted by an applicant that states a voting residence address located outside the registrar's county.

Sec. 101.054 [401.005]. APPLYING FOR MORE THAN ONE ELECTION IN SAME APPLICATION. (a) A person may apply with a single federal postcard application for a ballot for any one or more elections in which the early voting clerk to whom the application is submitted conducts early voting.

(b) An application that does not identify the election for which a ballot is requested shall be treated as if it requests a ballot for:

(1) each general election in which the clerk conducts early voting; and

(2) the general primary election if the application indicates party preference and is submitted to the early voting clerk for the primary.

(c) An application shall be treated as if it requests a ballot for:

[4] a runoff election that results from an election for which a ballot is requested; and

~~(2) each election for a federal office, including a primary or runoff election, that occurs on or before the date of the second general election for state and county officers that occurs after the date the application is submitted.~~

(d) An application requesting a ballot for more than one election shall be preserved for the period for preserving the precinct election records for the last election for which the application is effective.

Sec. 101.055 [401.006]. FPCA VOTER REGISTRATION. (a) The submission of a federal postcard application that complies with the applicable requirements by an unregistered applicant constitutes registration by the applicant:

(1) for the purpose of voting in the election for which a ballot is requested; and

(2) under Title 2 unless the person indicates on the application that the person is residing outside the United States indefinitely.

(b) For purposes of registering to vote under this chapter, a person shall provide the address of the last place of residence of the person in this state or the last place of residence in this state of the person's parent or legal guardian.

(c) The registrar shall register the person at the address provided under Subsection (b) unless that address no longer is recognized as a residential address, in which event the registrar shall assign the person to an address under procedures prescribed by the secretary of state. [In this chapter, "FPCA registrant" means a person registered to vote under this section.]

Sec. 101.056 [401.007]. METHOD OF PROVIDING BALLOT; REQUIRED ADDRESS. (a) The balloting materials provided under this subchapter ~~[chapter]~~ shall be airmailed to the voter free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), in an envelope labeled "Official Election Balloting Material - via Airmail." The secretary of state shall provide early voting clerks with instructions on compliance with this subsection.

(b) The address to which the balloting materials are sent to a voter must be:

(1) an address outside the county of the voter's residence; or

(2) an address in the United States for forwarding or delivery to the voter at a location outside the United States.

(c) If the address to which the balloting materials are to be sent is within the county served by the early voting clerk, the federal postcard application must indicate that the balloting materials will be forwarded or delivered to the voter at a location outside the United States.

Sec. 101.057 [~~101.008~~]. RETURN OF VOTED BALLOT. A ballot voted under this subchapter [~~chapter~~] may be returned to the early voting clerk by mail, common or contract carrier, or courier.

~~[Sec. 101.009. NOTING FPCA REGISTRATION ON POLL LIST. For each FPCA registrant accepted to vote, a notation shall be made beside the voter's name on the early voting poll list indicating that the voter is an FPCA registrant.~~

~~[Sec. 101.010. NOTING FPCA REGISTRATION ON EARLY VOTING ROSTER. The entry on the early voting roster pertaining to a voter under this chapter who is an FPCA registrant must include a notation indicating that the voter is an FPCA registrant.~~

~~[Sec. 101.011. EXCLUDING FPCA REGISTRANT FROM PRECINCT EARLY VOTING LIST. A person to whom a ballot is provided under this chapter is not required to be included on the precinct early voting list if the person is an FPCA registrant.]~~

Sec. 101.058 [~~101.012~~]. OFFICIAL CARRIER ENVELOPE. The officially prescribed carrier envelope for voting under this subchapter [~~chapter~~] shall be prepared so that it can be mailed free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.) [~~Federal Voting Assistance Act of 1955~~], and must contain the label prescribed by Section 101.056(a) [~~101.007(a)~~] for the envelope in which the balloting materials are sent to a voter. The secretary of state shall provide early voting clerks with instructions on compliance with this section.

SUBCHAPTER C. E-MAIL TRANSMISSION OF BALLOTING MATERIALS

Sec. 101.101. PURPOSE. The purpose of this subchapter is to implement the federal Military and Overseas Voter Empowerment Act (Pub. L. No. 111-84, Div. A, Title V, Subt. H).

Sec. 101.102. REQUEST FOR BALLOTING MATERIALS. (a) A person eligible to vote under this chapter may request from the appropriate early voting clerk e-mail transmission of balloting materials under this subchapter.

(b) The early voting clerk shall grant a request made under this section for the e-mail transmission of balloting materials if:

(1) the requestor has submitted a valid federal postcard application and:

(A) if the requestor is a person described by Section 101.001(2)(C), has provided a current mailing address that is located outside the United States; or

(B) if the requestor is a person described by Section 101.001(2)(A) or (B), has provided a current mailing address that is located outside the requestor's county of residence;

(2) the requestor provides an e-mail address:

(A) that corresponds to the address on file with the requestor's federal postcard application; or

(B) stated on a newly submitted federal postcard application;

(3) the request is submitted on or before the seventh day before the date of the election; and

(4) a marked ballot for the election from the requestor has not been received by the early voting clerk.

Sec. 101.103. CONFIDENTIALITY OF E-MAIL ADDRESS. An e-mail address used under this subchapter to request balloting materials is confidential and does not constitute public information for purposes of Chapter 552, Government Code. An early voting clerk shall ensure that a voter's e-mail address provided under this subchapter is excluded from public disclosure.

Sec. 101.104. ELECTIONS COVERED. The e-mail transmission of balloting materials under this subchapter is limited to:

(1) an election in which an office of the federal government appears on the ballot, including a primary election;

(2) an election to fill a vacancy in the legislature unless:

(A) the election is ordered as an emergency election under Section 41.0011; or

(B) the election is held as an expedited election under Section 203.013;

or

(3) an election held jointly with an election described by Subdivision (1) or

(2).

Sec. 101.105. BALLOTING MATERIALS TO BE SENT BY E-MAIL. Balloting materials to be sent by e-mail under this subchapter include:

(1) the appropriate ballot;

(2) ballot instructions, including instructions that inform a voter that the ballot must be returned by mail to be counted;

(3) instructions prescribed by the secretary of state on:

(A) how to print a return envelope from the federal Voting Assistance Program website; and

(B) how to create a carrier envelope or signature sheet for the ballot;

and

(4) a list of certified write-in candidates, if applicable.

Sec. 101.106. METHODS OF TRANSMISSION TO VOTER. (a) The balloting materials may be provided by e-mail to the voter in PDF format, through a scanned format, or by any other method of electronic transmission authorized by the secretary of state in writing.

(b) The secretary of state shall prescribe procedures for the retransmission of balloting materials following an unsuccessful transmission of the materials to a voter.

Sec. 101.107. RETURN OF BALLOT. (a) A voter described by Section 101.001(2)(A) or (B) must be voting from outside the voter's county of residence. A voter described by Section 101.001(2)(C) must be voting from outside the United States.

(b) A voter who receives a ballot under this subchapter must return the ballot in the same manner as required under Section 101.057 and, except as provided by Chapter 105, may not return the ballot by electronic transmission.

(c) A ballot that is not returned as required by Subsection (b) is considered a ballot not timely returned and is not sent to the early voting ballot board for processing.

(d) The deadline for the return of a ballot under this section is the same deadline as provided in Section 86.007.

Sec. 101.108. TRACKING OF BALLOTING MATERIALS. The secretary of state by rule shall create a tracking system under which an FPCA registrant may determine whether a voted ballot has been received by the early voting clerk. Each county that sends ballots to FPCA registrants shall provide information required by the secretary of state to implement the system.

Sec. 101.109. RULES. (a) The secretary of state may adopt rules as necessary to implement this subchapter.

(b) The secretary of state may provide for an alternate secure method of electronic ballot transmission under this subchapter instead of transmission by e-mail.

[Sec. 101.013. DESIGNATION OF SECRETARY OF STATE. The secretary of state is designated as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), as amended.]

SECTION 2. Section 2.025, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d) or as otherwise provided by this code, a runoff election shall be held not earlier than the 20th or later than the 45th day after the date the final canvass of the main election is completed.

(d) A runoff election for a special election to fill a vacancy in Congress or a special election to fill a vacancy in the legislature to which Section 101.104 applies shall be held not earlier than the 70th day or later than the 77th day after the date the final canvass of the main election is completed.

SECTION 3. Section 3.005(c), Election Code, is amended to read as follows:

(c) For an election to be held on:

(1) the date of the general election for state and county officers, the election shall be ordered not later than the 78th [70th] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the election shall be ordered not later than the 71st day before election day.

SECTION 4. Section 41.001, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

(1) the second Saturday in May in an odd-numbered year;

(2) the second Saturday in May in an even-numbered year, for an election held by a political subdivision other than a county; or

(3) [(2)] the first Tuesday after the first Monday in November.

(d) Notwithstanding Section 31.093, a county elections administrator is not required to enter into a contract to furnish election services for an election held on the date described by Subsection (a)(2).

SECTION 5. Section 41.0052, Election Code, is amended to read as follows:

Sec. 41.0052. CHANGING GENERAL ELECTION DATE. (a) ~~[The governing body of a political subdivision other than a county may, not later than December 31, 2005, change the date on which it holds its general election for officers to another authorized uniform election date.~~

~~[(a-1)]~~ The governing body of a political subdivision, other than a county, that holds its general election for officers on a date other than the November uniform election date may, not later than December 31, 2012 ~~[2010]~~, change the date on which it holds its general election for officers to the November uniform election date.

(b) A political subdivision that before September 1, 2011, held its general election for officers on the uniform election date in May or that is required by other law to hold its general election for officers on that date shall hold its general election for officers on the first Tuesday in April in an odd-numbered year unless the governing body of the political subdivision changes the date as provided by Subsection (a).

(c) A political subdivision [governing body] changing an election date under this section shall adjust the terms of office to conform to the new election date.

(d) A home-rule city may implement the change authorized by Subsection (a) through the adoption of a resolution. The change contained in the resolution supersedes a city charter provision that requires a different general election date.

(e) The holdover of a member of a governing body of a city in accordance with Section 17, Article XVI, Texas Constitution, so that a term of office may be conformed to a new election date chosen under this section does not constitute a vacancy for purposes of Section 11(b), Article XI, Texas Constitution.

SECTION 6. Sections 41.007(a), (b), and (c), Election Code, are amended to read as follows:

(a) The general primary election date is the first Tuesday in April ~~[March]~~ in each even-numbered year.

(b) The runoff primary election date is the third ~~[second]~~ Tuesday in June ~~[April]~~ following the general primary election.

(c) The presidential primary election date is the first Tuesday in April ~~[March]~~ in each presidential election year.

SECTION 7. Section 65.051, Election Code, is amended by adding Subsection (c) to read as follows:

(c) Section 1.006 does not apply to this section.

SECTION 8. Section 86.004(b), Election Code, is amended to read as follows:

(b) For an election to which Section 101.104 applies [the general election for state and county officers], the balloting materials for a voter who indicates on the application for a ballot to be voted by mail or the federal postcard application that the voter is eligible to vote early by mail as a consequence of the voter's being outside the United States shall be mailed on or before the later of the 45th day before election day or the seventh calendar day after the date the clerk receives the application. However, if it is not possible to mail the ballots by the deadline of the 45th day before election

day, the clerk shall notify the secretary of state within 24 hours of knowing that the deadline will not be met. The secretary of state shall monitor the situation and advise the clerk, who shall mail the ballots as soon as possible in accordance with the secretary of state's guidelines.

SECTION 9. Section 86.011(b), Election Code, is amended to read as follows:

(b) If the return is timely, the clerk shall enclose the carrier envelope and the voter's early voting ballot application in a jacket envelope. The clerk shall also include in the jacket envelope:

(1) a copy of the voter's federal postcard application if the ballot is voted under Chapter 101; and

(2) the signature cover sheet, if the ballot is voted under Chapter 105.

SECTION 10. Subchapter B, Chapter 87, Election Code, is amended by adding Section 87.0223 to read as follows:

Sec. 87.0223. TIME OF DELIVERY: BALLOTS SENT OUT BY REGULAR MAIL AND E-MAIL. (a) If the early voting clerk has provided a voter a ballot to be voted by mail by both regular mail and e-mail under Subchapter C, Chapter 101, the clerk may not deliver a jacket envelope containing the early voting ballot voted by mail by the voter to the board until:

(1) both ballots are returned; or

(2) the deadline for returning marked ballots under Section 86.007 has passed.

(b) If both the ballot provided by regular mail and the ballot provided by e-mail are returned before the deadline, the early voting clerk shall deliver only the jacket envelope containing the ballot provided by e-mail to the board. The ballot provided by regular mail is considered to be a ballot not timely returned.

SECTION 11. Section 87.041, Election Code, is amended by adding Subsection (f) to read as follows:

(f) In making the determination under Subsection (b)(2) for a ballot cast under Chapter 101 or 105, the board shall compare the signature on the carrier envelope or signature cover sheet with the signature of the voter on the federal postcard application.

SECTION 12. Section 87.043, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The early voting ballot board shall place the carrier envelopes containing rejected ballots in an envelope and shall seal the envelope. More than one envelope may be used if necessary. The board shall keep a record of the number of rejected ballots in each envelope.

(d) A notation must be made on the carrier envelope of any ballot that was rejected after the carrier envelope was opened and include the reason the envelope was opened and the ballot was rejected.

SECTION 13. Section 87.0431, Election Code, is amended to read as follows:

Sec. 87.0431. NOTICE OF REJECTED BALLOT. Not later than the 10th day after election day, the presiding judge of the early voting ballot board shall deliver written notice of the reason for the rejection of a ballot to the voter at the residence

address on the ballot application. If the ballot was transmitted to the voter by e-mail under Subchapter C, Chapter 101, the presiding judge shall also provide the notice to the e-mail address to which the ballot was sent.

SECTION 14. Section 87.044(a), Election Code, is amended to read as follows:

(a) The early voting ballot board shall place each application for a ballot voted by mail in its corresponding jacket envelope. For a ballot voted under Chapter 101 or 105, the board shall also place the copy of the voter's federal postcard application or signature cover sheet in the same location as the carrier envelope. If the voter's ballot was accepted, the board shall also place the carrier envelope in the jacket envelope. However, if the jacket envelope is to be used in a subsequent election, the carrier envelope shall be retained elsewhere.

SECTION 15. Section 105.003, Election Code, is amended to read as follows:

Sec. 105.003. USE OF FEDERAL WRITE-IN ABSENTEE BALLOT FOR ELECTIONS FOR FEDERAL OFFICE. The secretary of state shall prescribe procedures to allow a voter who qualifies to vote by a federal write-in absentee ballot to vote through use of a federal write-in absentee ballot in:

(1) any general, special, primary, or runoff election for federal office; or

(2) an election for any office for which balloting materials may be sent

under Section 101.104.

SECTION 16. Section 142.010(b), Election Code, is amended to read as follows:

(b) Not later than the 68th [~~55th~~] day before general election day, the certifying authority shall deliver the certification to the authority responsible for having the official ballot prepared in each county in which the candidate's name is to appear on the ballot.

SECTION 17. Section 143.007(c), Election Code, is amended to read as follows:

(c) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 78th [~~70th~~] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 18. Section 144.005(d), Election Code, is amended to read as follows:

(d) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 78th [~~70th~~] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 19. Section 144.006(b), Election Code, is amended to read as follows:

(b) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 78th [~~67th~~] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 20. Section 145.037(e), Election Code, is amended to read as follows:

(e) The certification must be delivered not later than 5 p.m. of the 71st [~~70th~~] day before election day.

SECTION 21. Section 145.038(b), Election Code, is amended to read as follows:

(b) The state chair must deliver the certification of the replacement nominee not later than 5 p.m. of the 69th [~~67th~~] day before election day.

SECTION 22. Section 145.092(f), Election Code, is amended to read as follows:

(f) A candidate in an election for which the filing deadline for an application for a place on the ballot is not later than 5 p.m. of the 78th [~~70th~~] day before election day may not withdraw from the election after 5 p.m. of the 71st [~~67th~~] day before election day.

SECTION 23. Section 145.094(a), Election Code, is amended to read as follows:

(a) The name of a candidate shall be omitted from the ballot if the candidate:

(1) dies before the second day before the date of the deadline for filing the candidate's application for a place on the ballot;

(2) withdraws or is declared ineligible before 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a);

(3) withdraws or is declared ineligible before 5 p.m. of the 53rd day before election day, in an election subject to Section 145.092(b); or

(4) withdraws or is declared ineligible before 5 p.m. of the 71st [~~67th~~] day before election day, in an election subject to Section 145.092(f).

SECTION 24. Section 145.096(a), Election Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a candidate's name shall be placed on the ballot if the candidate:

(1) dies on or after the second day before the deadline for filing the candidate's application for a place on the ballot;

(2) is declared ineligible after 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a);

(3) is declared ineligible after 5 p.m. of the 53rd day before election day, in an election subject to Section 145.092(b); or

(4) is declared ineligible after 5 p.m. of the 71st [~~67th~~] day before election day, in an election subject to Section 145.092(f).

SECTION 25. Sections 146.025(a) and (b), Election Code, are amended to read as follows:

(a) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 78th [~~70th~~] day before general election day, except as otherwise provided by this code. A declaration may not be filed earlier than the 30th day before the date of the regular filing deadline.

(b) If a candidate whose name is to appear on the general election ballot dies or is declared ineligible after the third day before the date of the filing deadline prescribed by Subsection (a), a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 75th [~~67th~~] day before election day.

SECTION 26. Section 146.029(c), Election Code, is amended to read as follows:

(c) Not later than the 68th [~~62nd~~] day before election day, the certifying authority shall deliver the certification to the authority responsible for having the official ballot prepared in each county in which the office sought by the candidate is to be voted on.

SECTION 27. Section 146.054(b), Election Code, is amended to read as follows:

(b) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 74th [~~67th~~] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 28. Section 161.008(b), Election Code, is amended to read as follows:

(b) Not later than the 68th [~~62nd~~] day before general election day, the secretary of state shall deliver the certification to the authority responsible for having the official general election ballot prepared in each county in which the candidate's name is to appear on the ballot.

SECTION 29. Section 171.0231(d), Election Code, is amended to read as follows:

(d) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 88th [~~62nd~~] day 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 79th [~~59th~~] day before election day.

SECTION 30. Section 172.028(b), Election Code, is amended to read as follows:

(b) Not later than the 84th [~~57th~~] day before general primary election day, the state chair shall deliver the certification to the county chair in each county in which the candidate's name is to appear on the ballot.

SECTION 31. Section 172.052(a), Election Code, is amended to read as follows:

(a) A candidate for nomination may not withdraw from the general primary election after the 88th ~~[62nd]~~ day before general primary election day.

SECTION 32. Sections 172.054(a) and (b), Election Code, are amended to read as follows:

(a) The deadline for filing an application for a place on the general primary election ballot is extended as provided by this section if a candidate who has made an application that complies with the applicable requirements:

(1) dies on or after the fifth day before the date of the regular filing deadline and on or before the 88th ~~[62nd]~~ day before general primary election day;

(2) holds the office for which the application was made and withdraws or is declared ineligible on or after the date of the regular filing deadline and on or before the 88th ~~[62nd]~~ day before general primary election day; or

(3) withdraws or is declared ineligible during the period prescribed by Subdivision (2), and at the time of the withdrawal or declaration of ineligibility no other candidate has made an application that complies with the applicable requirements for the office sought by the withdrawn or ineligible candidate.

(b) An application for an office sought by a withdrawn, deceased, or ineligible candidate must be filed not later than 6 p.m. of the 80th ~~[60th]~~ day before general primary election day. An application filed by mail with the state chair is not timely if received later than 5 p.m. of the 80th ~~[60th]~~ day before general primary election day.

SECTION 33. Section 172.057, Election Code, is amended to read as follows:

Sec. 172.057. WITHDRAWN, DECEASED, OR INELIGIBLE CANDIDATE'S NAME OMITTED FROM GENERAL PRIMARY BALLOT. A candidate's name shall be omitted from the general primary election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 88th ~~[62nd]~~ day before general primary election day.

SECTION 34. Section 172.058(a), Election Code, is amended to read as follows:

(a) If a candidate who has made an application for a place on the general primary election ballot that complies with the applicable requirements dies or is declared ineligible after the 88th ~~[62nd]~~ day before general primary election day, the candidate's name shall be placed on the ballot and the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

SECTION 35. Section 172.059(a), Election Code, is amended to read as follows:

(a) A candidate for nomination may not withdraw from the runoff primary election after 5 p.m. of the 8th ~~[10th]~~ day after general primary election day.

SECTION 36. Section 172.082(c), Election Code, is amended to read as follows:

(c) The drawing shall be conducted at the county seat not later than the 81st ~~[53rd]~~ day before general primary election day.

SECTION 37. Section 192.033(b), Election Code, is amended to read as follows:

(b) The secretary of state shall deliver the certification to the authority responsible for having the official ballot prepared in each county before the later of the 68th [~~62nd~~] day before presidential election day or the second business day after the date of final adjournment of the party's national presidential nominating convention.

SECTION 38. Section 201.051(b), Election Code, is amended to read as follows:

(b) For a vacancy to be filled by a special election to be held on the date of the general election for state and county officers, the election shall be ordered not later than the 78th [~~70th~~] day before election day.

SECTION 39. Section 201.054(f), Election Code, is amended to read as follows:

(f) For a special election to be held on the date of the general election for state and county officers, the day of the filing deadline is the 75th [~~67th~~] day before election day.

SECTION 40. Sections 11.055(a) and (c), Education Code, are amended to read as follows:

(a) Except as provided by Subsection (c), an application of a candidate for a place on the ballot must be filed not later than 5 p.m. of the 71st [~~62nd~~] day before the date of the election. An application may not be filed earlier than the 30th day before the date of the filing deadline.

(c) For an election to be held on the date of the general election for state and county officers, the day of the filing deadline is the 78th [~~70th~~] day before election day.

SECTION 41. Section 11.056(b), Education Code, is amended to read as follows:

(b) A [~~Except as provided by Subsection (c), a~~] declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [~~5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed~~].

SECTION 42. Section 11.059(e), Education Code, is amended to read as follows:

(e) Not later than December 31, 2011 [~~2007~~], the board of trustees may adopt a resolution changing the length of the terms of its trustees. The resolution must provide for a term of either three or four years and specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for trustees that occurs after January 1, 2012 [~~2008~~], and a trustee who serves on that date shall serve the remainder of that term. This subsection expires January 1, 2017 [~~2013~~].

SECTION 43. Section 130.0825(b), Education Code, is amended to read as follows:

(b) A [~~Except as provided by Subsection (c), a~~] declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [~~5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed~~].

SECTION 44. Section 285.131(d), Health and Safety Code, is amended to read as follows:

(d) A ~~[Except as provided by Subsection (g), a]~~ declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election ~~[5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed].~~

SECTION 45. Subchapter A, Chapter 21, Local Government Code, is amended by adding Section 21.004 to read as follows:

Sec. 21.004. CHANGE OF LENGTH OF TERMS IN GENERAL-LAW MUNICIPALITY. (a) This section applies only to a general-law municipality whose governing body is composed of members that serve a term of one or three years.

(b) Not later than December 31, 2011, the governing body of the general-law municipality may adopt a resolution changing the length of the terms of its members to two years. The resolution must specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for members of the governing body that occurs after January 1, 2012, and a member who serves on that date shall serve the remainder of that term.

(c) This section expires January 1, 2015.

SECTION 46. Section 63.0945(d), Water Code, is amended to read as follows:

(d) A ~~[Except as provided by Subsection (f), a]~~ declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election ~~[5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed].~~

SECTION 47. (a) This section applies only to a political subdivision that elects the members of its governing body to a term that consists of an odd number of years.

(b) Not later than December 31, 2012, the governing body of the political subdivision may adopt a resolution changing the length of the terms of its members to an even number of years. The resolution must specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for members of the governing body that occurs after January 1, 2013, and a member who serves on that date shall serve the remainder of that term.

(c) This section expires January 1, 2020.

SECTION 48. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment.

SECTION 49. The secretary of state shall adopt rules as necessary to implement this Act, including the adjustment or modification of any affected date, deadline, or procedure.

SECTION 50. The following are repealed:

- (1) Section 41.0052(a-1), Election Code;
- (2) Sections 11.056(e) and 130.0825(e), Education Code;
- (3) Section 285.131(g), Health and Safety Code; and
- (4) Section 63.0945(f), Water Code.

SECTION 51. The changes in law made by this Act do not apply to an election held on November 8, 2011.

SECTION 52. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 100** (house committee printing) as follows:

(1) On page 15, line 20, strike "Subsection (d)" and substitute "Subsections (d) and (e)".

(2) On page 16, between lines 8 and 9, insert the following:

(e) For a city to which Sec. 501.0211 applies holding an election under Subsection (a)(2):

(1) the commissioner's court of the county in which the city is located is required to comply with election requirements under Title 17;

(2) the city is required to incorporate the election as part of the regular election ballot of the city; and

(3) the city pays all costs related to holding the election.

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

SECTION ____ . Section 501.0211(a), Election Code, is amended to read as follows:

(a) This section applies only to a municipality:

(1) with a population of at least 112,000 located in a county with a population of not more than 135,000;

(2) in which the sale of one or more types or classifications of alcoholic beverage is legal in the municipality as a result of a local option election held in the municipality; ~~and~~

(3) that, after the election is held, annexes territory in which the sale of one or more of those types or classifications of alcoholic beverage is not legal; and

(4) that is wholly contained in a single county and that is conducting a municipal election on the election date described by Section 41.001(a)(2).

Floor Amendment No. 2

(1) Amend **CSSB 100** (house committee printing), from page 16, line 22 to page 17, line 1 by striking Subsection (b).

(2) Renumber subsequent subsections accordingly.

Floor Amendment No. 3

Amend **CSSB 100** (house committee printing) as follows:

(1) Amend SECTION 5, Subsection (d) of Section 41.0052, Election Code (page 17, line 6) of the bill, after "(a)" insert "or provide for the election of all members of the governing body at the same election" and adjust accordingly.

(2) Amend SECTION 45 of the bill, by striking added Section 21.004, Local Government Code (page 30, line 18 through page 31, line 3), and substituting the following:

Sec. 21.004. CHANGE OF LENGTH OR STAGGERING OF TERMS IN GENERAL-LAW MUNICIPALITY. (a) This section applies only to a general-law municipality whose governing body is composed of members that serve:

(1) a term of one or three years; or

(2) staggered terms.

(b) Not later than December 31, 2012, the governing body of the general-law municipality may adopt a resolution:

(1) changing the length of the terms of its members to two years; or

(2) providing for the election of all members of the governing body at the same election.

(c) The resolution must specify the manner in which the transition in the length of terms is made. The transition must begin with the first regular election for members of the governing body that occurs after January 1, 2013, and a member who serves on that date shall serve the remainder of that term.

(d) This section expires January 1, 2016.

Floor Amendment No. 4

Amend **CSSB 100** as follows:

(1) Strike SECTION 6 and substitute the following appropriately numbered SECTION:

SECTION _____. Section 41.007(b), Election Code, is amended to read as follows:

(b) The runoff primary election date is the fourth Tuesday in May [~~second Tuesday in April~~] following the general primary election.

(2) Insert the following appropriately numbered SECTION to the bill and renumber the existing SECTIONS as appropriate:

SECTION _____. Section 172.023(a), Election Code, is amended to read as follows:

(a) An application for a place on the general primary election ballot must be filed not later than 6 p.m. on the second Monday in December of an odd-numbered year [~~January 2 in the primary election year~~] unless the filing deadline is extended under Subchapter C.

Floor Amendment No. 5

Amend **CSSB 100** by striking SECTION 29 of the bill amending Section 171.0231(d), Election Code (pages 25, line 18 to page 26, line 1), and substituting the following:

SECTION 29. Section 171.0231(d), Election Code, is amended to read as follows:

(d) A declaration of write-in candidacy must be filed not later than 6 [~~5~~] p.m. of the fifth [~~62nd~~] day after the date of the regular filing deadline for the general primary election [~~before general primary election day~~]. ~~However, if a candidate whose name is to appear on the ballot for the office of county chair or precinct chair dies or is declared ineligible after the third day before the date of the regular filing deadline prescribed by this subsection, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 59th day before election day.~~

Floor Amendment No. 1 on Third Reading

Amend **CSSB 100** on third reading, by striking the changes made by Floor Amendment No. 1 by Pickett in adding Section 41.001(e), Election Code, and amending Section 501.0211(a), Election Code, and substituting the following appropriately numbered SECTION and renumbering the existing sections as appropriate:

SECTION _____. Section 501.109, Election Code, is amended to read as follows:

Sec. 501.109. ELECTION IN [~~CERTAIN~~] MUNICIPALITIES. (a) This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality [~~that is located in more than one county~~].

(b) An election to which this section applies shall be conducted by the municipality instead of a county [~~the counties~~]. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.

(d) An action to contest the election under Section 501.155 may be brought in the district court of any county in which the municipality is located.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 100** on third reading 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) the date the ballot corresponding to the application is received by the authority conducting the election, if the ballot is returned to the authority [~~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 amendments were read.

Senator Van de Putte 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 100** 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 Van de Putte, Chair; Duncan, Williams, Seliger, and Shapiro.

SENATE CONCURRENT RESOLUTION 59

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

WHEREAS, Senate Bill No. 1082 has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains technical and typographical 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 make the following correction:

(1) Strike SECTION 5 of the bill and substitute the following:

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.

HEGAR

SCR 59 was read.

On motion of Senator Hegar, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

HOUSE CONCURRENT RESOLUTION 167

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

WHEREAS, House Bill No. 2203 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 house of representatives be instructed to make the following corrections:

(1) In SECTION 1 of the house engrossment (page 1, line 11), strike "three-year" and substitute "four-year [~~three-year~~]".

(2) In SECTION 1 of the house engrossment (page 1, line 14), strike "one-year" and substitute "two-year".

(3) Between SECTIONS 3 and 4 of the house engrossment (page 3, between lines 19 and 20) insert the following and renumber subsequent SECTIONS of the bill accordingly:

SECTION 4. Section 2003.916, Government Code, is amended to read as follows:

Sec. 2003.916. EXPIRATION. This subchapter expires January 1, 2014 [~~2013~~].

WILLIAMS

HCR 167 was read.

On motion of Senator Williams, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

RECESS

On motion of Senator Eltife, the Senate at 12:18 p.m. recessed until 2:00 p.m. today.

AFTER RECESS

The Senate met at 2:05 p.m. and was called to order by President Pro Tempore Ogden.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Friday, May 27, 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 126 Thompson
In memory of the Honorable Edmund Kuempel of Seguin.

THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

- HB 51** (86 Yeas, 53 Nays, 2 Present, not voting)
- HB 290** (136 Yeas, 1 Nays, 2 Present, not voting)
- HB 411** (134 Yeas, 4 Nays, 2 Present, not voting)
- HB 736** (138 Yeas, 0 Nays, 2 Present, not voting)
- HB 971** (138 Yeas, 0 Nays, 3 Present, not voting)
- HB 1173** (136 Yeas, 1 Nays, 2 Present, not voting)
- HB 1206** (101 Yeas, 36 Nays, 2 Present, not voting)
- HB 1244** (130 Yeas, 9 Nays, 2 Present, not voting)
- HB 1541** (112 Yeas, 28 Nays, 2 Present, not voting)

HB 1646 (132 Yeas, 5 Nays, 2 Present, not voting)

HB 1720 (136 Yeas, 0 Nays, 2 Present, not voting)

HB 1781 (139 Yeas, 0 Nays, 2 Present, not voting)

HB 2329 (139 Yeas, 0 Nays, 2 Present, not voting)

HB 2367 (138 Yeas, 1 Nays, 2 Present, not voting)

HB 2643 (112 Yeas, 24 Nays, 2 Present, not voting)

HB 2728 (74 Yeas, 63 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 272 (non-record vote)

House Conferees: Smithee - Chair/Hancock/Ritter/Taylor, Larry/Thompson

HB 335 (non-record vote)

House Conferees: Shelton - Chair/Branch/Creighton/Darby/Thompson

HB 1242 (non-record vote)

House Conferees: Geren - Chair/Cook/Frullo/Kuempel/Ritter

HB 1560 (non-record vote)

House Conferees: Scott - Chair/Creighton/Eiland/Keffer/Miller, Sid

HB 2365 (non-record vote)

House Conferees: Eissler - Chair/Hancock/Hochberg/Huberty/Strama

HB 2770 (non-record vote)

House Conferees: Smith, Wayne - Chair/Callegari/Hunter/Phillips/Thompson

HB 2910 (non-record vote)

House Conferees: Branch - Chair/Bonnen/Howard, Donna/Johnson/Pitts

HB 3246 (non-record vote)

House Conferees: Elkins - Chair/Jackson, Jim/King, Tracy O./Miller, Doug/Paxton

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

SB 158 (non-record vote)

House Conferees: Fletcher - Chair/Deshotel/Gallego/Hopson/Woolley

SB 377 (non-record vote)

House Conferees: Riddle - Chair/Anderson, Charles "Doc"/Dutton/Fletcher/Weber

SB 472 (non-record vote)

House Conferees: Giddings - Chair/Deshotel/Otto/Solomons/Turner

SB 516 (non-record vote)

House Conferees: Fletcher - Chair/Anderson, Charles "Doc"/Berman/Bonnen/King, Phil

SB 635 (non-record vote)

House Conferees: Larson - Chair/Cook/King, Tracy O./Price/Ritter

SB 694 (non-record vote)

House Conferees: Smith, Wayne - Chair/Cook/Deshotel/Dutton/Fletcher

SB 773 (non-record vote)

House Conferees: Gallego - Chair/Chisum/Frullo/Hilderbran/Munoz, Jr.

SB 875 (non-record vote)

House Conferees: Hancock - Chair/Bonnen/Chisum/Eiland/Smith, Wayne

SB 1010 (non-record vote)

House Conferees: Workman - Chair/Carter/Gallego/Lucio III/Madden

SB 1134 (non-record vote)

House Conferees: Craddick - Chair/Hancock/Lozano/Sheffield/Smith, Wayne

SB 1320 (non-record vote)

House Conferees: Gonzales, Veronica - Chair/Anderson, Rodney/
Deshotel/Kleinschmidt/Raymond

SB 1331 (non-record vote)

House Conferees: Gallego - Chair/Aliseda/Christian/Rodriguez, Eddie/Zedler

SB 1543 (non-record vote)

House Conferees: Larson - Chair/Guillen/Kuempel/Price/Rodriguez, Eddie

SB 1588 (non-record vote)

House Conferees: Pitts - Chair/Chisum/Frullo/Guillen/Zerwas

SB 1600 (non-record vote)

House Conferees: King, Phil - Chair/Beck/Fletcher/Miller, Sid/Walle

SB 1664 (non-record vote)

House Conferees: Truitt - Chair/Hunter/Miles/Riddle/Turner

SB 1717 (non-record vote)

House Conferees: Lewis - Chair/Hartnett/Jackson, Jim/Raymond/Thompson

SB 1788 (non-record vote)

House Conferees: Huberty - Chair/Aycock/Strama/Taylor, Larry/Weber

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 1216 WITH HOUSE AMENDMENT

Senator Estes called **SB 1216** 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 1216** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

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.

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

SECTION 1. Subchapter G, Chapter 6, Family Code, is amended by adding Section 6.6015 to read as follows:

Sec. 6.6015. DETERMINATION OF VALIDITY AND ENFORCEABILITY OF CONTRACT CONTAINING AGREEMENT TO ARBITRATE. (a) If a party to a suit for dissolution of a marriage opposes an application to compel arbitration or makes an application to stay arbitration and asserts that the contract containing the agreement to arbitrate is not valid or enforceable, notwithstanding any provision of the contract to the contrary, the court shall try the issue promptly and may order arbitration only if the court determines that the contract containing the agreement to arbitrate is valid and enforceable against the party seeking to avoid arbitration.

(b) A determination under this section that a contract is valid and enforceable does not affect the court's authority to stay arbitration or refuse to compel arbitration on any other ground provided by law.

(c) This section does not apply to:

- (1) a court order;
- (2) a mediated settlement agreement described by Section 6.602;
- (3) a collaborative law agreement described by Section 6.603;
- (4) a written settlement agreement reached at an informal settlement conference described by Section 6.604; or
- (5) any other agreement between the parties that is approved by a court.

SECTION 2. Subchapter A, Chapter 153, Family Code, is amended by adding Section 153.00715 to read as follows:

Sec. 153.00715. DETERMINATION OF VALIDITY AND ENFORCEABILITY OF CONTRACT CONTAINING AGREEMENT TO ARBITRATE. (a) If a party to a suit affecting the parent-child relationship opposes an application to compel arbitration or makes an application to stay arbitration and asserts that the contract containing the agreement to arbitrate is not valid or enforceable, notwithstanding any provision of the contract to the contrary, the court shall try the issue promptly and may order arbitration only if the court determines that the contract containing the agreement to arbitrate is valid and enforceable against the party seeking to avoid arbitration.

(b) A determination under this section that a contract is valid and enforceable does not affect the court's authority to stay arbitration or refuse to compel arbitration on any other ground provided by law.

(c) This section does not apply to:

- (1) a court order;
- (2) an agreed parenting plan described by Section 153.007;
- (3) a mediated settlement agreement described by Section 153.0071;

- (4) a collaborative law agreement described by Section 153.0072; or
(5) any other agreement between the parties that is approved by a court.

SECTION 3. The changes in law made by this Act apply 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.

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 Estes moved to concur in the House amendment to **SB 1216**.

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

SENATE BILL 407 WITH HOUSE AMENDMENTS

Senator Watson called **SB 407** 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.

Committee Amendment No. 1

Amend **SB 407** (senate engrossed version) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 43.26, Penal Code, is amended by adding Subsection (h) to read as follows:

(h) It is a defense to prosecution under Subsection (a) or (e) that the actor is a law enforcement officer or a school administrator who:

(1) possessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;

(2) allowed other law enforcement or school administrative personnel to access the material only as appropriate based on the allegation described by Subdivision (1); and

(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

SECTION _____. The change in law made by this Act to Section 43.26, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Floor Amendment No. 2

Amend **SB 407** (house committee printing) as follows:

(1) In SECTION 6 of the bill, strike the amended heading to Article 38.45, Code of Criminal Procedure (page 6, lines 17 through 19), and substitute the following:

Art. 38.45. EVIDENCE DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY ~~[THAT CONSTITUTES]~~ CHILD OR MINOR ~~[PORNOGRAPHY]~~.

(2) In SECTION 7 of the bill, in amended Article 38.45(a), Code of Criminal Procedure (page 6, line 24), strike "that".

(3) In SECTION 7 of the bill, in amended Article 38.45(a)(1), Code of Criminal Procedure (page 6, line 25), between "(1)" and "constitutes", insert "that".

(4) In SECTION 7 of the bill, in added Article 38.45(a)(1), Code of Criminal Procedure (page 6, line 26), strike "or".

(5) In SECTION 7 of the bill, in added Article 38.45(a)(2), Code of Criminal Procedure (page 7, line 1), between "Penal Code" and the period, insert the following:
; or

(3) that is described by Section 2 or 5, Article 38.071, of this code

(6) In SECTION 8 of the bill, strike the amended heading to Article 39.15, Code of Criminal Procedure (page 7, lines 4 through 6) and substitute the following:

Art. 39.15. DISCOVERY OF EVIDENCE DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY ~~[THAT CONSTITUTES]~~ CHILD OR MINOR ~~[PORNOGRAPHY]~~.

(7) In SECTION 9 of the bill, in added Article 39.15(a)(1), Code of Criminal Procedure (page 7, line 12), strike "or".

(8) In SECTION 9 of the bill, in added Article 39.15(a)(2), Code of Criminal Procedure (page 7, line 14), between "Penal Code" and the period, insert the following:

; or

(3) that is described by Section 2 or 5, Article 38.071, of this code

The amendments were read.

Senator Watson moved to concur in the House amendments to **SB 407**.

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

SENATE BILL 1094 WITH HOUSE AMENDMENT

Senator Rodriguez called **SB 1094** 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 1094** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the availability of online testing for high school equivalency examinations.

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

SECTION 1. Section 7.111, Education Code, is amended by adding Subsection (c) to read as follows:

(c) The board by rule shall develop and deliver high school equivalency examinations and provide for the administration of the examinations online. The rules must:

(1) provide a procedure for verifying the identity of the person taking the examination; and

(2) prohibit a person under 18 years of age from taking the examination online.

SECTION 2. This Act applies beginning with the 2011-2012 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Rodriguez moved to concur in the House amendment to **SB 1094**.

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

SENATE BILL 942 WITH HOUSE AMENDMENT

Senator Watson called **SB 942** 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 942** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Subchapter B, Chapter 9017, Special District Local Laws Code (page 2, between lines 25 and 26), insert the following new Section 9017.054:

Sec. 9017.054. EXCLUSION OF TERRITORY FROM DEFINED AREA.
Before holding an election under Section 9017.060, the district may exclude territory from the defined area in the manner provided by Sections 49.303, 49.304, 49.305, 49.306, and 49.307, Water Code.

(2) In SECTION 1 of the bill, in added Section 9017.054, Special District Local Laws Code (page 2, line 26), strike "9017.054" and substitute "9017.055".

(3) In SECTION 1 of the bill, in added Section 9017.055, Special District Local Laws Code (page 3, line 4), strike "9017.055" and substitute "9017.056".

(4) In SECTION 1 of the bill, in added Section 9017.055(b), Special District Local Laws Code (page 3, line 10), strike "9017.056, 9017.059, 9017.060, 9017.061, 9017.062, or 9017.063" and substitute "9017.057, 9017.060, 9017.061, 9017.062, 9017.063, or 9017.064".

(5) In SECTION 1 of the bill, in added Section 9017.056, Special District Local Laws Code (page 3, line 17), strike "9017.056" and substitute "9017.057".

(6) In SECTION 1 of the bill, in added Section 9017.057, Special District Local Laws Code (page 3, line 26), strike "9017.057" and substitute "9017.058".

(7) In SECTION 1 of the bill, in added Section 9017.058, Special District Local Laws Code (page 4, line 11), strike "9017.058" and substitute "9017.059".

(8) In SECTION 1 of the bill, in added Section 9017.058, Special District Local Laws Code (page 4, line 14), strike "9017.056" and substitute "9017.057".

(9) In SECTION 1 of the bill, in added Section 9017.058, Special District Local Laws Code (page 4, line 16), strike "Code." and substitute "Code, primarily intended to serve the defined area."

(10) In SECTION 1 of the bill, in added Section 9017.059, Special District Local Laws Code (page 4, line 17), strike "9017.059" and substitute "9017.060".

(11) In SECTION 1 of the bill, in added Section 9017.059, Special District Local Laws Code (page 4, line 19), strike "9017.055" and substitute "9017.056".

(12) In SECTION 1 of the bill, in added Section 9017.060, Special District Local Laws Code (page 5, line 1), strike "9017.060" and substitute "9017.061".

(13) In SECTION 1 of the bill, in added Section 9017.060, Special District Local Laws Code (page 5, line 2), strike "9017.059" and substitute "9017.060".

(14) In SECTION 1 of the bill, in added Section 9017.061, Special District Local Laws Code (page 5, line 8), strike "9017.061" and substitute "9017.062".

(15) In SECTION 1 of the bill, in added Section 9017.061, Special District Local Laws Code (page 5, line 14), strike "9017.059" and substitute "9017.060".

(16) In SECTION 1 of the bill, in added Section 9017.062, Special District Local Laws Code (page 5, line 22), strike "9017.062" and substitute "9017.063".

(17) In SECTION 1 of the bill, in added Section 9017.063, Special District Local Laws Code (page 5, line 27), strike "9017.063" and substitute "9017.064".

(18) In SECTION 1 of the bill, in added Section 9017.063, Special District Local Laws Code (page 6, line 1), strike "9017.059" and substitute "9017.060".

(19) In SECTION 1 of the bill, in added Section 9017.064, Special District Local Laws Code (page 6, line 4), strike "9017.064" and substitute "9017.065".

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 942**.

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

VOTE RECONSIDERED ON SENATE BILL 316

Senator Whitmire moved to reconsider the vote by which the Conference Committee Report on **SB 316** was adopted.

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

SB 316, Relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition; providing civil penalties.

Question — Shall the Conference Committee Report on **SB 316** be adopted?

On motion of Senator Whitmire and by unanimous consent, **SB 316** was recommitted to the conference committee.

**CONFERENCE COMMITTEE ON
SENATE BILL 316 DISCHARGED**

Senator Whitmire moved to discharge the Senate conferees and to concur in the House amendments to **SB 316**.

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

SENATE BILL 1636 WITH HOUSE AMENDMENT

Senator Davis called **SB 1636** 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 1636** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the collection, analysis, and preservation of sexual assault or DNA evidence.

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

SECTION 1. Section 411.151, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The department's failure to expunge a DNA record as required by this section may not serve as the sole grounds for a court in a criminal proceeding to exclude evidence based on or derived from the contents of that record.

SECTION 2. Section 420.003, Government Code, is amended by amending Subdivisions (1) and (6) and adding Subdivisions (1-a), (1-b), (1-c), and (1-d) to read as follows:

(1) "Accredited crime laboratory" means a crime laboratory, as that term is defined by Article 38.35, Code of Criminal Procedure, that has been accredited under Section 411.0205.

(1-a) "Active criminal case" means a case:

(A) in which:

(i) a sexual assault has been reported to a law enforcement agency;

and

(ii) physical evidence of the assault has been submitted to the agency or an accredited crime laboratory under this chapter for analysis; and

(B) for which:

(i) the statute of limitations has not run with respect to the prosecution of the sexual assault; or

(ii) a DNA profile was obtained that is eligible under Section 420.043 for comparison with DNA profiles in the state database or CODIS DNA database.

(1-b) "Advocate" means a person who provides advocacy services as an employee or volunteer of a sexual assault program.

(1-c) "Department" means the Department of Public Safety of the State of Texas.

(1-d) "Law enforcement agency" means a state or local law enforcement agency in this state with jurisdiction over the investigation of a sexual assault.

(6) "Sexual assault nurse examiner" means a registered nurse who has completed a service-approved examiner training course described by Section 420.011.

SECTION 3. Subsection (e), Section 420.031, Government Code, is amended to read as follows:

(e) Evidence collected under this section may not be released unless a signed, [the survivor of the offense or a legal representative of the survivor signs a] written consent to release the evidence is obtained as provided by Section 420.0735.

SECTION 4. Subchapter B, Chapter 420, Government Code, is amended by adding Section 420.033 to read as follows:

Sec. 420.033. CHAIN OF CUSTODY. Medical, law enforcement, department, and laboratory personnel who handle sexual assault evidence under this chapter or other law shall maintain the chain of custody of the evidence from the time the evidence is collected until the time the evidence is destroyed.

SECTION 5. Chapter 420, Government Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. ANALYSIS OF SEXUAL ASSAULT EVIDENCE

Sec. 420.041. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to physical evidence of a sexual assault with respect to an active criminal case.

Sec. 420.042. ANALYSIS OF SEXUAL ASSAULT EVIDENCE. (a) A law enforcement agency that receives sexual assault evidence collected under this chapter or other law shall submit that evidence to a public accredited crime laboratory for analysis not later than the 30th day after the date on which that evidence was received.

(b) A person who submits sexual assault evidence to a public accredited crime laboratory under this chapter or other law shall provide the following signed, written certification with each submission: "This evidence is being submitted by (name of person making submission) in connection with a criminal investigation."

(c) If sufficient personnel and resources are available, a public accredited crime laboratory as soon as practicable shall complete its analysis of sexual assault evidence submitted under this chapter or other law.

(d) To ensure the expeditious completion of analyses, the department and other applicable public accredited crime laboratories may contract with private accredited crime laboratories as appropriate to perform those analyses, subject to the necessary quality assurance reviews by the public accredited crime laboratories.

(e) The failure of a law enforcement agency to submit sexual assault evidence within the period required by this section does not affect the authority of:

(1) the agency to submit the evidence to an accredited crime laboratory for analysis; or

(2) an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons.

Sec. 420.043. DATABASE COMPARISON REQUIRED. On the request of any appropriate person and after an evidence collection kit containing biological evidence has been analyzed by an accredited crime laboratory and any necessary quality assurance reviews have been performed, the department shall compare the DNA profile obtained from the biological evidence with DNA profiles maintained in:

(1) state databases, including the DNA database maintained under Subchapter G, Chapter 411, if the amount and quality of the analyzed sample meet the requirements of the state database comparison policies; and

(2) the CODIS DNA database established by the Federal Bureau of Investigation, if the amount and quality of the analyzed sample meet the requirements of the bureau's CODIS comparison policies.

SECTION 6. Section 420.072, Government Code, is amended to read as follows:

Sec. 420.072. EXCEPTIONS. (a) A communication, a ~~[or]~~ record, or evidence that is confidential under this subchapter may be disclosed in court or in an administrative proceeding if:

(1) the proceeding is brought by the survivor against an advocate or a sexual assault program or is a criminal proceeding or a certification revocation proceeding in which disclosure is relevant to the claims or defense of the advocate or sexual assault program; or

(2) the survivor or other appropriate person ~~[a person authorized to act on behalf of the survivor]~~ consents in writing to the disclosure ~~[release of the confidential information]~~ as provided by Section 420.073 or 420.0735, as applicable.

(b) A communication, a ~~[or]~~ record, or evidence that is confidential under this subchapter may be disclosed only to:

(1) medical or law enforcement personnel if the advocate determines that there is a probability of imminent physical danger to any person for whom the communication, ~~[or]~~ record, or evidence is relevant or if there is a probability of immediate mental or emotional injury to the survivor;

(2) a governmental agency if the disclosure is required or authorized by law;

(3) a qualified person to the extent necessary for a management audit, financial audit, program evaluation, or research, except that a report of the research, audit, or evaluation may not directly or indirectly identify a survivor;

(4) a person authorized to receive the disclosure as a result of ~~[who has the]~~ written consent obtained under ~~[of the survivor or of a person authorized to act on the survivor's behalf as provided by]~~ Section 420.073 or 420.0735; or

(5) an advocate or a person under the supervision of a counseling supervisor who is participating in the evaluation or counseling of or advocacy for the survivor.

(c) A communication, a ~~[or]~~ record, or evidence that is confidential under this subchapter may not be disclosed to a parent or legal guardian of a survivor who is a minor if an advocate or a sexual assault program knows or has reason to believe that the parent or legal guardian of the survivor is a suspect in the sexual assault of the survivor.

SECTION 7. The heading to Section 420.073, Government Code, is amended to read as follows:

Sec. 420.073. CONSENT FOR RELEASE OF CERTAIN CONFIDENTIAL INFORMATION.

SECTION 8. Subsection (a), Section 420.073, Government Code, is amended to read as follows:

(a) Consent for the release of confidential information other than evidence contained in an evidence collection kit must be in writing and signed by the survivor, a parent or legal guardian if the survivor is a minor, a legal guardian if the survivor has been adjudicated incompetent to manage the survivor's personal affairs, an attorney ad litem appointed for the survivor, or a personal representative if the survivor is deceased. The written consent must specify:

- (1) the information or records covered by the release;
- (2) the reason or purpose for the release; and
- (3) the person to whom the information is to be released.

SECTION 9. Subchapter D, Chapter 420, Government Code, is amended by adding Section 420.0735 to read as follows:

Sec. 420.0735. CONSENT FOR RELEASE OF CERTAIN EVIDENCE.

(a) Consent for the release of evidence contained in an evidence collection kit must be in writing and signed by:

- (1) the survivor, if the survivor is 14 years of age or older;
- (2) the survivor's parent or guardian or an employee of the Department of Family and Protective Services, if the survivor is younger than 14 years of age; or
- (3) the survivor's personal representative, if the survivor is deceased.

(b) For purposes of Subsection (a)(1), a written consent signed by an incapacitated person, as that term is defined by Section 601, Texas Probate Code, is effective regardless of whether the incapacitated person's guardian, guardian ad litem, or other legal agent signs the release. If the incapacitated person is unable to provide a signature and the guardian, guardian ad litem, or other legal agent is unavailable to sign the release, then the investigating law enforcement officer may sign the release.

(c) Consent for release under Subsection (a) applies only to evidence contained in an evidence collection kit and does not affect the confidentiality of any other confidential information under this chapter.

(d) The written consent must specify:

- (1) the evidence covered by the release;
- (2) the reason or purpose for the release; and
- (3) the person to whom the evidence is to be released.

(e) A survivor or other person authorized to consent may withdraw consent to the release of evidence by submitting a written notice of withdrawal to the person or program to which consent was provided. Withdrawal of consent does not affect evidence disclosed before the date written notice of the withdrawal was received.

(f) A person who receives evidence made confidential by this chapter may not disclose the evidence except to the extent that disclosure is consistent with the authorized purposes for which the person obtained the evidence.

SECTION 10. Section 420.074, Government Code, is amended to read as follows:

Sec. 420.074. CRIMINAL SUBPOENA. Notwithstanding any other provision of this chapter, a person shall disclose a communication, a ~~[or]~~ record, or evidence that is confidential under this chapter for use in a criminal investigation or proceeding in response to a subpoena issued in accordance with law.

SECTION 11. Section 420.075, Government Code, is amended to read as follows:

Sec. 420.075. OFFENSE. A person commits an offense if the person intentionally or knowingly discloses a communication, a ~~[or]~~ record, or evidence that is confidential under this chapter, except as provided by this chapter. An offense under this section is a Class C misdemeanor.

SECTION 12. Subsections (f) and (g), Article 56.065, Code of Criminal Procedure, are amended to read as follows:

(f) The department, consistent with Chapter 420, Government Code, may develop procedures regarding the submission or collection of additional evidence of the alleged sexual assault other than through an examination as described by this article.

(g) The department, consistent with Chapter 420, Government Code, shall develop procedures for the transfer and preservation of evidence collected under this article to a crime laboratory or other suitable location designated by the public safety director of the department. The receiving entity shall preserve the evidence until the earlier of:

- (1) the second anniversary of the date the evidence was collected; or
- (2) the date on which ~~[the victim or a legal representative of the victim signs a]~~ written consent to release the evidence is obtained as provided by Section 420.0735, Government Code.

SECTION 13. Subsection (e), Article 102.056, Code of Criminal Procedure, is amended to read as follows:

(e) The legislature shall determine and appropriate the necessary amount from the criminal justice planning account to the criminal justice division of the governor's office for reimbursement in the form of grants to the Department of Public Safety of the State of Texas and other ~~[local]~~ law enforcement agencies for expenses incurred in performing duties imposed on those agencies under Section ~~[Sections]~~ 411.1471 or Subchapter B-1, Chapter 420 ~~[and 411.1472]~~, Government Code, as applicable. On the first day after the end of a calendar quarter, a law enforcement agency incurring expenses described by this subsection in the previous calendar quarter shall send a certified statement of the costs incurred to the criminal justice division. The criminal justice division through a grant shall reimburse the law enforcement agency for the costs not later than the 30th day after the date the certified statement is received. If the criminal justice division does not reimburse the law enforcement agency before the 90th day after the date the certified statement is received, the agency is not required to perform duties imposed under Section ~~[Sections]~~ 411.1471 or Subchapter B-1, Chapter 420 ~~[and 411.1472]~~, Government Code, as applicable, until the agency has been compensated for all costs for which the ~~[local law enforcement]~~ agency has submitted a certified statement under this subsection.

SECTION 14. On or after the effective date of this Act, the Department of Public Safety of the State of Texas shall ensure that any unanalyzed sexual assault evidence that is in the possession of a law enforcement agency and that is collected:

(1) on or after August 1, 2011, is analyzed in accordance with Chapter 420, Government Code, as amended by this Act; and

(2) before August 1, 2011, is analyzed as nearly as possible to the time provided by Chapter 420, Government Code, as amended by this Act.

SECTION 15. (a) A law enforcement agency in possession of sexual assault evidence that has not been submitted for laboratory analysis shall:

(1) not later than October 15, 2011, submit to the Department of Public Safety of the State of Texas a list of the agency's active criminal cases for which sexual assault evidence has not yet been submitted for laboratory analysis;

(2) not later than April 1, 2012, and subject to the availability of laboratory storage space, submit, as appropriate, to the Department of Public Safety of the State of Texas or a public accredited crime laboratory, as defined by Section 420.003, Government Code, as amended by this Act, all sexual assault evidence pertaining to those active criminal cases that has not yet been submitted for laboratory analysis; and

(3) if the law enforcement agency submits evidence under Subdivision (2) of this subsection to a laboratory other than a Department of Public Safety of the State of Texas laboratory, notify the department of:

(A) the laboratory to which the evidence was sent; and

(B) any analysis completed by the laboratory to which the evidence was sent and the date on which the analysis was completed.

(b) Not later than February 15, 2013, the Department of Public Safety of the State of Texas shall submit to the governor and the appropriate standing committees of the senate and the house of representatives a report containing:

(1) a projected timeline for the completion of laboratory analyses, in accordance with Chapter 420, Government Code, as amended by this Act, of all unanalyzed sexual assault evidence submitted under Subdivision (2), Subsection (a) of this section;

(2) a request for any necessary funding to accomplish the analyses under Subdivision (1) of this subsection, including a request for a grant of money under Subsection (e), Article 102.056, Code of Criminal Procedure, as amended by this Act, if money is available under that subsection;

(3) as appropriate, application materials for requests made as required by Subdivision (2) of this subsection; and

(4) if the department determines that outsourcing of a portion of the submitted evidence is necessary for timely analyses of the evidence:

(A) a proposal for determining which evidence should be outsourced; and

(B) a list of laboratories the department determines are capable of completing the outsourced analyses.

(c) Not later than September 1, 2014, and to the extent that funding is available, the Department of Public Safety of the State of Texas shall, as provided by Sections 420.042 and 420.043, Government Code, as added by this Act, analyze or contract for

the analysis of, and complete the required database comparison regarding, all sexual assault evidence submitted to the department under Subdivision (2), Subsection (a) of this section.

(d) Notwithstanding Subsection (c) of this section, the Department of Public Safety of the State of Texas is not required to use under this section in a state fiscal year any amount of money from the state highway fund that exceeds the amount the department has historically used in a state fiscal year to fund laboratory analyses of sexual assault evidence under Chapter 420, Government Code, as amended by this Act.

(e) To supplement funding of laboratory analyses under this section, the department may solicit and receive grants, gifts, or donations of money from the federal government or private sources as described by Chapter 420, Government Code.

SECTION 16. Notwithstanding Chapter 420, Government Code, as amended by this Act, and Section 14 of this Act, this Act does not apply to sexual assault evidence collected before September 1, 1996.

SECTION 17. (a) Except as provided by Article 102.056(e), Code of Criminal Procedure, as amended by this Act, Section 420.007, Government Code, and Section 15(d) of this Act, state funds may not be appropriated for the purpose of implementing this Act.

(b) Notwithstanding any other law, the Department of Public Safety of the State of Texas may not use legislative appropriations to discharge any additional duties imposed by this Act on the department.

SECTION 18. This Act takes effect September 1, 2011.

The amendment was read.

Senator Davis moved to concur in the House amendment to **SB 1636**.

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

SENATE BILL 1209 WITH HOUSE AMENDMENT

Senator Whitmire called **SB 1209** 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 1209** (house committee printing) as follows:

(1) Strike SECTION 3 of the bill, adding Section 152.0007(c), Human Resources Code (page 2, lines 20 through 25) and substitute the following:

SECTION 3. Subchapter A, Chapter 152, Human Resources Code, is amended by adding Section 152.0015 to read as follows:

Sec. 152.0015. PRETRIAL DETENTION POLICY FOR CERTAIN JUVENILES. A juvenile board shall establish a policy that specifies whether a person who has been transferred for criminal prosecution under Section 54.02, Family Code, and is younger than 17 years of age may be detained in a juvenile facility pending trial as provided by Section 51.12, Family Code.

(2) In SECTION 4 of the bill, in amended Section 54.02(h), Family Code (page 3, lines 11 through 12), strike "Section 152.0007(c)" and substitute "Section 152.0015".

The amendment was read.

Senator Whitmire moved to concur in the House amendment to **SB 1209**.

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

SENATE BILL 1920 WITH HOUSE AMENDMENT

Senator Gallegos called **SB 1920** 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 1920** as follows:

In SECTION 2 of the bill, on page 5, line 17, insert "state or federal" between "by" and "law".

The amendment was read.

Senator Gallegos moved to concur in the House amendment to **SB 1920**.

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

SENATE BILL 303 WITH HOUSE AMENDMENT

Senator Nichols called **SB 303** 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 303** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter B, Chapter 281, Health and Safety Code, is amended by adding Section 281.0286 to read as follows:

Sec. 281.0286. TARRANT COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Tarrant County Hospital District may appoint, contract for, or employ physicians as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Tarrant County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Tarrant County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive committee of the Tarrant County Hospital District shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive committee under this section must include:

(1) policies relating to:

(A) governance of the medical executive committee;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive committee.

(g) The medical executive committee and the board of the Tarrant County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive committee under this section and a policy of the Tarrant County Hospital District.

(h) A member of the medical executive committee who is a physician shall provide biennially to the chair of the medical executive committee a signed, verified statement indicating that the member of the medical executive committee:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive committee matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the committee member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each physician employed by the Tarrant County Hospital District shall ultimately report to the chair of the medical executive committee for the district.

The amendment was read.

Senator Nichols moved to concur in the House amendment to **SB 303**.

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

GUESTS PRESENTED

Senator Gallegos was recognized and introduced to the Senate students from Port Houston Elementary School, accompanied by their teachers, Sharon Perry, Maria Green, Donald Thomas, Susana Castro, and Prince Hall.

The Senate welcomed its guests.

SENATE BILL 1003 WITH HOUSE AMENDMENT

Senator Fraser called **SB 1003** 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 1003** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1. Section 7.052, Water Code, is amended by amending Subsection (b) and adding Subsection (b-3) to read as follows:

(b) Except as provided by Subsection (b-3), the [The] amount of the penalty for operating a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is \$10,000. Each day that a continuing violation occurs is a separate violation.

(b-3) If a person operating a facility as described by Subsection (b) holds any type of permit issued by the commission other than the permit required for the facility, the commission may assess a penalty under Subsection (b) or (c).

SECTION 2. Section 5.5145, Water Code, is amended to read as follows:

Sec. 5.5145. EMERGENCY ORDER CONCERNING OPERATION OF ROCK CRUSHER OR CONCRETE PLANT WITHOUT PERMIT. The commission may ~~shall~~ issue an emergency order under this subchapter suspending operations of a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing and is required to obtain a permit under Section 382.0518, Health and Safety Code, and is operating without the necessary permit.

SECTION 3. The change in law made by this Act to Section 7.052, Water Code, applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

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 Fraser moved to concur in the House amendment to **SB 1003**.

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

SENATE BILL 480 WITH HOUSE AMENDMENT

Senator Hegar called **SB 480** 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

Amend **SB 480** by adding appropriately numbered sections to read as follows:

SECTION ____ Chapter 29, Government Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. RECUSAL OR DISQUALIFICATION OF MUNICIPAL JUDGES

Sec. 29.051. DEFINITIONS. In this chapter:

(1) "Active judge" means a person who holds office as a district court judge or statutory county court judge.

(2) "Presiding judge" means the presiding judge of a municipal court, including a municipal court of record.

(3) "Regional presiding judge" means the presiding judge of the administrative judicial region appointed under Section 74.005.

Sec. 29.052. MOTION FOR RECUSAL OR DISQUALIFICATION. (a) A party in a hearing or trial in a municipal court, including a municipal court of record, may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the municipal judge. The grounds may include any disability of the judge to preside over the case.

(b) A motion for the recusal or disqualification of a municipal judge must:

(1) be filed at least 10 days before the date of the hearing or trial, except as provided by Subsection (c);

(2) be verified; and

(3) state with particularity the alleged grounds for recusal or disqualification of the judge based on:

(A) personal knowledge that is supported by admissible evidence; or

(B) specifically stated grounds for belief of the allegations.

(c) A motion for recusal or disqualification must be filed at the earliest practicable time before the beginning of the trial or other hearing if a judge is assigned to a case 10 or fewer days before the date set for a trial or hearing.

Sec. 29.053. NOTICE. A party filing a motion for recusal or disqualification under this subchapter shall serve on all other parties or their counsel:

(1) copies of the motion; and

(2) notice that the movant expects the motion to be presented to the judge three days after the filing of the motion unless the judge orders otherwise.

Sec. 29.054. STATEMENT OPPOSING OR CONCURRING WITH MOTION. A party may file with the clerk of the court a statement opposing or concurring with a motion for recusal or disqualification at any time before the motion is heard.

Sec. 29.055. PROCEDURE FOLLOWING FILING OF MOTION; RECUSAL OR DISQUALIFICATION WITHOUT MOTION. (a) Before further proceedings in a case in which a motion for the recusal or disqualification of a municipal judge has been filed, the judge shall:

(1) recuse or disqualify himself or herself; or

(2) request the regional presiding judge to assign a judge to hear the motion.

(b) A municipal judge who with or without a motion recuses or disqualifies himself or herself:

(1) shall enter an order of recusal or disqualification and:

(A) if the municipal judge is not the presiding judge, request the presiding judge to assign any other judge of the municipal court, including the presiding judge, to hear the case;

(B) if the municipal judge is the presiding judge, request the regional presiding judge to assign another judge of the municipal court to hear the case; or

(C) if the municipal judge serves in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case; and

(2) may not take other action in the case, except that a judge who recuses himself or herself for good cause may take other action as stated in the order in which the action is taken.

(c) A municipal judge who does not recuse or disqualify himself or herself:

(1) shall forward, in original form or certified copy, an order of referral, the motion, and all opposing and concurring statements to the regional presiding judge; and

(2) may not take other action in the case during the time after the filing of the motion for recusal or disqualification and before a hearing on the motion, except for good cause stated in the order in which the action is taken.

Sec. 29.056. HEARING ON MOTION. (a) A regional presiding judge who receives a request for the assignment of a judge to hear a motion to recuse or disqualify shall:

(1) immediately set a hearing before the regional presiding judge, an active judge, or a judge on the list of judges who are eligible to serve on assignment under Section 74.055;

(2) cause notice of the hearing to be given to all parties or their counsel; and

(3) make any other orders, including orders on interim or ancillary relief in the pending cause as justice may require.

(b) A judge who hears a motion for recusal or disqualification under Subsection (a) may also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(c) If none of the parties to an action object, a hearing under Subsection (a) or (b) may be conducted by telephone.

Sec. 29.057. PROCEDURE FOLLOWING GRANTING OF MOTION. (a) If a motion for recusal or disqualification is granted after a hearing is conducted as provided by Section 29.056, the judge who heard the motion shall enter an order of recusal or disqualification, and:

(1) if the judge who was the subject of the motion is not the presiding judge, request that the presiding judge assign any other judge of the municipality, including the presiding judge, to hear the case;

(2) if the judge who was the subject of the motion is the presiding judge, request the regional presiding judge to assign another judge of the municipality to hear the case; or

(3) if the judge subject to recusal or disqualification is located in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case.

(b) If the presiding judge is unable to assign a judge of the municipality to hear a case when a municipal judge is recused or disqualified under Section 29.055 or 29.056 because there are not any other municipal judges in the municipality or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, the presiding judge shall request the regional presiding judge to first assign a municipal judge from another municipality in the county or, if necessary, assign a municipal judge from a municipality in an adjacent county to hear the case.

(c) If the regional presiding judge is unable to assign a judge to hear a case when a municipal judge is recused or disqualified under Section 29.055 or 29.056 because there are not any other municipal judges in the county or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, the regional presiding judge may assign a municipal judge from a municipality in an adjacent county to hear the case.

Sec. 29.058. APPEAL. (a) After a municipal court of record has rendered a final judgment in a case, a party may appeal an order that denies a motion for recusal or disqualification as an abuse of the court's discretion.

(b) A party may not appeal an order that grants a motion for recusal or disqualification.

Sec. 29.059. CONTEMPT. If a party files a motion to recuse or disqualify under this subchapter and it is determined by the judge hearing the motion, at the hearing and on motion of the opposing party, that the motion to recuse or disqualify is brought solely for the purpose of delay and without sufficient cause, the judge may in the interest of justice find the party filing the motion in contempt under Section 21.002(c).

Sec. 29.060. COMPENSATION. (a) An active judge who is assigned to hear a motion to recuse or disqualify a municipal judge under this subchapter is not entitled to additional compensation other than travel expenses. A judge assigned to hear a motion to recuse or disqualify who is not an active judge is entitled to:

(1) compensation of \$450 per day of service, prorated for any day for which the judge provides less than a full day of service; and

(2) travel expenses.

(b) A municipal judge assigned under this subchapter to hear a case in a court other than the one in which the judge resides or serves is entitled to compensation provided by law for judges in similar cases and travel expenses.

(c) The municipality in which a case subject to this subchapter is pending shall pay the compensation and travel expenses due or incurred under this subchapter.

SECTION _____. Subchapter A, Chapter 29, Government Code, is amended by adding Section 29.013 to read as follows:

Sec. 29.013. REPORT TO TEXAS JUDICIAL COUNCIL. (a) The secretary of the municipality in a municipality with a municipal court, including a municipal court of record, or the employee responsible for maintaining the records of the municipality's governing body shall notify the Texas Judicial Council of the name of:

(1) each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court; and

(2) each person who vacates an office described by Subdivision (1).

(b) The secretary or employee shall notify the judicial council not later than the 30th day after the date of the person's election or appointment to office or vacancy from office.

SECTION _____. The following sections are repealed:

(1) Section 29.012, Government Code; and

(2) Section 22.073(c), Local Government Code.

SECTION _____. Subchapter A-1, Chapter 29, Government Code, as added by this Act, applies only to a hearing or trial initially filed in a municipal court on or after the effective date of this Act.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 480**.

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

SENATE BILL 809 WITH HOUSE AMENDMENT

Senator Seliger called **SB 809** 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 809** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 413.031(k-1), Labor Code, is amended to read as follows:

(k-1) A party who has exhausted all administrative remedies described by [under] Subsection (k) and who is aggrieved by a final decision of the division or the State Office of Administrative Hearings may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that in the case of a medical fee dispute the party seeking judicial review under this section must file suit not later than the 45th day after the date on which the State Office of Administrative Hearings mailed the party the notification of the decision. For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision was issued by the State Office of Administrative Hearings.

SECTION _____. Section 1305.103(c), Insurance Code, is amended to read as follows:

(c) An employee who lives within the service area of a network and who is being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with the network, shall select a network treating doctor on notification by the carrier that health care services are being provided through the network. The carrier shall provide to the employee all information required by Section 1305.451. If the employee fails to select a treating doctor on or before the 14th day after the date of receipt of the information required by Section 1305.451, the network may assign the employee a network treating doctor. An issue regarding whether a carrier properly provided an employee the information required by this subsection may be resolved using the process for adjudication of disputes under Chapter 410, Labor Code, as used by the department's division of workers' compensation.

SECTION _____. Section 1305.451, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) An issue regarding whether an employer properly provided an employee with the information required by this section may be resolved using the process for adjudication of disputes under Chapter 410, Labor Code, as used by the department's division of workers' compensation.

The amendment was read.

Senator Seliger moved to concur in the House amendment to **SB 809**.

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

SENATE BILL 322 WITH HOUSE AMENDMENT

Senator Carona called **SB 322** 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 322** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 2502, Insurance Code, is amended by adding Section 2502.006 to read as follows:

Sec. 2502.006. CERTAIN EXTRA HAZARDOUS COVERAGES PROHIBITED. (a) A title insurance company may not insure against loss or damage sustained by reason of any claim that under federal bankruptcy, state insolvency, or similar creditor's rights laws the transaction vesting title in the insured as shown in the policy or creating the lien of the insured mortgage is:

(1) a preference or preferential transfer under 11 U.S.C. Section 547;

(2) a fraudulent transfer under 11 U.S.C. Section 548;

(3) a transfer that is fraudulent as to present and future creditors under Section 24.005, Business & Commerce Code, or a similar law of another state; or

(4) a transfer that is fraudulent as to present creditors under Section 24.006, Business & Commerce Code, or a similar law of another state.

(b) The commissioner may by rule designate coverages that violate this section. It is not a defense against a claim that a title insurance company has violated this section that the commissioner has not adopted a rule under this subsection.

(c) Title insurance issued in or on a form prescribed by the commissioner shall be considered to comply with this section.

(d) Nothing in this section prohibits title insurance with respect to liens, encumbrances, or other defects to title to land that:

(1) appear in the public records before the date on which the contract of title insurance is made;

(2) occur or result from transactions before the transaction vesting title in the insured or creating the lien of the insured mortgage; or

(3) result from failure to timely perfect or record any instrument before the date on which the contract of title insurance is made.

(e) A title insurance company may not engage in the business of title insurance in this state if the title insurance company provides insurance of the type prohibited by Subsection (a) anywhere in the United States, except to the extent that the laws of another state require the title insurance company to provide that type of insurance.

SECTION _____. Section 2502.006, Insurance Code, as added by this Act, applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2012. A policy delivered, issued for delivery, or renewed before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 322**.

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

SENATE BILL 993 WITH HOUSE AMENDMENT

Senator Uresti called **SB 993** 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 993** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Subchapter B, Chapter 262, Family Code, is amended by adding Section 262.1095 to read as follows:

Sec. 262.1095. INFORMATION PROVIDED TO RELATIVES AND CERTAIN INDIVIDUALS; INVESTIGATION. (a) When the Department of Family and Protective Services or another agency takes possession of a child under this chapter, the department:

(1) shall provide information as prescribed by this section to each adult the department is able to identify and locate who:

(A) is related to the child within the third degree by consanguinity as determined under Chapter 573, Government Code, or is an adult relative of the alleged father of the child who the department determines is most likely to be the child's biological father; and

(B) is identified as a potential relative or designated caregiver, as defined by Section 264.751, on the proposed child placement resources form provided under Section 261.307; and

(2) may provide information as prescribed by this section to each adult the department is able to identify and locate who has a long-standing and significant relationship with the child.

(b) The information provided under Subsection (a) must:

(1) state that the child has been removed from the child's home and is in the temporary managing conservatorship of the department;

(2) explain the options available to the individual to participate in the care and placement of the child and the support of the child's family;

(3) state that some options available to the individual may be lost if the individual fails to respond in a timely manner; and

(4) include, if applicable, the date, time, and location of the hearing under Subchapter C, Chapter 263.

(c) The department is not required to provide information to an individual if the individual has received service of citation under Section 102.009 or if the department determines providing information is inappropriate because the individual has a criminal history or a history of family violence.

(d) The department shall use due diligence to identify and locate all individuals described by Subsection (a) not later than the 30th day after the date the department files a suit affecting the parent-child relationship. In order to identify and locate the individuals described by Subsection (a), the department shall seek information from:

(1) each parent, relative, and alleged father of the child; and

(2) the child in an age-appropriate manner.

(e) The failure of a parent or alleged father of the child to complete the proposed child placement resources form does not relieve the department of its duty to seek information about the person under Subsection (d).

SECTION _____. Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.007 to read as follows:

Sec. 263.007. REPORT REGARDING NOTIFICATION OF RELATIVES. Not later than the 10th day before the date set for a hearing under Subchapter C, the department shall file with the court a report regarding:

(1) the efforts the department made to identify, locate, and provide information to the individuals described by Section 262.1095;

(2) the name of each individual the department identified, located, or provided with information; and

(3) if applicable, an explanation of why the department was unable to identify, locate, or provide information to an individual described by Section 262.1095.

SECTION _____. The heading to Section 263.105, Family Code, is amended to read as follows:

Sec. 263.105. REVIEW OF SERVICE PLAN; MODIFICATION.

SECTION _____. Section 263.105, Family Code, is amended by adding Subsection (c) to read as follows:

(c) The court may modify an original or amended service plan at any time.

SECTION _____. Section 263.201(b), Family Code, is amended to read as follows:

(b) A status hearing is not required if the court holds an initial permanency hearing under Section 262.2015 and makes findings required by Section 263.202 before the date a status hearing is required by this section.

SECTION _____. Section 263.202, Family Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1), (f), (g), and (h) to read as follows:

(a) If all persons ~~[parties]~~ entitled to citation and notice of a status hearing under this chapter were not served, the court shall make findings as to whether:

(1) the department or other agency has exercised due diligence to locate all necessary persons, including an alleged father of the child, regardless of whether the alleged father is registered with the registry of paternity under Section 160.402; and

(2) the child and each ~~[custodial]~~ parent, alleged father, or relative of the child before the court ~~have~~ ~~[has]~~ furnished to the department all available information necessary to locate an ~~[another]~~ absent parent, alleged father, or relative of the child through exercise of due diligence.

(b) Except as otherwise provided by this subchapter ~~[Subsection (c)]~~, a status hearing shall be limited to matters related to the contents and execution of the service plan filed with the court. The court shall review the service plan that the department or other agency filed under this chapter for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether:

(1) a plan that has the goal of returning the child to the child's parents adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child; ~~[and]~~

(2) the child's parents have reviewed and understand the ~~[service]~~ plan and have been advised that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, within the

reasonable period of time specified in the plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code or the child may not be returned to the parents;

(3) the plan is reasonably tailored to address any specific issues identified by the department or other agency; and

(4) the child's parents and the representative of the department or other agency have signed the plan.

(b-1) After reviewing the service plan and making any necessary modifications, the court shall incorporate the service plan into the orders of the court and may render additional appropriate orders to implement or require compliance with the plan.

(f) The court shall review the report filed by the department under Section 263.007 and inquire into the sufficiency of the department's efforts to identify, locate, and provide information to each adult described by Section 262.1095(a). The court shall order the department to make further efforts to identify, locate, and provide information to each adult described by Section 262.1095(a) if the court determines that the department's efforts have not been sufficient.

(g) The court shall give the child's parents an opportunity to comment on the service plan.

(h) If a proposed child placement resources form as described by Section 261.307 has not been submitted, the court shall require each parent, alleged father, or other person to whom the department is required to provide a form to submit a completed form.

SECTION _____. Subchapter C, Chapter 263, Family Code, is amended by adding Section 263.203 to read as follows:

Sec. 263.203. APPOINTMENT OF ATTORNEY AD LITEM; ADMONISHMENTS. (a) The court shall advise the parties of the provisions regarding the mandatory appointment of an attorney ad litem under Subchapter A, Chapter 107, and shall appoint an attorney ad litem to represent the interests of any person eligible if the appointment is required by that subchapter.

(b) The court shall advise the parties that progress under the service plan will be reviewed at all subsequent hearings, including a review of whether the parties have acquired or learned any specific skills or knowledge stated in the plan.

SECTION _____. Sections 263.202(c) and (d), Family Code, are repealed.

SECTION _____. The changes in law made by this Act to Chapters 262 and 263, Family Code, apply only to a child taken into possession by the Department of Family and Protective Services or another agency on or after the effective date of this Act. A child taken into possession before that date is governed by the law in effect on the date the child is taken into possession, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Uresti moved to concur in the House amendment to **SB 993**.

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

SENATE BILL 594 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 594** 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 594** (house committee printing) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 6), strike "and (k)" and substitute "(k), and (q)".

(2) In SECTION 1 of the bill, strike Section 481.074(b)(2), Health and Safety Code (page 1, line 21, through page 2, line 5), and substitute the following:

(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, ~~[department registration number,]~~ and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state of the prescribing practitioner, all information required to be provided by a practitioner under Section 481.075(e)(1), and all information required to be provided by a dispensing pharmacist under Section 481.075(e)(2).

(3) In SECTION 1 of the bill, strike Sections 481.074(k)(7), (8), and (9), Health and Safety Code (page 6, line 21, through page 7, line 2), and substitute the following:

(7) the ~~[legibly printed or stamped]~~ name, address, Federal Drug Enforcement Administration ~~[registration]~~ number, and telephone number of the practitioner at the practitioner's usual place of business, which must be legibly printed or stamped on a written prescription; and

(8) if the prescription is handwritten, the signature of the prescribing practitioner~~[-and~~

~~[(9) if the prescribing practitioner is licensed in this state, the practitioner's department registration number].~~

(4) In SECTION 1 of the bill, after amended Section 481.074(k), Health and Safety Code (page 7, between lines 2 and 3), insert the following:

(q) Each dispensing pharmacist shall send all information required by the director, including any information required to complete the Schedule III through V prescription forms, to the director by electronic transfer or another form approved by the director not later than the seventh ~~[15th]~~ day after the date ~~[last day of the month in which]~~ the prescription is completely filled.

(5) In SECTION 2 of the bill, strike Section 481.075(e)(1)(E), Health and Safety Code (page 8, lines 1-3), and substitute the following:

(E) the practitioner's name, address, ~~[department registration number,]~~ and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state;

(6) In SECTION 2 of the bill, strike Section 481.075(i)(3), Health and Safety Code (page 10, lines 2-7), and substitute the following:

(3) send all information required by the director, including any information required to complete an official prescription form or electronic prescription record, to the director by electronic transfer or another form approved by the director not later than the seventh ~~[15th]~~ day after the date ~~[last day of the month in which]~~ the prescription is completely filled.

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

SECTION _____. Section 481.061, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) A person shall provide the department with the person's Federal Drug Enforcement Administration number not later than the 45th day after the director issues a registration to the person under this subchapter.

SECTION _____. Subsections (a) and (i), Section 481.076, Health and Safety Code, are amended to read as follows:

(a) The director may not permit any person to have access to information submitted to the director under Section 481.074(q) or 481.075 except:

(1) an investigator for the Texas Medical Board, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of Nursing, or the Texas State Board of Pharmacy;

(2) an authorized officer or member of the department engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state; or

(3) if the director finds that proper need has been shown to the director:

(A) a law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(B) a pharmacist or practitioner who is a physician, dentist, veterinarian, podiatrist, or advanced practice nurse or physician assistant described by Section 481.002(39)(D) and is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner; or

(C) a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity.

(i) Information submitted to the director under Section 481.074(q) or 481.075 is confidential and remains confidential regardless of whether the director permits access to the information under this section.

SECTION _____. Notwithstanding Section 481.061, Health and Safety Code, as amended by this Act, a person who holds a valid registration under Subchapter C, Chapter 481, Health and Safety Code, on the effective date of this Act is not required to submit the person's Federal Drug Enforcement Administration number to the Department of Public Safety of the State of Texas before October 15, 2011.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 594**.

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

SENATE BILL 1196 WITH HOUSE AMENDMENT

Senator Rodriguez called **SB 1196** 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

Amend **SB 1196** (senate engrossed version) as follows:

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

SECTION _____. Subpart E, Part 2, Chapter XIII, Texas Probate Code, is amended by adding Section 652 to read as follows:

Sec. 652. LOCATION OF HEARING. (a) Except as provided by Subsection (b) of this section, the judge may hold a hearing on a guardianship matter involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship matter is pending. The hearing should be held in a physical setting that is not likely to have a harmful effect on the ward or proposed ward.

(b) On the request of the adult proposed ward, the adult ward, or the attorney of the proposed ward or ward, the hearing may not be held under the authority of this section at a place other than the courthouse.

(2) Immediately following SECTION 42(b) of the bill (page 32, between lines 5 and 6), insert the following appropriately lettered subsection and reletter subsequent subsections of SECTION 42 accordingly:

(____) Section 652, Texas Probate Code, as added by this Act, applies to a guardianship matter that is pending or commenced on or after the effective date of this Act.

The amendment was read.

Senator Rodriguez moved to concur in the House amendment to **SB 1196**.

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

SENATE BILL 1605 WITH HOUSE AMENDMENTS

Senator Seliger called **SB 1605** 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 1605** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the Texas Low-Level Radioactive Waste Disposal Compact Commission.

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

SECTION 1. Section 401.248, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The compact waste disposal facility license holder may not accept compact waste at the compact waste disposal facility unless the compact commission established by the compact under Section 403.006 has adopted bylaws necessary to carry out the terms of the compact.

SECTION 2. Chapter 403, Health and Safety Code, is amended by adding Section 403.0005 to read as follows:

Sec. 403.0005. DEFINITIONS. In this chapter:

(1) "Commission" means the commission established by Article III of the Texas Low-Level Radioactive Waste Disposal Compact.

(2) "Host state commissioner" means a person who is appointed from this state to serve on the commission under this chapter.

SECTION 3. Sections 403.002 and 403.004, Health and Safety Code, are amended to read as follows:

Sec. 403.002. TERMS OF COMMISSION MEMBERS; VACANCY. Host [A host] state commissioners serve staggered six-year terms, with the terms of two host state commissioners expiring on February 1 of each even-numbered year. A host state commissioner serves [for a term of six years and] until a successor is appointed and qualified. A vacancy in the office of host state commissioner is filled for the unexpired term by appointment of the governor.

Sec. 403.004. COMPENSATION. A host state commissioner is not entitled to compensation for performing the duties of host state commissioner but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of host state commissioner.

SECTION 4. Chapter 403, Health and Safety Code, is amended by adding Sections 403.0051, 403.0052, 403.0053, 403.0054, and 403.0055 to read as follows:

Sec. 403.0051. COMMISSION AS INDEPENDENT ENTITY. (a) The commission is an independent entity and not a program, department, or other division of, or administratively attached to, the Texas Commission on Environmental Quality.

(b) Money for the commission may not be appropriated as part of an appropriation for the Texas Commission on Environmental Quality.

Sec. 403.0052. BIENNIAL REPORTS TO LEGISLATURE. On or before December 1 of each even-numbered year, the commission shall file with the governor and the appropriate legislative committees a written report that includes:

(1) a statement of the activities of the commission during the preceding fiscal biennium;

(2) the commission's recommendations for necessary and desirable legislation; and

(3) an accounting of all funds received and disbursed by the commission during the preceding biennium.

Sec. 403.0053. ATTORNEY GENERAL TO REPRESENT COMMISSION. The attorney general shall represent the commission under this chapter in all matters before the state courts and any court of the United States.

Sec. 403.0054. APPLICABILITY OF SUNSET ACT. (a) The commission is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency subject to review under that chapter, but may not be abolished under that chapter.

(b) The commission shall be reviewed during each period in which the Texas Commission on Environmental Quality is reviewed.

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

Sec. 403.0055. AUDIT. The commission is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

SECTION 5. The term of office of a person serving as a host state commissioner of the Texas Low-Level Radioactive Waste Disposal Compact Commission on the effective date of this Act expires February 1, 2012. To begin the staggering of terms, the governor shall appoint host state commissioners, in accordance with the provisions of Section 403.002, Health and Safety Code, as amended by this Act, as follows:

- (1) two host state commissioners to terms expiring February 1, 2014;
- (2) two host state commissioners to terms expiring February 1, 2016; and
- (3) two host state commissioners to terms expiring February 1, 2018.

SECTION 6. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 1605** (house committee report) as follows:

(1) In Section 3 of the bill, in amended Section 403.002, Health and Safety Code (page 2, lines 1-2), strike "February 1 of each even-numbered year" and substitute "September 1 of each odd-numbered year".

(2) In Section 5 of the bill (page 3, line 24), strike "February 1, 2012" and substitute "on that date".

(3) In Section 5(1) of the bill (page 4, line 2), strike "February 1, 2014" and substitute "September 1, 2013".

(4) In Section 5(2) of the bill (page 4, line 4), strike "February 1, 2016" and substitute "September 1, 2015".

(5) In Section 5(3) of the bill (page 4, line 6), strike "February 1, 2018" and substitute "September 1, 2017".

The amendments were read.

Senator Seliger moved to concur in the House amendments to **SB 1605**.

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

SENATE BILL 736 WITH HOUSE AMENDMENT

Senator Hinojosa called **SB 736** 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 736** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to membership of local school health advisory councils.

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

SECTION 1. Section 28.004(d), Education Code, is amended to read as follows:

(d) The board of trustees shall appoint at least five members to the local school health advisory council. A majority of the members must be persons who are parents of students enrolled in the district and who are not employed by the district. One of those members shall serve as chair or co-chair of the council. The board of trustees also may appoint one or more persons from each of the following groups or a representative from a group other than a group specified under this subsection:

- (1) public school teachers;
- (2) public school administrators;
- (3) district students;
- (4) health care professionals;
- (5) the business community;
- (6) law enforcement;
- (7) senior citizens;
- (8) the clergy; ~~and~~
- (9) nonprofit health organizations; and
- (10) local domestic violence programs.

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 736**.

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

SENATE BILL 731 WITH HOUSE AMENDMENT

Senator Nichols called **SB 731** 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 731** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the attorney general's legal sufficiency review of a comprehensive development agreement.

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

SECTION 1. Section 371.051, Transportation Code, is amended to read as follows:

Sec. 371.051. ATTORNEY GENERAL REVIEW AND EXAMINATION FEE.

(a) A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

(b) A toll project entity shall pay a nonrefundable examination fee to the attorney general on submitting a proposed comprehensive development agreement for review. At the time the examination fee is paid, the toll project entity shall also submit for review a complete transcript of proceedings related to the comprehensive development agreement.

(c) If the toll project entity submits multiple proposed comprehensive development agreements relating to the same toll project for review, the entity shall pay the examination fee under Subsection (b) for each proposed comprehensive development agreement.

(d) The attorney general shall provide a legal sufficiency determination not later than the 60th business day after the date the examination fee and transcript of the proceedings required under Subsection (b) are received. If the attorney general cannot provide a legal sufficiency determination within the 60-business-day period, the attorney general shall notify the toll project entity in writing of the reason for the delay and may extend the review period for not more than 30 business days.

(e) After the attorney general issues a legal sufficiency determination, a toll project entity may supplement the transcript of proceedings or amend the comprehensive development agreement to facilitate a redetermination by the attorney general of the prior legal sufficiency determination issued under this section.

(f) The toll project entity may collect or seek reimbursement of the examination fee under Subsection (b) from the private participant.

(g) The attorney general by rule shall set the examination fee required under Subsection (b) in a reasonable amount and may adopt other rules as necessary to implement this section. The fee may not be set in an amount that is determined by a percentage of the cost of the toll project. The amount of the fee may not exceed reasonable attorney's fees charged for similar legal services in the private sector.

SECTION 2. The requirements of Section 371.051, Transportation Code, as amended by this Act, apply only to a comprehensive development agreement submitted to the office of the attorney general 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 Nichols moved to concur in the House amendment to **SB 731**.

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

SENATE BILL 425 WITH HOUSE AMENDMENTS

Senator Carona called **SB 425** from the President's table for consideration of the House amendments to the bill.

Senator Carona temporarily withdrew further consideration of the House amendments to **SB 425**.

REMARKS ORDERED PRINTED

On motion of Senator Watson and by unanimous consent, the exchange between Senators Carona and Watson regarding **SB 425** was ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Watson: Cities often need to look at a contractor's actual insurance policy or at endorsements reflecting special coverages like additional insured or waiver of subrogation. Would Section 1811.155 of this bill prevent them from doing that?

Senator Carona: No, cities could continue to look at actual insurance policies.

Senator Watson: Cities often have language in their construction contracts that requires the contractor to defend and indemnify them for claims alleging that they are jointly negligent with the contractor. Would the language in Section 1811.154 mean that insurance would no longer cover this type of contractual liability?

Senator Carona: No, this bill does not affect terms of the policy.

Senator Watson: Is it your intent to ask the Texas Department of Insurance to make this clear in their rulemaking?

Senator Carona: We have visited with TDI at length about this bill and we are in agreement with these issues.

SENATE BILL 425 WITH HOUSE AMENDMENTS

Senator Carona again called **SB 425** 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 425** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

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.

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

SECTION 1. Subtitle A, Title 10, Insurance Code, is amended by adding Chapter 1811 to read as follows:

CHAPTER 1811. CERTIFICATES OF PROPERTY AND CASUALTY
INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1811.001. DEFINITIONS. In this chapter:

(1) "Agent" means a person required to hold a license as a property and casualty agent or surplus lines agent.

(2) "Certificate holder" means a person, other than a policyholder:

(A) who is designated on a certificate of insurance as a certificate holder; or

(B) to whom a certificate of insurance has been issued by an insurer or agent at the request of the policyholder.

(3) "Certificate of insurance" means a document, instrument, or record, including an electronic record, no matter how titled or described, that is executed by an insurer or agent and issued to a third person not a party to the subject insurance contract, as a statement or summary of property or casualty insurance coverage. The term does not include an insurance binder or policy form.

(4) "Electronic record" has the meaning assigned by Section 322.002, Business & Commerce Code.

(5) "Insurance" means an insurance contract for property or casualty insurance.

(6) "Insurer" means a company or insurance carrier that is engaged in the business of making property or casualty insurance contracts. The term includes:

(A) a stock fire or casualty insurance company;

(B) a mutual fire or casualty insurance company;

(C) a Mexican casualty insurance company;

(D) a Lloyd's plan;

(E) a reciprocal or interinsurance exchange;

(F) a county mutual insurance company;

(G) a farm mutual insurance company;

(H) a risk retention group;

(I) the Medical Liability Insurance Joint Underwriting Association under Chapter 2203;

(J) the Texas Windstorm Insurance Association under Chapter 2210;

(K) the FAIR Plan Association under Chapter 2211;

(L) an eligible surplus lines insurer; and

(M) any other insurer authorized to write property or casualty insurance in this state.

(7) "Lender" has the meaning assigned by Section 549.001.

(8) "Person" means:

(A) an individual; or

(B) a partnership, corporation, limited liability company, association, trust, or other legal entity, including an insurer or a political subdivision or agency of this state.

(9) "Policyholder" means a person who has contracted with a property or casualty insurer for insurance coverage.

(10) "Record" has the meaning assigned by Section 322.002, Business & Commerce Code.

Sec. 1811.002. APPLICABILITY. (a) This chapter applies to a certificate holder, policyholder, insurer, or agent with regard to a certificate of insurance issued on property or casualty operations or a risk located in this state, regardless of where the certificate holder, policyholder, insurer, or agent is located.

(b) This chapter may not be construed to apply to:

(1) a statement, summary, or evidence of property insurance required by a lender in a lending transaction involving:

(A) a mortgage;

(B) a lien;

(C) a deed of trust; or

(D) any other security interest in real or personal property as security

for a loan;

(2) a certificate issued under:

(A) a group or individual policy for:

(i) life insurance;

(ii) credit insurance;

(iii) accident and health insurance;

(iv) long-term care benefit insurance; or

(v) Medicare supplement insurance; or

(B) an annuity contract; or

(3) standard proof of motor vehicle liability insurance under Section 601.081, Transportation Code.

Sec. 1811.003. RULES. The commissioner may adopt rules as necessary or proper to accomplish the purposes of this chapter.

Sec. 1811.004. FILING FEE. (a) The department may collect a fee in an amount determined by the commissioner for the filing of a new or amended certificate of insurance form under this chapter.

(b) The fee may not exceed \$100.

(c) A fee collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

[Sections 1811.005-1811.050 reserved for expansion]

SUBCHAPTER B. PROHIBITED ACTS AND PRACTICES

Sec. 1811.051. ALTERING, AMENDING, OR EXTENDING THE TERMS OF AN INSURANCE POLICY; CONTRACTUAL RIGHTS OF CERTIFICATE HOLDER. (a) A property or casualty insurer or agent may not issue a certificate of insurance or any other type of document purporting to be a certificate of insurance if the certificate or document alters, amends, or extends the coverage or terms and conditions provided by the insurance policy referenced on the certificate or document.

(b) A certificate of insurance or any other type of document may not convey a contractual right to a certificate holder.

Sec. 1811.052. USE OF APPROVED CERTIFICATE OF INSURANCE FORMS. (a) An insurer or an agent may not issue a certificate of insurance unless the form of the certificate:

(1) has been filed with and approved by the department under Section 1811.101; or

(2) is a standard form deemed approved by the department under Section 1811.103.

(b) A person may not execute, issue, or require the issuance of a certificate of insurance for risks located in this state, unless the certificate of insurance form has been filed with and approved by the department.

Sec. 1811.053. ALTERATION OR MODIFICATION OF APPROVED CERTIFICATE OF INSURANCE FORMS. A person may not alter or modify a certificate of insurance form approved under Section 1811.101 unless the alteration or modification is approved by the department.

Sec. 1811.054. ISSUANCE OF FALSE OR MISLEADING CERTIFICATE OF INSURANCE. A person may not require the issuance of a certificate of insurance from an insurer, agent, or policyholder that contains any false or misleading information concerning the policy of insurance to which the certificate refers.

Sec. 1811.055. REQUEST FOR DOCUMENTS IN LIEU OF CERTIFICATE OF INSURANCE. A person may not require an agent or insurer, either in addition to or in lieu of a certificate of insurance, to issue any other document or correspondence, instrument, or record, including an electronic record, that is inconsistent with this chapter.

Sec. 1811.056. USE OF DISAPPROVED CERTIFICATE OF INSURANCE FORMS. A person who receives written notice under Section 1811.102 that a certificate of insurance form filed under this chapter has been disapproved by the commissioner shall immediately stop using the form.

[Sections 1811.057-1811.100 reserved for expansion]

SUBCHAPTER C. CERTIFICATE OF INSURANCE FORMS

Sec. 1811.101. FILING AND APPROVAL OF FORMS. (a) Except as provided by Subsection (b), an insurer or agent may not deliver or issue for delivery in this state a certificate of insurance unless the certificate's form:

(1) has been filed with and approved by the commissioner; and

(2) contains the phrase "for information purposes only" or similar language.

(b) If a certificate of insurance form does not contain the language required by Subsection (a)(2), the commissioner may approve the form if the form states:

(1) that the certificate of insurance does not confer any rights or obligations other than the rights and obligations conveyed by the policy referenced on the form; and

(2) that the terms of the policy control over the terms of the certificate of insurance.

(c) A filed form is approved at the expiration of 60 days after the date the form is filed unless the commissioner by order approves or disapproves the form during the 60-day period beginning the date the form is filed. The commissioner's approval of a filed form constitutes a waiver of any unexpired portion of the 60-day period.

(d) The commissioner may extend by not more than 10 days the 60-day period described by Subsection (c) during which the commissioner may approve or disapprove a form filed by an insurer or agent. The commissioner shall notify the insurer or agent of the extension before the expiration of the 60-day period.

(e) A filed form for which an extension has been granted under Subsection (d) is considered approved at the expiration of the extension period described by that subsection absent an earlier approval or disapproval of the form.

(f) A person may not use a form unless the form has been filed with and approved by the commissioner.

Sec. 1811.102. DISAPPROVAL OF FORMS; WITHDRAWAL OF APPROVAL. (a) The commissioner shall disapprove a form filed under Section 1811.101 or withdraw approval of a form if the form:

(1) contains a provision or has a title or heading that is misleading, is deceptive, or violates public policy;

(2) violates any state law, including a rule adopted under this code;

(3) requires an agent to provide certification of insurance coverage that is not available in the line or type of insurance coverage referenced on the form; or

(4) directly or indirectly requires the commissioner to make a coverage determination under a policy of insurance or insurance transaction.

(b) The commissioner may not disapprove a form filed under Section 1811.101 or withdraw approval of a form based solely on the fact that the form contains language described by Section 1811.101(b).

(c) An order issued by the commissioner disapproving a form, or a notice of the commissioner's intention to withdraw approval of a form, must state the grounds for the disapproval or withdrawal of approval in sufficient detail to reasonably inform the person filing the form of those grounds and the changes to the form necessary to obtain approval.

(d) An order disapproving a form or withdrawing approval of a form takes effect on the date prescribed by the commissioner in the order. The commissioner may not prescribe a date earlier than the 30th day after the effective date of the order, as prescribed by the commissioner.

Sec. 1811.103. STANDARD CERTIFICATE OF INSURANCE FORMS. A standard certificate of insurance form promulgated by the Association for Cooperative Operations Research and Development, the American Association of Insurance Services, or the Insurance Services Office (ISO) is deemed approved on the date the form is filed with the department. Notwithstanding this section, the commissioner may withdraw approval of a standard form under Section 1811.102.

Sec. 1811.104. PUBLIC INSPECTION OF INFORMATION. A certificate of insurance form and any supporting information filed with the department under this subchapter is open to public inspection as of the date of the filing.

[Sections 1811.105-1811.150 reserved for expansion]

SUBCHAPTER D. EFFECT OF APPROVAL OF CERTIFICATE OF INSURANCE FORM

Sec. 1811.151. CONFIRMATION OF POLICY ISSUANCE. A certificate of insurance form that has been approved by the commissioner and properly executed and issued by a property and casualty insurer or an agent constitutes a confirmation that the referenced insurance policy has been issued or that coverage has been bound. This section applies regardless of whether the face of the certificate includes the phrase "for information purposes only" or similar language.

Sec. 1811.152. CERTIFICATE OF INSURANCE NOT POLICY OF INSURANCE. A certificate of insurance is not a policy of insurance and does not amend, extend, or alter the coverage afforded by the referenced insurance policy.

Sec. 1811.153. RIGHTS CONFERRED BY CERTIFICATE OF INSURANCE. A certificate of insurance does not confer to a certificate holder new or additional rights beyond what the referenced policy or any executed endorsement of insurance provides.

Sec. 1811.154. REFERENCE TO OTHER CONTRACTS. A certificate of insurance may not contain a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance, including a contract for construction or services.

Sec. 1811.155. NOTICE. (a) A person may have a legal right to notice of cancellation, nonrenewal, or material change or any similar notice concerning a policy of insurance only if:

- (1) the person is named within the policy or an endorsement to the policy;
- and
- (2) the policy or endorsement or a law, including a rule, of this state requires notice to be provided.

(b) A certificate of insurance may not alter the terms and conditions of the notice required by a policy of insurance or the law of this state.

Sec. 1811.156. CERTIFICATE OF INSURANCE ISSUED IN VIOLATION OF CHAPTER. A certificate of insurance that is executed, issued, or required and that is in violation of this chapter is void and has no effect.

[Sections 1811.157-1811.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT AND REMEDIES

Sec. 1811.201. POWERS OF COMMISSIONER. (a) If the commissioner has reason to believe that an insurer or agent has violated or is threatening to violate this chapter or a rule adopted under this chapter, the commissioner may:

- (1) issue a cease and desist order;
- (2) seek an injunction under Section 1811.203;
- (3) request that the attorney general recover a civil penalty under Section 1811.203;
- (4) impose sanctions on the insurer or agent as provided by Chapter 82; or
- (5) take any combination of those actions.

(b) This section does not prevent or limit any action by or remedy available to the commissioner under applicable law.

Sec. 1811.202. HEARING; NOTICE. (a) The commissioner may hold a hearing on whether to issue a cease and desist order under Section 1811.201 if the commissioner has reason to believe that:

- (1) an insurer or agent has violated or is threatening to violate this chapter or a rule adopted under this chapter; or
- (2) an insurer or agent has engaged in or is threatening to engage in an unfair act related to a certificate of insurance.

(b) The commissioner shall serve on the insurer or agent a statement of charges and a notice of hearing in the form provided by Section 2001.052, Government Code.

(c) A hearing under this section is a contested case under Chapter 2001, Government Code.

Sec. 1811.203. CIVIL PENALTY; INJUNCTION. (a) A person, including an insurer or agent, who wilfully violates this chapter is subject to a civil penalty of not more than \$1,000 for each violation.

(b) The commissioner may request that the attorney general institute a civil suit in a district court in Travis County for injunctive relief to restrain a person, including an insurer or agent, from continuing a violation or threat of violation of Subchapter B. On application for injunctive relief and a finding that a person, including an insurer or agent, is violating or threatening to violate Subchapter B, the district court shall grant the injunctive relief and issue an injunction without bond.

(c) On request by the commissioner, the attorney general shall institute and conduct a civil suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized under this subchapter.

Sec. 1811.204. INVESTIGATION OF COMPLAINTS. (a) The commissioner may:

(1) investigate a complaint or allegation of specific violations by a person, including an insurer or agent, who has allegedly engaged in an act or practice prohibited by Subchapter B; and

(2) enforce the provisions of this chapter.

(b) If the commissioner has reason to believe that a person, including an insurer or agent, is performing an act in violation of Subchapter B, the person shall immediately provide to the commissioner, on written request of the commissioner, information relating to that act.

SECTION 2. The changes in law made by this Act apply only to a certificate of insurance issued on or after January 1, 2012. A certificate of insurance issued before January 1, 2012, 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 3. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 425** (house committee printing) in SECTION 1 of the bill as follows:

(1) In added Section 1811.102, Insurance Code, strike proposed Subsection (d) (page 8, lines 8-12) and substitute:

(d) An order disapproving a form or withdrawing approval of a form takes effect on the date prescribed by the commissioner in the order. An order withdrawing approval of a form may not become effective until the 30th day after the date of the order.

(2) In added Section 1811.153, Insurance Code (page 9, line 13), strike "does" and substitute "shall".

Floor Amendment No. 1 on Third Reading

Amend **CSSB 425** on third reading as follows:

On page 11, line 23, strike "shall" and insert "may"

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 425**.

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

SENATE BILL 502 WITH HOUSE AMENDMENT

Senator West called **SB 502** 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 502** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to determinations of paternity; creating an offense.

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

SECTION 1. Section 160.302(a), Family Code, is amended to read as follows:

(a) An acknowledgment of paternity must:

- (1) be in a record;
- (2) be signed, or otherwise authenticated, under penalty of perjury by the mother and the man seeking to establish paternity;
- (3) state that the child whose paternity is being acknowledged:
 - (A) does not have a presumed father or has a presumed father whose full name is stated; and
 - (B) does not have another acknowledged or adjudicated father;
- (4) state whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and

(5) state that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of the paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances [~~and is barred after four years~~].

SECTION 2. Section 160.306, Family Code, is amended to read as follows:

Sec. 160.306. FILING FEE NOT REQUIRED. The bureau of vital statistics may not charge a fee for filing:

- (1) an acknowledgment of paternity;
- (2) a ~~[or]~~ denial of paternity; or
- (3) a rescission of an acknowledgment of paternity or denial of paternity.

SECTION 3. Section 160.307, Family Code, is amended to read as follows:

Sec. 160.307. PROCEDURES [PROCEEDING] FOR RESCISSION. (a) A signatory may rescind an acknowledgment of paternity or denial of paternity as provided by this section [~~by commencing a proceeding to rescind~~] before the earlier of:

- (1) the 60th day after the effective date of the acknowledgment or denial, as provided by Section 160.304; or

(2) the date ~~[of the first hearing in]~~ a proceeding to which the signatory is a party is initiated before a court to adjudicate an issue relating to the child, including a proceeding that establishes child support.

(b) A signatory seeking to rescind an acknowledgment of paternity or denial of paternity must file with the bureau of vital statistics a completed rescission, on the form prescribed under Section 160.312, in which the signatory declares under penalty of perjury that:

(1) as of the date the rescission is filed, a proceeding has not been held affecting the child identified in the acknowledgment of paternity or denial of paternity, including a proceeding to establish child support;

(2) a copy of the completed rescission was sent by certified or registered mail, return receipt requested, to:

(A) if the rescission is of an acknowledgment of paternity, the other signatory of the acknowledgment of paternity and the signatory of any related denial of paternity; or

(B) if the rescission is of a denial of paternity, the signatories of the related acknowledgment of paternity; and

(3) if a signatory to the acknowledgment of paternity or denial of paternity is receiving services from the Title IV-D agency, a copy of the completed rescission was sent by certified or registered mail to the Title IV-D agency.

(c) On receipt of a completed rescission, the bureau of vital statistics shall void the acknowledgment of paternity or denial of paternity affected by the rescission and amend the birth record of the child, if appropriate.

(d) Any party affected by the rescission, including the Title IV-D agency, may contest the rescission by bringing a proceeding under Subchapter G to adjudicate the parentage of the child.

SECTION 4. Sections 160.308(a) and (c), Family Code, are amended to read as follows:

(a) After the period for rescission under Section 160.307 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact. The proceeding may ~~[must]~~ be commenced at any time before the issuance of an order affecting the child identified in ~~[fourth anniversary of the date]~~ the acknowledgment or denial, including an order relating to support of the child ~~[is filed with the bureau of vital statistics unless the signatory was a minor on the date the signatory executed the acknowledgment or denial. If the signatory was a minor on the date the signatory executed the acknowledgment or denial, the proceeding must be commenced before the earlier of the fourth anniversary of the date of:~~

~~[(1) the signatory's 18th birthday; or~~

~~[(2) the removal of the signatory's disabilities of minority by court order, marriage, or by other operation of law].~~

(c) Notwithstanding any other provision of this chapter, a collateral attack on an acknowledgment of paternity signed under this chapter may not be maintained after the issuance of an order affecting the child identified in the acknowledgment, including an order relating to support of the child [fourth anniversary of the date the

~~acknowledgment of paternity is filed with the bureau of vital statistics unless the signatory was a minor on the date the signatory executed the acknowledgment. If the signatory was a minor on the date the signatory executed the acknowledgment, a collateral attack on the acknowledgment of paternity may not be maintained after the earlier of the fourth anniversary of the date of:~~

~~(1) the signatory's 18th birthday; or~~

~~(2) the removal of the signatory's disabilities of minority by court order, marriage, or by other operation of law].~~

SECTION 5. Section 160.309, Family Code, is amended to read as follows:

Sec. 160.309. PROCEDURE FOR ~~[RESCISSION OR]~~ CHALLENGE. (a) Each signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to ~~[repeal or]~~ challenge the acknowledgment or denial of paternity.

(b) For purposes of ~~[the rescission of or]~~ a challenge to an acknowledgment of paternity or denial of paternity, a signatory submits to the personal jurisdiction of this state by signing the acknowledgment or denial. The jurisdiction is effective on the filing of the document with the bureau of vital statistics.

(c) Except for good cause shown, while a proceeding is pending to ~~[repeal or]~~ challenge an acknowledgment of paternity or a denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(d) A proceeding to ~~[repeal or to]~~ challenge an acknowledgment of paternity or a denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage under Subchapter G.

(e) At the conclusion of a proceeding to ~~[repeal or]~~ challenge an acknowledgment of paternity or a denial of paternity, the court shall order the bureau of vital statistics to amend the birth record of the child, if appropriate.

SECTION 6. Section 160.312, Family Code, is amended to read as follows:

Sec. 160.312. FORMS ~~[FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY]~~. (a) To facilitate compliance with this subchapter, the bureau of vital statistics shall prescribe forms for the:

(1) acknowledgment of paternity;

(2) ~~[and the]~~ denial of paternity; and

(3) rescission of an acknowledgment or denial of paternity.

(b) A valid acknowledgment of paternity, ~~[or]~~ denial of paternity, or rescission of an acknowledgment or denial of paternity is not affected by a later modification of the prescribed form.

SECTION 7. Subchapter F, Chapter 160, Family Code, is amended by adding Section 160.512 to read as follows:

Sec. 160.512. OFFENSE: FALSIFICATION OF SPECIMEN. (a) A person commits an offense if the person alters, destroys, conceals, fabricates, or falsifies genetic evidence in a proceeding to adjudicate parentage, including inducing another person to provide a specimen with the intent to affect the outcome of the proceeding.

(b) An offense under this section is a felony of the third degree.

(c) An order excluding a man as the biological father of a child based on genetic evidence shown to be altered, fabricated, or falsified is void and unenforceable.

SECTION 8. Section 160.607(b), Family Code, is amended to read as follows:

(b) A proceeding seeking to adjudicate the parentage of a child having a ~~[disprove the father-child relationship between a child and the child's]~~ presumed father may be maintained at any time if the court determines that:

(1) the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception; or ~~[and]~~

(2) the presumed father was precluded from commencing a proceeding to adjudicate the parentage of the child before the expiration of the time prescribed by Subsection (a) because of the mistaken belief that he was the child's biological father based on misrepresentations that led him to that conclusion ~~[never represented to others that the child was his own].~~

SECTION 9. Section 160.608(f), Family Code, is amended to read as follows:

(f) This section applies to a proceeding to ~~[repeal or]~~ challenge an acknowledgment of paternity or a denial of paternity as provided by Section 160.309(d).

SECTION 10. Section 160.609(a), Family Code, is amended to read as follows:

(a) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity may commence a proceeding under this chapter ~~[seeking to repeal the acknowledgment or denial or]~~ to challenge the paternity of the child only within the time allowed under Section ~~[160.307 or]~~ 160.308.

SECTION 11. (a) The changes in law made by this Act with respect to an acknowledgment or denial of paternity apply only to an acknowledgment or denial of paternity that becomes effective on or after the effective date of this Act. An acknowledgment or denial of paternity that became effective before the effective date of this Act is governed by the law in effect at the time the acknowledgment or denial of paternity became effective, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act with respect to a proceeding to adjudicate parentage apply only to a proceeding that is commenced on or after the effective date of this Act. A proceeding to adjudicate parentage 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 12. This Act takes effect September 1, 2011.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 502**.

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

SENATE BILL 1620 WITH HOUSE AMENDMENT

Senator Duncan called **SB 1620** 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 1620** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 28.027(b), Education Code (page 2, line 17), following the underlined period, insert:

The State Board of Education may only approve a course to substitute for a mathematics course taken after successful completion of Algebra I and geometry and after successful completion of or concurrently with Algebra II. The State Board of Education may only approve a course to substitute for a science course taken after successful completion of biology and chemistry and after successful completion of or concurrently with physics.

(2) In SECTION 2 of the bill, strike added Section 28.027(e), Education Code (page 3, line 23, through page 4, line 4).

(3) In SECTION 3 of the bill, strike amended Section 28.025(b-2), Education Code (page 4, lines 7 through 21), and substitute the following:

(b-2) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student to comply with the curriculum requirements for a mathematics course under Subsection (b-1)(1) taken after the successful completion of Algebra I and geometry and either after the successful completion of or concurrently with ~~an~~ Algebra II [course] or a science course under Subsection (b-1)(1) taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with [a] physics [course] by successfully completing an advanced career and technical course designated by the State Board of Education as containing substantively similar and rigorous academic content. A student may use the option provided by this subsection for not more than two courses.

(4) In SECTION 4 of the bill, in added Section 61.0517(b), Education Code (page 5, lines 5 and 6), strike "ensure that academic credit for an applied STEM course is freely transferable among all" and substitute "work with institutions of higher education to ensure that credit for an applied STEM course may be applied to relevant degree programs offered by".

(5) In SECTION 4 of the bill, in added Section 61.0517(c), Education Code (page 5, line 9), strike "listing of courses approved" and substitute "review of courses considered for approval".

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 1620**.

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

Nays: Nichols.

PERSONAL PRIVILEGE STATEMENT

Senator Deuell read the following citation:

THE SECRETARY OF THE NAVY

The President of the United States takes pleasure in presenting the SILVER STAR MEDAL to

**CORPORAL JAMES E. NICHOLSON, JR.
UNITED STATES MARINE CORPS RESERVE**

for service as set forth in the following

CITATION:

For conspicuous gallantry and intrepidity in action against the enemy while serving as a Browning Automatic Rifleman, G Company, 3d Battalion, 7th Marines, 1st Marine Division in the Republic of South Korea on 22 April 1951. During the late evening hours, Corporal (then Private First Class) Nicholson's fire team came under intense enemy fire by a numerically superior enemy force. Despite being surrounded, Corporal Nicholson and his team courageously applied suppressive fire against the enemy, resulting in numerous enemy casualties. Although equipped with a malfunctioning weapon, he advanced under furious enemy automatic weapons fire and hand grenades to retrieve a seriously wounded Marine. Corporal Nicholson's outstanding courage and daring initiative was a constant source of inspiration to his fire team, squad, and platoon. His determination and daring, despite overwhelming enemy fire, directly resulted in the return of a seriously wounded Marine to a safe area and the ability of his platoon to hold the high ground in the face of superior enemy numbers. Corporal Nicholson was personally responsible for drawing the fire of and destroying a particularly effective enemy machine gun with fire from his Browning Automatic Rifle. By his selfless determination, daring initiative, and complete dedication to duty, Corporal Nicholson reflected great credit upon himself and upheld the highest traditions of the Marine Corps and the United States Naval Service.

For the President,
/s/Ray Mabus
Secretary of the Navy

SENATE BILL 978 WITH HOUSE AMENDMENT

Senator Hinojosa called **SB 978** 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 978** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to procedures for the dissolution of the Hidalgo County Water Improvement District No. 3.

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

SECTION 1. DEFINITIONS. In this Act:

- (1) "City" means a municipality described by Section 2 of this Act.
- (2) "City council" means the governing body of a city.

(3) "District" means the Hidalgo County Water Improvement District No. 3.

(4) "District board" means the district's board of directors.

SECTION 2. DISTRICT AND MUNICIPALITY TO WHICH ACT IS APPLICABLE. This Act applies only to:

(1) the district; and

(2) a municipality that:

(A) has a population greater than 100,000; and

(B) contains within its corporate boundaries or extraterritorial jurisdiction more than half of the district's territory.

SECTION 3. DISSOLUTION OF DISTRICT; FINDINGS PREREQUISITE TO MOTION TO TRANSFER. (a) The district is dissolved on the later of:

(1) the effective date of this Act; or

(2) the date a transfer ordinance adopted pursuant to Section 5 of this Act takes effect under Section 8 of this Act.

(b) At a regularly scheduled meeting of the city council, a city may propose an ordinance to allow the city to accept a transfer of the obligations, liabilities, and assets of the district if the city council finds that as of the date of the meeting:

(1) at least 80 percent of the raw water diverted by the district in the preceding 12 months was diverted for use by the city;

(2) the city is capable of assuming all rights and obligations of the district;

(3) the city is capable of assuming responsibility for operating the district's facilities to benefit the district's existing customers and performing the services and functions performed by the district;

(4) dissolution of the district will result in an overall cost savings to city residents; and

(5) dissolution of the district will result in a more stable water supply for residents of the city and surrounding communities.

SECTION 4. HEARING REQUIRED. (a) Before a city may propose an ordinance described by Section 5 of this Act, the city must conduct a public hearing on the issue.

(b) Notice of the public hearing must be:

(1) posted in accordance with the laws that apply to regular meetings of the city council; and

(2) mailed to each district board member.

SECTION 5. TRANSFER ORDINANCE. (a) After a city council has made the findings required by Section 3(b) of this Act and has conducted a public hearing as required by Section 4 of this Act, the city council may adopt an ordinance allowing the city to accept a transfer of the district's obligations, liabilities, and assets.

(b) The ordinance must contain provisions that:

(1) eliminate the required payment of any flat tax or assessments paid to the district by landowners in the district;

(2) ensure that all water rights are held in trust by the city for the uses previously adjudicated;

(3) ensure that all individual water users are entitled to continue to use or have access to the same amount of water they were entitled to before the dissolution of the district;

(4) require the city to perform all the functions of the district, including the provision of services; and

(5) ensure delivery of water to landowners at or below the lowest comparable delivery charge imposed by any other irrigation district in Hidalgo County.

(c) The ordinance takes effect only if two-thirds of the city council votes in favor of the ordinance.

SECTION 6. CITY CONSENT; DISTRICT DUTIES. (a) On or before the effective date of the ordinance described by Section 5 of this Act, the district board shall provide the district's management and operational records to the city that passed the ordinance to ensure the orderly transfer of management and operational responsibility to the city.

(b) Without the consent of a majority of the members of a city council that publishes notice under Section 4(b) of this Act, the district may not:

(1) sell, transfer, or encumber any district asset;

(2) issue debt or acquire additional obligations; or

(3) default on or fail to honor financial, legal, or other obligations of the district.

(c) Unless a majority of the members of a city council that publishes notice under Section 4(b) of this Act agree otherwise, the district shall:

(1) maintain assets of the district in an appropriate condition reflective of good stewardship and proper repair; and

(2) preserve district records, including information maintained by the district in electronic format.

(d) Any action undertaken by the district that does not comply with Subsection (b) of this section is void.

(e) This section expires on the date a city that has published notice under Section 4(b) of this Act repeals the city's ordinance described by Section 5 of this Act.

SECTION 7. PETITION BY VOTERS; SUSPENSION OR REPEAL OF ORDINANCE; ELECTION. (a) The voters of the district and of a city that enacts a transfer ordinance under this Act may object to the ordinance by filing a petition with the secretary of the city.

(b) The petition must be signed by at least five percent of the combined total of registered voters who reside in the city or any part of the district outside the city.

(c) The petition must be filed not later than the 30th day after the date the city council votes in favor of the transfer ordinance under Section 5(c) of this Act.

(d) The city secretary shall verify the signatures on the petition and shall present the verified petition to the city council at the council's next scheduled meeting.

(e) On receipt of the petition, the city council shall suspend the effectiveness of the ordinance, and the city may not take action under the ordinance unless the ordinance is approved by the voters under Subsection (f) of this section.

(f) The city council shall reconsider the suspended ordinance at the next scheduled meeting of the council. If the city council does not repeal the transfer ordinance, the city council shall submit a proposition for or against enactment of the

ordinance to the voters of the city and the district at an election held jointly by the city and the district on the next uniform election date. The transfer ordinance takes effect if a majority of the voters voting in that election vote in favor of the transfer.

SECTION 8. EFFECTIVE DATE OF TRANSFER. A transfer ordinance under this Act takes effect on the date:

(1) the period for filing a voter petition expires under Section 7(c) of this Act, if a voter petition is not filed under that section; or

(2) the voters approve the transfer ordinance under Section 7(f) of this Act.

SECTION 9. TRANSFER OF ASSETS. (a) On or before the effective date of a transfer ordinance under Section 8 of this Act, the district shall:

(1) transfer to the city the ownership of any water rights and certificates of adjudication;

(2) transfer the assets, debts, and contractual rights and obligations of the district to the city; and

(3) provide notice and make recordings of the transfers under this section as required by the Water Code and other law.

(b) On receipt of notice of the transfer of a district certificate of adjudication, the Texas Commission on Environmental Quality shall note in its records that the certificate of adjudication is owned and held by the city. The Texas Commission on Environmental Quality shall transfer the district's certificate to the city as a ministerial act without further application, notice, or hearing. A person or other legal entity does not have a right to object to or to request an administrative review of a transfer made in accordance with this Act.

(c) The transfer of the district's water rights and any certificate of adjudication to the city does not affect or impair the priority, extent, validity, or purpose of the water rights or certificate.

SECTION 10. EXPIRATION. This Act expires January 1, 2016.

SECTION 11. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by 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 978**.

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

SENATE BILL 49 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 49** 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 49** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to school district requirements regarding parental notification in connection with disciplinary alternative education programs.

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

SECTION 1. Section 37.008, Education Code, is amended by adding Subsection (l-1) to read as follows:

(l-1) A school district shall provide the parents of a student removed to a disciplinary alternative education program with written notice of the district's obligation under Subsection (l) to provide the student with an opportunity to complete coursework required for graduation. The notice must:

(1) include information regarding all methods available for completing the coursework; and

(2) state that the methods are available at no cost to the student.

SECTION 2. This Act applies beginning with the 2011-2012 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 49**.

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

Nays: Birdwell.

SENATE BILL 988 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 988** from the President's table for consideration of the House amendment to the bill. o

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 988** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of a cybersecurity, education, and economic development council.

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

SECTION 1. Chapter 2054, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. CYBERSECURITY, EDUCATION,
AND ECONOMIC DEVELOPMENT COUNCIL

Sec. 2054.501. DEFINITION. In this subchapter, "council" means the Cybersecurity, Education, and Economic Development Council.

Sec. 2054.502. CYBERSECURITY, EDUCATION, AND ECONOMIC DEVELOPMENT COUNCIL; COMPOSITION. (a) The Cybersecurity, Education, and Economic Development Council is established.

(b) The council is composed of nine members appointed by the executive director. The members must include:

(1) one representative from the department;

(2) one representative from the Texas Economic Development and Tourism Office in the office of the governor;

(3) two representatives from institutions of higher education with cybersecurity-related programs;

(4) one representative from a public junior college, as defined by Section 61.003, Education Code, with a cybersecurity-related program;

(5) one state military forces liaison experienced in the cybersecurity field; and

(6) three representatives from chamber of commerce organizations or businesses who have a cybersecurity background.

(c) The council shall elect a presiding officer from among its members.

(d) A council member serves at the pleasure of the executive director.

Sec. 2054.503. COMPENSATION. A council member serves without compensation or reimbursement of expenses.

Sec. 2054.504. COUNCIL POWERS AND DUTIES. (a) The council shall:

(1) at least quarterly, meet at the call of the presiding officer; and

(2) conduct an interim study and make recommendations to the executive director regarding:

(A) improving the infrastructure of this state's cybersecurity operations with existing resources and through partnerships between government, business, and institutions of higher education; and

(B) examining specific actions to accelerate the growth of cybersecurity as an industry in this state.

(b) The council may request the assistance of state agencies, departments, or offices to carry out its duties.

Sec. 2054.505. REPORT. Not later than December 1, 2012, the council shall submit a report based on its findings to:

(1) the executive director;

(2) the governor;

(3) the lieutenant governor;

(4) the speaker of the house of representatives;

(5) the higher education committees of the senate and house of representatives;

(6) the Senate Committee on Economic Development;

(7) the House Technology Committee; and

(8) the House Economic and Small Business Development Committee.

Sec. 2054.506. EXPIRATION OF SUBCHAPTER. This subchapter expires and the council is abolished September 1, 2013.

SECTION 2. Not later than the 30th day after the effective date of this Act, the executive director of the Department of Information Resources shall appoint the members of the Cybersecurity, Education, and Economic Development Council as established by Subchapter N, Chapter 2054, Government Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2011.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 988**.

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

Nays: Patrick.

SENATE BILL 332 WITH HOUSE AMENDMENTS

Senator Fraser called **SB 332** 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 332** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the ownership of groundwater below the surface of land, the right to produce that groundwater, and the management of groundwater in this state.

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

SECTION 1. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.

(b) The groundwater ownership and rights described by this section:

(1) entitle the landowner, including a landowner's lessees, heirs, or assigns, to drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or negligently causing subsidence, but does not entitle a landowner, including a landowner's lessees, heirs, or assigns, to the right to capture a specific amount of groundwater below the surface of his land; and

(2) do not affect the existence of common law defenses or other defenses to liability under the rule of capture.

(c) Nothing [The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing] in this code shall be construed as granting the authority to deprive [depriving] or divest a landowner, including a landowner's lessees, heirs, or assigns, [divesting the owners or their lessees and assigns] of the groundwater ownership and rights described by this section [or rights, except as those rights may be limited or altered by rules promulgated by a district].

(d) This section does not:

(1) prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district;

(2) affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under this chapter or a special law governing a district; or

(3) require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner [~~A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.~~]

(e) This section does not affect the ability to regulate groundwater in any manner authorized under:

(1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Coastal Subsidence District; and

(3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District.

SECTION 2. Section 36.101, Water Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. In adopting a rule under this chapter, a district [~~During the rulemaking process the board~~] shall:

(1) consider all groundwater uses and needs;

(2) [~~and shall~~] develop rules that [which] are fair and impartial;

(3) consider the groundwater ownership and rights described by Section 36.002;

(4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution;

(5) consider the goals developed as part of the district's comprehensive management plan under Section 36.1071; and

(6) [~~and that do~~] not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

(a-1) Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.

SECTION 3. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 332** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 36.002(b)(1), Water Code (page 1, line 20), strike "his" and substitute "that landowner's".

(2) In SECTION 1 of the bill, in added Section 36.002(e)(2), Water Code (page 3, line 3), strike "Coastal".

(3) In SECTION 2 of the bill, in added Section 36.101(a)(4), Water Code (page 3, line 26), strike "water" and substitute "groundwater".

(4) In SECTION 2 of the bill, in added Section 36.101(a)(5), Water Code (page 4, line 3), strike "comprehensive".

The amendments were read.

Senator Fraser moved to concur in the House amendments to **SB 332**.

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

Nays: Watson.

SENATE BILL 629 WITH HOUSE AMENDMENT

Senator Hegar called **SB 629** 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 629** (house committee printing) in SECTION 1 of the bill, at the end of added Section 8343.004, Special District Local Laws Code (page 2, line 6), by adding "Consent of the City of San Marcos is required for the inclusion in the district of the 203.47-acre tract described in Section 2 of the Act enacting this chapter."

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 629**.

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

SENATE BILL 924 WITH HOUSE AMENDMENT

Senator Carona called **SB 924** 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 924** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Subchapter H, Chapter 418, Government Code, is amended by adding Section 418.192 to read as follows:

Sec. 418.192. COMMUNICATIONS BY PUBLIC SERVICE PROVIDERS DURING DISASTERS AND EMERGENCIES. (a) In this section:

(1) "Emergency" means a temporary, sudden, and unforeseen occurrence that requires action by a public service provider to correct the occurrence, inform others of the occurrence, protect lives or property, or temporarily reduce demand for or allocate supply of the provider's products or services to ensure public safety or preserve the integrity of service delivery mechanisms.

(2) "Public service provider" means any person or entity that provides essential products or services to the public that are regulated under the Natural Resources Code, Utilities Code, or Water Code, including:

(A) common carriers under Section 111.002, Natural Resources Code;

(B) telecommunications providers as defined by Section 51.002, Utilities Code; and

(C) any other person or entity providing or producing heat, light, power, or water.

(b) A public service provider may enter into a contract for an emergency notification system described by this section for use in informing the provider's customers, governmental entities, and other affected persons regarding:

(1) notice of a disaster or emergency; and

(2) any actions a recipient is required to take during a disaster or emergency.

(c) The emergency notification system for which a contract is entered into under Subsection (b) must rely on a dynamic information database that:

(1) is capable of simultaneous transmission of emergency messages to all recipients through at least two industry-standard gateways to one or more telephones or electronic devices owned by a recipient in a manner that does not negatively impact the existing communications infrastructure;

(2) allows the public service provider to:

(A) store prewritten emergency messages in the dynamic information database for subsequent use; and

(B) generate emergency messages in real time based on provider inputs;

(3) allows a recipient to select the language in which the recipient would prefer to receive messages;

(4) transmits the message in the recipient's language of choice to that recipient;

(5) converts text messages to sound files and transmits those sound files to the appropriate device;

(6) assigns recipients to priority groups for notification;

(7) allows for the collection and verification of responses by recipients of emergency messages; and

(8) reads or receives alerts from a commercial mobile alert system established by the Federal Communications Commission or complies with standards adopted for a commercial mobile alert system established by the Federal Communications Commission.

(d) The dynamic information database must comply with:

(1) the Telecommunications Service Priority program established by the Federal Communications Commission; and

(2) the Federal Information Processing Standard 140-2 governing compliant cryptographic modules for encryption and security issued by the National Institute of Standards and Technology.

(e) Before sending a notice described by Subsection (b), a public service provider must:

(1) provide a copy of the notice to the emergency management director designated under Section 418.1015, for each political subdivision for which the public service provider provides services at the time of the notice; and

(2) during a disaster declared by the governor or United States government, obtain approval of the notice from the emergency management director designated under Section 418.1015, for each political subdivision for which the public service provider provides services during the disaster.

(f) A customer of a public service provider may decline to receive the notices described by Subsection (b) by providing written notice of that decision to the public service provider.

(g) A public service provider shall cooperate with emergency management officials of each political subdivision in which the public service provider provides services to survey the number of notification systems in place.

(h) The requirements of this section do not apply to an emergency notification system that is in use by a public service provider on June 1, 2011.

(b) 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 was read.

Senator Carona moved to concur in the House amendment to **SB 924**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 3109

Senator Seliger 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 3109** 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 3109** 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 Seliger, Chair; Duncan, Eltife, Uresti, and Hinojosa.

**VOTE RECONSIDERED ON
SENATE BILL 408**

On motion of Senator Estes and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 408** was reconsidered:

SB 408, Relating to inspection of and the operation of watercraft on the John Graves Scenic Riverway; providing for the imposition of a criminal penalty.

Question — Shall the Senate concur in the House amendment to **SB 408**?

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 President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 408** 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 Estes, Chair; Fraser, Harris, Carona, and Lucio.

SENATE BILL 293 WITH HOUSE AMENDMENTS

Senator Watson called **SB 293** 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 293** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to telemedicine medical services, telehealth services, and home telemonitoring services provided to certain Medicaid recipients.

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

SECTION 1. Section 531.001, Government Code, is amended by adding Subdivisions (4-a), (7), and (8) to read as follows:

(4-a) "Home telemonitoring service" means a health service that requires scheduled remote monitoring of data related to a patient's health and transmission of the data to a licensed home health agency as defined by Section 531.02164(a).

(7) "Telehealth service" means a health service, other than a telemedicine medical service, that is delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(8) "Telemedicine medical service" means a health care service that is initiated by a physician or provided by a health professional acting under physician delegation and supervision, that is provided for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

SECTION 2. Section 531.0216, Government Code, is amended to read as follows:

Sec. 531.0216. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS AND TELEHEALTH SERVICE PROVIDERS UNDER MEDICAID. (a) The commission by rule shall develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services or telehealth services.

(b) In developing the system, the executive commissioner by rule shall:

(1) review programs and pilot projects in other states to determine the most effective method for reimbursement;

(2) establish billing codes and a fee schedule for services;

(3) provide for an approval process before a provider can receive reimbursement for services;

(4) consult with the Department of State Health Services and the telemedicine and telehealth advisory committee to establish procedures to:

(A) identify clinical evidence supporting delivery of health care services using a telecommunications system;

(B) establish pilot studies for telemedicine medical service delivery and telehealth 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

(7) establish a separate modifier for telemedicine medical services, telehealth services, and home telemonitoring services eligible for reimbursement.

(c) The commission shall encourage health care providers and health care facilities to participate as telemedicine medical service providers or telehealth service providers in the health care delivery system. The commission may not require that a service be provided to a patient through telemedicine medical services or telehealth services when the service can reasonably be provided by a physician through a face-to-face consultation with the patient in the community in which the patient resides or works. This subsection does not prohibit the authorization of the provision of any service to a patient through telemedicine medical services or telehealth services at the patient's request.

(d) Subject to Section 153.004, Occupations Code, the commission may adopt rules as necessary to implement this section. In the rules adopted under this section, the commission shall:

(1) refer to the site where the patient is physically located as the patient site; and

(2) refer to the site where the physician or health professional providing the telemedicine medical service or telehealth service is physically located as the distant site.

(e) The commission may not reimburse a health care facility for telemedicine medical services or telehealth services provided to a Medicaid recipient unless the facility complies with the minimum standards adopted under Section 531.02161.

(f) Not later than December 1 of each even-numbered year, the commission shall report to the speaker of the house of representatives and the lieutenant governor on the effects of telemedicine medical services, telehealth services, and home telemonitoring services on the Medicaid program in the state, including the number of physicians, ~~and~~ health professionals, and licensed health care facilities using telemedicine medical services, telehealth services, or home telemonitoring services, the geographic and demographic disposition of the physicians and health professionals, the number of patients receiving telemedicine medical services, telehealth services, and home telemonitoring services, the types of services being provided, and the cost of utilization of telemedicine medical services, telehealth services, and home telemonitoring services to the program.

~~[(g) In this section:~~

~~[(1) "Telehealth service" has the meaning assigned by Section 57.042, Utilities Code.~~

~~[(2) "Telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code.]~~

SECTION 3. The heading to Section 531.02161, Government Code, is amended to read as follows:

Sec. 531.02161. TELEMEDICINE, TELEHEALTH, AND HOME TELEMONITORING TECHNOLOGY STANDARDS.

SECTION 4. 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.

SECTION 5. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02164 to read as follows:

Sec. 531.02164. MEDICAID SERVICES PROVIDED THROUGH HOME TELEMONITORING SERVICES. (a) In this section, "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.

(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) A program established under this section must:

(1) provide that home telemonitoring services are available only to persons who are diagnosed with one or more conditions described by Section 531.02171(c)(4) and who exhibit two or more of the following risk factors:

(A) two or more hospitalizations in the prior 12-month period;

(B) frequent or recurrent emergency room admissions;

(C) a documented history of poor adherence to ordered medication

regimens;

(D) a documented history of falls in the prior six-month period;

(E) limited or absent informal support systems;

(F) living alone or being home alone for extended periods of time; and

(G) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home health agency 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.

SECTION 6. The heading to Section 531.02171, Government Code, as added by Chapter 661 (H.B. 2700), Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 531.02171. TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES PILOT PROGRAMS.

SECTION 7. Section 531.02171(c), Government Code, as added by Chapter 661 (H.B. 2700), Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(c) In developing and operating a pilot program under this section, the commission shall:

(1) solicit and obtain support for the program from local officials and the medical community;

(2) focus on enhancing health outcomes in the area served by the pilot program through increased access to medical or health care services, including:

(A) health screenings;

(B) prenatal care;

(C) medical or surgical follow-up visits;

(D) periodic consultation with specialists regarding chronic disorders;

(E) triage and pretransfer arrangements; ~~and~~

(F) transmission of diagnostic images or data; and

(G) monitoring of chronic conditions;

(3) establish quantifiable measures and expected health outcomes for each authorized telemedicine medical service or telehealth service;

(4) consider condition-specific applications of telemedicine medical services or telehealth services, including applications for:

(A) pregnancy;

(B) diabetes;

(C) heart disease; ~~and~~

(D) cancer;

(E) chronic obstructive pulmonary disease;

(F) hypertension; and

(G) congestive heart failure; and

(5) demonstrate that the provision of services authorized as telemedicine medical services or telehealth services will not adversely affect the provision of traditional medical services or other health care services within the area served by the pilot program.

SECTION 8. The heading to Section 531.02172, Government Code, is amended to read as follows:

Sec. 531.02172. TELEMEDICINE AND TELEHEALTH ADVISORY COMMITTEE.

SECTION 9. Section 531.02172(b), Government Code, is amended to read as follows:

(b) The advisory committee must include:

(1) representatives of health and human services agencies and other state agencies concerned with the use of telemedical and telehealth consultations and home telemonitoring services in the Medicaid program and the state child health plan program, including representatives of:

(A) the commission;

(B) the Department of State Health Services;

- (C) the Texas Department of Rural Affairs;
- (D) the Texas Department of Insurance;
- (E) the Texas Medical Board;
- (F) the Texas Board of Nursing; and
- (G) the Texas State Board of Pharmacy;
- (2) representatives of health science centers in this state;
- (3) experts on telemedicine, telemedical consultation, and telemedicine medical services or telehealth services; ~~and~~
- (4) representatives of consumers of health services provided through telemedical consultations and telemedicine medical services or telehealth services; and
- (5) representatives of providers of telemedicine medical services, telehealth services, and home telemonitoring services.

SECTION 10. 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.

SECTION 11. The following provisions of the Government Code are repealed:

- (1) Section 531.02161(a);
- (2) Sections 531.0217(a)(3) and (4);
- (3) Sections 531.02171(a)(3) and (4), as added by Chapter 661 (H.B. 2700), Acts of the 77th Legislature, Regular Session, 2001; and
- (4) Section 531.02171, as added by Chapter 959 (S.B. 1536), Acts of the 77th Legislature, Regular Session, 2001.

SECTION 12. Not later than December 31, 2012, the Health and Human Services Commission shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the establishment and implementation of the program to permit reimbursement under the state Medicaid program for home telemonitoring services under Section 531.02164, Government Code, as added by this Act. The report must include:

- (1) the methods used by the commission to determine whether the program was cost-effective and feasible; and
- (2) if the program has been established, information regarding:
 - (A) the utilization of home telemonitoring services by Medicaid recipients under the program;
 - (B) the health outcomes of Medicaid recipients who receive home telemonitoring services under the program;
 - (C) the hospital admission rate of Medicaid recipients who receive home telemonitoring services under the program;
 - (D) the cost of the home telemonitoring services provided under the program; and
 - (E) the estimated cost savings to the state as a result of the program.

SECTION 13. 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 14. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 293** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 531.001(4-a), Government Code (page 1, line 11), strike "as" and substitute "or a hospital, as those terms are".

(2) In SECTION 2 of the bill, strike amended Section 531.0216(b), Government Code (page 2, line 23, through page 3, line 26), and substitute the following:

(b) In developing the system, the executive commissioner by rule shall:

(1) review programs and pilot projects in other states to determine the most effective method for reimbursement;

(2) establish billing codes and a fee schedule for services;

(3) provide for an approval process before a provider can receive reimbursement for services;

(4) consult with the Department of State Health Services and the telemedicine and telehealth advisory committee to establish procedures to:

(A) identify clinical evidence supporting delivery of health care services using a telecommunications system; and

(B) ~~establish pilot studies for telemedicine medical service delivery;~~
and

~~[(C)]~~ annually review health care services, considering new clinical findings, to determine whether reimbursement for particular services should be denied or authorized;

~~(5) [establish pilot programs in designated areas of this state under which the commission, in administering government funded health programs, may reimburse a health professional participating in the pilot program for telehealth services authorized under the licensing law applicable to the health professional;~~

~~[(6)]~~ establish a separate provider identifier for telemedicine medical services providers, telehealth services providers, and home telemonitoring services providers; and

~~(6) [(7)]~~ establish a separate modifier for telemedicine medical services, telehealth services, and home telemonitoring services eligible for reimbursement.

(3) In SECTION 5 of the bill, strike added Section 531.02164(a), Government Code (page 6, lines 6 through 9), and substitute the following:

(a) In this section:

(1) "Home health agency" means a facility licensed under Chapter 142, Health and Safety Code, to provide home health services as defined by Section 142.001, Health and Safety Code.

(2) "Hospital" means a hospital licensed under Chapter 241, Health and Safety Code.

(4) In SECTION 5 of the bill, strike added Section 531.02164(c), Government Code (page 6, line 15, through page 7, line 11), and substitute the following:

(c) The program required under this section must:

(1) provide that home telemonitoring services are available only to persons who:

(A) are diagnosed with one or more of the following conditions:

- (i) pregnancy;
- (ii) diabetes;
- (iii) heart disease;
- (iv) cancer;
- (v) chronic obstructive pulmonary disease;
- (vi) hypertension;
- (vii) congestive heart failure;
- (viii) mental illness or serious emotional disturbance;
- (ix) asthma;
- (x) myocardial infarction; or
- (xi) stroke; and

(B) exhibit two or more of the following risk factors:

- (i) two or more hospitalizations in the prior 12-month period;
- (ii) frequent or recurrent emergency room admissions;
- (iii) a documented history of poor adherence to ordered medication

regimens;

- (iv) a documented history of falls in the prior six-month period;
- (v) limited or absent informal support systems;
- (vi) living alone or being home alone for extended periods of time;

and

(vii) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home health agency or hospital while providing home telemonitoring services is shared with the patient's physician; and

(3) ensure that the program does not duplicate disease management program services provided under Section 32.057, Human Resources Code.

(5) In SECTION 5 of the bill, in added Section 531.02164(e), Government Code (page 7, lines 21 through 26), strike "If the commission determines that the provision of home telemonitoring services achieves cost savings for the Medicare program, the commission shall pursue the creation of accountable care organizations to participate in the Medicare shared savings program in accordance with 42 U.S.C. Section 1395jjj."

(6) Strike SECTION 6 of the bill (page 7, line 27, through page 8, line 4).

(7) Strike SECTION 7 of the bill (page 8, line 5, through page 9, line 14).

(8) In the recital to SECTION 9 of the bill (page 9, line 19), strike "Section 531.02172(b), Government Code, is" and substitute "Sections 531.02172(a) and (b), Government Code, are".

(9) In SECTION 9 of the bill, immediately following the recital (page 9, between lines 20 and 21), insert the following:

(a) The executive commissioner shall establish an advisory committee to assist the commission in:

(1) evaluating policies for telemedical consultations under Sections 531.02163 and 531.0217;

(2) ~~evaluating policies for telemedicine medical services or telehealth services pilot programs established under Section 531.02171;~~

~~(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.

(10) In SECTION 11(3) of the bill (page 10, line 27), strike "Sections 531.02171(a)(3) and (4)" and substitute "Section 531.02171".

(11) Renumber SECTIONS of the bill accordingly.

Floor Amendment No. 2

Amend **CSSB 293** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02176 to read as follows:

Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR PROVISION OF TELEMEDICINE MEDICAL, TELEHEALTH, AND HOME TELEMONITORING SERVICES. Notwithstanding any other law, the commission may not reimburse providers under the Medicaid program for the provision of telemedicine medical, telehealth, or home telemonitoring services on or after September 1, 2015.

The amendments were read.

Senator Watson 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 293** 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; Nelson, West, Uresti, and Harris.

CONFERENCE COMMITTEE ON HOUSE BILL 2608

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 2608** 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 2608** 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; Ellis, Hegar, Nichols, and Eltife.

SENATE BILL 1416 WITH HOUSE AMENDMENT

Senator Hinojosa called **SB 1416** 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 1416** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Sections 38.04(b) and (c), Penal Code, are amended to read as follows:

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if:

~~[(A)] the actor has been previously convicted under this section; [or~~

~~[(B) the actor uses a vehicle while the actor is in flight and the actor has not been previously convicted under this section;]~~

(2) a felony of the third degree if:

(A) the actor uses a vehicle while the actor is in flight ~~[and the actor has been previously convicted under this section]; [or]~~

(B) another suffers serious bodily injury as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(C) the actor uses a tire deflation device against the officer while the actor is in flight; or

(3) a felony of the second degree if:

(A) another suffers death as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(B) another suffers serious bodily injury as a direct result of the actor's use of a tire deflation device while the actor is in flight.

(c) In this section:

(1) "Vehicle" [,"vehicle"] has the meaning assigned by Section 541.201, Transportation Code.

(2) "Tire deflation device" has the meaning assigned by Section 46.01.

SECTION _____. Section 38.04, Penal 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.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 1416**.

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

SENATE BILL 1551 WITH HOUSE AMENDMENT

Senator Rodriguez called **SB 1551** 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 1551** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Chapter 13, Code of Criminal Procedure, is amended by adding Article 13.075 to read as follows:

Art. 13.075. CHILD INJURED IN ONE COUNTY AND RESIDING IN ANOTHER. An offense under Title 5, Penal Code, involving a victim younger than 18 years of age, or an offense under Section 25.03, Penal Code, that results in bodily injury to a child younger than 18 years of age, may be prosecuted in the county:

- (1) in which an element of the offense was committed;
- (2) in which the defendant is apprehended;
- (3) in which the victim resides; or
- (4) in which the defendant resides.

SECTION _____. Article 13.075, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

The amendment was read.

Senator Rodriguez moved to concur in the House amendment to **SB 1551**.

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

SENATE BILL 209 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 209** 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 209** 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. Article 45.056, Code of Criminal Procedure, is amended by amending Subsections (c), (d), and (e) and adding Subsections (f), (g), and (h) to read as follows:

(c) A county or justice court on approval of the commissioners court or a municipality or municipal court on approval of the city council may employ one or more ~~full-time~~ juvenile case managers to assist the court in administering the court's juvenile docket and in supervising its court orders in juvenile cases.

(d) Pursuant to Article 102.0174, the court may pay the salary and benefits of a ~~the~~ juvenile case manager from the juvenile case manager fund.

(e) A juvenile case manager employed under Subsection (c) shall give priority to ~~work primarily on~~ cases brought under Sections 25.093 and 25.094, Education Code.

(f) The juvenile case manager shall timely report to the judge who signed the order or judgment and, on request, to the judge assigned to the case or the presiding judge any information or recommendations relevant to assisting the judge in making decisions that are in the best interest of the child.

(g) The judge who is assigned to the case shall consult with the juvenile case manager who is supervising the case regarding:

(1) the child's home environment;

(2) the child's developmental, psychological, and educational status;

(3) the child's previous interaction with the justice system; and

(4) any sanctions available to the court that would be in the best interest of

the child.

(h) Subsections (f) and (g) do not apply to:

(1) a part-time judge; or

(2) a county judge of a county court that has one or more appointed full-time magistrates under Section 54.1172, Government Code.

SECTION 2. The changes in law made by this Act to Article 45.056, Code of Criminal Procedure, apply to a juvenile case manager employed on or after the effective date of this Act, regardless of whether the juvenile case manager began that employment before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2011.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 209**.

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

SENATE BILL 943 WITH HOUSE AMENDMENT

Senator Carona called **SB 943** 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 943** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the classification, use, and regulation of electric energy storage equipment or facilities.

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

SECTION 1. Section 31.002(10), Utilities Code, is amended to read as follows:

(10) "Power generation company" means a person that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which Subchapter E, Chapter 35, applies;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

SECTION 2. Chapter 35, Utilities Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. ELECTRIC ENERGY STORAGE

Sec. 35.151. ELECTRIC ENERGY STORAGE. This subchapter applies to electric energy storage equipment or facilities that are intended to provide energy or ancillary services at wholesale, including electric energy storage equipment or facilities listed on a power generation company's registration with the commission or, for an exempt wholesale generator, on the generator's registration with the Federal Energy Regulatory Commission.

Sec. 35.152. GENERATION ASSETS. (a) Electric energy storage equipment or facilities that are intended to be used to sell energy or ancillary services at wholesale are generation assets.

(b) The owner or operator of electric energy storage equipment or facilities that are generation assets under Subsection (a) is a power generation company and is required to register under Section 39.351(a). The owner or operator of the equipment or facilities is entitled to:

(1) interconnect the equipment or facilities;

(2) obtain transmission service for the equipment or facilities; and

(3) use the equipment or facilities to sell electricity or ancillary services at wholesale in a manner consistent with the provisions of this title and commission rules applicable to a power generation company or an exempt wholesale generator.

(c) Notwithstanding Subsection (a), this section does not affect a determination made by the commission in a final order issued before December 31, 2010.

SECTION 3. Section 31.002(10), Utilities Code, as amended by this Act, and Subchapter E, Chapter 35, Utilities Code, as added by this Act, may not be construed to determine the regulatory treatment of electricity acquired to charge electric energy storage equipment or facilities and used solely for the purpose of later sale as energy or ancillary services.

SECTION 4. (a) The Public Utility Commission of Texas shall adopt or revise rules as necessary to implement this Act not later than January 1, 2012.

(b) The Public Utility Commission of Texas shall ensure that the Electric Reliability Council of Texas adopts or revises the council's protocols, standards, and procedures to implement this Act not later than April 1, 2012.

SECTION 5. This Act takes effect September 1, 2011.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 943**.

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

SENATE BILL 1732 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1732** 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 1732** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to authorizing the adjutant general to operate post exchanges on state military property.

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

SECTION 1. Subchapter B, Chapter 431, Government Code, is amended by adding Section 431.040 to read as follows:

Sec. 431.040. POST EXCHANGES ON STATE MILITARY PROPERTY.

(a) The adjutant general may establish and contract for the operation of not more than three military-type post exchanges similar to those operated by the armed forces of the United States on any real property under the management and control of the department. A post exchange may sell, lease, or rent goods and services, including tobacco products, prepared foods, and beer and wine but not distilled spirits. The adjutant general may designate facilities located on department property to use for purposes of this section.

(b) The adjutant general shall adopt rules to govern post exchanges established under this section that are similar to the procedures, policies, and restrictions governing exchanges of the Army and Air Force Exchange Service, including rules that require an individual to show identification that indicates that the individual is qualified to buy, lease, or rent goods at the post exchange.

(c) The adjutant general shall contract with a person to operate a post exchange created under this section.

(d) A post exchange may sell, lease, or rent goods and services only to:

- (1) active, retired, and reserve members of the United States armed services;
- (2) active and retired members of the state military forces;
- (3) full-time employees of the adjutant general's department; and
- (4) dependents of an individual described by Subdivisions (1)-(3).

(e) The post exchange services account is a company fund under Section 431.014 and may be used in a manner authorized by the General Appropriations Act for local funds. The post exchange services account is exempt from the application of Sections 403.095 and 404.071. The account consists of:

(1) money received from the operation of post exchanges created under this section; and

(2) all interest attributable to money held in the account.

(f) A post exchange created under this section may sell goods and services, including beer and wine but not distilled spirits, for off-premises consumption if the operator of the exchange holds the appropriate license or permit issued by the Texas Alcoholic Beverage Commission. The licensee or permittee shall comply in all respects with the provisions of the Alcoholic Beverage Code and the rules of the Texas Alcoholic Beverage Commission.

(g) Chapter 94, Human Resources Code, does not apply to vending facilities operated at a post exchange.

SECTION 2. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.344 to read as follows:

Sec. 151.344. POST EXCHANGES ON STATE MILITARY PROPERTY.

(a) A taxable item sold, leased, or rented to, or stored, used, or consumed by, a post exchange under Section 431.040, Government Code, is exempt from the taxes imposed by this chapter.

(b) A taxable item sold, leased, or rented by a post exchange under Section 431.040, Government Code, is exempt from the taxes imposed by this chapter.

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 Van de Putte moved to concur in the House amendment to **SB 1732**.

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

SENATE BILL 1185 WITH HOUSE AMENDMENT

Senator Nichols called **SB 1185** 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 1185** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the authority of certain counties to impose a hotel occupancy tax for the operation and maintenance of a fairground in the county.

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

SECTION 1. Section 352.002, Tax Code, is amended by adding Subsection (o) to read as follows:

(o) The commissioners court of a county that has a population of 65,000 or more and that is bordered by the Neches and Trinity Rivers may impose a tax as provided by Subsection (a).

SECTION 2. Section 352.003, Tax Code, is amended by adding Subsection (n) to read as follows:

(n) The tax rate in a county authorized to impose the tax under Section 352.002(o) may not exceed two percent of the price paid for a room in a hotel.

SECTION 3. Subchapter B, Chapter 352, Tax Code, is amended by adding Section 352.1037 to read as follows:

Sec. 352.1037. USE OF REVENUE: CERTAIN COUNTIES BORDERING NECHES AND TRINITY RIVERS. The revenue from a tax imposed under this chapter by a county authorized to impose the tax under Section 352.002(o) may be used only to operate and maintain a fairground in the county that has a substantial impact on tourism and hotel activity.

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 Nichols moved to concur in the House amendment to **SB 1185**.

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

SENATE BILL 391 WITH HOUSE AMENDMENT

Senator Patrick called **SB 391** 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 391** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the provision of electronic samples of a textbook adopted by the State Board of Education.

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

SECTION 1. Section 31.022, Education Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) A notice published under Subsection (d) must state that a publisher of an adopted textbook for a grade level other than prekindergarten must submit an electronic sample of the textbook as required by Sections 31.027(a) and (b) and may not submit a print sample copy.

SECTION 2. The heading to Section 31.027, Education Code, is amended to read as follows:

Sec. 31.027. INFORMATION TO SCHOOL DISTRICTS; ELECTRONIC SAMPLE [COPIES].

SECTION 3. Sections 31.027(a) and (b), Education Code, are amended to read as follows:

(a) A publisher shall provide each school district and open-enrollment charter school with information that fully describes each of the publisher's adopted textbooks. On request of a school district, a publisher shall provide an electronic [a] sample [copy] of an adopted textbook.

(b) A publisher shall provide an electronic [at least two] sample [copies] of each adopted textbook to be maintained at each regional education service center.

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

The amendment was read.

Senator Patrick moved to concur in the House amendment to **SB 391**.

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

SENATE BILL 981 WITH HOUSE AMENDMENTS

Senator Carona called **SB 981** 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 981** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of distributed renewable generation of electricity.

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

SECTION 1. 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; or

(B) a retail electric customer who contracts with another person to finance, install, or maintain distributed renewable generation on the customer's side of the meter, regardless of whether the customer takes ownership of the installed distributed renewable generation.

SECTION 2. Section 39.916, Utilities Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) If, at the time distributed renewable generation is installed on a retail electric customer's side of the meter, the estimated annual amount of electric energy to be produced by the distributed renewable generation is less than or equal to the customer's estimated annual electric energy consumption, the commission may not:

(1) consider the distributed renewable generation owner to be an electric utility, a power generation company, or a retail electric provider; or

(2) require the distributed renewable generation owner to register with or to be certified by the commission.

SECTION 3. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 981** (house committee printing) by striking SECTION 2 of the bill (page 1, line 15, through page 2, line 3) and substituting the following:

SECTION 2. Section 39.916, Utilities Code, is amended by adding Subsection (k) to read as follows:

(k) Neither a retail electric customer that uses distributed renewable generation nor the owner of the distributed renewable generation that the retail electric customer uses is an electric utility, power generation company, or retail electric provider for the purposes of this title and neither is required to register with or be certified by the commission if at the time distributed renewable generation is installed, the estimated annual amount of electricity to be produced by the distributed renewable generation is less than or equal to the retail electric customer's estimated annual electricity consumption.

Floor Amendment No. 2

Amend **CSSB 981** (house committee printing) in SECTION 1 of the bill, in amended Section 39.916(a), Utilities Code, by striking Subdivision (2) (page 1, lines 7-14) and substituting the following:

(2) "Distributed renewable generation owner" means:

(A) an ~~the~~ owner of distributed renewable generation;

(B) a retail electric customer on whose side of the meter distributed renewable generation is installed and operated, regardless of whether the customer takes ownership of the distributed renewable generation; or

(C) a person who by contract is assigned ownership rights to energy produced from distributed renewable generation located at the premises of the customer on the customer's side of the meter.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 981**.

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

SENATE BILL 663 WITH HOUSE AMENDMENT

Senator Nichols called **SB 663** 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 663** (house committee printing) as follows:

(1) In SECTION 9 of the bill, in proposed Section 402.1022, Occupations Code (page 6, line 25), strike "(a)".

(2) In SECTION 9 of the bill, in proposed Section 402.1022, Occupations Code (page 7, lines 2-5), strike proposed Subsection (b) of that section.

The amendment was read.

Senator Nichols moved to concur in the House amendment to **SB 663**.

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

SENATE BILL 498 WITH HOUSE AMENDMENTS

Senator Jackson called **SB 498** 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 498** (house committee printing) as follows:

(j) The commission by rule may set and the department may [not] charge a fee not to exceed \$300 for a white-tailed deer trapping and transporting permit issued under this section, except that the department may not charge a fee for a permit issued to a political subdivision or property owners' association if the deer pose a threat to human health or safety.

Floor Amendment No. 1 on Third Reading

Amend **SB 498** on third reading as follows:

(1) Strike the recital to SECTION 1 of the bill and substitute the following:
SECTION 1. Sections 43.0612(a)-(i) and (k), Parks and Wildlife Code, are amended to read as follows:

(2) Strike amended Section 43.0612(j), Parks and Wildlife Code.

The amendments were read.

Senator Jackson moved to concur in the House amendments to **SB 498**.

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

SENATE BILL 844 WITH HOUSE AMENDMENT

Senator Patrick called **SB 844** 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 844** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the offense of escape from custody by a person lawfully detained.

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

SECTION 1. Sections 38.06(a) and (c), Penal Code, are amended to read as follows:

(a) A person commits an offense if the person [~~he~~] escapes from custody when the person [~~he~~] is:

(1) under arrest for, lawfully detained for, charged with, or convicted of an offense;

(2) in custody pursuant to a lawful order of a court;

(3) detained in a secure detention facility, as that term is defined by Section 51.02, Family Code; or

(4) in the custody of a juvenile probation officer for violating an order imposed by the juvenile court under Section 52.01, Family Code.

(c) An offense under this section is a felony of the third degree if the actor:

(1) is under arrest for, charged with, or convicted of a felony;

(2) is confined or lawfully detained in a secure correctional facility or law enforcement facility; or

(3) is committed to or lawfully detained in a secure correctional facility, as defined by Section 51.02, Family Code, other than a halfway house, operated by or under contract with the Texas Youth Commission.

SECTION 2. 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 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.

SECTION 3. This Act takes effect September 1, 2011.

The amendment was read.

Senator Patrick moved to concur in the House amendment to **SB 844**.

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

SENATE BILL 1250 WITH HOUSE AMENDMENT

Senator Lucio called **SB 1250** 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 1250** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the applicability of certain restrictions on the location and operation of concrete crushing facilities.

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

SECTION 1. Section 382.065(b), Health and Safety Code, is amended to read as follows:

(b) Subsection (a) does not apply to a concrete crushing facility:

(1) at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001; ~~or~~

(2) at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility; or

(3) that:

(A) uses a concrete crusher:

(i) in the manufacture of products that contain recycled materials;

and

(ii) that is located in an enclosed building; and

(B) is located:

(i) within 25 miles of an international border; and

(ii) in a municipality with a population of not less than 6,100 but

not more than 20,000.

SECTION 2. This Act takes effect September 1, 2011.

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1250**.

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

SENATE BILL 1048 WITH HOUSE AMENDMENTS

Senator Jackson called **SB 1048** 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 1048** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of public and private facilities and infrastructure.

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

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapters 2267 and 2268 to read as follows:

CHAPTER 2267. PUBLIC AND PRIVATE FACILITIES AND
INFRASTRUCTURE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. In this chapter:

(1) "Affected jurisdiction" means any county or municipality in which all or a portion of a qualifying project is located.

(2) "Comprehensive agreement" means the comprehensive agreement authorized by Section 2267.058 between the contracting person and the responsible governmental entity.

(3) "Contracting person" means a person who enters into a comprehensive or interim agreement with a responsible governmental entity under this chapter.

(4) "Develop" means to plan, design, develop, finance, lease, acquire, install, construct, or expand a qualifying project.

(5) "Governmental entity" means:

(A) a board, commission, department, or other agency of this state, including an institution of higher education as defined by Section 61.003, Education Code, that elects to operate under this chapter through the adoption of a resolution by the institution's board of regents; and

(B) a political subdivision of this state that elects to operate under this chapter by the adoption of a resolution by the governing body of the political subdivision.

(6) "Interim agreement" means an agreement authorized by Section 2267.059 between a contracting person and a responsible governmental entity that proposes the development or operation of the qualifying project.

(7) "Lease payment" means any form of payment, including a land lease, by a governmental entity to the contracting person for the use of a qualifying project.

(8) "Material default" means any default by a contracting person in the performance of duties imposed under Section 2267.057(f) that jeopardizes adequate service to the public from a qualifying project.

(9) "Operate" means to finance, maintain, improve, equip, modify, repair, or operate a qualifying project.

(10) "Qualifying project" means:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

(11) "Responsible governmental entity" means a governmental entity that has the power to develop or operate an applicable qualifying project.

(12) "Revenue" means all revenue, income, earnings, user fees, lease payments, or other service payments that support the development or operation of a qualifying project, including money received as a grant or otherwise from the federal government, a governmental entity, or any agency or instrumentality of the federal government or governmental entity in aid of the project.

(13) "Service contract" means a contract between a governmental entity and a contracting person under Section 2267.054.

(14) "Service payment" means a payment to a contracting person of a qualifying project under a service contract.

(15) "User fee" means a rate, fee, or other charge imposed by a contracting person for the use of all or part of a qualifying project under a comprehensive agreement.

Sec. 2267.002. DECLARATION OF PUBLIC PURPOSE; CONSTRUCTION OF CHAPTER. (a) The legislature finds that:

(1) there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities in this state that serve a public need and purpose;

(2) the public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;

(3) there are inadequate resources to develop new education facilities, technology and other public infrastructure, and government facilities for the benefit of the citizens of this state, and there is demonstrated evidence that partnerships between public entities and private entities or other persons can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

(4) financial incentives exist under state and federal tax provisions that encourage public entities to enter into partnerships with private entities or other persons to develop qualifying projects; and

(5) authorizing private entities or other persons to develop or operate one or more qualifying projects may serve the public safety, benefit, and welfare by making the projects available to the public in a more timely or less costly fashion.

(b) An action authorized under Section 2267.053 serves the public purpose of this chapter if the action facilitates the timely development or operation of a qualifying project.

(c) The purposes of this chapter include:

(1) encouraging investment in this state by private entities and other persons;

(2) facilitating bond financing or other similar financing mechanisms, private capital, and other funding sources that support the development or operation of qualifying projects in order to expand and accelerate financing for qualifying projects that improve and add to the convenience of the public; and

(3) providing governmental entities with the greatest possible flexibility in contracting with private entities or other persons to provide public services through qualifying projects subject to this chapter.

(d) This chapter shall be liberally construed in conformity with the purposes of this section.

(e) The procedures in this chapter are not exclusive. This chapter does not prohibit a responsible governmental entity from entering into an agreement for or procuring public and private facilities and infrastructure under other authority.

Sec. 2267.003. APPLICABILITY. This chapter does not apply to:

(1) the financing, design, construction, maintenance, or operation of a highway in the state highway system;

(2) a transportation authority created under Chapter 451, 452, 453, or 460, Transportation Code; or

(3) any telecommunications, cable television, video service, or broadband infrastructure other than technology installed as part of a qualifying project that is essential to the project.

Sec. 2267.004. APPLICABILITY OF EMINENT DOMAIN LAW. This chapter does not alter the eminent domain laws of this state or grant the power of eminent domain to any person who is not expressly granted that power under other state law.

[Sections 2267.005-2267.050 reserved for expansion]

SUBCHAPTER B. QUALIFYING PROJECTS

Sec. 2267.051. APPROVAL REQUIRED; SUBMISSION OF PROPOSAL FOR QUALIFYING PROJECT. (a) A person may not develop or operate a qualifying project unless the person obtains the approval of and contracts with the responsible governmental entity under this chapter. The person may initiate the approval process by submitting a proposal requesting approval under Section 2267.053(a), or the responsible governmental entity may request proposals or invite bids under Section 2267.053(b).

(b) A person submitting a proposal requesting approval of a qualifying project shall specifically and conceptually identify any facility, building, infrastructure, or improvement included in the proposal as a part of the qualifying project.

(c) On receipt of a proposal submitted by a person initiating the approval process under Section 2267.053(a), the responsible governmental entity shall determine whether to accept the proposal for consideration in accordance with Sections 2267.052 and 2267.065 and the guidelines adopted under those sections. A responsible governmental entity that determines not to accept the proposal for consideration shall return the proposal, all fees, and the accompanying documentation to the person submitting the proposal.

(d) The responsible governmental entity may at any time reject a proposal initiated by a person under Section 2267.053(a).

Sec. 2267.052. ADOPTION OF GUIDELINES BY RESPONSIBLE GOVERNMENTAL ENTITIES. (a) Before requesting or considering a proposal for a qualifying project, a responsible governmental entity must adopt and make publicly

available guidelines that enable the governmental entity to comply with this chapter. The guidelines must be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible governmental entity.

(b) The guidelines for a responsible governmental entity described by Section 2267.001(5)(A) must:

(1) require the responsible governmental entity to:

(A) make a representative of the entity available to meet with persons who are considering submitting a proposal; and

(B) provide notice of the representative's availability;

(2) provide reasonable criteria for choosing among competing proposals;

(3) contain suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;

(4) allow the responsible governmental entity to accelerate the selection, review, and documentation timelines for proposals involving a qualifying project considered a priority by the entity;

(5) include financial review and analysis procedures that at a minimum consist of:

(A) a cost-benefit analysis;

(B) an assessment of opportunity cost;

(C) consideration of the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market; and

(D) consideration of the results of all studies and analyses related to the proposed qualifying project;

(6) allow the responsible governmental entity to consider the nonfinancial benefits of a proposed qualifying project;

(7) include criteria for:

(A) the qualifying project, including the scope, costs, and duration of the project and the involvement or impact of the project on multiple public entities;

(B) the creation of and the responsibilities of an oversight committee, with members representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and

(C) compliance with the requirements of Chapter 2268;

(8) require the responsible governmental entity to analyze the adequacy of the information to be released by the entity when seeking competing proposals and require that the entity provide more detailed information, if the entity determines necessary, to encourage competition, subject to Section 2267.053(g);

(9) establish criteria, key decision points, and approvals required to ensure that the responsible governmental entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement; and

(10) require the posting and publishing of public notice of a proposal requesting approval of a qualifying project, including:

(A) specific information and documentation regarding the nature, timing, and scope of the qualifying project, as required under Section 2267.053(a);

(B) a reasonable period of not less than 45 days, as determined by the responsible governmental entity, to encourage competition and partnerships with private entities and other persons in accordance with the goals of this chapter, during which the responsible governmental entity must accept submission of competing proposals for the qualifying project; and

(C) a requirement for advertising the notice on the governmental entity's Internet website and on TexasOnline or the state's official Internet website.

(c) The guidelines of a responsible governmental entity described by Section 2267.001(5)(B):

(1) may include the provisions required under Subsection (b); and

(2) must include a requirement that the governmental entity engage the services of qualified professionals, including an architect, professional engineer, or certified public accountant, not otherwise employed by the governmental entity, to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any proposal requesting approval of a qualifying project unless the governing body of the governmental entity determines that the analysis of the proposal is to be performed by employees of the governmental entity.

Sec. 2267.053. APPROVAL OF QUALIFYING PROJECTS BY RESPONSIBLE GOVERNMENTAL ENTITY. (a) A private entity or other person may submit a proposal requesting approval of a qualifying project by the responsible governmental entity. The proposal must be accompanied by the following, unless waived by the responsible governmental entity:

(1) a topographic map, with a 1:2,000 or other appropriate scale, indicating the location of the qualifying project;

(2) a description of the qualifying project, including:

(A) the conceptual design of any facility or a conceptual plan for the provision of services or technology infrastructure; and

(B) a schedule for the initiation of and completion of the qualifying project that includes the proposed major responsibilities and timeline for activities to be performed by the governmental entity and the person;

(3) a statement of the method the person proposes for securing necessary property interests required for the qualifying project;

(4) information relating to any current plans for the development of facilities or technology infrastructure to be used by a governmental entity that are similar to the qualifying project being proposed by the person for each affected jurisdiction;

(5) a list of all permits and approvals required for the development and completion of the qualifying project from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;

(6) a list of any facilities that will be affected by the qualifying project and a statement of the person's plans to accommodate the affected facilities;

(7) a statement on the person's general plans for financing the qualifying project, including the sources of the person's funds and identification of any dedicated revenue source or proposed debt or equity investment for the person;

(8) the name and address of each individual who may be contacted for further information concerning the request;

(9) user fees, lease payments, and other service payments over the term of any applicable interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time; and

(10) any additional material and information the responsible governmental entity reasonably requests.

(b) A responsible governmental entity may request proposals or invite bids from persons for the development or operation of a qualifying project. A responsible governmental entity shall consider the total project cost as one factor in evaluating the proposals received, but is not required to select the proposal that offers the lowest total project cost. The responsible governmental entity may consider the following factors:

(1) the proposed cost of the qualifying project;

(2) the general reputation, industry experience, and financial capacity of the person submitting a proposal;

(3) the proposed design of the qualifying project;

(4) the eligibility of the project for accelerated selection, review, and documentation timelines under the responsible governmental entity's guidelines;

(5) comments from local citizens and affected jurisdictions;

(6) benefits to the public;

(7) the person's good faith effort to comply with the goals of a historically underutilized business plan;

(8) the person's plans to employ local contractors and residents;

(9) for a qualifying project that involves a continuing role beyond design and construction, the person's proposed rate of return and opportunities for revenue sharing; and

(10) other criteria that the responsible governmental entity considers appropriate.

(c) The responsible governmental entity may approve as a qualifying project the development or operation of a facility needed by the governmental entity, or the design or equipping of a qualifying project, if the responsible governmental entity determines that the project serves the public purpose of this chapter. The responsible governmental entity may determine that the development or operation of the project as a qualifying project serves the public purpose if:

(1) there is a public need for or benefit derived from the project of the type the person proposes as a qualifying project;

(2) the estimated cost of the project is reasonable in relation to similar facilities; and

(3) the person's plans will result in the timely development or operation of the qualifying project.

(d) The responsible governmental entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the proposal, including reasonable legal fees and fees for financial, technical, and other necessary advisors or consultants.

(e) The approval of a responsible governmental entity described by Section 2267.001(5)(A) is subject to the private entity or other person entering into an interim or comprehensive agreement with the responsible governmental entity.

(f) On approval of the qualifying project, the responsible governmental entity shall establish a date by which activities related to the qualifying project must begin. The responsible governmental entity may extend the date.

(g) The responsible governmental entity shall take action appropriate under Section 552.153 to protect confidential and proprietary information provided by the contracting person under an agreement.

(h) Before entering into the negotiation of an interim or comprehensive agreement, each responsible governmental entity described by Section 2267.001(5)(A) must submit copies of detailed proposals to the Partnership Advisory Commission in accordance with Chapter 2268.

(i) This chapter and an interim or comprehensive agreement entered into under this chapter do not enlarge, diminish, or affect any authority a responsible governmental entity has to take action that would impact the debt capacity of this state.

Sec. 2267.054. SERVICE CONTRACTS. A responsible governmental entity may contract with a contracting person for the delivery of services to be provided as part of a qualifying project in exchange for service payments and other consideration as the governmental entity considers appropriate.

Sec. 2267.055. AFFECTED JURISDICTIONS. (a) A person submitting a proposal to a responsible governmental entity under Section 2267.053 shall notify each affected jurisdiction by providing a copy of its proposal to the affected jurisdiction.

(b) Not later than the 60th day after the date an affected jurisdiction receives the notice required by Subsection (a), the affected jurisdiction that is not the responsible governmental entity for the respective qualifying project shall submit in writing to the responsible governmental entity any comments the affected jurisdiction has on the proposed qualifying project and indicate whether the facility or project is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. The responsible governmental entity shall consider the submitted comments before entering into a comprehensive agreement with a contracting person.

Sec. 2267.056. DEDICATION AND CONVEYANCE OF PUBLIC PROPERTY. (a) After obtaining any appraisal of the property interest that is required under other law in connection with the conveyance, a governmental entity may dedicate any property interest, including land, improvements, and tangible personal property, for public use in a qualifying project if the governmental entity finds that the dedication will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the governmental entity or reducing the delivery time of a qualifying project.

(b) In connection with a dedication under Subsection (a), a governmental entity may convey any property interest, including a license, franchise, easement, or another right or interest the governmental entity considers appropriate, subject to the conditions imposed by general law governing such conveyance and subject to the rights of an existing utility under a license, franchise, easement, or other right under

law, to the contracting person for the consideration determined by the governmental entity. The consideration may include the agreement of the contracting person to develop or operate the qualifying project.

Sec. 2267.057. POWERS AND DUTIES OF CONTRACTING PERSON.

(a) The contracting person has:

(1) the power granted by:

(A) general law to a person that has the same form of organization as the contracting person; and

(B) a statute governing the business or activity of the contracting person; and

(2) the power to:

(A) develop or operate the qualifying project; and

(B) collect lease payments, impose user fees subject to Subsection (b), or enter into service contracts in connection with the use of the project.

(b) The contracting person may not impose a user fee or increase the amount of a user fee until the fee or increase is approved by the responsible governmental entity.

(c) The contracting person may own, lease, or acquire any other right to use or operate the qualifying project.

(d) The contracting person may finance a qualifying project in the amounts and on the terms determined by the contracting person. The contracting person may issue debt, equity, or other securities or obligations, enter into sale and leaseback transactions, and secure any financing with a pledge of, security interest in, or lien on any or all of its property, including all of its property interests in the qualifying project.

(e) In operating the qualifying project, the contracting person may:

(1) establish classifications according to reasonable categories for assessment of user fees; and

(2) with the consent of the responsible governmental entity, adopt and enforce reasonable rules for the qualifying project to the same extent as the responsible governmental entity.

(f) The contracting person shall:

(1) develop or operate the qualifying project in a manner that is acceptable to the responsible governmental entity and in accordance with any applicable interim or comprehensive agreement;

(2) subject to Subsection (g), keep the qualifying project open for use by the public at all times, or as appropriate based on the use of the project, after its initial opening on payment of the applicable user fees, lease payments, or service payments;

(3) maintain, or provide by contract for the maintenance or upgrade of, the qualifying project, if required by any applicable interim or comprehensive agreement;

(4) cooperate with the responsible governmental entity to establish any interconnection with the qualifying project requested by the responsible governmental entity; and

(5) comply with any applicable interim or comprehensive agreement and any lease or service contract.

(g) The qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible governmental entity, to protect public safety or for reasonable construction or maintenance activities.

(h) This chapter does not prohibit a contracting person of a qualifying project from providing additional services for the qualifying project to the public or persons other than the responsible governmental entity, provided that the provision of additional service does not impair the contracting person's ability to meet the person's commitments to the responsible governmental entity under any applicable interim or comprehensive agreement.

Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before developing or operating the qualifying project, the contracting person must enter into a comprehensive agreement with a responsible governmental entity. The comprehensive agreement shall provide for:

(1) delivery of letters of credit or other security in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible governmental entity, and delivery of performance and payment bonds in compliance with Chapter 2253 for all construction activities;

(2) review of plans and specifications for the qualifying project by the responsible governmental entity and approval by the responsible governmental entity if the plans and specifications conform to standards acceptable to the responsible governmental entity, except that the contracting person may not be required to complete the design of a qualifying project before the execution of a comprehensive agreement;

(3) inspection of the qualifying project by the responsible governmental entity to ensure that the contracting person's activities are acceptable to the responsible governmental entity in accordance with the comprehensive agreement;

(4) maintenance of a public liability insurance policy, copies of which must be filed with the responsible governmental entity accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible governmental entity and reasonably sufficient to ensure coverage of tort liability to the public and project employees and to enable the continued operation of the qualifying project;

(5) monitoring of the practices of the contracting person by the responsible governmental entity to ensure that the qualifying project is properly maintained;

(6) reimbursement to be paid to the responsible governmental entity for services provided by the responsible governmental entity;

(7) filing of appropriate financial statements on a periodic basis; and

(8) policies and procedures governing the rights and responsibilities of the responsible governmental entity and the contracting person if the comprehensive agreement is terminated or there is a material default by the contracting person, including conditions governing:

(A) assumption of the duties and responsibilities of the contracting person by the responsible governmental entity; and

(B) the transfer or purchase of property or other interests of the contracting person to the responsible governmental entity.

(b) The comprehensive agreement shall provide for any user fee, lease payment, or service payment established by agreement of the parties. In negotiating a user fee under this section, the parties shall establish a payment or fee that is the same for persons using a facility of the qualifying project under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or an amendment to the agreement is conclusive evidence that the user fee, lease payment, or service payment complies with this chapter. A user fee or lease payment established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, a service payment.

(c) A comprehensive agreement may include a provision that authorizes the responsible governmental entity to make grants or loans to the contracting person from money received from the federal, state, or local government or any agency or instrumentality of the government.

(d) The comprehensive agreement must incorporate the duties of the contracting person under this chapter and may contain terms the responsible governmental entity determines serve the public purpose of this chapter. The comprehensive agreement may contain:

(1) provisions that require the responsible governmental entity to provide notice of default and cure rights for the benefit of the contracting person and the persons specified in the agreement as providing financing for the qualifying project;

(2) other lawful terms to which the contracting person and the responsible governmental entity mutually agree, including provisions regarding unavoidable delays or providing for a loan of public money to the contracting person to develop or operate one or more qualifying projects; and

(3) provisions in which the authority and duties of the contracting person under this chapter cease and the qualifying project is dedicated for public use to the responsible governmental entity or, if the qualifying project was initially dedicated by an affected jurisdiction, to the affected jurisdiction.

(e) Any change in the terms of the comprehensive agreement that the parties agree to must be added to the comprehensive agreement by written amendment.

(f) The comprehensive agreement may provide for the development or operation of phases or segments of the qualifying project.

Sec. 2267.059. INTERIM AGREEMENT. Before or in connection with the negotiation of the comprehensive agreement, the responsible governmental entity may enter into an interim agreement with the contracting person proposing the development or operation of the qualifying project. The interim agreement may:

(1) authorize the contracting person to begin project phases or activities for which the contracting person may be compensated relating to the proposed qualifying project, including project planning and development, design, engineering, environmental analysis and mitigation, surveying, and financial and revenue analysis, including ascertaining the availability of financing for the proposed facility or facilities of the qualifying project;

(2) establish the process and timing of the negotiation of the comprehensive agreement; and

(3) contain any other provision related to any aspect of the development or operation of a qualifying project that the parties consider appropriate.

Sec. 2267.060. FEDERAL, STATE, AND LOCAL ASSISTANCE. (a) The contracting person and the responsible governmental entity may use any funding resources that are available to the parties, including:

(1) accessing any designated trust funds; and

(2) borrowing or accepting grants from any state infrastructure bank.

(b) The responsible governmental entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive the assistance.

(c) If the responsible governmental entity is a state agency, any money received from the state or federal government or any agency or instrumentality of the state or federal government is subject to appropriation by the legislature.

(d) The responsible governmental entity may determine that it serves the public purpose of this chapter for all or part of the costs of a qualifying project to be directly or indirectly paid from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality of the government.

Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) If the contracting person commits a material default, the responsible governmental entity may assume the responsibilities and duties of the contracting person of the qualifying project. If the responsible governmental entity assumes the responsibilities and duties of the contracting person, the responsible governmental entity has all the rights, title, and interest in the qualifying project, subject to any liens on revenue previously granted by the contracting person to any person providing financing for the project.

(b) A responsible governmental entity that has the power of eminent domain under state law may exercise that power to acquire the qualifying project in the event of a material default by the contracting person. Any person who has provided financing for the qualifying project, and the contracting person to the extent of its capital investment, may participate in the eminent domain proceedings with the standing of a property owner.

(c) The responsible governmental entity may terminate, with cause, any applicable interim or comprehensive agreement and exercise any other rights and remedies available to the governmental entity at law or in equity.

(d) The responsible governmental entity may make any appropriate claim under the letters of credit or other security or the performance and payment bonds required by Section 2267.058(a)(1).

(e) If the responsible governmental entity elects to assume the responsibilities and duties for a qualifying project under Subsection (a), the responsible governmental entity may:

(1) develop or operate the qualifying project;

(2) impose user fees;

(3) impose and collect lease payments for the use of the project; and

(4) comply with any applicable contract to provide services.

(f) The responsible governmental entity shall collect and pay to secured parties any revenue subject to a lien to the extent necessary to satisfy the contracting person's obligations to secured parties, including the maintenance of reserves. The liens shall be correspondingly reduced and, when paid off, released.

(g) Before any payment is made to or for the benefit of a secured party, the responsible governmental entity may use revenue to pay the current operation and maintenance costs of the qualifying project, including compensation to the responsible governmental entity for its services in operating and maintaining the qualifying project. The right to receive any payment is considered just compensation for the qualifying project.

(h) The full faith and credit of the responsible governmental entity may not be pledged to secure any financing of the contracting person that was assumed by the governmental entity when the governmental entity assumed responsibility for the qualifying project.

Sec. 2267.062. EMINENT DOMAIN. (a) At the request of the contracting person, the responsible governmental entity may exercise any power of eminent domain that it has under law to acquire any land or property interest to the extent that the responsible governmental entity dedicates the land or property interest to public use and finds that the action serves the public purpose of this chapter.

(b) Any amounts to be paid in any eminent domain proceeding shall be paid by the contracting person.

Sec. 2267.063. AFFECTED FACILITY OWNER. (a) The contracting person and each facility owner, including a public utility, a public service company, or a cable television provider, whose facilities will be affected by a qualifying project shall cooperate fully in planning and arranging the manner in which the facilities will be affected.

(b) The contracting person and responsible governmental entity shall ensure that a facility owner whose facility will be affected by a qualifying project does not suffer a disruption of service as a result of the construction or improvement of the qualifying project.

(c) A governmental entity possessing the power of eminent domain may exercise that power in connection with the relocation of facilities affected by the qualifying project or facilities that must be relocated to the extent that the relocation is necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which includes construction of, renovation to, or improvements to temporary facilities to provide service during the period of construction or improvement. The governmental entity shall exercise its power of eminent domain to the extent required to ensure an affected facility owner does not suffer a disruption of service as a result of the construction or improvement of the qualifying project during the construction or improvement or after the qualifying project is completed or improved.

(d) The contracting person shall pay any amount owed for the crossing, constructing, or relocating of facilities.

Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. A peace officer of this state or of any affected jurisdiction has the same powers and jurisdiction within the area of the qualifying project as the officer has in the officer's area of jurisdiction. The officer may access the qualifying project at any time to exercise the officer's powers and jurisdiction.

Sec. 2267.065. PROCUREMENT GUIDELINES. (a) Chapters 2155, 2156, and 2166, any interpretations, rules, or guidelines of the comptroller and the Texas Facilities Commission, and interpretations, rules, or guidelines developed under Chapter 2262 do not apply to a qualifying project under this chapter.

(b) A responsible governmental entity may enter into a comprehensive agreement only in accordance with guidelines that require the contracting person to design and construct the qualifying project in accordance with procedures that do not materially conflict with those specified in:

(1) Section 2166.2531;

(2) Section 44.036, Education Code;

(3) Section 271.119, Local Government Code; or

(4) Subchapter J, Chapter 271, Local Government Code, for civil works projects as defined by Section 271.181(2), Local Government Code.

(c) This chapter does not authorize a responsible governmental entity or a contracting person to obtain professional services through any process except in accordance with Subchapter A, Chapter 2254.

(d) Identified team members, including the architect, engineer, or builder, may not be substituted or replaced once a project is approved and an interim or comprehensive agreement is executed without the written approval of the responsible governmental entity.

Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC ACCESS TO PROCUREMENT RECORDS. (a) Not later than the 10th day after the date a responsible governmental entity accepts a proposal submitted in accordance with Section 2267.053(a) or (b), the responsible governmental entity shall provide notice of the proposal as follows:

(1) for a responsible governmental entity described by Section 2267.001(5)(A), by posting the proposal on the entity's Internet website; and

(2) for a responsible governmental entity described by Section 2267.001(5)(B), by:

(A) posting a copy of the proposal on the entity's Internet website; or

(B) publishing in a newspaper of general circulation in the area in which the qualifying project is to be performed a summary of the proposal and the location where copies of the proposal are available for public inspection.

(b) The responsible governmental entity shall make available for public inspection at least one copy of the proposal. This section does not prohibit the responsible governmental entity from posting the proposal in another manner considered appropriate by the responsible governmental entity to provide maximum notice to the public of the opportunity to inspect the proposal.

(c) Trade secrets, financial records, or other records of the contracting person excluded from disclosure under Section 552.101 may not be posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the contracting person.

(d) The responsible governmental entity shall hold a public hearing on the proposal during the proposal review process not later than the 30th day before the date the entity enters into an interim or comprehensive agreement.

(e) On completion of the negotiation phase for the development of an interim or comprehensive agreement and before an interim agreement or comprehensive agreement is entered into, a responsible governmental entity must make available the proposed agreement in a manner provided by Subsection (a) or (b).

(f) A responsible governmental entity that has entered into an interim agreement or comprehensive agreement shall make procurement records available for public inspection on request. For purposes of this subsection, procurement records do not include the trade secrets of the contracting person or financial records, including balance sheets or financial statements of the contracting person, that are not generally available to the public through regulatory disclosure or other means.

(g) Cost estimates relating to a proposed procurement transaction prepared by or for a responsible governmental entity are not open to public inspection.

(h) Any inspection of procurement transaction records under this section is subject to reasonable restrictions to ensure the security and integrity of the records.

(i) This section applies to any accepted proposal regardless of whether the process of bargaining results in an interim or comprehensive agreement.

CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2268.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Partnership Advisory Commission.

(2) "Comprehensive agreement" has the meaning assigned by Section 2267.001.

(3) "Detailed proposal" means a proposal for a qualifying project accepted by a responsible governmental entity beyond a conceptual level of review that defines and establishes periods related to fixing costs, payment schedules, financing, deliverables, and project schedule.

(4) "Interim agreement" has the meaning assigned by Section 2267.001.

(5) "Qualifying project" has the meaning assigned by Section 2267.001.

(6) "Responsible governmental entity" has the meaning assigned by Section 2267.001.

Sec. 2268.002. APPLICABILITY. This chapter applies only to responsible governmental entities described by Section 2267.001(5)(A).

[Sections 2268.003-2268.050 reserved for expansion]

SUBCHAPTER B. COMMISSION

Sec. 2268.051. ESTABLISHMENT OF COMMISSION. The Partnership Advisory Commission is an advisory commission in the legislative branch that advises responsible governmental entities described by Section 2267.001(5)(A) on proposals received under Chapter 2267.

Sec. 2268.052. COMPOSITION AND TERMS. (a) The commission consists of the following 11 members:

(1) the chair of the House Appropriations Committee or the chair's designee;

(2) three representatives appointed by the speaker of the house of representatives;

(3) the chair of the Senate Finance Committee or the chair's designee;

(4) three senators appointed by the lieutenant governor; and

(5) three representatives of the executive branch, appointed by the governor.

(b) The legislative members serve on the commission until the expiration of their terms of office or until their successors qualify.

(c) The members appointed by the governor serve at the will of the governor.

Sec. 2268.053. PRESIDING OFFICER. The members of the commission shall elect from among the legislative members a presiding officer and an assistant presiding officer to serve two-year terms.

Sec. 2268.054. COMPENSATION; REIMBURSEMENT. A member of the commission is not entitled to compensation for service on the commission but is entitled to reimbursement for all reasonable and necessary expenses incurred in performing duties as a member.

Sec. 2268.055. MEETINGS. The commission shall hold meetings quarterly or on the call of the presiding officer.

Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL, AND OTHER SUPPORT. (a) The legislative body that the presiding officer serves shall provide administrative staff support for the commission.

(b) The Texas Legislative Council shall provide legal, research, and policy analysis services to the commission.

(c) The staffs of the House Appropriations Committee, Senate Finance Committee, and comptroller shall provide technical assistance.

(d) The comptroller or a state agency shall provide additional assistance as needed.

Sec. 2268.057. COMMISSION PROCEEDINGS. A copy of the proceedings of the commission shall be filed with the legislative body that the presiding officer serves.

Sec. 2268.058. SUBMISSION OF DETAILED PROPOSALS FOR QUALIFYING PROJECTS; EXEMPTION; COMMISSION REVIEW. (a) Before beginning to negotiate an interim or comprehensive agreement, each responsible governmental entity receiving a detailed proposal for a qualifying project must provide copies of the proposal to:

(1) the presiding officer of the commission; and

(2) the chairs of the House Appropriations Committee and Senate Finance Committee or their designees.

(b) The following qualifying projects are not subject to review by the commission:

(1) any proposed qualifying project with a total cost of less than \$5 million; and

(2) any proposed qualifying project with a total cost of more than \$5 million but less than \$50 million for which money has been specifically appropriated as a public-private partnership in the General Appropriations Act.

(c) The commission may undertake additional reviews of any qualifying project that will be completed in phases and for which an appropriation has not been made for any phase other than the current phase of the project.

(d) Not later than the 10th day after the date the commission receives a complete copy of the detailed proposal for a qualifying project, the commission shall determine whether to accept or decline the proposal for review and notify the responsible governmental entity of the commission's decision.

(e) If the commission accepts a proposal for review, the commission shall provide its findings and recommendations to the responsible governmental entity not later than the 45th day after the date the commission receives complete copies of the detailed proposal. If the commission does not provide its findings or recommendations to the responsible governmental entity by that date, the commission is considered to have declined review of the proposal and to not have made any findings or recommendations on the proposal.

(f) The responsible governmental entity on request of the commission shall provide any additional information regarding a qualifying project reviewed by the commission if the information is available to or can be obtained by the responsible governmental entity.

(g) The commission shall review accepted detailed proposals and provide findings and recommendations to the responsible governmental entity that include:

(1) a determination on whether the terms of the proposal and proposed qualifying project create state tax-supported debt, taking into consideration the specific findings of the comptroller with respect to the recommendation;

(2) an analysis of the potential financial impact of the qualifying project;

(3) a review of the policy aspects of the detailed proposal and the qualifying project; and

(4) proposed general business terms.

(h) Review by the commission does not constitute approval of any appropriations necessary to implement a subsequent interim or comprehensive agreement.

(i) Except as provided by Subsection (e), the responsible governmental entity may not begin negotiation of an interim or comprehensive agreement until the commission has submitted its recommendations or declined to accept the detailed proposals for review.

(j) Not later than the 30th day before the date a comprehensive or interim agreement is executed, the responsible governmental entity shall submit to the commission and the chairs of the House Appropriations Committee and Senate Finance Committee or their designees:

(1) a copy of the proposed interim or comprehensive agreement; and

(2) a report describing the extent to which the commission's recommendations were addressed in the proposed interim or comprehensive agreement.

Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS SUBMITTED TO COMMISSION. Records and information afforded protection under Section 552.153 that are provided by a responsible governmental entity to the commission shall continue to be protected from disclosure when in the possession of the commission.

SECTION 2. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.153 to read as follows:

Sec. 552.153. PROPRIETARY RECORDS AND TRADE SECRETS INVOLVED IN CERTAIN PARTNERSHIPS. (a) In this section, "affected jurisdiction," "comprehensive agreement," "contracting person," "interim agreement," "qualifying project," and "responsible governmental entity" have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under Chapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a contracting person to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the contracting person;

(B) financial records of the contracting person, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) other information submitted by the contracting person that, if made public before the execution of an interim or comprehensive agreement, would adversely affect the financial interest or bargaining position of the responsible governmental entity or the person.

(c) Except as specifically provided by Subsection (b), this section does not authorize the withholding of information concerning:

(1) the terms of any interim or comprehensive agreement, service contract, lease, partnership, or agreement of any kind entered into by the responsible governmental entity and the contracting person or the terms of any financing arrangement that involves the use of any public money; or

(2) the performance of any person developing or operating a qualifying project under Chapter 2267.

SECTION 3. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 1048** (house committee report) as follows:

(1) In SECTION 1 of the bill, in proposed Section 2267.002(e), Government Code (page 5, line 17), between "other" and "authority", insert "statutory".

(2) In SECTION 1 of the bill, immediately following proposed Section 2267.065(b)(2), Government Code (page 26, between lines 19 and 20), insert the following:

(3) Section 51.780, Education Code;

(3) In SECTION 1 of the bill, in proposed Section 2267.065(b), Government Code (page 26, lines 20 and 21), renumber the subdivisions of that subsection appropriately.

Floor Amendment No. 5

Amend **CSSB 1048** (house committee printing) in SECTION 1 of the bill, immediately following added Section 2267.060, Government Code (page 22, between lines 23 and 24), by inserting the following:

Sec. 2267.0605. PERFORMANCE AND PAYMENT BONDS REQUIRED. (a) The construction, remodel, or repair of a qualifying project may be performed only after performance and payment bonds for the construction, remodel, or repair have been executed in compliance with Chapter 2253 regardless of whether the qualifying project is on public or private property or is publicly or privately owned.

(b) For purposes of this section, a qualifying project is considered a public work under Chapter 2253 and the responsible governmental entity shall assume the obligations and duties of a governmental entity under that chapter. The obligee under a performance bond under this section may be a public entity, a private person, or an entity consisting of both a public entity and a private person.

Floor Amendment No. 8

Amend **CSSB 1048** (house committee report) in SECTION 1 of the bill, immediately following proposed Section 2267.065, Government Code (page 27, between lines 5 and 6), by inserting the following:

Sec. 2267.0655. HISTORICALLY UNDERUTILIZED BUSINESSES. A responsible governmental entity selecting a provider of services for a qualifying project or awarding a contract for a qualifying project shall comply with the requirements of Chapter 2161 if:

(1) the entity receives more than \$10 million in appropriated state funds in a state fiscal year; or

(2) the entity is awarding a contract in an amount that exceeds \$100,000 or is selecting a provider of services for the project in connection with a contract in an amount that exceeds \$100,000.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1048** on third reading by striking the text of proposed Section 2267.0655, Government Code, as added on second reading by Amendment No. 8 by Dukes.

The amendments were read.

Senator Jackson moved to concur in the House amendments to **SB 1048**.

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

Nays: Nichols.

SENATE BILL 776 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 776** 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 776** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to customs brokers.

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

SECTION 1. Sections 151.157(a-1), (f), and (f-1), Tax Code, are amended to read as follows:

(a-1) The comptroller shall maintain a password-protected website that a customs broker, or an authorized employee of a customs broker, licensed under this section must use to prepare documentation to show the exemption of tangible personal property under Section 151.307(b)(2). The comptroller shall require a customs broker or authorized employee to use the website to actually produce the documentation after providing all necessary information. The comptroller shall use the information provided by a customs broker or authorized employee under this subsection as necessary to enforce this section and Section 151.307. The comptroller may ~~shall~~ provide an alternate method to prepare documentation to show the exemption of tangible personal property under Section 151.307(b)(2) in those instances when the password-protected website is unavailable due to technical or communication problems. A customs broker or authorized employee may use the alternate method only if the comptroller provides prior authorization for each use.

(f) The comptroller may suspend or revoke a license issued under this section if the customs broker does not comply with Section 151.1575(c) or issues documentation that is false ~~[to obtain a refund of taxes paid on tangible personal property not exported or to assist another person in obtaining such a refund]~~. The comptroller may determine the length of suspension or revocation necessary for the enforcement of this chapter and the comptroller's rules. A proceeding to suspend or revoke a license under this subsection is a contested case under Chapter 2001, Government Code. Judicial review is by trial de novo. The district courts of Travis County have exclusive original jurisdiction of a suit under this section.

(f-1) In addition to any other penalty provided by law, the comptroller may require a customs broker to pay to the comptroller the amount of any tax refunded and the amount of any penalty imposed under Section 151.1575(c) if the customs broker did not comply with this section or the rules adopted by the comptroller under this section ~~[in relation to the refunded tax]~~.

SECTION 2. Sections 151.1575(a), (b), and (c), Tax Code, are amended to read as follows:

(a) A customs broker licensed by the comptroller or an authorized employee of the customs broker may issue documentation certifying that delivery of tangible personal property was made to a point outside the territorial limits of the United States as required by Section 151.307(b)(2)(B) only if the customs broker or authorized employee:

- (1) watches the property cross the border of the United States;

(2) watches the property being placed on a common carrier for delivery outside the territorial limits of the United States; or

(3) verifies that the purchaser is transporting the property to a destination outside of the territorial limits of the United States by:

(A) examining a passport, laser visa identification card, or foreign voter registration picture identification indicating that the purchaser of the property resides in a foreign country;

(B) requiring that the documentation examined under Paragraph (A) have a unique identification number for that purchaser;

(C) requiring the purchaser to produce the property and the original sales receipt for the property;

(D) [~~(C)~~] requiring the purchaser to state the foreign country destination of the property which must be the foreign country in which the purchaser resides;

(E) [~~(D)~~] requiring the purchaser to state the date and time the property is expected to arrive in the foreign country destination;

(F) [~~(E)~~] requiring the purchaser to state the date and time the property was purchased, the name and address of the place at which the property was purchased, the sales price and quantity of the property, and a description of the property;

(G) [~~(F)~~] requiring the purchaser and the broker or an authorized employee to sign in the presence of each other a form prepared or approved by the comptroller:

(i) stating that the purchaser has provided the information and documentation required by this subdivision; and

(ii) that contains a notice to the purchaser that tangible personal property not exported is subject to taxation under this chapter and the purchaser is liable, in addition to other possible civil liabilities and criminal penalties, for payment of an amount equal to the value of the merchandise if the purchaser improperly obtained a refund of taxes relating to the property; and

(H) [~~(G)~~] requiring the purchaser to produce the purchaser's:

(i) Form I-94, Arrival/Departure record, or its successor, as issued by the United States Immigration and Naturalization Service, for those purchasers in a county not bordering the United Mexican States; or

(ii) air, land, or water travel documentation if the customs broker is located in a county that does not border the United Mexican States.

(b) A customs broker licensed by the comptroller or an authorized employee of the customs broker may issue and deliver documentation under Subsection (a) at any time after the tangible personal property is purchased and the broker or employee completes the process required by Subsection (a). The comptroller shall limit to six the number of receipts for which a single proof of export documentation may be issued under this section. The documentation must include:

(1) the name and address of the customs broker;

(2) the license number of the customs broker;

(3) the name and address of the purchaser;

(4) the name and address of the place at which the property was purchased;

(5) the date and time of the sale;

- (6) a description and the quantity of the property;
- (7) the sales price of the property;
- (8) the foreign country destination of the property, which may not be the place of export;
- (9) the date and time:
 - (A) at which the customs broker or authorized employee watched the property cross the border of the United States;
 - (B) at which the customs broker or authorized employee watched the property being placed on a common carrier for delivery outside the territorial limits of the United States; or
 - (C) the property is expected to arrive in the foreign country destination, as stated by the purchaser;
- (10) a declaration signed by the customs broker or an authorized employee of the customs broker stating that:
 - (A) the customs broker is a licensed Texas customs broker; and
 - (B) the customs broker or authorized employee inspected the property and the original receipt for the property; and
- (11) an export certification stamp issued by the comptroller.

(c) The comptroller may require a customs broker to pay the comptroller the amount of any tax refunded if the customs broker does not comply with this section, Section 151.157, or the rules adopted by the comptroller under this section or Section 151.157. In addition to the amount of the refunded tax, the comptroller may require the customs broker to pay a penalty of in an amount equal to the amount of the refunded tax, but not less than \$500 nor more than \$5,000. The comptroller and the state may deduct any penalties to be paid by a customs broker from the broker's posted bond.

SECTION 3. Section 151.158, Tax Code, is amended by amending Subsection (g) and adding Subsections (g-1) and (g-2) to read as follows:

(g) The comptroller shall charge \$2.10 [~~\$1.60~~] for each stamp. The comptroller shall use:

- (1) \$1.60 of the money from the sale of the stamps only for costs related to producing the stamps, including costs of materials, labor, and overhead; and
- (2) the remaining 50 cents only for enforcement of the laws relating to customs brokers under this title.

(g-1) Any unspent money shall be deposited to the credit of the general revenue fund.

(g-2) Customs brokers who return unused stamps to the comptroller's office on a quarterly basis shall get credit towards the purchase of new stamps.

SECTION 4. The change in law made by this Act applies only to documentation issued on or after the effective date of this Act. Documentation issued before the effective date of this Act is governed by the law in effect on the date the documentation was issued, and that law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 776** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in amended Section 151.1575(a)(3)(G)(ii), Tax Code (page 4, line 9), strike "and" and substitute "[~~and~~]".

(2) In SECTION 2 of the bill, in amended Section 151.1575(a)(3)(H)(ii), Tax Code (page 4, line 18), strike the period and substitute the following:
; and

(1) requiring the purchaser and the broker or an authorized employee, when using a power of attorney form, to attest, as a part of the form and in the presence of each other:

(i) that the purchaser has provided the information and documentation required by this subdivision; and

(ii) that the purchaser is on notice that tangible personal property not exported is subject to taxation under this chapter and the purchaser is liable, in addition to other possible civil liabilities and criminal penalties, for payment of an amount equal to the value of the merchandise if the purchaser improperly obtained a refund of taxes relating to the property.

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **SB 776**.

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

SENATE BILL 1170 WITH HOUSE AMENDMENTS

Senator Carona called **SB 1170** 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 1170** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of barbers and cosmetologists.

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

SECTION 1. Section 1601.001(a), Occupations Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Barber school" means a place that holds a permit issued under Subchapter H to teach the practice of barbering and may be privately or publicly funded. The term includes a barber college.

SECTION 2. Section 1601.253, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The commission shall adopt rules for the issuance of a Class A barber certificate to a person who holds an operator license under Chapter 1602. The department shall issue the certificate to an applicant who:

(1) holds an active operator license under Chapter 1602;

(2) completes at least 300 hours of instruction in barbering that includes barber history and shaving through a commission-approved training program in a barber school;

(3) passes the examination required under Subsection (a); and

(4) submits to the department:

(A) an application on a form prescribed by the department; and

(B) the required fee.

SECTION 3. Section 1601.254, Occupations Code, is amended to read as follows:

Sec. 1601.254. ELIGIBILITY FOR BARBER INSTRUCTOR LICENSE [TEACHER'S CERTIFICATE]. (a) A person holding a barber instructor license may perform any act of barbering and may instruct a person in any act of barbering.

(b) To be eligible for a barber instructor license, an [A+] applicant [for a teacher's certificate] must:

(1) be at least 18 years of age;

(2) have a high school diploma or a high school equivalency certificate;

(3) hold a current [be a] Class A barber certificate;

(4) [(2)] have completed:

(A) a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school; or

(B) at least one year of work experience as a licensed Class A barber and:

(i) have completed 500 hours of instruction in barber courses and methods of teaching in a commission-approved training program;

(ii) have completed 15 semester hours in education courses from an accredited college or university within the 10 years preceding the date of the application; or

(iii) have obtained a degree in education from an accredited college or university; and

(5) pass the required examination.

(c) The commission shall adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of barbering as defined by Sections 1601.002(1)(C)-(H) and (K) [five years' experience as a practicing barber in a barbershop, two years of which occurred in the two years preceding the application date; and

[(3) submit the required examination fee with the application].

[(b) An applicant must submit a new application and fee for each examination taken by the applicant. Fees paid are not refundable.

[(c) The department shall issue a teacher's certificate to an applicant who:

[(1) passes the appropriate examination; and

[(2) pays the required certificate fee.]

SECTION 4. Subchapter F, Chapter 1601, Occupations Code, is amended by adding Sections 1601.261, 1601.262, and 1601.263 to read as follows:

Sec. 1601.261. ELIGIBILITY FOR SHAMPOO APPRENTICE PERMIT. (a) A person holding a shampoo apprentice permit may perform only barbering as defined by Section 1601.002(1)(I).

(b) The department shall issue a shampoo apprentice permit to an applicant who is at least 16 years of age.

(c) A shampoo apprentice permit expires on the second anniversary of the date of issuance and may not be renewed.

(d) The commission shall adopt rules as necessary to administer this section. The commission may not require an applicant to:

(1) complete any hours of instruction at a barber training program as a prerequisite for the issuance of a shampoo apprentice permit; or

(2) pay a fee for a shampoo apprentice permit.

(e) A facility licensed under this chapter may employ a person who holds a shampoo apprentice permit to perform shampooing or conditioning services and shall pay the person at least the federal minimum wage as provided by Section 6, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206).

Sec. 1601.262. ELIGIBILITY FOR BARBER TECHNICIAN/MANICURIST SPECIALTY LICENSE. (a) A person holding a barber technician/manicurist specialty license may perform only barbering as defined by Sections 1601.002(1)(C) through (G).

(b) To be eligible for a barber technician/manicurist specialty license, an applicant must:

(1) submit an application on a form prescribed by the department;

(2) pay the required fee; and

(3) either:

(A) hold both an active barber technician license and an active manicurist license; or

(B) meet the requirements of Subsection (c).

(c) An applicant who qualifies under Subsection (b)(3)(B) must:

(1) be at least 17 years of age and have completed the seventh grade or its equivalent; and

(2) have completed:

(A) 900 hours of instruction in a barber technician/manicurist curriculum in a commission-approved training program; or

(B) 600 hours of instruction in a manicure curriculum and 300 hours of instruction in a barber technician curriculum in a commission-approved training program.

Sec. 1601.263. ELIGIBILITY FOR BARBER TECHNICIAN/HAIR WEAVING SPECIALTY LICENSE. (a) A person holding a barber technician/hair weaving specialty license may perform only barbering as defined by Sections 1601.002(1)(C), (D), (G), and (H).

(b) To be eligible for a barber technician/hair weaving specialty license, an applicant must:

(1) submit an application on a form prescribed by the department;

(2) pay the required fee; and

(3) either:

(A) hold both an active barber technician license and an active hair weaving specialty certificate of registration; or

(B) meet the requirements of Subsection (c).

(c) An applicant who qualifies under Subsection (b)(3)(B) must:

(1) be at least 17 years of age and have completed the seventh grade or its equivalent; and

(2) have completed:

(A) 600 hours of instruction in a barber technician/hair weaving curriculum in a commission-approved training program; or

(B) 300 hours of instruction in a hair weaving curriculum and 300 hours of instruction in a barber technician curriculum in a commission-approved training program.

SECTION 5. Section 1601.352, Occupations Code, is amended to read as follows:

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. ~~[(a)]~~ An applicant for a barber school permit must:

(1) provide to the department adequate proof of financial responsibility;

(2) submit an application on a form prescribed by the department;

(3) satisfy the facility and equipment requirements of Section 1601.353; and

(4) pay the required fee ~~[demonstrate to the department that the school meets the requirements of this subchapter for issuance of a permit].~~

~~[(b) Before issuing a barber school permit, the department must determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.]~~

SECTION 6. Section 1601.353, Occupations Code, is amended to read as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. ~~[(a)]~~ The department may ~~[not]~~ approve an application for a permit for a barber school if ~~[that provides training leading to issuance of a Class A barber certificate unless]~~ the school ~~[has]~~:

(1) is located in:

(A) a municipality with a population of more than 50,000 that has a building of permanent construction containing at least 2,000 ~~[2,800]~~ square feet of floor space, including classroom and practical areas, covered in ~~[divided into at least:~~

~~[(A) a senior department;~~

~~[(B) a junior department;~~

~~[(C) a class theory room;~~

~~[(D) a supply room;~~

~~[(E) an office space; and~~

~~[(F) separate restrooms for male and female students;~~

~~[(2)] a hard-surface floor-covering of tile or other suitable material; or~~

(B) a municipality with a population of 50,000 or less or an unincorporated area of a county that has a building of permanent construction containing at least 1,000 square feet of floor space, including classroom and practical areas, covered in a hard-surface floor-covering of tile or other suitable material;

(2) has the following equipment:

(A) ~~[(2)]~~ at least 10 student workstations that include a chair that reclines, a back bar, and a wall mirror ~~[20 modern barber chairs, including a cabinet and mirror for each chair];~~

- (B) ~~[(4)]~~ a sink behind every two workstations [~~barber chairs~~];
- (C) ~~[(5)]~~ a liquid sterilizer for each workstation [~~barber chair~~];
- (D) ~~[(6)]~~ an adequate number of latherers, vibrators, and hair dryers for student use;
- ~~[(7)]~~ adequate lighting for each room;
- (E) ~~[(8)]~~ at least 10 [~~20~~] classroom chairs and other materials necessary to teach the required subjects; and
- (F) access to permanent restrooms and [~~a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;~~
- ~~[(9)]~~ at least one medical dictionary and a standard work on human anatomy;
- ~~[(10)]~~ adequate drinking fountain facilities [~~with at least one for each floor~~]; and
- (3) meets any other requirement set by the commission
- ~~[(11)]~~ at least one fire extinguisher].
- (b) An applicant for a barber school permit must submit to the department:
- (1) a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;
- (2) photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;
- (3) a detailed copy of the training program;
- (4) a copy of the catalogue and promotional literature of the school;
- (5) a copy of the building lease or proposed building lease if the building is not owned by the school;
- (6) a sworn statement showing the ownership of the school; and
- (7) the required permit fee.]

SECTION 7. Section 1601.402(b), Occupations Code, is amended to read as follows:

(b) A Class A barber, barber technician, instructor [~~teacher~~], manicurist, or other licensed specialist must renew the person's certificate or license on or before the expiration date.

SECTION 8. Section 1601.405(a), Occupations Code, is amended to read as follows:

(a) The department may not require a Class A barber, barber technician, instructor [~~teacher~~], or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

SECTION 9. Section 1601.560, Occupations Code, is amended to read as follows:

Sec. 1601.560. INSTRUCTOR-TO-STUDENT RATIO [QUALIFIED INSTRUCTOR]. (a) A [~~In addition to the teacher required by Section 1601.355(b), a]~~ barber school must [~~that provides training leading to issuance of a Class A barber certificate shall~~] have at least one [qualified] instructor [~~holding a Class A certificate,~~] for every 25 students on the school's premises. [~~A teacher may serve as an instructor in practical work in addition to holding a position as a theory teacher.~~]

(b) A barber school must have at least one instructor for every three student instructors on the school's premises ~~[may not enroll more than one student teacher for each certified teacher who teaches at the school]~~. A student instructor ~~[teacher]~~ shall concentrate on developing teaching skills and may not be booked with customers.

SECTION 10. Section 1601.563(b), Occupations Code, is amended to read as follows:

(b) A barber school's refund policy must provide that:

(1) the refund is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled [clock] hours, as specified by an enrollment agreement, contract, or other document acceptable to the department;

(2) the effective date of the termination for refund purposes is the earliest of:

(A) the last date of attendance, if the student is terminated by the school;

(B) the date the permit holder receives the student's written notice of withdrawal; or

(C) 10 school days after the last date of attendance; and

(3) the school may retain not more than \$100 if:

(A) tuition is collected before the course of training begins; and

(B) the student does not begin the course of training before the date the cancellation period under Section 1601.562 expires.

SECTION 11. Section 1601.602, Occupations Code, is amended to read as follows:

Sec. 1601.602. REVOCATION OF STUDENT INSTRUCTOR'S [TEACHER'S] BARBER CERTIFICATE. A violation of Section 1601.560(b) by a student instructor ~~[teacher]~~ is a ground for the revocation of the ~~[person's]~~ student instructor's ~~[teacher]~~ barber certificate ~~[license]~~.

SECTION 12. Section 1602.002(a), Occupations Code, is amended to read as follows:

(a) In this chapter, "cosmetology" means the practice of performing or offering to perform for compensation any of the following services:

(1) treating a person's hair by:

(A) providing any method of treatment as a primary service, including arranging, beautifying, bleaching, cleansing, coloring, cutting, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving;

(B) providing a necessary service that is preparatory or ancillary to a service under Paragraph (A), including bobbing, clipping, cutting, or trimming; or

(C) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from charges for any other service;

(2) weaving or braiding a person's hair;

(3) shampooing and conditioning a person's hair;

(4) servicing a person's wig or artificial hairpiece on a person's head or on a block after the initial retail sale and servicing in any manner listed in Subdivision (1);

(5) treating a person's mustache or beard by arranging, beautifying, coloring, processing, styling, or trimming;

(6) cleansing, stimulating, or massaging a person's scalp, face, neck, or arms:

(A) by hand or by using a device, apparatus, or appliance; and

(B) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;

(7) beautifying a person's face, neck, or arms using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;

(8) administering facial treatments;

(9) removing superfluous hair from a person's body using depilatories, preparations, or tweezing techniques [~~mechanical tweezers~~];

(10) treating a person's nails by:

(A) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring; or

(B) attaching false nails; [ø]

(11) massaging, cleansing, treating, or beautifying a person's hands or feet;

or

(12) applying semipermanent, thread-like extensions composed of single fibers to a person's eyelashes.

SECTION 13. Section 1602.254, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) To be eligible for an operator license, an applicant must meet the requirements of Subsection (c) or:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed:

(A) 1,500 hours of instruction in a licensed beauty culture school; or

(B) 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the commission in a vocational cosmetology program in a public school.

(c) The commission shall adopt rules for the issuance of an operator license under this section to a person who holds a Class A barber certificate. The department shall issue the license to an applicant who:

(1) holds an active Class A barber certificate;

(2) completes 300 hours of instruction in cosmetology through a commission-approved training program in a cosmetology school;

(3) passes the examination required under Section 1602.262; and

(4) submits to the department:

(A) an application on a form prescribed by the department; and

(B) the required fee.

SECTION 14. Sections 1602.255(b) and (c), Occupations Code, are amended to read as follows:

(b) To be eligible for an instructor license, an applicant must:

(1) be at least 18 years of age;

(2) have a high school diploma [~~completed the 12th grade~~] or a high school equivalency certificate [~~its equivalent~~];

(3) hold an operator license under this chapter; [~~and~~]

(4) have [~~completed~~]:

(A) ~~completed~~ [~~a course consisting of~~] 750 hours of instruction in [~~cosmetology courses and~~] methods of teaching in:

(i) a licensed private beauty culture school; or

(ii) a vocational training program of a publicly financed postsecondary institution; [~~or~~]

(B) completed at least:

(i) one year [~~two years~~] of verifiable experience as a licensed cosmetology operator; and

(ii) 500 [~~250~~] hours of instruction in cosmetology in a commission-approved training program;

(C) completed 15 semester hours in education courses through an accredited college or university within the 10 years before the date of application; or

(D) obtained a degree in education from an accredited college or university; and

(5) pass the examination required under Section 1602.262.

(c) The commission shall adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of cosmetology defined in Sections 1602.002(a)(7) [~~1602.002(7)~~], (9), [~~and~~] (10), and (12).

SECTION 15. Section 1602.257, Occupations Code, is amended to read as follows:

Sec. 1602.257. ELIGIBILITY FOR ESTHETICIAN [~~A FACIALIST~~] SPECIALTY LICENSE. (a) A person holding an esthetician [~~a facialist~~] specialty license may perform only the practice of cosmetology defined in Sections 1602.002(a)(6), (7), (8), [~~through~~] (9), and (12).

(b) To be eligible for an esthetician [~~a facialist~~] specialty license, an applicant must:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed 750 hours of instruction in esthetics [~~facialist~~] specialty through a commission-approved training program.

SECTION 16. Subchapter F, Chapter 1602, Occupations Code, is amended by adding Sections 1602.2571 and 1602.2572 to read as follows:

Sec. 1602.2571. ELIGIBILITY FOR A SPECIALTY LICENSE IN EYELASH EXTENSION APPLICATION. (a) A person holding a specialty license in eyelash extension application may perform only the practice of cosmetology defined in Section 1602.002(a)(12).

(b) To be eligible for a specialty license in eyelash extension application, an applicant must:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed a training program described by Section 1602.2572 that has been approved by the commission.

Sec. 1602.2572. EYELASH EXTENSION APPLICATION TRAINING PROGRAM. (a) An eyelash extension application training program must include at least 320 hours of classroom instruction and practical experience, including at least eight hours of theoretical instruction, and include instruction in the following areas:

(1) recognizing infectious or contagious diseases of the eye and allergic reactions to materials;

(2) proper sanitation practices;

(3) occupational health and safety practices;

(4) eyelash extension application procedures; and

(5) eyelash extension isolation and separation procedures.

(b) An instructor at an eyelash extension application training program must comply with Section 1602.251(b).

(c) The commission shall adopt rules regarding eyelash extension application training programs and may establish or designate approved training programs.

SECTION 17. Subchapter F, Chapter 1602, Occupations Code, is amended by adding Section 1602.261 to read as follows:

Sec. 1602.261. ELIGIBILITY FOR MANICURIST/ESTHETICIAN SPECIALTY LICENSE. (a) A person holding a manicurist/esthetician specialty license may perform only the practice of cosmetology defined in Sections 1602.002(a)(6) through (11).

(b) To be eligible for a manicurist/esthetician specialty license, an applicant must:

(1) submit an application on a form prescribed by the department;

(2) pay the required fee; and

(3) either:

(A) hold both an active manicurist specialty license and an active esthetician specialty license; or

(B) meet the educational requirements of Subsection (c).

(c) An applicant who qualifies under Subsection (b)(3)(B) must:

(1) either:

(A) have obtained a high school diploma or a high school equivalency certificate; or

(B) have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(2) have completed:

(A) 1,200 hours of instruction in a manicure/esthetics specialty curriculum in a commission-approved training program; or

(B) 600 hours of instruction in a manicure curriculum and 750 hours of instruction in an esthetics curriculum in commission-approved training programs.

SECTION 18. Section 1602.262, Occupations Code, is amended to read as follows:

Sec. 1602.262. ISSUANCE OF LICENSE OR CERTIFICATE. (a) An applicant for a ~~[an operator]~~ license under this chapter ~~[- instructor license, manicurist specialty license, or facialist specialty license]~~ is entitled to the license if the applicant:

- (1) meets the applicable eligibility requirements;
- (2) passes the applicable examination;
- (3) pays the required fee; ~~[and]~~
- (4) has not committed an act that constitutes a ground for denial of the license; and

(5) submits an application on a form prescribed by the department.

(b) An applicant for a specialty certificate is entitled to the certificate if the applicant:

- (1) meets the eligibility requirements;
- (2) pays the required fee; ~~[and]~~
- (3) has not committed an act that constitutes a ground for denial of the certificate; and

(4) submits an application on a form prescribed by the department.

SECTION 19. Section 1602.267(c), Occupations Code, is amended to read as follows:

(c) A shampoo apprentice permit expires on the second ~~[first]~~ anniversary of the date of issuance and may not be renewed.

SECTION 20. Sections 1602.303(a) and (b), Occupations Code, are amended to read as follows:

(a) A person holding a private beauty culture school license may maintain an establishment in which any practice of cosmetology is taught, including providing an eyelash extension application training program described by Section 1602.2572.

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

- (1) be on a form prescribed by the department;
- (2) be verified by the applicant; and
- (3) contain a statement that the building:

(A) is of permanent construction and is divided into at least two separate areas:

- (i) one area for instruction in theory; and
- (ii) one area for clinic work;

(B) contains a minimum of:

(i) 2,000 ~~[3,500]~~ square feet of floor space if the building is located in a municipality with a population of more than 50,000; or

(ii) 1,000 square feet of floor space if the building is located in a municipality with a population of 50,000 or less or in an unincorporated area of a county;

(C) has access to permanent restrooms and adequate drinking fountain facilities ~~[separate restrooms for male and female students]~~; and

(D) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 10 ~~[50]~~ students.

SECTION 21. Section 1602.305(a), Occupations Code, is amended to read as follows:

(a) A person holding a specialty shop license may maintain an establishment in which only the practice of cosmetology as defined in Section 1602.002(a)(2) [~~1602.002(2)~~], (4), (7), (9), [~~or~~] (10), or (12) is performed.

SECTION 22. Section 1602.451(a), Occupations Code, is amended to read as follows:

(a) The holder of a private beauty culture school license shall:

- (1) maintain a sanitary establishment;
- (2) maintain ~~[on its staff and]~~ on duty ~~[during business hours]~~ one full-time licensed instructor for each 25 students in attendance;
- (3) maintain a daily record of students' attendance;
- (4) establish regular class and instruction hours and grades;
- (5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;
- (6) require a school term of not less than 600 hours instruction for a complete course in manicuring;
- (7) hold examinations before issuing diplomas;
- (8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;
- (9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and
- (10) provide the department with information on:
 - (A) the current course completion rates of students who attend a course of instruction offered by the school; and
 - (B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 23. Section 1602.458(b), Occupations Code, is amended to read as follows:

(b) The refund policy must provide that:

- (1) the refund is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled [elect] hours, as specified by an enrollment agreement, contract, or other document acceptable to the department;
- (2) the effective date of the termination for refund purposes is the earliest of:
 - (A) the last date of attendance, if the student is terminated by the school;
 - (B) the date the license holder receives the student's written notice of withdrawal; or
 - (C) 10 school days after the last date of attendance; and
- (3) the school may retain not more than \$100 if:
 - (A) tuition is collected before the course of training begins; and
 - (B) the student fails to withdraw from the course of training before the cancellation period expires.

SECTION 24. Section 1603.255, Occupations Code, is amended to read as follows:

Sec. 1603.255. EARLY EXAMINATION. The department ~~[, on written request by a student,]~~ may allow ~~[provide]~~ for the early written examination of a student who has completed the following number of ~~[an applicant for a Class A barber certificate, a teacher's certificate, or an operator license who has completed at least 1,000]~~ hours of instruction in a department-approved training program:

(1) 1,000 hours for a student seeking a Class A barber certificate or operator license in a private barber or cosmetology school; or

(2) 900 hours for a student seeking a Class A barber certificate or operator license in a publicly funded barber or cosmetology school.

SECTION 25. Sections 1603.352(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A person who holds a license, certificate, or permit issued under this chapter, Chapter 1601, or Chapter 1602 and who performs a barbering service described by Section 1601.002(1)(E) or (F) or a cosmetology service described by Section 1602.002(a)(10) or (11) shall, before performing the service, clean, disinfect, and sterilize with an autoclave or ~~[a]~~ dry heat sterilizer or sanitize with ~~an~~ ultraviolet sanitizer, ~~[or other department approved sterilizer,]~~ in accordance with the sterilizer or sanitizer manufacturer's instructions, each metal instrument, including metal nail clippers, cuticle pushers, cuticle nippers, and other metal instruments, used to perform the service.

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, beauty culture school, or other facility licensed under this chapter, Chapter 1601, or Chapter 1602, is responsible for providing an autoclave, ~~[or]~~ a dry heat sterilizer, or an ultraviolet sanitizer ~~[, or other department approved sterilizer]~~ for use in the shop or school as required by Subsection (a). ~~[An autoclave or a dry heat, ultraviolet, or other department approved sterilizer used as required by Subsection (a) must be listed with the United States Food and Drug Administration.]~~

(c) Each sterilized or sanitized instrument must be stored in accordance with the manufacturer's instructions.

SECTION 26. The following provisions of the Occupations Code are repealed:

- (1) Section 1601.001(a)(5);
- (2) Section 1601.354;
- (3) Section 1601.355; and
- (4) Section 1602.403(b).

SECTION 27. (a) The Texas Department of Licensing and Regulation shall conduct a study that analyzes the performance of barber schools under Subchapter L, Chapter 1601, Occupations Code, and beauty culture schools under Subchapter J, Chapter 1602, Occupations Code, including the payment of refunds and recommendations for improvements to the process for the payment of refunds to eligible students.

(b) In conducting the study, the Texas Department of Licensing and Regulation shall consult with:

- (1) the Advisory Board on Barbering;
- (2) the Advisory Board on Cosmetology;
- (3) national accrediting organizations for barbers and cosmetologists;
- (4) representatives of barber schools and beauty culture schools; and

(5) barbers, cosmetologists, and other interested parties.

(c) Not later than September 1, 2012, the Texas Department of Licensing and Regulation shall report the results of the study to the:

- (1) House Committee on Licensing and Administrative Procedures; and
- (2) Senate Committee on Business and Commerce.

(d) This section expires September 1, 2013.

SECTION 28. (a) The Texas Department of Licensing and Regulation shall issue a specialty license in eyelash extension application under Section 1602.2571, Occupations Code, as added by this Act, to an applicant who:

(1) submits an application on a form prescribed by the department not later than April 1, 2012;

(2) meets the eligibility requirements of Sections 1602.2571(b)(1) and (2), Occupations Code, as added by this Act;

(3) submits proof of either:

(A) successful completion of a training program provided by an eyelash extension manufacturer or distributor that is approved by the department; or

(B) completion of at least 240 hours of verifiable practical experience performing the practice of cosmetology defined in Section 1602.002(a)(12), Occupations Code, as added by this Act, at a facility licensed under this chapter; and

(4) pays the required application fee.

(b) A license issued under this section may be renewed in the same manner as a specialty license in eyelash extension application issued under Section 1602.2571, Occupations Code, as added by this Act.

(c) This section expires March 1, 2013.

SECTION 29. (a) Not later than February 1, 2012, the Texas Commission of Licensing and Regulation shall adopt rules to implement Sections 1602.2571 and 1602.2572, Occupations Code, as added by this Act, and Section 28 of this Act.

(b) A person is not required to hold a specialty license in eyelash extension application issued under Section 1602.2571, Occupations Code, as added by this Act, until June 1, 2012.

SECTION 30. (a) The changes in law made by this Act apply only to an application for the issuance or renewal of a license or certificate that is filed with the Texas Department of Licensing and Regulation on or after the effective date of this Act. An application for the issuance or renewal of a license or certificate that is 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) Except as provided by Section 29(a) of this Act, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement the changes in law made by this Act not later than March 31, 2012.

SECTION 31. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 1170** (house committee printing) as follows:

(1) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(i), Occupations Code, strike "2,000" and substitute "2,800".

(2) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(i), Occupations Code, strike "municipality" and substitute "county".

(3) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(i), Occupations Code, strike "50,000" and substitute "100,000".

(4) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(ii), Occupations Code, strike "1,000" and substitute "1,800".

(5) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(ii), Occupations Code, strike "municipality with a population of 50,000 or less or in an unincorporated area of a county" and substitute "county with a population of 100,000 or less".

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

SECTION _____. To the extent of any conflict, the change in law made by this Act to Section 1602.303(b)(3)(B), Occupations Code, prevails over a change in law made by any other Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 1170**.

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

SENATE BILL 1546 WITH HOUSE AMENDMENT

Senator Patrick called **SB 1546** 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. 2

Amend **SB 1546** (house committee printing) in SECTION 1 of the bill, in amended Section 41.45 (e-1), Tax Code (page 1, line 8), by striking "under Section 1.111" and substituting "~~under Section 1.111~~".

The amendment was read.

Senator Patrick moved to concur in the House amendment to **SB 1546**.

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

Nays: Rodriguez.

SENATE BILL 1810 WITH HOUSE AMENDMENT

Senator Carona called **SB 1810** 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 1810** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the exemption of certain retirement accounts from access by creditors.

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

SECTION 1. Sections 42.0021(a), (c), and (d), Property Code, are amended to read as follows:

(a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, annuity, deferred compensation, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, or a simplified employee pension plan, an individual retirement account or individual retirement annuity, including an inherited individual retirement account or individual retirement annuity, or a health savings account, and under any annuity or similar contract purchased with assets distributed from that type of plan or account, [and under any retirement annuity or account described by Section 403(b) or 408A of the Internal Revenue Code of 1986, and under any individual retirement account or any individual retirement annuity, including a simplified employee pension plan, and under any health savings account described by Section 223 of the Internal Revenue Code of 1986.] is exempt from attachment, execution, and seizure for the satisfaction of debts to the extent [unless] the plan, contract, annuity, or account is exempt from federal income tax, or to the extent federal income tax on the person's interest is deferred until actual payment of benefits to the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A, 457(b), or 501(a), Internal Revenue Code of 1986, including a government plan or church plan described by Section 414(d) or (e), [does not qualify under the applicable provisions of the] Internal Revenue Code of 1986. For purposes of this subsection, the interest of a person in a plan, annuity, account, or contract acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coannuitant, heir, or legatee, is exempt to the same extent that the interest of the person from whom the plan, annuity, account, or contract was acquired was exempt on the date of the person's death. [A person's right to the assets held in or to receive payments, whether vested or not, under a government or church plan or contract is also exempt unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974.] If this subsection is held invalid or preempted by federal law in whole or in part or in certain circumstances, the subsection remains in effect in all other respects to the maximum extent permitted by law.

(c) Amounts distributed from a plan, annuity, account, or contract entitled to an [the] exemption under Subsection (a) are not subject to seizure for a creditor's claim for 60 days after the date of distribution if the amounts qualify as a nontaxable rollover contribution under Subsection (b).

(d) A participant or beneficiary of a [stock bonus, pension, profit-sharing, retirement] plan, annuity, account, or contract entitled to an exemption under Subsection (a), other than an individual retirement account or individual retirement annuity, [or government plan] is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the exempt plan, annuity, account, or contract to secure a loan to the participant or beneficiary from the exempt plan, annuity, account, or contract, and the right to the assets held in or to receive payments from the plan, annuity,

account, or contract is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

SECTION 2. Section 42.0021, Property Code, as amended by this Act, applies to an inherited individual retirement plan, annuity, account, or contract without regard to whether the plan, annuity, account, or contract was created before, on, or after the effective date of this Act.

SECTION 3. The changes made by this Act are intended to clarify rather than change existing law.

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 Carona moved to concur in the House amendment to **SB 1810**.

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

SENATE BILL 1285 WITH HOUSE AMENDMENT

Senator Watson called **SB 1285** 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 1285** (house engrossment) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subdivision (1), Subsection (a), Section 8.01, Chapter 452 (**SB 738**), Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) Deposits by the members to the police retirement system shall be made at a rate of at least 13 [~~six~~] percent of the basic hourly earnings of each member. Deposits required to be made by members shall be deducted from payroll. On recommendation of the board, the Active-Contributory members may by a majority of those voting increase the rate of member deposits above 13 [~~six~~] percent to whatever amount the board has recommended. If the deposit rate for members has been increased to a rate above 13 [~~six~~] percent, the rate may be decreased if the board recommends the decrease, the board's actuary approves the decrease, and a majority of the Active-Contributory members voting on the matter approve the decrease.

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 1285**.

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

SENATE BILL 1909 WITH HOUSE AMENDMENT

Senator Lucio called **SB 1909** 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 1909** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to The University of Texas at Brownsville, including its partnership agreement with the Texas Southmost College District.

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

SECTION 1. Subsection (c), Section 78.02, Education Code, is amended to read as follows:

(c) The university may enter into any [a partnership] agreement with the Texas Southmost [Union Junior] College District to facilitate higher education advancement and opportunity in the district's service area and the transition of students from Texas Southmost College to [in the manner authorized by Subchapter N, Chapter 51, to offer a lower division, occupational, or technical course that is not offered at] the university. An agreement may cover any matter related to those purposes, including the facilitation of the transfer of course credit and the alignment of courses between the university and the college.

SECTION 2. Section 78.03, Education Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The board may prescribe courses leading to customary degrees offered at leading American universities and may award those degrees, including bachelor's, master's, and doctoral degrees and their equivalents [authorize the university to offer any upper level or graduate course which is authorized by the Texas Higher Education Coordinating Board].

(a-1) A department, school, or degree program may not be instituted without the prior approval of the Texas Higher Education Coordinating Board.

SECTION 3. Section 78.04, Education Code, is amended to read as follows:

Sec. 78.04. FACILITIES. (a) The board shall make provisions for adequate physical facilities for use by the university. Subject to the agreement of the parties as provided by Subsection (b), the facilities may include facilities[;] on land committed by the board of trustees of the Texas Southmost [Union Junior] College District on the district's Texas Southmost College campus. The provision of facilities is[;] subject to the normal requirements of the board and the Texas Higher Education Coordinating Board.

(b) The board and the board of trustees of the Texas Southmost College District may contract with each other for the use of facilities. The terms of the contract shall be negotiated between the parties and must provide for reasonable compensation for the use of facilities.

SECTION 4. Subsections (b) and (d), Section 78.02, and Sections 78.07 and 78.08, Education Code, are repealed.

SECTION 5. (a) The University of Texas at Brownsville and the Texas Southmost College District, formerly referred to as the Southmost Union Junior College District, are free-standing, independent institutions that have operated in close association under a partnership agreement authorized by Section 78.02, Education Code. It is the intent of this Act to facilitate the independent operation of the university and the college district in the absence of such a partnership, but this Act does not affect the authority of the university and the college district to continue in partnership or to establish a new partnership at a future date.

(b) The University of Texas at Brownsville and the Texas Southmost College District shall cooperate to ensure that each institution timely achieves separate accreditation from a recognized accrediting agency before the termination of the existing partnership agreement and shall continue a partnership agreement in effect until August 31, 2015, to the extent necessary to ensure accreditation.

(c) The University of Texas at Brownsville and the Texas Southmost College District may extend or renew the existing partnership agreement, agree to its earlier termination, or execute a new agreement as necessary to ensure accreditation.

(d) The University of Texas at Brownsville and the Texas Southmost College District shall submit to the legislature a semiannual report on the status of the partnership until each institution achieves separate accreditation and the existing partnership agreement is terminated.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1909**.

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

SENATE BILL 1449 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 1449** 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 1449** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to an alternative method of satisfying certain licensing requirements for chemical dependency treatment facilities.

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

SECTION 1. Subsection (b), Section 464.005, Health and Safety Code, is amended to read as follows:

(b) The Department of State Health Services [~~commission~~] may require an inspection before renewing a license, unless the applicant submits an accreditation review from the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the department in accordance with Section 464.0055.

SECTION 2. Subchapter A, Chapter 464, Health and Safety Code, is amended by adding Section 464.0055 to read as follows:

Sec. 464.0055. ACCREDITATION REVIEW TO SATISFY INSPECTION REQUIREMENTS. (a) In this section:

(1) "Accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the Department of State Health Services.

(2) "Department" means the Department of State Health Services.

(b) The department shall accept an accreditation review from an accreditation commission for a treatment facility instead of an inspection by the department for renewal of a license under Section 464.005, but only if:

(1) the treatment facility is accredited by the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the department;

(2) the accreditation commission maintains and updates an inspection or review program that, for each treatment facility, meets the department's applicable minimum standards;

(3) the accreditation commission conducts a regular on-site inspection or review of the treatment facility according to the accreditation commission's guidelines; and

(4) the treatment facility submits to the department a copy of its most recent accreditation review from the accreditation commission in addition to the application, fee, and any report or other document required for renewal of a license.

(c) This section does not limit the department in performing any duties, investigations, or inspections authorized by this chapter, including authority to take appropriate action relating to a treatment facility, such as closing the treatment facility.

(d) This section does not require a treatment facility to obtain accreditation from an accreditation commission.

SECTION 3. Section 464.005, Health and Safety Code, as amended by this Act, and Section 464.0055, Health and Safety Code, as added by this Act, apply only to the renewal of a license to operate a chemical dependency treatment facility 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.

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

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 1449**.

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

SENATE BILL 385 WITH HOUSE AMENDMENT

Senator Williams called **SB 385** 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 385** on third reading as follows:

(1) In SECTION 1 of the bill, strike added Paragraphs (D) and (E) in amended Section 386.252(a)(1), Health and Safety Code (page 1, line 22, through page 2, line 1), and substitute the following:

(D) five percent shall be used for the clean fleet program;

(E) two percent may be used for the Texas alternative fueling facilities program;

(F) not less than 16 percent shall be used for the natural gas vehicle grant program; and

(G) not more than four percent may be used to provide grants for natural gas fueling stations under Section 394.010;

(2) In the recital to SECTION 2 of the bill, amending Section 386.252, Health and Safety Code (page 3, line 2), strike "Subsection (e)" and substitute "Subsections (e), (f), and (g)".

(3) In SECTION 2 of the bill, immediately following added Section 386.252(e), Health and Safety Code (page 3, between lines 7 and 8), add the following:

(f) 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 394 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 394 would resolve the noncompliance.

(g) Under Subsection (f), the commission may not reallocate more than the minimum amount of money necessary to resolve the noncompliance.

(4) In the recital to SECTION 3 of the bill, adding Chapter 393 to Subtitle C, Title 5, Health and Safety Code (page 3, line 9), strike "Chapter 393" and substitute "Chapters 393 and 394".

(5) In SECTION 3 of the bill, immediately following added Chapter 393, Health and Safety Code (page 5, between lines 12 and 13), add the following:

CHAPTER 394. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

Sec. 394.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Texas Emissions Reduction Plan Advisory Board.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Heavy-duty motor vehicle" means a motor vehicle with:

(A) a gross vehicle weight rating of more than 8,500 pounds; and

(B) an engine certified to the United States Environmental Protection Agency's standards for heavy-duty engines.

(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.

(6) "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.

(7) "Motor vehicle" has the meaning assigned by Section 386.151.

(8) "Natural gas vehicle" means a motor vehicle that receives not less than 75 percent of its power from compressed or liquefied natural gas.

(9) "Program" means the Texas natural gas vehicle grant program established under this chapter.

Sec. 394.002. PROGRAM. The commission shall establish and administer the Texas natural gas vehicle grant program to encourage an entity that has a heavy-duty or medium-duty motor vehicle to repower the vehicle with a natural gas engine or replace the vehicle with a natural gas vehicle. Under the program, the commission shall provide grants for eligible heavy-duty motor vehicles and medium-duty motor vehicles to offset the incremental cost for the entity of repowering or replacing the heavy-duty or medium-duty motor vehicle.

Sec. 394.003. QUALIFYING VEHICLES. (a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the calendar year the entity:

(1) purchased, leased, or otherwise commercially financed the vehicle as a new on-road heavy-duty or medium-duty motor vehicle that:

(A) is a natural gas vehicle;

(B) is certified to current federal emissions standards;

(C) replaces an on-road heavy-duty or medium-duty motor vehicle of the same weight classification and use; and

(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.

(b) A heavy-duty or medium-duty motor vehicle is not a qualifying vehicle if the vehicle or the natural gas engine powering the vehicle:

(1) has been awarded a grant under this chapter for a previous reporting period; or

(2) has received a similar grant or tax credit in another jurisdiction if that grant or tax credit program is relied on for credit in the state implementation plan.

Sec. 394.004. APPLICATION FOR GRANT. (a) Only an entity operating in this state that operates a heavy-duty or medium-duty motor vehicle may apply for and receive a grant under this chapter.

(b) 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.

(c) The commission, after consulting stakeholders, shall:

(1) simplify the application form; and

(2) minimize, to the maximum extent possible, documentation required for an application.

Sec. 394.005. ELIGIBILITY FOR GRANTS. (a) The commission by rule shall establish criteria for prioritizing qualifying vehicles eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate after consultation with the advisory board.

(b) To be eligible for a grant under the program:

(1) the use of the qualifying vehicle must be projected to result in a reduction in emissions of nitrogen oxides of at least 25 percent as compared to the motor vehicle or engine being replaced, based on:

(A) the baseline emission level set by the commission under Subsection

(g); and

(B) the certified emission rate of the new vehicle; and

(2) the qualifying vehicle must:

(A) replace a heavy-duty or medium-duty motor vehicle that:

(i) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is in operating condition and has at least two years of remaining useful life, as determined in accordance with criteria established by the commission; or

(B) be a heavy-duty or medium-duty motor vehicle repowered with a natural gas engine that:

(i) is installed in an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is installed in an on-road vehicle that, at the time of the vehicle's repowering, was in operating condition and had at least two years of remaining useful life, as determined in accordance with criteria established by the commission.

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, leased, or otherwise commercially financed and registered and operated in the state by the grant recipient until the earlier of the fourth anniversary of the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in:

(1) the counties any part of which are included in the area described by Section 394.010(a); or

(2) counties designated as nonattainment areas within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).

(d) The commission shall include and enforce the usage provisions in the grant contracts. The commission shall monitor compliance with the ownership, leasing, and usage requirements, including submission of reports on at least an annual basis, or more frequently as determined by the commission.

(e) The commission by contract may require the return of all or a portion of grant funds for a grant recipient's noncompliance with the usage and percentage of use requirements under this section.

(f) A heavy-duty or medium-duty motor vehicle replaced under this program must be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall establish criteria for ensuring the permanent destruction of the engine or vehicle. The commission shall enforce the destruction requirements.

(g) The commission shall establish baseline emission levels for emissions of nitrogen oxides for on-road heavy-duty or medium-duty motor vehicles being replaced by using the emission certification for the engine or vehicle being replaced. The commission may consider deterioration of the emission performance of the engine of the vehicle being replaced in establishing the baseline emission level. The commission may consider and establish baseline emission rates for additional pollutants of concern, as determined by the commission after consultation with the advisory board.

(h) Mileage or fuel use requirements established by the commission under Subsection (b)(2)(A)(ii) may differ by vehicle weight categories and type of use.

(i) The executive director shall waive the requirements of Subsection (b)(2)(A)(i) on a finding of good cause, which may include short lapses in registration or operation due to economic conditions, seasonal work, or other circumstances.

Sec. 394.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the replacement for which the grant is made, which may include the initial cost of the natural gas vehicle or natural gas engine and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

Sec. 394.007. AMOUNT OF GRANT. (a) The commission shall develop a grant schedule that:

(1) assigns a standardized grant in an amount between 60 and 90 percent of the incremental cost of a natural gas vehicle purchase, lease, other commercial finance, or repowering;

(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.

(b) Not less than 60 percent of the total amount of grants awarded under this chapter for the purchase and repowering of motor vehicles must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The minimum grant requirement under this subsection does not apply if the commission does not receive enough grant applications to satisfy the requirement for motor vehicles described by this subsection that are eligible to receive a grant under this chapter.

(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.

Sec. 394.008. GRANT PROCEDURES. (a) The commission shall adopt procedures for:

(1) awarding grants under this chapter in the form of rebates; and

(2) streamlining the grant application, contracting, reimbursement, and reporting process for qualifying natural gas vehicle purchases or repowers.

(b) Procedures adopted under this section must:

(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;

(2) if a federal standard for the calculation of emissions reductions exists, provide a method to calculate the reduction in emissions of nitrogen oxides, volatile organic compounds, carbon monoxide, particulate matter, and sulfur compounds for each replacement or repowering;

(3) assign a standardized rebate amount for each qualifying vehicle under Section 394.007;

(4) allow for processing rebates on an ongoing first-come, first-served basis;

(5) provide for contracts between the commission and participating dealers under Section 394.009;

(6) allow grant recipients to assign their grant funds to participating dealers to offset the purchase or lease price;

(7) require grant applicants to identify natural gas fueling stations that are available to fuel the qualifying vehicle in the area of its use;

(8) provide for payment not later than the 30th day after the date the request for reimbursement for an approved grant is received;

(9) provide for application submission and application status checks to be made over the Internet; and

(10) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting requirements.

(c) The commission, or its designee, shall oversee the grant process and is responsible for final approval of any grant.

(d) Grant recipients are responsible for meeting all grant conditions, including reporting and monitoring as required by the commission through the grant contract.

Sec. 394.009. PARTICIPATING DEALERS. (a) In this section, "participating dealer" means a person who:

(1) sells, leases, or otherwise commercially finances on-road heavy-duty or medium-duty natural gas vehicles or heavy-duty or medium-duty natural gas engines; and

(2) has satisfied all requirements established by the commission for participation in the program as a dealer.

(b) A participating dealer must agree to the terms and conditions of a standardized contract developed by the commission.

(c) A participating dealer shall:

(1) provide information regarding natural gas vehicle grants to fleet operators;

(2) assist an applicant who purchases, leases, or otherwise commercially finances a natural gas vehicle or engine from the dealer with the completion of the application; and

(3) submit completed applications and documentation to the commission on behalf of an applicant who purchases, leases, or otherwise commercially finances a natural gas vehicle or engine from the dealer.

(d) A participating dealer may not approve a grant.

(e) The commission shall:

(1) maintain and make available to the public online a list of all qualified dealers; and

(2) establish requirements for participation in the program by sellers of on-road heavy-duty or medium-duty natural gas vehicles and heavy-duty or medium-duty natural gas engines.

Sec. 394.010. CLEAN TRANSPORTATION TRIANGLE. (a) To ensure that natural gas vehicles purchased, leased, or otherwise commercially financed or repowered under the program have access to fuel, and to build the foundation for a self-sustaining market for natural gas vehicles in Texas, the commission shall award grants to support the development of a network of natural gas vehicle fueling stations along the interstate highways connecting Houston, San Antonio, Dallas, and Fort Worth. In awarding the grants, the commission shall provide for:

(1) strategically placed natural gas vehicle fueling stations in and between the Houston, San Antonio, and Dallas-Fort Worth areas to enable a natural gas vehicle to travel along that triangular area relying solely on natural gas fuel;

(2) grants to be dispersed through a competitive bidding process to offset a portion of the cost of installation of the natural gas dispensing equipment;

(3) contracts that require the recipient stations to meet operational, maintenance, and reporting requirements as specified by the commission; and

(4) a listing, to be maintained by the commission and made available to the public online, of all natural gas vehicle fueling stations that have received grant funding, including location and hours of operation.

(b) The commission may not award more than:

(1) three station grants to any entity; or

(2) one grant for each station.

(c) 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.

(d) Stations funded by grants under this section must be publicly accessible and located not more than three miles from an interstate highway system. The commission shall give preference to:

(1) stations providing both liquefied natural gas and compressed natural gas at a single location; and

(2) stations located not more than one mile from an interstate highway system.

(e) To meet the goals of this section, the commission may solicit grant applications under this section for a new fueling station in a specific area or location.

(f) Grants made under this section are not subject to the requirements of Sections 394.002 through 394.008. The commission shall develop an application package and review applications in accordance with Sections 386.110 and 386.111.

(g) The commission, in consultation with the natural gas industry, shall determine the most efficient use of funding for the station grants under this section to maximize the availability of natural gas fueling stations.

Sec. 394.011. ADMINISTRATION OF PROGRAM. The commission may contract with one or more entities for administration of the program.

Sec. 394.012. EXPIRATION. This chapter expires August 31, 2017.

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

SECTION _____. The Texas Commission on Environmental Quality shall adopt rules and establish procedures under Chapter 394, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

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.

The amendment was read.

Senator Williams moved to concur in the House amendment to **SB 385**.

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 932 WITH HOUSE AMENDMENT

Senator Williams called **SB 932** 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 932** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to oyster beds and shells and an oyster shell recovery and replacement program.

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

SECTION 1. Section 76.020, Parks and Wildlife Code, is amended to read as follows:

Sec. 76.020. OYSTER SHELL RECOVERY AND REPLACEMENT PROGRAM. (a) The commission by proclamation may establish and conduct a program to require the recovery of oyster shell or other suitable cultch material from, and replacement of oyster shell in, the coastal waters of the state to maintain or enhance public oyster reefs.

(b) The department may accept grants and donations of money or materials from private or public sources to be applied to the oyster shell recovery and replacement program.

SECTION 2. Subchapter A, Chapter 76, Parks and Wildlife Code, is amended by adding Section 76.021 to read as follows:

Sec. 76.021. OYSTER SHELL RECOVERY AND REPLACEMENT PROGRAM ACCOUNT; FEE. (a) The oyster shell recovery and replacement program account is a separate account in the game, fish, and water safety account. The account consists of money deposited to the account under this section. The account is exempt from the application of Section 403.095, Government Code.

(b) The department shall collect a fee of 20 cents or an amount set by the commission, whichever is greater, from a licensed commercial oyster fisherman for each box of oysters harvested by the fisherman from the water of this state.

(c) The commission by rule shall adopt policies and procedures for the issuance of oyster shell recovery tags or other means to collect the fee imposed by this section. A tag required by this section must:

(1) be affixed to the outside of each box of oysters at the time of harvest, in the location of harvest;

(2) contain information required by the Department of State Health Services under the National Shellfish Sanitation Program; and

(3) remain affixed during transportation of the oysters to a dealer.

(d) The department shall deposit to the credit of the oyster shell recovery and replacement program account all revenue, less allowable costs, from the fees collected under Subsection (b).

(e) Money in the oyster shell recovery and replacement program account may be appropriated only for the recovery and enhancement of public oyster reefs under Section 76.020.

(f) The department shall consult with members of the oyster industry regarding the management of oyster beds in this state.

SECTION 3. Section 76.115, Parks and Wildlife Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c) Before closing any area, the commission [commissioner] shall [post notices of the closing in fish and oyster houses in two towns nearest the area to be closed and shall] publish notice in a daily newspaper of general circulation in the area to be closed. The notice [notices] shall be [posted and] published at least three days before the effective date of the closing.

(d) Areas closed under this section must reopen by the beginning of the next public oyster season unless sound biological data indicates that the need for closure still exists.

(e) The commission by rule may establish procedures and criteria for closing areas under Subsection (a).

(f) The commission may delegate to the executive director the duties and responsibilities under this section.

SECTION 4. Not later than January 1, 2012, the Parks and Wildlife Commission shall adopt rules:

- (1) for the recovery of oyster shells in accordance with this Act; and
- (2) necessary for the implementation of this Act.

SECTION 5. This Act takes effect September 1, 2011.

The amendment was read.

Senator Williams moved to concur in the House amendment to **SB 932**.

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

SENATE BILL 1035 WITH HOUSE AMENDMENTS

Senator Williams called **SB 1035** 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 **CSSB 1035** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to motor vehicle title services; providing penalties.

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

SECTION 1. Effective January 1, 2012, the heading to Subchapter E, Chapter 520, Transportation Code, is amended to read as follows:

SUBCHAPTER E. COUNTY PERMITTING OF MOTOR VEHICLE TITLE SERVICES

SECTION 2. Effective January 1, 2012, Subdivisions (2), (3), (4), and (6), Section 520.051, Transportation Code, are amended to read as follows:

(2) "Motor vehicle title service" means any person that for compensation directly or indirectly assists other persons in obtaining motor vehicle [title] documents by submitting, transmitting, or sending applications for motor vehicle [title] documents to the appropriate government agencies, including county tax assessor-collectors.

(3) "Motor vehicle [Title] documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, or notifications under Chapter 683 of this code or Chapter 70, Property Code.

(4) "Title service permit [license] holder" means a person who holds a motor vehicle title service permit [license] or a title service runner's permit [license].

(6) "Title service runner" means any person employed by a [~~licensed~~] motor vehicle title service to submit or present motor vehicle [title] documents to the county tax assessor-collector.

SECTION 3. Effective January 1, 2012, Subchapter E, Chapter 520, Transportation Code, is amended by adding Section 520.0521 to read as follows:

Sec. 520.0521. PURPOSE; LIBERAL CONSTRUCTION. (a) The purpose of this subchapter is to protect the integrity of the submittal of transactional motor vehicle documents by nongovernmental entities through:

(1) the permitting and regulation of titling services and title service runners;
and

(2) the enforcement of this chapter to prevent crime, fraud, unfair practices, and discrimination.

(b) This subchapter shall be liberally construed to give effect to the purpose of this subchapter.

SECTION 4. Effective January 1, 2012, Sections 520.052 through 520.060, Transportation Code, are amended to read as follows:

Sec. 520.052. APPLICABILITY. This subchapter applies to any motor vehicle title service operating in a county[-:

~~(+) that requires a permit under Section 520.053 [has a population of more than 500,000; or~~

~~(2) in which the commissioners court by order has adopted this subchapter].~~

Sec. 520.053. PERMIT [LICENSE] REQUIRED. A county may require a motor vehicle title service or a title service runner to obtain a permit from the county in which the titles are required to be filed [person may not act as a motor vehicle title service or act as an agent for that business unless that person holds a license issued under this subchapter].

Sec. 520.054. GENERAL PERMIT [LICENSE] APPLICATION REQUIREMENTS. (a) In a county that requires [An applicant for] a motor vehicle title service permit or a title service runner permit, an applicant [license] must apply on a form prescribed by the county tax assessor-collector. The application form must be signed by the applicant and accompanied by the application fee, which may not exceed the maximum fee allowed under Section 520.077.

(b) An application must include:

(1) the applicant's name, business address, and business telephone number;

(2) the name under which the applicant will do business;

(3) the physical address of each office from which the applicant will conduct business;

(4) a statement indicating whether the applicant has previously applied for a permit [license] under this subchapter, the result of the previous application, and whether the applicant has ever been the holder of a permit [license] under this subchapter that was revoked or suspended;

(5) information from the applicant as required by the county tax assessor-collector to establish the business reputation and character of the applicant;

(6) the applicant's federal tax identification number;

(7) the applicant's state sales tax number; [and]

(8) any other information required by rules adopted under this subchapter;

(9) an affirmation of the truth of the information contained in the application signed and sworn to before an officer authorized to administer oaths; and

(10) if for a motor vehicle title service permit, an affirmation that all acts of a motor vehicle title service's employees, agents, contractors, or title service runners are acts of the motor vehicle title service for the purposes of this subchapter.

(c) A permit fee charged under Subsection (a) must be deposited in the general fund for the county tax assessor-collector and sheriff to use for the administration and enforcement of the county's motor vehicle title service and title service runner permitting program.

Sec. 520.055. APPLICATION REQUIREMENTS: CORPORATION. In addition to the information required in Section 520.054, an applicant for a motor vehicle title service permit [~~license~~] that intends to engage in business as a corporation shall submit the following information:

(1) the state of incorporation;

(2) the name, address, date of birth, and social security number of each of the principal owners and directors of the corporation;

(3) information about each officer and director as required by the county tax assessor-collector to establish the business reputation and character of the applicant; and

(4) a statement indicating whether an employee, officer, or director has been refused a motor vehicle title service permit [~~license~~] or a title service runner's permit [~~license~~] or has been the holder of a permit [~~license~~] that was revoked or suspended.

Sec. 520.056. APPLICATION REQUIREMENTS: PARTNERSHIP. In addition to the information required in Section 520.054, a motor vehicle title service permit [~~license~~] applicant that intends to engage in business as a partnership shall submit an application that includes the following information:

(1) the name, address, date of birth, and social security number of each partner;

(2) information about each partner as required by the county tax assessor-collector to establish the business reputation and character of the applicant; and

(3) a statement indicating whether a partner or employee has been refused a motor vehicle title service permit [~~license~~] or a title service runner's permit [~~license~~] or has been the holder of a permit [~~license~~] that was revoked or suspended.

Sec. 520.057. RECORDS. ~~[(a)]~~ A holder of a motor vehicle title service permit [~~license~~] shall maintain records as required by Section 520.080 ~~[this section on a form prescribed and made available by the county tax assessor collector for each transaction in which the license holder receives compensation. The records shall include:~~

~~[(1) the date of the transaction;~~

~~[(2) the name, age, address, sex, driver's license number, and a legible photocopy of the driver's license for each customer; and~~

~~[(3) the license plate number, vehicle identification number, and a legible photocopy of proof of financial responsibility for the motor vehicle involved.~~

~~[(b) A motor vehicle title service shall keep:~~

~~[(1) two copies of all records required under this section for at least two years after the date of the transaction;~~

~~[(2) legible photocopies of any documents submitted by a customer; and~~

~~[(3) legible photocopies of any documents submitted to the county tax assessor-collector].~~

Sec. 520.058. INSPECTION OF RECORDS. A motor vehicle title service permit [~~license~~] holder or any of its employees shall allow an inspection of records required under Section 520.057 by the county tax assessor-collector or a peace officer on the premises of the motor vehicle title service at any reasonable time to verify, check, or audit the records.

Sec. 520.059. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT [~~LICENSE~~]. (a) The county tax assessor-collector may deny, suspend, revoke, or reinstate a permit [~~license~~] issued under this subchapter.

(b) The county tax assessor-collector shall adopt rules that establish grounds for the denial, suspension, revocation, or reinstatement of a permit [~~license~~] and rules that establish procedures for disciplinary action. Procedures issued under this subchapter are subject to Chapter 2001, Government Code.

(c) A person whose permit [~~license~~] is revoked may not apply for a new permit [~~license~~] before the first anniversary of the date of the revocation.

(d) A permit [~~license~~] may not be issued under a fictitious name that is similar to or may be confused with the name of a governmental entity or that is deceptive or misleading to the public.

(e) The county tax assessor-collector must provide written notice of denial, suspension, or revocation of a permit.

(f) Notwithstanding any other provision of law, the county has all powers necessary, incidental, or convenient to:

(1) initiate and conduct proceedings, investigations, or hearings;

(2) administer oaths;

(3) receive evidence and pleadings;

(4) issue subpoenas to compel the attendance of any person;

(5) order the production of any tangible property, including papers, records, or other documents;

(6) make findings of fact on all factual issues arising out of a proceeding initiated under this subchapter;

(7) specify and govern appearance, practice, and procedures before the county;

(8) issue conclusions of law and decisions, including declaratory decisions or orders;

(9) enter into settlement agreements;

(10) impose a sanction for contempt;

(11) assess and collect fees and costs, including attorney's fees;

(12) issue cease and desist orders in the nature of temporary or permanent injunctions;

(13) impose a civil penalty;

(14) enter an order requiring a person to:

(A) pay costs and expenses of a party in connection with an order;

- (B) perform an act other than the payment of money; or
- (C) refrain from performing an act; and
- (15) enforce a county order.

Sec. 520.060. PERMIT [LICENSE] RENEWAL. (a) A permit [license] issued under this subchapter expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee.

(b) A person who is otherwise eligible to renew a permit [license] may renew an unexpired permit [license] by paying to the county tax assessor-collector before the expiration date of the permit [license] the required renewal fee. A person whose permit [license] has expired may not engage in activities that require a permit [license] until the permit [license] has been renewed under this section.

(c) If a person's permit [license] has been expired for 90 days or less, the person may renew the permit [license] by paying to the county tax assessor-collector 1-1/2 times the required renewal fee.

(d) If a person's permit [license] has been expired for longer than 90 days but less than one year, the person may renew the permit [license] by paying to the county tax assessor-collector two times the required renewal fee.

(e) If a person's permit [license] has been expired for one year or longer, the person may not renew the permit [license]. The person may obtain a new permit [license] by complying with the requirements and procedures for obtaining an original permit [license].

(f) Notwithstanding Subsection (e), if a person had obtained a permit [was licensed] in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person may renew an expired permit [license]. The person must pay to the county tax assessor-collector a fee that is equal to two times the required renewal fee for the permit [license].

(g) Before the 30th day preceding the date on which a person's permit [license] expires, the county tax assessor-collector shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the county tax assessor-collector.

SECTION 5. Effective January 1, 2012, Section 520.061, Transportation Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as provided by Subsection (c) or the Penal Code, an [A~~n~~] offense under this section is a Class A misdemeanor.

(c) An offense under this section is a state jail felony if it is based on:

(1) a violation of Section 520.053; or

(2) the falsification of information required under Section 520.054, 520.055, or 520.056.

SECTION 6. Effective January 1, 2012, Subchapter E, Chapter 520, Transportation Code, is amended by adding Section 520.0611 to read as follows:

Sec. 520.0611. CIVIL PENALTY. (a) A person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each violation.

(b) Each day a violation occurs constitutes a separate violation.

(c) The county by rule shall establish factors to be considered in determining the amount of the civil penalty assessed by the county.

(d) Notwithstanding any other law to the contrary, a civil penalty recovered under this subchapter shall be deposited to the credit of the county's general fund or other fund as designated by the county.

SECTION 7. Effective January 1, 2012, Subsection (a), Section 520.062, Transportation Code, is amended to read as follows:

(a) The county attorney or a [A] district attorney of the county in which the motor vehicle title service is operating [located] may bring an action to enjoin the operation of a motor vehicle title service or a title service runner if the motor vehicle title service permit [license] holder or a runner of the motor vehicle title service while in the scope of the runner's employment is found to have committed one or more violations of or convicted of more than one offense under this subchapter.

SECTION 8. Effective January 1, 2012, Section 520.063, Transportation Code, is amended to read as follows:

Sec. 520.063. EXEMPTIONS. The following persons and their agents are exempt from the permitting [licensing] and other requirements established by this subchapter:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by the department under Chapter 503;

(2) a vehicle lessor holding a license issued by the department [Motor Vehicle Board] under Chapter 2301, Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under Section 2301.254(a) of that code; [and]

(3) a vehicle lease facilitator holding a license issued by the department [Motor Vehicle Board] under Chapter 2301, Occupations Code;

(4) a state or federally chartered bank or credit union; and

(5) an auctioneer licensed under Chapter 1802, Occupations Code.

SECTION 9. Effective January 1, 2012, Chapter 520, Transportation Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. STATE LICENSING OF MOTOR VEHICLE TITLE SERVICES

Sec. 520.071. DEFINITIONS. In this subchapter:

(1) "Board" means the board of the Texas Department of Motor Vehicles.

(2) "Motor vehicle" has the meaning assigned by Section 501.002.

(3) "Motor vehicle documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, or notifications under Chapter 683 of this code or Chapter 70, Property Code.

(4) "Motor vehicle title service" means any person that for compensation directly or indirectly assists other persons in obtaining motor vehicle documents by submitting, transmitting, or sending applications for motor vehicle documents to the appropriate government agencies, including county tax assessor-collectors.

(5) "Title service license holder" means a person who holds a motor vehicle title service license or a title service runner's license.

(6) "Title service record" means the written record for each transaction in which a motor vehicle title service receives compensation.

(7) "Title service runner" means any person employed by a motor vehicle title service to submit or present motor vehicle documents to the county tax assessor-collector.

Sec. 520.072. APPLICABILITY. This subchapter applies to any motor vehicle title service operating in this state.

Sec. 520.073. PURPOSE; LIBERAL CONSTRUCTION. (a) The purpose of this subchapter is to protect the integrity of the submittal of transactional motor vehicle documents by nongovernmental entities through:

(1) the licensing and regulation of titling services and title service runners;
and

(2) the enforcement of this chapter to prevent crime, fraud, unfair practices, and discrimination.

(b) This subchapter shall be liberally construed to give effect to the purpose of this subchapter.

Sec. 520.074. LICENSE REQUIRED. A person may not act as a motor vehicle title service or act as a title service runner unless that person holds:

(1) a permit issued by the county, if required by the county where the titles are required to be filed; and

(2) a license issued by the department.

Sec. 520.075. STATE LICENSE APPLICATION REQUIREMENTS. An applicant for a motor vehicle title service license or a title service runner license must apply on a form prescribed by the department. The application form must be signed by the applicant and accompanied by the application fee.

Sec. 520.076. ESTABLISHED AND PERMANENT PLACE OF BUSINESS.

(a) An applicant for a motor vehicle title service license must demonstrate that the location for which the applicant requests the license is an established and permanent place of business. A location is considered to be an established and permanent place of business if the applicant:

(1) owns the real property on which the business is situated or has a written lease for the property that has a term of not less than the term of the license; and

(2) maintains on the location:

(A) a permanent furnished office that is equipped for titling services as specified in department rules; and

(B) a conspicuous sign with letters at least six inches high showing the name of the applicant's business.

(b) The applicant must demonstrate that:

(1) the applicant intends to remain regularly and actively engaged in the business specified in the application for a time equal to at least the term of the license at the location specified in the application; and

(2) the applicant or a bona fide employee of the applicant will be:

(A) at the location to transact title services; and

(B) available to the public or the department at that location during reasonable and lawful business hours.

Sec. 520.077. LICENSE FEES. (a) The department by rule shall adopt fees for an original license and a renewal license for motor vehicle title services and for an original license and a renewal license for title service runners.

(b) The fee for an original license for a motor vehicle title service or for a title service runner may not exceed \$500.

(c) The fee for a renewal license for a motor vehicle title service or for a title service runner may not exceed \$200 annually.

(d) The fee for an amendment to a license issued under this subchapter may not exceed \$25.

(e) The fee for a duplicate license issued under this subchapter may not exceed \$50.

(f) An additional fee may be charged for late renewal of not more than 1-1/2 times the renewal fee.

(g) A fee collected under this section shall be deposited to the credit of the state highway fund. Section 403.095, Government Code, does not apply to money received by the department and deposited to the credit of the state highway fund under this subchapter.

(h) The department may refund from funds appropriated to the department for that purpose a fee collected under this subchapter that is not due or that exceeds the amount due.

Sec. 520.078. SURETY BOND. (a) The department may not issue or renew a motor vehicle title service license unless the applicant provides to the department satisfactory proof that the applicant has purchased a properly executed surety bond in the amount of \$25,000 with a good and sufficient surety authorized by the Texas Department of Insurance in effect for at least the term of the license.

(b) The surety bond must be:

(1) in a form approved by the department; and

(2) conditioned on the submission by the applicant of money and accurate motor vehicle documents on behalf of another person that are required to be submitted to government agencies, including county tax assessor-collectors, in order to obtain motor vehicle title or registration.

(c) A person may recover against a surety bond if the person obtains a judgment assessing damages and reasonable attorney's fees based on an act or omission of the bondholder:

(1) on which the bond is conditioned; and

(2) that occurred during the term for which the motor vehicle title service license was valid.

(d) The liability imposed on a surety is limited to the amount:

(1) required to be submitted to the appropriate government agencies, including county tax assessor-collectors;

(2) received by the applicant for performing as a motor vehicle title service;

(3) incurred in engaging the applicant to assist in obtaining motor vehicle documents; and

(4) of attorney's fees awarded in the judgment.

(e) The liability of a surety may not exceed the face value of the surety bond. A surety is not liable for successive claims in excess of the bond amount regardless of the number of claims made against the bond or the number of years the bond remains in force.

Sec. 520.079. LICENSE RENEWAL. (a) The board shall set the term of a license issued under this subchapter by rule.

(b) If a person's license has been expired for 90 days or less, the person may renew the license by paying a late fee in addition to the renewal fee as described in Section 520.077(f).

Sec. 520.080. RECORDS. (a) A holder of a motor vehicle title service license shall:

(1) maintain records as required by department rule, including any forms prescribed by the department for each transaction presented to the county tax office or appropriate government office under this subchapter; and

(2) provide a copy of the record to the county tax assessor-collector.

(b) The records maintained under this section must include:

(1) the date of the transaction;

(2) the name, age, address, sex, and driver's license number of, and a legible photocopy of the driver's license for, each customer;

(3) the license plate number and vehicle identification number of, and, if applicable, a legible photocopy of proof of financial responsibility for, the motor vehicle involved; and

(4) any other information required to be maintained by department rule.

(c) Records required by this section must be maintained for four years from the date of the transaction.

(d) A motor vehicle title service shall keep:

(1) a copy of all records required under this section for at least four years after the date of the transaction;

(2) a legible photocopy of any documents submitted by a customer; and

(3) a legible photocopy of any documents submitted to the county tax assessor-collector.

Sec. 520.081. INSPECTION OF RECORDS. A motor vehicle title service license holder or any of its employees shall allow during business hours at the license holder's business location an inspection of records required under Section 520.080 by the department, the county tax assessor-collector, or a peace officer.

Sec. 520.082. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department may deny, suspend, revoke, or reinstate a license issued under this subchapter.

(b) The department:

(1) shall adopt rules that establish grounds for the denial, suspension, revocation, or reinstatement of a license and rules that establish procedures for disciplinary action; and

(2) may adopt rules that allow for the incorporation of findings made by a county that has denied, suspended, revoked, or reinstated a permit issued under Subchapter E.

(c) Procedures established under this subchapter are subject to Chapter 2001, Government Code.

(d) The department must provide written notice of denial, suspension, or revocation of a license.

(e) Notwithstanding any other provision of law, the board has all powers necessary, incidental, or convenient to:

(1) initiate and conduct proceedings, investigations, or hearings;

(2) administer oaths;

(3) receive evidence and pleadings;

(4) issue subpoenas to compel the attendance of any person;

(5) order the production of any tangible property, including papers, records, and other documents;

(6) make findings of fact on all factual issues arising out of a proceeding initiated under this subchapter;

(7) specify and govern appearance, practice, and procedures before the board;

(8) issue conclusions of law and decisions, including declaratory decisions or orders;

(9) enter into settlement agreements;

(10) impose a sanction for contempt;

(11) assess and collect fees and costs, including attorney's fees;

(12) issue cease and desist orders in the nature of temporary or permanent injunctions;

(13) impose a civil penalty;

(14) enter an order requiring a person to:

(A) pay costs and expenses of a party in connection with an order;

(B) perform an act other than the payment of money; or

(C) refrain from performing an act; and

(15) enforce a board order.

Sec. 520.083. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted by the department or county tax assessor-collector under this subchapter.

(b) Except as provided by Subsection (c) or the Penal Code, an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a state jail felony if it is based on:

(1) a violation of Section 520.074; or

(2) the falsification of information required under Section 520.075 or 520.078.

Sec. 520.084. CIVIL PENALTY. (a) A person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each violation.

(b) Each day a violation occurs constitutes a separate violation.

(c) The department by rule shall establish factors to be considered in determining the amount of the civil penalty assessed by the department.

(d) Notwithstanding any other law to the contrary, a civil penalty recovered under this subchapter shall be deposited in the state treasury to the credit of the state highway fund.

Sec. 520.085. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is violating this subchapter or a board rule or order, the board after notice may require the person engaged in the conduct to appear and show cause why a cease and desist order should not be issued prohibiting the conduct described in the notice.

(b) An interlocutory cease and desist order may be granted with or without bond or other undertaking if:

(1) the order is necessary to the performance of the duties delegated to the board by this subchapter;

(2) the order is necessary or convenient to maintaining the status quo between two or more adverse parties before the board;

(3) a party before the board is entitled to relief demanded of the board and all or part of the relief requires the restraint of some act prejudicial to the party;

(4) a person is performing, about to perform, or procuring or allowing the performance of an act:

(A) relating to the subject of a contested case pending before the board, in violation of the rights of a party before the board; and

(B) that would tend to render the board's order in the case ineffectual;

or

(5) substantial injury to the rights of a person subject to the board's jurisdiction is threatened regardless of any remedy available at law.

(c) A proceeding under this section is governed by:

(1) this subchapter and the board's rules; and

(2) Chapter 2001, Government Code, relating to a contested case, to the extent that chapter is not in conflict with Subdivision (1).

(d) An interlocutory cease and desist order remains in effect until vacated or incorporated in a final order of the board. An appeal of an interlocutory cease and desist order must be made to the board before seeking judicial review as provided by this subchapter.

(e) A permanent cease and desist order may be issued regardless of the requirements of Subsection (b) but only under the procedures for a final order by the board under this subchapter. An appeal of a permanent cease and desist order is made in the same manner as an appeal of a final order under this subchapter.

Sec. 520.086. INJUNCTION. (a) The attorney general or a district attorney of the county in which the motor vehicle title service is operating may bring an action to enjoin the operation of a motor vehicle title service or a title service runner if the motor vehicle title service license holder or a runner of the motor vehicle title service while in the scope of the runner's employment is found to have committed one or more violations of or convicted of more than one offense under this subchapter.

(b) If the court grants relief under Subsection (a), the court may:

(1) enjoin the person from maintaining or participating in the business of a motor vehicle title service for a period of time as determined by the court; or

(2) declare the place where the person's business is located to be closed for any use relating to the business of the motor vehicle title service for as long as the person is enjoined from participating in that business.

Sec. 520.087. COMPLAINT INVESTIGATION AND DISPOSITION. (a) If the department has reason to believe, through receipt of a complaint or otherwise, that a violation of this subchapter or a rule, order, or decision of the department has occurred or is likely to occur, the department may conduct an investigation unless it determines that the complaint is frivolous or for the purpose of harassment.

(b) If the investigation establishes that a violation of this subchapter or a rule, order, or decision of the department has occurred or is likely to occur, the department shall initiate proceedings as it determines appropriate to enforce this subchapter or its rules, orders, and decisions.

Sec. 520.088. EXEMPTIONS. The following persons and their agents are exempt from the licensing and other requirements established by this subchapter:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by the department under Chapter 503;

(2) a vehicle lessor holding a license issued by the department under Chapter 2301, Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under Section 2301.254(a), Occupations Code;

(3) a vehicle lease facilitator holding a license issued by the department under Chapter 2301, Occupations Code;

(4) a state or federally chartered bank or credit union; and

(5) an auctioneer licensed under Chapter 1802, Occupations Code.

SECTION 10. Effective January 1, 2012, Subsection (c), Section 730.007, Transportation Code, is amended to read as follows:

(c) This section does not:

(1) prohibit the disclosure of a person's photographic image to:

(A) a law enforcement agency, the Texas Department of Motor Vehicles, a county tax assessor-collector, or a criminal justice agency for an official purpose; or

(B) an agency of this state investigating an alleged violation of a state or federal law relating to the obtaining, selling, or purchasing of a benefit authorized by Chapter 31 or 33, Human Resources Code; or

(2) prevent a court from compelling by subpoena the production of a person's photographic image.

SECTION 11. Not later than November 1, 2011, the Texas Department of Motor Vehicles shall adopt rules and forms to administer Subchapter F, Chapter 520, Transportation Code, as added by this Act.

SECTION 12. The change in law made by this Act to Section 520.061, Transportation Code, as amended by this Act, applies only to an offense committed on or after January 1, 2012. An offense committed 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. For purposes of this section, an offense was committed before January 1, 2012, if any element of the offense was committed before that date.

SECTION 13. Except as otherwise provided by this Act, this Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 1035** (house committee printing) in SECTION 9 of the bill, immediately following proposed Section 520.080, Transportation Code (page 18, between lines 9 and 10), by inserting the following:

(e) If the records maintained under Subsection (b) by a holder of a motor vehicle title service license include a legible photocopy of a driver's license issued by a foreign government, the license holder must also maintain a valid identification document for the customer.

(f) In this section, "valid identification document" means a document that contains an identifiable photograph with information concerning a particular individual that is of a type of document intended or commonly accepted for the purpose of identification of an individual and is issued by:

(1) an agency or institution of the federal government; or

(2) an agency, institution, or political subdivision of this state or another

state.

The amendments were read.

Senator Williams moved to concur in the House amendments to **SB 1035**.

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

SENATE BILL 767 WITH HOUSE AMENDMENT

Senator Ellis called **SB 767** 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 767** (house committee printing) in SECTION 1 of the bill, by striking added Section 21.152, Business & Commerce Code (page 8, lines 8-10).

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 767**.

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

SENATE BILL 1068 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1068** 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 1068** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the lease of certain state parking facilities to other persons.

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

SECTION 1. The heading to Section 2165.2035, Government Code, is amended to read as follows:

Sec. 2165.2035. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; PRIVATE COMMERCIAL USE.

SECTION 2. Subchapter E, Chapter 2165, Government Code, is amended by adding Sections 2165.204, 2165.2045, and 2165.2046 to read as follows:

Sec. 2165.204. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; PRIVATE INDIVIDUAL USE OF EXCESS INDIVIDUAL PARKING SPACES. (a) The commission may lease to a private individual an individual parking space in a state-owned parking lot or garage located in the city of Austin if the commission determines the parking space to be in excess of the number of parking spaces sufficient to accommodate the regular parking requirements of state employees employed near the lot or garage and visitors to nearby state government offices.

(b) Money received from a lease under this section shall be deposited to the credit of the general revenue fund.

(c) In leasing a parking space under Subsection (a), the commission must ensure that the lease does not restrict uses for parking lots and garages developed under Section 2165.2035, including special event parking related to institutions of higher education.

(d) In leasing or renewing a lease for a parking space under Subsection (a), the commission shall give preference to an individual who is currently leasing or previously leased the parking space.

Sec. 2165.2045. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; CERTAIN GOVERNMENTAL ENTITIES USE OF EXCESS BLOCKS OF PARKING SPACE. (a) The commission may lease to an institution of higher education or a local government all or a significant block of a state-owned parking lot or garage located in the city of Austin if the commission determines the parking spaces located in the lot or garage to be in excess of the number of parking spaces sufficient to accommodate the regular parking requirements of state employees employed near the lot or garage and visitors to nearby state government offices.

(b) Money received from a lease under this section shall be deposited to the credit of the general revenue fund.

(c) In leasing all or a block of a state-owned parking lot or garage under Subsection (a), the commission must ensure that the lease does not restrict uses for parking lots and garages developed under Section 2165.2035, including special event parking related to institutions of higher education.

(d) In leasing or renewing a lease for all or a block of a state-owned parking lot or garage under Subsection (a), the commission shall give preference to an entity that is currently leasing or previously leased the lot or garage or a block of the lot or garage.

Sec. 2165.2046. REPORTS ON PARKING PROGRAMS. On or before October 1 of each even-numbered year, the commission shall submit a report to the Legislative Budget Board describing the effectiveness of parking programs developed by the commission under this subchapter. The report must, at a minimum, include:

(1) the yearly revenue generated by the programs;

- (2) the yearly administrative and enforcement costs of each program;
- (3) yearly usage statistics for each program; and
- (4) initiatives and suggestions by the commission to:
 - (A) modify administration of the programs; and
 - (B) increase revenue generated by the programs.

SECTION 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 Ellis moved to concur in the House amendment to **SB 1068**.

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

SENATE BILL 1286 WITH HOUSE AMENDMENT

Senator Watson called **SB 1286** 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 1286** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the funding of retirement systems for firefighters in certain municipalities.

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

SECTION 1. Subsections (a) and (b), Section 10.01, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Each municipality in which a fire department to which this Act applies is located shall appropriate and contribute to the fund an amount equal to a percentage [~~18.05 percent~~] of the compensation of all members during that month as follows:

- (1) 19.05 percent, beginning on the first pay date following September 30, 2010, through the pay date immediately preceding September 30, 2011;
- (2) 20.05 percent, beginning on the first pay date following September 30, 2011, through the pay date immediately preceding September 30, 2012;
- (3) 21.05 percent, for 24 pay dates of the municipality beginning on the first pay date following September 30, 2012; and
- (4) 22.05 percent, for all pay dates of the municipality that follow the 24 pay dates referenced in Subdivision (3) of this subsection.

(b) Each firefighter shall pay into the fund each month a percentage [~~13.70 percent~~] of the firefighter's compensation for that month as follows:

- (1) 15.70 percent, for the pay dates of the municipality following September 30, 2010, through the pay date immediately preceding September 30, 2011;

(2) 16.20 percent, beginning on the first pay date of the municipality following September 30, 2011, through the pay date immediately preceding September 30, 2012;

(3) 16.70 percent, beginning on the first pay date of the municipality following September 30, 2012, through the pay date immediately preceding September 30, 2013;

(4) 17.20 percent, beginning on the first pay date of the municipality following September 30, 2013, through the pay date immediately preceding September 30, 2014;

(5) 17.70 percent, beginning on the first pay date of the municipality following September 30, 2014, through the pay date immediately preceding September 30, 2015;

(6) 18.20 percent, beginning on the first pay date of the municipality following September 30, 2015, through the pay date immediately preceding September 30, 2016; and

(7) 18.70 percent, for the first pay date of the municipality following September 30, 2016, and all subsequent pay dates of the municipality.

SECTION 2. This Act takes effect September 1, 2011.

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 1286**.

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Friday, May 27, 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 172 Hamilton

Instructing the enrolling clerk of the house to make corrections in H.B. 2643.

THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 2761 (122 Yeas, 16 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 803 WITH HOUSE AMENDMENT

Senator Hegar called **SB 803** 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 803** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to venue projects in certain counties.

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

SECTION 1. Subchapter A, Chapter 334, Local Government Code, is amended by adding Section 334.0083 to read as follows:

Sec. 334.0083. VENUE PROJECTS IN CERTAIN COUNTIES. (a) In this section, "venue" has the meaning assigned by Section 334.001 and includes a tourism development project such as a park, aquarium, birding center, bird viewing site, history center, art center, nature center, nature trail, museum, or water-related project that creates or enhances an activity involving water sports or fishing.

(b) A county with a population of 40,000 or less in which at least one state park and one national wildlife refuge are located may plan, acquire, establish, develop, construct, or renovate a venue as a venue project 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 Hegar moved to concur in the House amendment to **SB 803**.

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

SENATE BILL 71 WITH HOUSE AMENDMENT

Senator Nelson called **SB 71** 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 71** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

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

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

SECTION 1. Subsection (h), Section 264.701, Family Code, is amended to read as follows:

(h) The committee shall:

(1) develop and adopt policies and procedures governing the system each state agency uses to evaluate the effectiveness of programs to prevent or treat child abuse or neglect with which the agency contracts;

(2) develop and adopt standard definitions of "child abuse treatment" and "child abuse prevention" to be used in implementing and administering the evaluation system created under this subchapter;

(3) develop and adopt standard models and guidelines for prevention and treatment of child abuse to be used in implementing and administering the evaluation system created under this subchapter;

(4) develop and adopt, in cooperation with each affected state agency, a schedule for each agency's adoption and implementation of the committee's evaluation system that considers each agency's budget cycle;

(5) develop and adopt a standard report form and a reporting schedule for the affected agencies; and

(6) develop and adopt objective criteria by which the performance of child abuse programs may be measured after reports under this subchapter are submitted and evaluated[~~and~~

~~(7) report annually to the Board of Protective and Regulatory Services, governor, lieutenant governor, and speaker of the house of representatives on the results of the committee's evaluation process].~~

SECTION 2. The heading to Section 531.0274, Government Code, is amended to read as follows:

Sec. 531.0274. COORDINATION AND APPROVAL OF CASELOAD ESTIMATES[~~; REPORT~~].

SECTION 3. Subsection (b), Section 531.1235, Government Code, is amended to read as follows:

(b) The advisory board shall prepare a biennial [~~an annual~~] report with respect to the recommendations of the advisory board under Subsection (a). The advisory board shall file the report with the commission, the Department of Aging and Disability Services, the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 15 of each even-numbered year.

SECTION 4. Subsection (b), Section 531.124, Government Code, is amended to read as follows:

(b) The advisory board shall biennially [~~annually~~] review and comment on the minimum standards adopted under Section 111.041 and the plan implemented under Subsection (a) and shall include its conclusions in the report submitted under Section 531.1235.

SECTION 5. Subsection (b), Section 11.0045, Health and Safety Code, is amended to read as follows:

(b) The board shall publish the plan not later than September 1 of each even-numbered year. The board shall at a minimum:

(1) make the plan available on its generally accessible Internet site; and

(2) make printed copies of the plan available on request to members of the public~~;~~ and

~~(3) send printed copies of the plan to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the committees of the senate and the house of representatives that have oversight responsibilities regarding the board and the department].~~

SECTION 6. The heading to Section 32.017, Health and Safety Code, is amended to read as follows:

Sec. 32.017. RECORDS ~~[AND REVIEW]~~.

SECTION 7. The heading to Section 36.012, Health and Safety Code, is amended to read as follows:

Sec. 36.012. RESEARCH~~;~~ ~~REPORT TO LEGISLATURE]~~.

SECTION 8. Subsection (a), Section 83.005, Health and Safety Code, is amended to read as follows:

(a) The identity of a veteran about whom a report has been made under Section 83.002 ~~[or 83.004]~~ may not be disclosed unless the veteran consents to the disclosure.

SECTION 9. Section 83.009, Health and Safety Code, is amended to read as follows:

Sec. 83.009. CERTAIN CASES EXCLUDED. Section ~~[Sections]~~ 83.002 ~~does [and 83.004 do]~~ not apply to veterans treated before January 1, 1982, for symptoms typical of a person who has been exposed to a chemical defoliant or herbicide or other causative agent, including Agent Orange.

SECTION 10. Subsection (c), Section 94.001, Health and Safety Code, is amended to read as follows:

(c) The department shall update the state plan developed under this section biennially ~~[and shall, not later than October 1 of each even-numbered year, file the state plan with the governor, lieutenant governor, and speaker of the house of representatives]~~.

SECTION 11. Subsection (h), Section 108.0065, Health and Safety Code, is amended to read as follows:

(h) The commission, using existing funds, may contract with an entity to comply with the requirements under Subsection ~~[Subsections]~~ (e) ~~[and (f)]~~.

SECTION 12. Subsection (g), Section 533.032, Health and Safety Code, is amended to read as follows:

(g) The department shall:

(1) attach the report ~~[reports]~~ required by Subsection ~~[Subsections]~~ (c) ~~[and (e)]~~ to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report ~~[reports]~~ to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) Health and Human Services Commission; and

(3) update the department's long-range plan biennially and include the report ~~[reports]~~ in the plan.

SECTION 13. Subsection (a), Section 533.0415, Health and Safety Code, is amended to read as follows:

(a) The department, the Texas Department of Human Services, the Texas Youth Commission, the Texas Juvenile Probation Commission, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the agencies involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals]; and

~~[(D) submit a report to the governor, lieutenant governor, and speaker of the house of representatives by October 15 of each even-numbered year].~~

SECTION 14. Subsection (d), Section 22.005, Human Resources Code, is amended to read as follows:

(d) With the approval of the comptroller, the department shall establish an internal accounting system, and the department's expenditures shall be allocated to the various funds according to the system. ~~[At the end of each fiscal biennium the department shall report to the comptroller the amount of the unencumbered balances in each of the department's operating funds that belongs to the children's assistance fund and the medical assistance fund, and those unencumbered balances shall be returned to the appropriate special fund.]~~

SECTION 15. Subsection (d), Section 33.002, Human Resources Code, is amended to read as follows:

(d) The department shall continually monitor the expedited issuance of food stamp benefits to ensure that each region in the state complies with federal regulations and that those households eligible for expedited issuance are identified, processed, and certified within the timeframes prescribed within the federal regulations. ~~[As soon as practicable after the end of each fiscal year, the department shall report to the Governor's Office of Budget and Planning, the Legislative Budget Board, the state auditor, and the department's board members regarding its monitoring of expedited issuance and the degree of compliance with federal regulations on a region by region~~

~~basis. The department shall notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.]~~

SECTION 16. Section 34.006, Human Resources Code, is amended to read as follows:

Sec. 34.006. STUDY. The Texas Workforce Commission, in collaboration with local workforce development boards and the appropriate standing committees of the senate and house of representatives, shall:

(1) study methods to improve the delivery of workforce services to persons residing in minimum service counties, as defined by the commission; and

(2) develop recommendations to improve the delivery of services described by Subdivision (1) ~~[for inclusion in the report required by Section 34.007].~~

SECTION 17. Subsection (b), Section 52.001, Human Resources Code, is amended to read as follows:

(b) ~~The [Consistent with the provisions of the Memorandum of Understanding on Family Planning Services required by Section 22.012, Human Resources Code, the]~~ department shall:

(1) set guidelines for keeping statistical information on school age pregnancy and parenthood by agencies, organizations, and individuals so that the information may be evaluated and compared;

(2) collect information relating to school age pregnancy as considered necessary by the department, including information on educational programs provided in the public school system relating to family life education, abstinence from sex, and sexually transmitted diseases;

(3) serve as a statewide clearinghouse on information relating to school age pregnancy and education on abstinence from sex and make it available to the legislature, other state agencies, and private entities that are involved in preventing school age pregnancy, addressing the problems caused by school age pregnancy, or encouraging abstinence from sex;

(4) analyze and evaluate the data collected on and studies relating to school age pregnancy and make the analysis and information readily available to the legislature, relevant agencies, and the public; and

(5) make recommendations to the relevant state agencies or the legislature to prevent duplication of services~~]; and~~

~~[(6) submit a report each regular session to the legislature on the status of school age pregnancy programs in the state and the department's progress in meeting the requirements of this section].~~

SECTION 18. Section 131.005, Human Resources Code, is amended to read as follows:

Sec. 131.005. REPORTING AND ACCOUNTING SYSTEM. Each health and human services agency that provides, purchases, or otherwise funds transportation services for clients shall:

(1) comply with the standardized system of reporting and accounting established by the office under Section 131.003(a)(3); and

(2) make any changes to agency data collection systems that are necessary to enable the agency to comply with the standardized system~~]; and~~

~~[(3) not later than August 31 of each year, submit to the office a report relating to transportation services that complies with the standardized system].~~

SECTION 19. Section 131.006, Human Resources Code, is amended to read as follows:

Sec. 131.006. IMPLEMENTATION OF STATEWIDE COORDINATION PLAN. In order to implement the statewide coordination plan created by the office under Section 131.003(a)(2), the office shall:

(1) review rules, policies, contracts, grants, and funding mechanisms relating to transportation services of each health and human services agency that provides, purchases, or otherwise funds transportation services for clients to determine whether the rules, policies, contracts, grants, and funding mechanisms are consistent with the plan; and

(2) make recommendations for revisions to rules, policies, contracts, grants, and funding mechanisms determined under Subdivision (1) to be inconsistent with the plan; and

~~[(3) not later than September 30 of each even numbered year, submit a report by electronic mail and by hand delivery to the governor, the secretary of state, the Legislative Budget Board, and the commissioner relating to the results of the review conducted by the office under this section].~~

SECTION 20. Subsection (c), Section 264.205, Family Code, is repealed.

SECTION 21. The following provisions of the Government Code are repealed:

- (1) Section 531.0243;
- (2) Subsection (b), Section 531.0273;
- (3) Subsections (c), (d), and (e), Section 531.0274;
- (4) Section 531.029;
- (5) Section 531.0311;
- (6) Subsection (b), Section 531.056;
- (7) Subsection (l), Section 531.070;
- (8) Subsection (f), Section 531.110;
- (9) Section 531.603;
- (10) Section 752.005;
- (11) Section 752.006; and
- (12) Subchapter G, Chapter 531.

SECTION 22. The following provisions of the Health and Safety Code are repealed:

- (1) Subsections (c), (d), and (e), Section 32.017;
- (2) Subsection (b), Section 36.012;
- (3) Subsection (e), Section 62.104;
- (4) Section 83.004;
- (5) Subsections (f) and (g), Section 108.0065;
- (6) Section 121.0067;
- (7) Subsection (i), Section 532.021;
- (8) Subsections (e) and (f), Section 533.032;
- (9) Subsection (e), Section 533.033;
- (10) Section 533.036;
- (11) Subsection (b), Section 533.049;

- (12) Subsection (b), Section 533.050;
- (13) Subsection (d), Section 534.022;
- (14) Subsection (d), Section 571.0065; and
- (15) Section 1001.031.

SECTION 23. The following provisions of the Human Resources Code are repealed:

- (1) Subsection (b), Section 22.025;
- (2) Subsection (c), Section 22.0255;
- (3) Section 31.0034;
- (4) Subsection (d), Section 31.0325;
- (5) Subsection (s), Section 32.021;
- (6) Subsection (d), Section 32.048;
- (7) Subsection (d), Section 32.055;
- (8) Section 32.257;
- (9) Subsection (c), Section 33.0022;
- (10) Section 34.007;
- (11) Subsection (c), Section 52.001;
- (12) Section 117.031; and
- (13) Section 161.031.

SECTION 24. The following provisions of the Occupations Code are repealed:

- (1) Section 505.207; and
- (2) Section 603.157.

SECTION 25. Section 1.23, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 26. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 71**.

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

SENATE BILL 76 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 76** 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 76** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to certain providers of subsidized child care.

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

SECTION 1. Subtitle B, Title 4, Labor Code, is amended by adding Chapter 313 to read as follows:

CHAPTER 313. REQUIREMENTS FOR PROVIDERS OF RELATIVE CHILD CARE

Sec. 313.001. DEFINITIONS. In this chapter:

- (1) "Department" means the Department of Family and Protective Services.
- (2) "Relative child care" means child care that is:
 - (A) funded wholly or partly from money received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.); and
 - (B) provided by a provider who:
 - (i) is at least 18 years of age;
 - (ii) complies with any federal or state requirements regarding subsidized child care that apply to the provider;
 - (iii) provides child-care services for less than 24 hours a day to a child who is, by marriage, blood relationship, or court decree:
 - (a) the grandchild of the provider;
 - (b) the great-grandchild of the provider;
 - (c) the sibling of the provider, and the child resides in a separate residence from the provider; or
 - (d) the niece or nephew of the provider; and
 - (iv) operates a listed family home under Chapter 42, Human Resources Code, that provides care for one or more children related to the provider and does not hold any other license or permit to provide child care under Chapter 42, Human Resources Code.
- (3) "Teen parent" means an individual 18 years of age or younger, or 19 years of age and fully enrolled in a secondary school in a program leading toward a high school diploma, who is the parent of a child.

Sec. 313.002. LOCATION OF CARE. (a) Except as provided by Subsections (b) and (c), relative child care must be provided in the child-care provider's home.

- (b) The commission shall allow relative child care in the child's home:
 - (1) for a disabled child and the child's siblings;
 - (2) for a child under 18 months of age and the child's siblings;
 - (3) for a child of a teen parent; and
 - (4) when the parent's work schedule necessitates child-care services during the evening, overnight, or on the weekend and taking the child outside of the child's home would be disruptive to the child.

(c) The commission may allow relative child care in the child's home if the commission determines that other child-care provider arrangements are not available in the community.

Sec. 313.003. LISTING AS FAMILY HOME. A relative child-care provider must list the provider's home with the department as a family home.

Sec. 313.004. NOTICE OF BACKGROUND AND CRIMINAL HISTORY CHECKS. The commission must provide notice of the background and criminal history check requirement to the parent or guardian of the child who will receive care through a relative child-care provider before the parent or guardian selects the provider.

Sec. 313.005. MEMORANDUM OF UNDERSTANDING. The commission and the department shall adopt a memorandum of understanding regarding the administration and payment of costs of listing a relative child-care provider as required by this chapter.

SECTION 2. Chapter 301, Labor Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. DETECTION AND PREVENTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE

Sec. 301.191. PREVENTION AND DETECTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE. (a) The commission shall develop risk assessment protocols to identify and assess possible instances of fraud, waste, and abuse in child-care programs, including:

(1) the use of unemployment insurance wage records to identify:

(A) potential ineligible parents due to a change in income or underreporting of income;

(B) relative child-care providers who are engaged in other employment;
and

(C) parents who do not have the required work history; and

(2) the identification of parents who apply for or receive child-care services in multiple workforce areas simultaneously.

(b) The commission shall ensure that local workforce development boards implement procedures to prevent and detect fraud, waste, and abuse in child-care programs.

Sec. 301.192. CORRECTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE. (a) The commission shall ensure that corrective action is initiated against a child-care provider who commits fraud, including:

(1) temporarily or permanently withholding payments to the provider for child-care services already delivered;

(2) recovering money paid for child care from the child-care provider;

(3) stopping the provision of authorized child care at the provider's facility or location; or

(4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.

(b) The commission shall ensure that corrective action is initiated against a parent who commits fraud, including:

(1) recovering money paid for child care from the parent;

(2) declaring the parent ineligible for future child care under a commission program;

(3) limiting the enrollment of the parent's child to a regulated child-care provider; or

(4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.

(c) If the commission proposes to take a corrective action under Subsection (a) or (b), the provider or parent is entitled to appeal the proposed corrective action in accordance with procedures adopted by the commission by rule.

SECTION 3. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0523 to read as follows:

Sec. 42.0523. LISTING OF RELATIVE CHILD-CARE PROVIDERS. (a) A child-care provider who only provides child care under Chapter 313, Labor Code, to children related to the provider may list the provider's home as a family home.

(b) Before the department may list a child-care provider's home under this section, in addition to conducting any other background or criminal history check required for a family home listing, the department must search the central database of sex offender registration records maintained by the Department of Public Safety under Chapter 62, Code of Criminal Procedure, to determine whether the provider is listed in the registry as a sex offender.

(c) The address of a family home listed under this section is the address of the child-care provider's home, regardless of whether the child care is provided in the provider's home or in the child's home.

(d) A relative child-care provider's home listed as a family home under this section is exempt from the health and safety requirements of 45 C.F.R. Section 98.41(a).

SECTION 4. Subchapter A, Chapter 302, Labor Code, is amended by adding Section 302.0047 to read as follows:

Sec. 302.0047. ELECTRONIC VALIDATION OF CHILD-CARE SERVICES AND ATTENDANCE. If feasible, the commission shall use an electronic validation system to ensure that parents verify that a provider of relative child care is providing care and that the child for whom the care is provided is in attendance during the period for which the child-care provider is being reimbursed for services.

SECTION 5. Subsection (g), Section 42.054, Human Resources Code, is amended to read as follows:

(g) The provisions of Subsections (b) through (f) of this section do not apply to:

(1) licensed foster homes and licensed foster group homes;
 (2) nonprofit facilities regulated under this chapter that provided 24-hour care for children in the managing conservatorship of the department during the 12-month period immediately preceding the anniversary date of the facility's license;
 [or]

(3) facilities operated by a nonprofit corporation or foundation that provides 24-hour residential care and does not charge for the care provided; or

(4) a family home listed under Section 42.0523 in which the relative child-care provider cares for the child in the child's own home.

SECTION 6. The Texas Workforce Commission and the Department of Family and Protective Services shall adopt the memorandum of understanding required by Section 313.005, Labor Code, as added by this Act, not later than October 1, 2011.

SECTION 7. 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 8. Notwithstanding Chapter 313, Labor Code, as added by this Act, the Texas Workforce Commission shall ensure that payments made on or after November 1, 2011, to providers of relative child care, as defined by Section 313.001, Labor Code, as added by this Act, are made only to providers with respect to whom a background and criminal history check has been conducted as required by that chapter.

SECTION 9. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 76** (house committee printing) as follows:

(1) In SECTION 2 of the bill, immediately following added Section 301.191, Labor Code (page 4, between lines 9 and 10), add the following:

(c) The commission may use a motor vehicle record, including a photographic image and signature, to prevent and detect fraud, waste, and abuse in child-care programs.

(d) The commission may use the information under Subsection (c) otherwise for enforcement under this title.

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

SECTION _____. Section 730.005, Transportation Code, is amended to read as follows:

Sec. 730.005. **REQUIRED DISCLOSURE.** Personal information obtained by an agency in connection with a motor vehicle record shall be disclosed for use in connection with any matter of:

- (1) motor vehicle or motor vehicle operator safety;
- (2) motor vehicle theft;
- (3) motor vehicle emissions;
- (4) motor vehicle product alterations, recalls, or advisories;
- (5) performance monitoring of motor vehicles or motor vehicle dealers by a motor vehicle manufacturer;
- (6) removal of nonowner records from the original owner records of a motor vehicle manufacturer to carry out the purposes of:

(A) the Automobile Information Disclosure Act, 15 U.S.C. Section 1231 et seq.;

(B) 49 U.S.C. Chapters 301, 305, 323, 325, 327, 329, and 331;

(C) the Anti Car Theft Act of 1992, 18 U.S.C. Sections 553, 981, 982, 2119, 2312, 2313, and 2322, 19 U.S.C. Sections 1646b and 1646c, and 42 U.S.C. Section 3750a et seq., all as amended;

(D) the Clean Air Act, 42 U.S.C. Section 7401 et seq., as amended; and

(E) any other statute or regulation enacted or adopted under or in relation to a law included in Paragraphs (A)-(D); [✕]

(7) child support enforcement under Chapter 231, Family Code; or

(8) enforcement by the Texas Workforce Commission under Title 4, Labor Code.

SECTION _____. Section 730.007(c), Transportation Code, is amended to read as follows:

(c) This section does not:

(1) prohibit the disclosure of a person's photographic image to:

(A) a law enforcement agency or a criminal justice agency for an official purpose; [~~or~~]

(B) an agency of this state investigating an alleged violation of a state or federal law relating to the obtaining, selling, or purchasing of a benefit authorized by Chapter 31 or 33, Human Resources Code; or

(C) an agency of this state investigating an alleged violation of a state or federal law under authority provided by Title 4, Labor Code; or

(2) prevent a court from compelling by subpoena the production of a person's photographic image.

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 76**.

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

SENATE BILL 221 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 221** 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 221** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

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.

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

SECTION 1. Section 59.006(a), Finance Code, is amended to read as follows:

(a) This section provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. This section does not apply to and does not require or authorize a financial institution to give a customer notice of:

(1) a demand or inquiry from a state or federal government agency authorized by law to conduct an examination of the financial institution;

(2) a record request from a state or federal government agency or instrumentality under statutory or administrative authority that provides for, or is accompanied by, a specific mechanism for discovery and protection of a customer record of a financial institution, including a record request from a federal agency subject to the Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the Internal Revenue Service under Section 1205, Internal Revenue Code of 1986;

(3) a record request from or report to a government agency arising out of the investigation or prosecution of a criminal offense or the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in accordance with Chapter 48, Human Resources Code;

(4) a record request in connection with a garnishment proceeding in which the financial institution is garnishee and the customer is debtor;

(5) a record request by a duly appointed receiver for the customer;

(6) an investigative demand or inquiry from a state legislative investigating committee;

(7) an investigative demand or inquiry from the attorney general of this state as authorized by law other than the procedural law governing discovery in civil cases; or

(8) the voluntary use or disclosure of a record by a financial institution subject to other applicable state or federal law.

SECTION 2. Section 411.114, Government Code, is amended to read as follows:

Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~] SERVICES. (a)(1) In this subsection:

(A) "Child," "child-care facility," "child-placing agency," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(B) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(C) "Maternity home" has the meaning assigned by Section 249.001, Health and Safety Code.

(D) "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(E) "Ward" has the meaning assigned by Section 601, Texas Probate Code.

(2) The Department of Family and Protective Services shall obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, certification, or listing under Chapter 42, Human Resources Code, or Chapter 249, Health and Safety Code;

(B) an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, family home, or maternity home licensed, registered, certified, or listed under Chapter 42, Human Resources Code, or Chapter 249, Health and Safety Code;

(C) a person 14 years of age or older who will be regularly or frequently working or staying in a child-care facility, family home, or maternity home while children are being provided care, other than a child in the care of the home or facility;

(D) an applicant selected for a position with the Department of Family and Protective Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Family and Protective Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) a registered volunteer with the Department of Family and Protective Services;

(G) a person providing or applying to provide in-home, adoptive, or foster care for children in the care of the Department of Family and Protective Services and other persons living in the residence in which the child will reside;

(H) a Department of Family and Protective Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) an alleged perpetrator in ~~[a person who is the subject of]~~ a report the Department of Family and Protective Services receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the statutory definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or the definition of abuse, neglect, or exploitation applicable through a rule adopted by the executive commissioner of the Health and Human Services Commission under Section 48.002(c), Human Resources Code, except that if the executive commissioner has not adopted applicable rules under that section, the statutory definition of abuse, neglect, or exploitation under Section 48.002(a) [Chapter 48], Human Resources Code, shall be used; and

(ii) the person ~~[who is the subject of the report]~~ is not also the victim of the alleged conduct;

(J) a person providing child care for a child who is in the care of the Department of Family and Protective Services and who is or will be receiving adoptive, foster, or in-home care;

(K) through a contract with a nonprofit management center, an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a nonprofit, tax-exempt organization that provides any service that involves the care of or access to a child ~~[children]~~, an elderly person ~~[persons]~~, or a person ~~[persons]~~ with a disability; or

(L) an applicant for a child-care administrator or child-placing agency administrator license under Chapter 43, Human Resources Code.

(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 an alleged perpetrator in [~~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 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 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; or

(Q) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with an entity or person that contracts with the Department of Family and Protective Services and has access to confidential information in the department's records, if the employee, applicant, volunteer, or applicant volunteer has or will have access to that confidential information.

(4) Subject to Section 411.087, the Department of Family and Protective [~~and Regulatory~~] Services is entitled to:

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2) or (3); and

(B) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3). Law enforcement entities shall expedite the furnishing of such information to Department of Family and Protective [~~and Regulatory~~] Services workers to ensure prompt criminal background checks for the safety of alleged victims and Department of Family and Protective [~~and Regulatory~~] Services workers.

(5) The Department of Family and Protective [~~and Regulatory~~] Services may not use the authority granted under this section to harass an employee or volunteer. The executive commissioner of the Health and Human Services Commission [~~Board of Protective and Regulatory Services~~] shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) Criminal history record information obtained by the Department of Family and Protective [~~and Regulatory~~] Services under this subsection may not be released to any person except:

(A) on court order;

(B) with the consent of the person who is the subject of the criminal history record information;

(C) for purposes of an administrative hearing held by the Department of Family and Protective [~~and Regulatory~~] Services concerning the person who is the subject of the criminal history record information; or

(D) as provided by Subdivision (7).

(7) The Department of Family and Protective [~~and Regulatory~~] Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a child-care facility, child-placing agency, family home, or maternity home listed in Subdivision (2) that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subdivision (2)(E) or (3) who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information; [~~or~~]

(D) an adult who resides [~~residing~~] with an alleged victim of abuse, neglect, or exploitation of a child, elderly person, or person with a disability and who also resides with the alleged perpetrator of that abuse, neglect, or exploitation if:

(i) the alleged perpetrator [~~person who~~] is the subject of the criminal history record information; and

(ii) [~~if~~] the Department of Family and Protective [~~and Regulatory~~] Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the alleged victim [~~child, elderly person, or person with a disability~~] or the adult; or

(E) an elderly or disabled person who is an alleged victim of abuse, neglect, or exploitation and who resides with the alleged perpetrator of that abuse, neglect, or exploitation if:

(i) the alleged perpetrator is the subject of the criminal history record information; and

(ii) the Department of Family and Protective Services determines that the release of information to the elderly or disabled person or adult is necessary to ensure the safety or welfare of the elderly or disabled person.

(b) The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to a volunteer of or an employee or applicant for permanent or temporary employment with the Department of Family and Protective [~~and Regulatory~~] Services, or a facility, home, business, or other entity, if the volunteer position, employment, or potential employment involves direct interaction with or the opportunity to interact and associate with children.

(c) The Department of Family and Protective [~~and Regulatory~~] Services may charge an organization or person that requests criminal history record information under Subsection (a)(3) a fee in an amount necessary to cover the costs of obtaining the information on the organization's or person's behalf.

SECTION 3. Section 142.018(a), Health and Safety Code, is amended to read as follows:

(a) In this section, "abuse," "exploitation," and "neglect" have the meanings applicable through a rule adopted by the executive commissioner of the Health and Human Services Commission under [~~assigned by~~] Section 48.002(c) [48.002], Human Resources Code, except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a), Human Resources Code, shall be used.

SECTION 4. Section 40.0315(b), Human Resources Code, is amended to read as follows:

(b) An investigator in the unit shall determine whether an elderly or disabled person who is the subject of a report made under Section 48.051(a) may have suffered from abuse, neglect, or exploitation as a result of the criminal conduct of another person. If the investigator determines that criminal conduct may have occurred, the investigator shall immediately notify:

(1) the commission's office of inspector general if the disabled person who is the subject of the report resides in a state supported living center or the ICF-MR component of the Rio Grande State Center; and [~~or~~]

(2) the appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department.

SECTION 5. Sections 48.002(a)(3) and (5), Human Resources Code, are amended to read as follows:

(3) "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an [the] elderly or disabled person that involves using, or attempting to use, the resources of the [an] elderly or disabled person, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.

(5) "Protective services" means the services furnished by the department or by a protective services agency to an elderly or disabled person who has been determined to be in a state of abuse, neglect, or exploitation or to a relative or caretaker of an elderly or disabled person if the department determines the services are necessary to prevent the elderly or disabled person from returning to a state of abuse, neglect, or exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with this chapter. The term does not include the services of the department or another protective services agency in conducting an investigation regarding alleged abuse, neglect, or exploitation of an elderly or disabled person.

SECTION 6. Section 48.002, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) Except as provided by Subsection (b), the executive commissioner by rule may adopt definitions of "abuse," "neglect," and "exploitation," as an alternative to the definitions of those terms under Subsection (a), for purposes of conducting an investigation under this chapter.

SECTION 7. Section 48.006(a), Human Resources Code, is amended to read as follows:

(a) Subject to the availability of funds, the department shall develop a community satisfaction survey that solicits information regarding the department's performance with respect to providing investigative and adult protective services. In each region, the department shall send the survey at least biennially [~~annually~~] to:

(1) stakeholders in the adult protective services system, including local law enforcement agencies and prosecutors' offices;

(2) protective services agencies, including nonprofit agencies; and

(3) courts with jurisdiction over probate matters.

SECTION 8. Section 48.053, Human Resources Code, is amended to read as follows:

Sec. 48.053. FALSE REPORT; PENALTY. (a) A person commits an offense if the person knowingly or intentionally reports information as provided in this chapter that the person knows is false or lacks factual foundation.

(b) An offense under this section is a Class A ~~[B]~~ misdemeanor.

SECTION 9. Section 48.151(a), Human Resources Code, is amended to read as follows:

(a) Not later than 24 hours after the department receives a report of an allegation of abuse, neglect, or exploitation under Section 48.051, the department shall initiate a prompt and thorough investigation as needed to evaluate the accuracy of the report and to assess the need for protective services, unless the department determines that the report:

- (1) is frivolous or patently without a factual basis; or
- (2) does not concern abuse, neglect, or exploitation, as those terms are defined by rules adopted by the executive commissioner under Section 48.002(c), except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a) shall be used [48.002].

SECTION 10. Section 48.152, Human Resources Code, is amended to read as follows:

Sec. 48.152. INVESTIGATION. (a) An investigation by the department or a state agency shall include an interview with the elderly or disabled person, if appropriate, and with persons thought to have knowledge of the circumstances. If the elderly or disabled person refuses to be interviewed or cannot be interviewed because of a physical or mental impairment, the department shall continue the investigation by interviewing other persons thought to have knowledge relevant to the investigation.

(b) The investigation may include an interview with an alleged juvenile perpetrator of the alleged abuse, neglect, or exploitation.

(c) The department or state agency may conduct an interview under this section in private or may include any person the department or agency determines is necessary.

SECTION 11. Section 48.1522, Human Resources Code, is amended to read as follows:

Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if during the course of the department's or another state agency's investigation of reported abuse, neglect, or exploitation a caseworker of the department or other state agency, as applicable, or the caseworker's supervisor has cause to believe that the elderly or disabled person has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, the caseworker or supervisor shall:

(1) immediately notify an appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department; and

(2) provide the law enforcement agency with a copy of the investigation report of the department or other state agency, as applicable, in a timely manner.

(b) If during the course of the department's investigation of reported abuse, neglect, or exploitation a caseworker of the department or the caseworker's supervisor has cause to believe that a disabled person who is a resident or client of a state supported living center or the ICF-MR component of the Rio Grande State Center has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, in addition to the report to the appropriate law enforcement agency required by Subsection (a), the

caseworker shall immediately notify the commission's office of inspector general and promptly provide the commission's office of inspector general with a copy of the department's investigation report.

SECTION 12. Sections 48.154(a), (b), (c), (d), and (e), Human Resources Code, are amended to read as follows:

(a) The department or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of the department's or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person, ~~or~~ agency, or institution that has a record or document that the department or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the department or state agency that requested the record or document.

(b) The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial record from a person, agency, or institution or a medical record, including a mental health record, from a hospital or health care provider if the request for a record is made in the course of an investigation by the department.

(c) If the department or another state agency cannot obtain access to a record or document that is necessary to properly conduct an investigation or to perform another duty under this chapter, the department or state agency may petition the probate court or the statutory or constitutional county court having probate jurisdiction for access to the record or document.

(d) On good cause shown, the court shall order the person, agency, or institution who has ~~denied access to~~ a requested record or document to allow the department or state agency to have access to that record or document under the terms and conditions prescribed by the court.

(e) A person, agency, or institution who has a requested record or document is entitled to notice and a hearing on a ~~the~~ petition filed under this section.

SECTION 13. Section 48.203(d), Human Resources Code, is amended to read as follows:

(d) Except as provided by Section 48.208, if [H] an elderly or disabled person withdraws from or refuses consent to voluntary protective services, the services may not be provided.

SECTION 14. Section 48.204, Human Resources Code, is amended to read as follows:

Sec. 48.204. AGENCY POWERS. A protective services agency may furnish protective services to an elderly or disabled person with the person's consent or to a relative or caretaker of an elderly or disabled person on behalf of the elderly or disabled person with the relative's or caregiver's consent or, if the elderly or disabled person lacks the capacity to consent, without that person's consent as provided by this chapter.

SECTION 15. Section 48.208, Human Resources Code, is amended by amending Subsections (e), (e-2), (f), and (h) and adding Subsection (i) to read as follows:

(e) The emergency order expires on the earlier of ~~at~~ the end of the 10th day after ~~72 hours from~~ the date ~~time~~ the order is rendered or the end of the 10th day after the date the person was removed to safer surroundings if the emergency order was rendered subsequent to the removal of the person to safer surroundings in accordance with Subsection (h), unless:

- (1) the emergency order terminates as provided by Subsection (e-1);
- (2) the 10-day ~~72-hour~~ period ends on a Saturday, Sunday, or legal holiday in which event the order is automatically extended to 4 p.m. on the first succeeding business day; or
- (3) the court extends the order as provided by Subsection (e-2).

(e-2) The court, after notice and a hearing, may extend an emergency order issued under this section for a period of not more than 30 days after the date the original emergency order for protective services was rendered. The court, after notice and a hearing and for good cause shown, may grant a second extension of an emergency order of not more than an additional 30 days. The court may not grant more than two extensions of the original emergency order. An extension order that ends on a Saturday, Sunday, or legal holiday is automatically extended to 4 p.m. on the first succeeding business day. The court may modify or terminate the emergency order on petition of the department, the incapacitated person, or any person interested in the person's ~~his~~ welfare.

(f) Any medical facility, emergency medical services provider, or physician who provides treatment to or who transports ~~treatment~~ an elderly or disabled person pursuant to an emergency order under Subsection (d) or an emergency authorization under Subsection (h) ~~this chapter~~ is not liable for any damages arising from the treatment or transportation, except those damages resulting from the negligence of the facility, provider, or physician.

(h) If the department cannot obtain an emergency order under this section because the court is closed on a Saturday, Sunday, or legal holiday or after 5 p.m., the department may remove or authorize an appropriate transportation service, including an emergency medical services provider, to remove the elderly or disabled person to safer surroundings, authorize medical treatment, or authorize ~~order~~ or provide other available services necessary to remove conditions creating the threat to life or physical safety. The department must obtain an emergency order under this section not later than 4 p.m. on the first succeeding business day after the date on which protective services are provided. If the department does not obtain an emergency order, the department shall cease providing protective services and, if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place.

(i) If the department's removal of a person from the person's place of residence under this section results in that residence being vacant, the department shall notify the appropriate law enforcement agency of the vacancy to facilitate the law enforcement agency's monitoring of the residence.

SECTION 16. Sections 48.405(a) and (b), Human Resources Code, are amended to read as follows:

- (a) If the employee requests a hearing, the department or its designee shall:

(1) set a hearing;
 (2) give written notice of the hearing to the employee; and
 (3) designate an administrative law judge [~~a hearings examiner~~] to conduct the hearing.

(b) The administrative law judge [~~hearings examiner~~] shall make findings of fact and conclusions of law and shall promptly issue an order regarding [~~to the commissioner or the commissioner's designee a proposal for decision as to~~] the occurrence of the reportable conduct.

SECTION 17. Section 48.405(c), Human Resources Code, is repealed.

SECTION 18. The change made by this Act to Section 48.053, Human Resources 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 the 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 19. The change in law made by this Act to Section 48.405, Human Resources Code, applies only to a hearing requested on or after the effective date of this Act. A hearing requested before the effective date of this Act is governed by the law in effect when the hearing was requested, and the former law is continued in effect for that purpose.

SECTION 20. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 221** (house committee printing) as follows:

(1) In SECTION 2 of the bill, strike amended Section 411.114(a)(2)(I)(i), Government Code (page 4, line 26, through page 5, line 8), and substitute the following:

(i) the report alleges the person has engaged in conduct that meets the applicable [~~statutory~~] definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(2) In SECTION 6 of the bill, in proposed Section 48.002(c), Human Resources Code (page 13, line 9), between "chapter" and the underlined period, insert "or Chapter 142, Health and Safety Code".

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 221**.

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

SENATE BILL 222 WITH HOUSE AMENDMENT

Senator Nelson called **SB 222** 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 222** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to access to certain long-term care services and supports under the medical assistance program.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0515 to read as follows:

Sec. 531.0515. RISK MANAGEMENT CRITERIA FOR CERTAIN WAIVER PROGRAMS. (a) In this section, "legally authorized representative" has the meaning assigned by Section 531.051.

(b) The commission shall consider developing risk management criteria under home and community-based services waiver programs designed to allow individuals eligible to receive services under the programs to assume greater choice and responsibility over the services and supports the individuals receive.

(c) The commission shall ensure that any risk management criteria developed under this section include:

(1) a requirement that if an individual to whom services and supports are to be provided has a legally authorized representative, the representative be involved in determining which services and supports the individual will receive; and

(2) a requirement that if services or supports are declined, the decision to decline is clearly documented.

SECTION 2. Section 533.0355, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

(h) The Department of Aging and Disability Services shall ensure that local mental retardation authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section 533.038(d), including options such as the availability and types of ICF-MR placements for which an individual may be eligible while the individual is on a department interest list or other waiting list for other services.

SECTION 3. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Sections 161.084 and 161.085 to read as follows:

Sec. 161.084. MEDICAID SERVICE OPTIONS PUBLIC EDUCATION INITIATIVE. (a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department, in cooperation with the commission, shall educate the public on:

(1) the availability of home and community-based services under a Medicaid state plan program, including the primary home care and community attendant services programs, and under a Section 1915(c) waiver program; and

(2) the various service delivery options available under the Medicaid program, including the consumer direction models available to recipients under Section 531.051, Government Code.

(c) The department may coordinate the activities under this section with any other related activity.

Sec. 161.085. INTEREST LIST REPORTING. The department shall post on the department's Internet website historical data, categorized by state fiscal year, on the percentages of individuals who elect to receive services under a program for which the department maintains an interest list once their names reach the top of the list.

SECTION 4. (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 should use existing 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) 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 5. As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall apply for and actively pursue amendments from the federal Centers for Medicare and Medicaid Services, or any other appropriate federal agency, to the community living assistance and support services waiver and the home and community-based services

program waiver granted under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) to authorize the provision of personal attendant services through the programs operated under those waivers.

SECTION 6. 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 7. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 222**.

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

SENATE BILL 469 WITH HOUSE AMENDMENT

Senator Nelson called **SB 469** 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 469** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the collection of unpaid tolls by a regional tollway authority.

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

SECTION 1. Section 366.003, Transportation Code, is amended by adding Subdivision (10-a) to read as follows:

(10-a) "Toll assessment facility" means a location on a turnpike project where a vehicle that is driven or towed through the facility is assessed a toll for the use of the project.

SECTION 2. Section 366.178, Transportation Code, is amended by amending Subsections (a), (b), (c), (d), (e), (f), (g), (i), and (i-1) and adding Subsections (b-1), (b-2), (b-3), (b-4), (d-1), (d-2), and (f-1) to read as follows:

(a) A motor vehicle other than an authorized emergency vehicle, as defined by Section 541.201, that passes through a toll assessment ~~collection~~ facility, whether driven or towed, shall pay the proper toll. The exemption from payment of a toll for an authorized emergency vehicle applies regardless of whether the vehicle is:

- (1) responding to an emergency;
- (2) displaying a flashing light; or
- (3) marked as a police or emergency vehicle.

(b) A person who fails or refuses to pay a toll provided for the use of a project is liable for a fine not to exceed \$250, plus any ~~an~~ administrative fees ~~fee~~ incurred in connection with the violation.

(b-1) As an alternative to requiring payment of a toll at the time a vehicle is driven or towed through a toll assessment facility, the authority shall use video recordings, photography, electronic data, transponders, or other tolling methods to permit the registered owner of the nonpaying vehicle to pay the toll at a later date.

(b-2) If the authority does not collect the proper toll at the time a vehicle is driven or towed through a toll assessment facility, the authority shall send an invoice by first class mail to the registered owner of the vehicle. The invoice may include one or more tolls assessed by the authority for use of the project by the nonpaying vehicle and must specify the date by which the toll or tolls must be paid. Except as provided by Subsection (b-3), the registered owner shall pay the unpaid tolls included in the invoice not later than the 30th day after the date the invoice is mailed.

(b-3) If the address to which the invoice issued under Subsection (b-2) is mailed to the registered owner is determined to be incorrect, the registered owner shall pay the invoice not later than the 30th day after the date the invoice is mailed to the correct address.

(b-4) If the registered owner of the nonpaying vehicle fails to pay the unpaid tolls included in the invoice mailed under Subsection (b-2) or (b-3) by the date specified in the invoice, the authority shall send the first notice of nonpayment by first class mail to the registered owner of the nonpaying vehicle as provided by Subsection (d).

(c) On ~~if a person fails to pay the proper toll:~~

~~[(1) on] issuance of the first [a] notice of nonpayment, the registered owner of the nonpaying vehicle shall pay both the unpaid tolls included in the invoice and an [the proper toll and the] administrative fee. The authority may charge only one administrative fee of not more than \$25 for the first notice of nonpayment that is sent to the registered owner of the nonpaying vehicle[-and~~

~~[(2) an authority may charge an administrative fee of not more than \$100 to recover the cost of collecting the unpaid toll].~~

(d) Unless an authority requires additional time to send a notice of nonpayment because of events outside the authority's reasonable control, the authority shall send the first notice of nonpayment not later than the 30th day after the date the 30-day period expires for the registered owner to pay the invoice issued under Subsection (b-2) or (b-3). If an authority requires additional time as provided by this subsection, the authority must send the notice not later than the 60th day after the date the 30-day period expires for the registered owner to pay the invoice issued under Subsection (b-2) or (b-3). The first notice [Notice] of nonpayment [under Subsection (e)(1)] shall [be sent by first class mail and may not] require payment of the unpaid tolls included in the invoice [the proper toll] and the administrative fee before the 30th day after the date the first notice of nonpayment is mailed[-The registered owner shall pay a separate toll and administrative fee for each nonpayment].

(d-1) If the registered owner of the nonpaying vehicle fails to pay the unpaid tolls and the administrative fee by the date specified in the first notice of nonpayment, the authority shall send a second notice of nonpayment by first class mail to the registered owner of the nonpaying vehicle. The second notice of nonpayment must specify the date by which payment must be made and may require payment of:

(1) the unpaid tolls and administrative fee included in the first notice of nonpayment; and

(2) an additional administrative fee of not more than \$25 for each unpaid toll included in the notice, not to exceed a total of \$200.

(d-2) If the registered owner of the nonpaying vehicle fails to pay the amount included in the second notice of nonpayment by the date specified in that notice, the authority shall send a third notice of nonpayment by first class mail to the registered owner of the nonpaying vehicle. The third notice of nonpayment must specify the date by which payment must be made and may require payment of:

(1) the amount included in the second notice of nonpayment; and

(2) any third-party collection service fees incurred by the authority.

(e) If the registered owner of the vehicle fails to pay the amount included in the third notice of nonpayment by the date [proper toll and administrative fee in the time] specified in [by] the notice, the owner may [shall] be cited as for other traffic violations as provided by law, and the owner shall pay a fine of not more than \$250 for each nonpayment of a toll.

(f) Except as provided by Subsection (f-1), in [In] the prosecution of a violation for nonpayment, proof that the vehicle passed through a toll assessment [collection] facility and that the amount included in the third notice of nonpayment was not paid before the date specified in the notice, [without payment of the proper toll] together with proof that the defendant was the registered owner or the driver of the vehicle when the unpaid toll was assessed [failure to pay occurred], establishes the nonpayment of the registered owner. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence, including a copy of the rental, lease, or other contract document or the electronic data provided to the authority under Subsection (i) that shows the defendant was the lessee of the vehicle when the unpaid toll was assessed [underlying event of nonpayment occurred].

(f-1) Nonpayment by the registered owner of the vehicle may be established by:

(1) a copy of a written agreement between the authority and the registered owner for the payment of unpaid tolls and administrative fees; and

(2) evidence that the registered owner is in default under the agreement.

(g) The court of the local jurisdiction in which the unpaid toll was assessed [violation occurs] may assess and collect the fine in addition to any court costs. The court shall collect the unpaid tolls, [proper toll and] administrative fees, and third-party collection service fees incurred by the authority on or before the date the fines and court costs are collected by the court [fee] and forward the tolls [toll] and fees [fee] to the authority. Payment of the unpaid tolls, administrative fees, and third-party collection service fees by the registered owner may not be waived by the court unless the court finds that the registered owner of the vehicle is indigent.

(i) A registered owner who is the lessor of a vehicle for which an invoice is mailed under Subsection (b-2) or (b-3) [a notice of nonpayment has been issued] is not liable if, not later than the 30th day after the date the invoice [notice of nonpayment] is mailed, the registered owner provides to the authority:

(1) a copy of the rental, lease, or other contract document covering the vehicle on the date the unpaid toll was assessed [~~of the nonpayment~~], with the name and address of the lessee clearly legible; or

(2) electronic data, other than a photocopy or scan of a rental or lease contract, that contains the information required under Sections 521.460(c)(1), (2), and (3) covering the vehicle on the date the unpaid toll was assessed [~~of the nonpayment~~] under this section.

(i-1) If the lessor timely provides the required information under Subsection (i), the lessee of the vehicle on the date the unpaid toll was assessed [~~of the violation~~] is considered to be the registered owner of the vehicle for purposes of this section, and the authority shall follow the procedures provided by this section as if the lessee were the registered owner of the vehicle, including sending an invoice [~~—The lessee is subject to prosecution for failure to pay the proper toll if the authority sends a notice of nonpayment~~] to the lessee by first-class mail not later than the 30th day after the date of the receipt of the information from the lessor.

SECTION 3. Section 366.178, Transportation Code, as amended by this Act, applies only to a vehicle that is driven or towed through a toll assessment facility, as defined by Section 366.003, Transportation Code, as amended by this Act, on or after the effective date of this Act. A toll that is assessed before the effective date of this Act is governed by the law in effect on the date the vehicle was driven or towed through a toll assessment facility, and the former law is continued in effect for that purpose.

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

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 469**.

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

SENATE BILL 1178 WITH HOUSE AMENDMENT

Senator Nelson called **SB 1178** 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 1178** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

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.

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

SECTION 1. Subdivision (18), Section 42.002, Human Resources Code, is amended to read as follows:

(18) "Controlling person" means a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies of a ~~residential child care~~ facility or family home.

SECTION 2. Section 42.041, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding the requirements of Subsection (b)(14), a municipality that operates an elementary-age (ages 5-13) recreation program may, in lieu of an annual public hearing, accept public comment through the municipality's Internet website for at least 30 days before the municipality adopts standards of care by ordinance if the municipality:

(1) has a population of 300,000 or more; and

(2) has held at least two annual public hearings on the standards of care and adopted standards of care by ordinance after those public hearings.

SECTION 3. Section 42.044, Human Resources Code, is amended by amending Subsection (b) and adding Subsections (c-1) and (c-2) to read as follows:

(b) The department shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. ~~The department shall investigate a listed family home when the department receives a complaint of abuse or neglect of a child, as defined by Section 261.401, Family Code.~~ At least one of the annual visits must be unannounced and all may be unannounced.

(c-1) The department:

(1) shall investigate a listed family home if the department receives a complaint that:

(A) a child in the home has been abused or neglected, as defined by Section 261.401, Family Code; or

(B) otherwise alleges an immediate risk of danger to the health or safety of a child being cared for in the home; and

(2) may investigate a listed family home to ensure that the home is providing care for compensation to not more than three children, excluding children who are related to the caretaker.

(c-2) The department must notify the operator of a listed family home when a complaint is being investigated under this section and report in writing the results of the investigation to the family home's operator.

SECTION 4. Section 42.052, Human Resources Code, is amended by amending Subsection (j) and adding Subsection (j-1) to read as follows:

(j) The operator of a listed family home shall undergo initial and subsequent background and criminal history checks required under Section 42.056. If the operator of a listed family home fails to submit the information required by Section 42.056 for a subsequent background and criminal history check, the department shall automatically:

(1) suspend the home's listing until the required information is submitted;
and

(2) revoke the home's listing if the required information is not submitted within six months after the date the automatic suspension begins.

(j-1) A suspension or revocation under Subsection (j) is not a suspension or revocation under Section 42.072.

SECTION 5. Subsection (f), Section 42.054, Human Resources Code, is amended to read as follows:

(f) If a facility, agency, or home fails to pay the annual fee when due, the license, listing, or registration, as appropriate, is automatically suspended until the fee is paid. The license, listing, or registration shall be revoked if the fee is not paid within six months after the date the automatic suspension begins. A suspension or revocation under this subsection is not a suspension or revocation under Section 42.072.

SECTION 6. Section 42.056, Human Resources Code, is amended by amending Subsection (a-2) and adding Subsection (l) to read as follows:

(a-2) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a day-care center, before-school or after-school program, or school-age program shall submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a), unless the person is only required to have the person's name submitted based on criteria specified by Subsection (a)(7). This subsection does not apply to a program that is exempt from the licensing requirements of Section 42.041.

(l) In accordance with rules adopted by the executive commissioner, a person that contracts to provide one or more substitute employees to a facility or family home must submit to the department for use in conducting background and criminal history checks the name of each substitute employee. Before a substitute employee may be present at a facility or family home, the employee must meet the same requirements under this section as an employee present at the facility or family home who performs similar duties. The director, owner, or operator of a facility or family home must verify with the department that a substitute employee is eligible to be present at the facility or family home before allowing the employee to begin work.

SECTION 7. Section 42.062, Human Resources Code, is amended to read as follows:

Sec. 42.062. CERTAIN EMPLOYMENT AND SERVICE PROHIBITED. A person may not be employed as a controlling person or serve in that capacity in a [residential child care] facility or family home if the person [may not employ in any capacity a person who] is not eligible to receive a license or certification for the operation of a [residential child care] facility or family home under Section 42.072(g) or [who] has been denied a license under Section 42.046 for a substantive reason.

SECTION 8. Section 42.072, Human Resources Code, is amended by adding Subsection (c-1) and amending Subsections (e) and (g) to read as follows:

(c-1) A person described by Subsection (c) may not be a controlling person in any facility or family home during the five-year period in which the person is ineligible to receive a license, listing, registration, or certification.

(e) A person may continue to operate a facility or family home during an appeal of a license, listing, or registration [denial or] revocation unless the operation of the facility or family home poses a risk to the health or safety of children. The executive commissioner shall by rule establish the criteria for determining whether the operation of a facility or family home poses a risk to the health or safety of children. The department shall notify the facility or family home of the criteria the department used

to determine that the operation of the facility or family home poses a risk to health or safety and that the facility or family home may not operate. A person who has been notified by the department that the facility or home may not operate under this section may seek injunctive relief from a district court in Travis County or in the county in which the facility or home is located to allow operation during the pendency of an appeal. The court may grant injunctive relief against the agency's action only if the court finds that the child-care operation does not pose a health or safety risk to children. A court granting injunctive relief under this subsection shall have no other jurisdiction over an appeal of final agency action unless conferred by Chapter 2001, Government Code.

(g) Notwithstanding Subsection (c), the department may refuse to issue a license, listing, registration, or certification to:

(1) a person whose license, listing, registration, or certification for a ~~[residential child care]~~ facility or family home was revoked by the department or by court order;

(2) a person who was a controlling person of a ~~[residential child care]~~ facility or family home at the time conduct occurred that resulted in the revocation of the license, listing, registration, or certification of the facility or family home;

(3) a person who voluntarily closed a ~~[residential child care]~~ facility or family home or relinquished the person's license, listing, registration, or certification after:

(A) the department took an action under Subsection (a) in relation to the facility, family home, or person; or

(B) the person received notice that the department intended to take an action under Subsection (a) in relation to the facility, family home, or person; or

(4) a person who was a controlling person of a ~~[residential child care]~~ facility or family home at the time conduct occurred that resulted in the closure of the facility or family home or relinquishment of the license, listing, registration, or certification in the manner described by Subdivision (3).

SECTION 9. Subsection (a), Section 42.078, Human Resources Code, is amended to read as follows:

(a) The department may impose an administrative penalty against a facility or family home licensed, ~~[or]~~ registered, or listed under this chapter that violates this chapter or a rule or order adopted under this chapter. In addition, the department may impose an administrative penalty against a residential child-care facility or a controlling person of a residential child-care facility if the facility or controlling person:

(1) violates a term of a license or registration issued under this chapter;

(2) makes a statement about a material fact that the facility or person knows or should know is false:

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

(B) in response to a matter under investigation;

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

(A) a book, record, or file required to be maintained by the facility; or

(B) any part of the premises of the facility;

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

(5) fails to pay a penalty assessed under this chapter on or before the date the penalty is due, as determined under this section.

SECTION 10. Chapter 42, Human Resources Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES

Sec. 42.201. DEFINITIONS. In this subchapter:

(1) "Shelter" means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals and families, including a family violence shelter, a homeless shelter, and an emergency shelter. The term does not include a temporary facility established in response to a natural or other disaster.

(2) "Shelter care" means child care that is provided:

(A) to seven or more children under 14 years of age who temporarily reside at a shelter each with an adult who is related to the child by blood or who is the child's managing conservator;

(B) by a person who is not a temporary resident of a shelter; and

(C) while the adult described by Paragraph (A) is away from the shelter.

(3) "Shelter day-care facility" means a shelter that provides shelter care for not more than 24 hours a day, but at least four hours a day, three or more days a week.

Sec. 42.202. PERMIT REQUIRED. (a) Except as provided by Subsections (b) and (e), a shelter may not provide shelter care unless the shelter holds a permit issued by the department under this subchapter.

(b) A shelter is not required to obtain a permit to provide shelter care under this subchapter if the shelter holds a license to operate a child-care facility that is issued by the department under Subchapter C. A shelter that holds that license must comply with the applicable provisions of Subchapter C, the applicable rules of the department, and any specific terms of the license.

(c) Notwithstanding any other law, including Section 42.041, a shelter that holds a permit issued under this subchapter is not required to hold a license under Subchapter C to operate a shelter day-care facility.

(d) The department may not issue a permit under this subchapter to a shelter that provides child care to a child who is not a resident of the shelter. A shelter that provides child care described by this subsection must hold a license to operate a child-care facility issued under Subchapter C.

(e) A shelter is not required to obtain a permit under this subchapter or a license under Subchapter C if the shelter provides shelter care for:

(1) less than four hours a day or for less than three days a week; or

(2) six or fewer children.

Sec. 42.203. APPLICATION; INITIAL INSPECTION AND BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall develop and implement a streamlined procedure by which a shelter may apply for and be issued a permit to operate a shelter day-care facility. The shelter must submit an application for the permit to the department on a form prescribed by the department.

(b) Except as provided by Section 42.204, on receipt of a shelter's application for a permit, the department shall:

(1) conduct an initial inspection of the shelter day-care facility to ensure that the shelter is able to comply with the provisions of this subchapter and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located; and

(2) conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by Section 42.206(a).

(c) The department may charge an applicant an administrative fee in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

(d) The department shall process an application not later than the 30th day after the date the department receives all of the required information.

Sec. 42.204. CONVERSION OF LICENSE. (a) The department shall develop and implement a procedure by which a shelter that holds a license to operate a child-care facility that is issued under Subchapter C before September 1, 2012, may convert the license to a permit under this subchapter. The procedure must include an abbreviated application form for use by the shelter in applying for the permit.

(b) The department may waive the requirements under Section 42.203(b) for an initial inspection or background and criminal history checks with respect to a licensed child-care facility seeking to convert a license to a permit under this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

Sec. 42.205. CAREGIVER QUALIFICATIONS AND TRAINING; CHILD-TO-CAREGIVER RATIOS. (a) The executive commissioner shall adopt rules that specify the minimum:

(1) qualifications and training required for a person providing child care in a shelter day-care facility; and

(2) child-to-caregiver ratios in a shelter day-care facility.

(b) In adopting rules under this section, the executive commissioner shall consider:

(1) the special circumstances and needs of families that seek temporary shelter; and

(2) the role of a shelter in assisting and supporting families in crisis.

Sec. 42.206. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED. (a) In accordance with rules adopted by the executive commissioner, a shelter shall, when applying for a permit under this subchapter and at least once during each 24-month period after receiving that permit, submit to the department for use in conducting background and criminal history checks:

(1) the name of any director or prospective director of the shelter day-care facility and the name of each caregiver or prospective caregiver employed at the facility to provide care to children;

(2) the name of each person counted in child-to-caregiver ratios at the shelter day-care facility; and

(3) the name of each person 14 years of age or older who will have unsupervised access to one or more children while in the care of the shelter day-care facility.

(b) In addition to the requirements of Subsection (a), a shelter shall submit a complete set of fingerprints of each person required to undergo a criminal history check under Subsection (a) if:

(1) the person has lived outside the state at any time during the previous five years; or

(2) the shelter has reason to suspect that the person has a criminal history in another state.

(c) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a) or (b), as applicable;

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or another criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(d) For purposes of Sections 411.114 and 411.087, Government Code:

(1) a shelter that applies for a permit is considered to be an applicant for a license under this chapter; and

(2) a shelter day-care facility operating under a permit issued under this subchapter is considered to be a child-care facility licensed under this chapter.

(e) The department shall require the shelter to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

Sec. 42.207. APPLICABILITY OF OTHER LAW. Except as otherwise provided by this subchapter, a shelter day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002, and the provisions of this chapter and the department's rules that apply to a child-care facility licensed under Subchapter C do not apply to a shelter day-care facility.

Sec. 42.208. REPORTING OF INCIDENTS AND VIOLATIONS. A shelter day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

Sec. 42.209. AUTHORITY TO CONDUCT LIMITED INSPECTIONS.

(a) The department may inspect a shelter day-care facility operating under this subchapter if the department receives a complaint or report of child abuse or neglect alleged to have occurred at the shelter day-care facility.

(b) If the department inspects a shelter day-care facility as authorized by this section, the department may require the facility to take appropriate corrective action the department determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. The department may continue to inspect the facility until corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) The department may charge a shelter issued a permit under this subchapter a reasonable fee for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

Sec. 42.210. SUSPENSION, DENIAL, OR REVOCATION. (a) The department may suspend, deny, or revoke a permit issued to a shelter under this subchapter if the shelter does not comply with the provisions of this subchapter or any applicable department rules.

(b) The department may refuse to issue a permit under this subchapter to a shelter that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by the department.

(c) A shelter day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 to the same extent and in the same manner as a licensed child-care facility is subject to that section.

SECTION 11. Subsection (a), Section 43.010, Human Resources Code, is amended to read as follows:

(a) The department may deny, revoke, suspend, or refuse to renew a license, or place on probation or reprimand a license holder for:

- (1) violating this chapter or a rule adopted under this chapter;
- (2) circumventing or attempting to circumvent the requirements of this chapter or a rule adopted under this chapter;
- (3) engaging in fraud or deceit related to the requirements of this chapter or a rule adopted under this chapter;
- (4) providing false or misleading information to the department during the license application or renewal process for any person's license;
- (5) making a statement about a material fact during the license application or renewal process that the person knows or should know is false;
- (6) having:

(A) a criminal history or central registry record that would prohibit a person from working in a child-care facility, as defined by Section 42.002, under rules applicable to that type of facility; or

(B) a criminal history relevant to the duties of a licensed child-care or child-placing administrator, as those duties are specified in rules adopted by the executive commissioner;

(7) using drugs or alcohol in a manner that jeopardizes the person's ability to function as an administrator; or

(8) performing duties as a child-care administrator in a negligent manner.

SECTION 12. Section 411.087, Government Code, is amended by amending Subsections (a) and (e) and adding Subsection (f) to read as follows:

(a) Unless otherwise authorized by Subsection (e), a [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the department criminal history record information maintained by the department that relates to another person is authorized to:

(1) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to that person; or

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

(e) The department may provide access to state and national criminal history record information to qualified [nongovernmental] entities entitled to that information under 42 U.S.C. Section 5119a. The department must follow federal law and regulation, federal executive orders, and federal policy in releasing information under this subsection.

(f) Notwithstanding any other law, a person, agency, department, political subdivision, or other entity entitled to access the criminal history record information of a person under Subsection (e) is not required to collect or submit the person's fingerprints if:

(1) a complete set of the person's fingerprints was previously submitted under Subsection (d)(1);

(2) the department retained the fingerprints;

(3) the fingerprints are acceptable to the Federal Bureau of Investigation for access to criminal history record information; and

(4) the only purpose for which the person's fingerprints are collected is to access criminal history record information under Subsection (e).

SECTION 13. Subsection (a), Section 411.114, Government Code, is amended to read as follows:

(a)(1) In this subsection:

(A) "Child," "child-care facility," "child-placing agency," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(B) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

~~[(C) "Maternity home" has the meaning assigned by Section 249.001, Health and Safety Code.]~~

(D) "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(E) "Ward" has the meaning assigned by Section 601, Texas Probate Code.

(2) The Department of Family and Protective Services shall obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, certification, or listing under Chapter 42, Human Resources Code~~[- or Chapter 249, Health and Safety Code];~~

(B) an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, or family home~~[- or maternity home]~~ licensed, registered, certified, or listed under Chapter 42, Human Resources Code~~[- or Chapter 249, Health and Safety Code];~~

(C) a person 14 years of age or older who will be regularly or frequently working or staying in a child-care facility or~~;~~ family home~~[- or maternity home]~~ while children are being provided care, other than a child in the care of the home or facility;

(D) an applicant selected for a position with the Department of Family and Protective Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Family and Protective Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) a registered volunteer with the Department of Family and Protective Services;

(G) a person providing or applying to provide in-home, adoptive, or foster care for children in the care of the Department of Family and Protective Services and other persons living in the residence in which the child will reside;

(H) a Department of Family and Protective Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) a person who is the subject of a report the Department of Family and Protective Services receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the statutory definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person who is the subject of the report is not also the victim of the alleged conduct;

(J) a person providing child care for a child who is in the care of the Department of Family and Protective Services and who is or will be receiving adoptive, foster, or in-home care;

(K) through a contract with a nonprofit management center, an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a nonprofit, tax-exempt organization that provides any service that involves the care of or access to children, elderly persons, or persons with a disability; or

(L) an applicant for a child-care administrator or child-placing agency administrator license under Chapter 43, Human Resources Code.

(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 or 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 or 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.

(4) Subject to Section 411.087, the Department of Family and Protective ~~[and Regulatory]~~ Services is entitled to:

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2); and

(B) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3). Law enforcement entities shall expedite the furnishing of such information to Department of Family and Protective ~~[and Regulatory]~~ Services workers to ensure prompt criminal background checks for the safety of alleged victims and Department of Family and Protective ~~[and Regulatory]~~ Services workers.

(5) The Department of Family and Protective ~~[and Regulatory]~~ Services may not use the authority granted under this section to harass an employee or volunteer. The executive commissioner of the Health and Human Services Commission ~~[Board of Protective and Regulatory Services]~~ shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) Criminal history record information obtained by the Department of Family and Protective ~~[and Regulatory]~~ Services under this subsection may not be released to any person except:

(A) on court order;

(B) with the consent of the person who is the subject of the criminal history record information;

(C) for purposes of an administrative hearing held by the Department of Family and Protective ~~[and Regulatory]~~ Services concerning the person who is the subject of the criminal history record information; or

(D) as provided by Subdivision (7).

(7) The Department of Family and Protective ~~[and Regulatory]~~ Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a child-care facility, child-placing agency, or family home~~[-or maternity home]~~ listed in Subdivision (2) that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subdivision (2)(E) or (3) who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information; or

(D) an adult residing with a child, elderly person, or person with a disability and the person who is the subject of the criminal history record information, if the Department of Family and Protective ~~[and Regulatory]~~ Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the child, elderly person, or person with a disability or the adult.

SECTION 14. Subsection (e), Section 81.042, Health and Safety Code, is amended to read as follows:

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

(1) a professional registered nurse;

- (2) an administrator or director of a public or private temporary or permanent child-care facility;
- (3) an administrator or director of a nursing home, personal care home, ~~maternity home,~~ adult respite care center, or adult day-care center;
- (4) an administrator of a home health agency;
- (5) an administrator or health official of a public or private institution of higher education;
- (6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;
- (7) a superintendent, manager, or health official of a public or private camp, home, or institution;
- (8) a parent, guardian, or householder;
- (9) a health professional;
- (10) an administrator or health official of a penal or correctional institution;
- or

(11) emergency medical service personnel, a peace officer, or a firefighter.

SECTION 15. (a) The Department of Family and Protective Services shall develop and implement a procedure by which a maternity home that provides residential child care to a minor mother and that holds a license issued under Chapter 249, Health and Safety Code, before September 1, 2012, may convert the license to a residential child-care facility license issued under Chapter 42, Human Resources Code.

(b) The Department of Family and Protective Services may waive requirements for an initial inspection or initial background and criminal history checks with respect to a maternity home seeking to convert a license under Subsection (a) of this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

SECTION 16. The following laws are repealed:

- (1) Chapter 249, Health and Safety Code; and
- (2) Subsection (g-2), Section 42.042, Human Resources Code.

SECTION 17. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2011.

(b) The changes in law made by this Act by the amendment of Subsection (a), Section 411.114, Government Code, and Subsection (e), Section 81.042, Health and Safety Code, the enactment of Subchapter G, Chapter 42, Human Resources Code, and the repeal of Chapter 249, Health and Safety Code, and Subsection (g-2), Section 42.042, Human Resources Code, take effect September 1, 2012.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 1178**.

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

SENATE BILL 1422 WITH HOUSE AMENDMENT

Senator Nelson called **SB 1422** 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 1422** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to coordinated county transportation authorities; creating an offense.

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

SECTION 1. Section 460.106(d), Transportation Code, is amended to read as follows:

(d) Except as provided by Subchapter I, a [A] service plan may be implemented in an area of the county participating in the authority only if a majority of votes received favor the authorization of a tax levy by the authority.

SECTION 2. Subchapter C, Chapter 460, Transportation Code, is amended by adding Sections 460.1091 and 460.1092 to read as follows:

Sec. 460.1091. ENFORCEMENT OF FARES AND OTHER CHARGES; PENALTIES. (a) A board of directors by resolution may prohibit the use of the public transportation system by a person without payment of the appropriate fare for the use of the system and may establish reasonable and appropriate methods to ensure that persons using the public transportation system pay the appropriate fare for that use.

(b) A board of directors by resolution may provide that a fare for or charge for the use of the public transportation system that is not paid incurs a reasonable administrative fee.

(c) An authority shall post signs designating each area in which a person is prohibited from using the transportation system without payment of the appropriate fare.

(d) A person commits an offense if the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the public transportation system without paying the appropriate fare.

(e) If the person fails to provide proof that the person paid the appropriate fare for the use of the public transportation system and fails to pay any administrative fee assessed under Subsection (b) on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare and the administrative fee, it is prima facie evidence that the person used the public transportation system without paying the appropriate fare.

(f) The notice required by Subsection (e) may be included in a citation issued to the person by a peace officer under Article 14.06, Code of Criminal Procedure, or by a fare enforcement officer under Section 460.1092, in connection with an offense relating to the nonpayment of the appropriate fare for the use of the public transportation system.

(g) It is an exception to the application of Subsection (d) that on or before the 30th day after the date the authority notified the person that the person is required to pay the amount of the fare and any administrative fee assessed under Subsection (b), the person:

(1) provided proof that the person paid the appropriate fare at the time the person used the transportation system or at a later date or that the person was exempt from payment; and

(2) paid the administrative fee assessed under Subsection (b), if applicable.

(h) An offense under Subsection (d) is:

(1) a misdemeanor punishable by a fine not to exceed \$100; and

(2) not a crime of moral turpitude.

(i) A justice court located in the service area of the authority may enter into an agreement with the authority to try all criminal cases that arise under Subsection (d). Notwithstanding Articles 4.12 and 4.14, Code of Criminal Procedure, if a justice court enters into an agreement with the authority:

(1) a criminal case that arises under Subsection (d) must be tried in the justice court; and

(2) the justice court has exclusive jurisdiction in all criminal cases that arise under Subsection (d).

Sec. 460.1092. FARE ENFORCEMENT OFFICERS. (a) An authority may employ persons to serve as fare enforcement officers to enforce the payment of fares for use of the public transportation system by:

(1) requesting and inspecting evidence showing payment of the appropriate fare from a person using the public transportation system; and

(2) issuing a citation to a person described by Section 460.1091(d).

(b) Before commencing duties as a fare enforcement officer, a person must complete at least eight hours of training approved by the authority that is appropriate to the duties required of a fare enforcement officer.

(c) While performing duties, a fare enforcement officer shall:

(1) wear a distinctive uniform, badge, or insignia that identifies the person as a fare enforcement officer; and

(2) work under the direction of the authority's chief administrative officer.

(d) A fare enforcement officer may:

(1) request evidence showing payment of the appropriate fare from passengers of the public transportation system or evidence showing exemption from the payment requirement;

(2) request personal identification or other documentation designated by the authority from a passenger who does not produce evidence showing payment of the appropriate fare on request by the officer;

(3) instruct a passenger to immediately leave the public transportation system if the passenger does not possess evidence showing payment or exemption from payment of the appropriate fare; or

(4) file a complaint in the appropriate court that charges the person with an offense under Section 460.1091(d).

(e) A fare enforcement officer may not carry a weapon while performing duties under this section unless the officer is a certified peace officer.

(f) A fare enforcement officer who is not a certified peace officer is not a peace officer and has no authority to enforce a criminal law, except as provided by this section.

SECTION 3. Section 460.406(c), Transportation Code, is amended to read as follows:

(c) The board of directors may authorize the negotiation of a contract without competitive sealed bids or proposals if:

(1) the aggregate amount involved in the contract is \$50,000 [~~\$25,000~~] or less;

(2) the contract is for construction for which not more than one bid or proposal is received;

(3) the contract is for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;

(4) the contract is to respond to an emergency for which the public exigency does not permit the delay incident to the competitive process;

(5) the contract is for personal or professional services or services for which competitive bidding is precluded by law;

(6) the contract, without regard to form and which may include bonds, notes, loan agreements, or other obligations, is for the purpose of borrowing money or is a part of a transaction relating to the borrowing of money, including:

(A) a credit support agreement, such as a line or letter of credit or other debt guaranty;

(B) a bond, note, debt sale or purchase, trustee, paying agent, remarketing agent, indexing agent, or similar agreement;

(C) an agreement with a securities dealer, broker, or underwriter; and

(D) any other contract or agreement considered by the board of directors to be appropriate or necessary in support of the authority's financing activities;

(7) the contract is for work that is performed and paid for by the day as the work progresses;

(8) the contract is for the purchase of land or a right-of-way;

(9) the contract is for the purchase of personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or

(C) by a political subdivision of this state, a state agency, or an entity of the federal government;

(10) the contract is for services performed by blind or severely disabled persons;

(11) the contract is for the purchase of electricity; or

(12) the contract is one awarded for alternate project delivery under Sections 271.117-271.119, Local Government Code.

SECTION 4. Chapter 460, Transportation Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. PARTICIPATION IN AUTHORITY THROUGH TAX INCREMENT PAYMENTS

Sec. 460.601. DEFINITION. In this subchapter, "tax increment" means the amount of revenue generated from ad valorem taxes, sales and use taxes imposed by a municipality under Section 321.101(a), Tax Code, or both ad valorem and sales and

use taxes that are attributable to a public transportation financing area designated under this subchapter that exceeds the amount attributable to the area for the year in which the area was designated.

Sec. 460.602. PARTICIPATION IN SERVICE PLAN; AGREEMENT WITH MUNICIPALITY. A service plan may be implemented in an area of a municipality that has not authorized the authority's sales and use tax levy if:

(1) the authorization by the municipality of the authority's sales and use tax levy, when combined with the rates of all sales and use taxes imposed by other political subdivisions in the municipality, would exceed two percent in any location in the municipality; and

(2) the municipality has entered into an agreement with the authority to provide public transportation services in a public transportation financing area designated under this subchapter in exchange for all or a portion of the tax increment in the area.

Sec. 460.603. DESIGNATION OF PUBLIC TRANSPORTATION FINANCING AREA. The governing body of a municipality by ordinance may designate a contiguous geographic area in the jurisdiction of the municipality to be a public transportation financing area. The geographic area:

(1) must have one or more transit facilities that include a structure provided for or on behalf of the authority for embarkation on and disembarkation from public transportation services provided by the authority, which may include a transit stop, transit shelter, transit garage, or transit terminal;

(2) may include any territory located in the municipality's jurisdiction; and

(3) must include an area one-half mile on either side of the proposed service route served by a structure under Subdivision (1), to the extent that that area is included in the municipality's boundaries.

Sec. 460.604. HEARING. (a) Before adopting an ordinance designating a public transportation financing area, the municipality must hold a public hearing on the creation of the public transportation financing area and its benefits to the municipality and to property in the proposed public transportation financing area. At the hearing, an interested person may speak for or against the designation of the public transportation financing area.

(b) Not later than the 30th day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the municipality.

Sec. 460.605. DESIGNATION OF TAX INCREMENT. (a) In the ordinance designating an area as a public transportation financing area, the municipality must:

(1) designate a portion or amount of the tax increment to be paid to the authority and deposited in the tax increment account under Section 460.606; and

(2) state whether the tax increment will be generated from ad valorem tax revenue, sales and use tax revenue, or both.

(b) The amount designated for payment and deposit may not exceed the equivalent of the amount that would be collected by the authority if the municipality had authorized the authority's sales and use tax levy.

(c) Notwithstanding Subsection (b), if the amount designated under Subsection (b) is not sufficient to compensate the authority for the maintenance and operating expenses of providing service to the public transportation financing area and for any capital cost incurred for the benefit of the public transportation financing area, the authority may request and the municipality shall designate that the entire portion or amount of the tax increment be deposited in the tax increment account, regardless of whether that amount exceeds the authority's sales and use tax levy equivalent, until any amounts owed for all previous years' maintenance and operating expenses and for any capital cost incurred for the benefit of the public transportation financing area have been paid.

Sec. 460.606. TAX INCREMENT ACCOUNT; USE OF TAXES. (a) An authority that enters into an agreement with a municipality to provide services to a public transportation financing area must establish a tax increment account and maintain the account as a fiduciary of the municipality.

(b) The taxes to be deposited into the tax increment account may be disbursed from the account only to:

(1) compensate the authority for maintenance and operating expenses of providing services to the public transportation financing area, including compensation for expansion, improvement, rehabilitation, or enhancement amounts owed for previous years' maintenance and operating expenses for the public transportation financing area;

(2) compensate the authority for any capital cost incurred for the benefit of the public transportation financing area;

(3) notwithstanding Section 321.506, Tax Code, satisfy claims of holders of tax increment bonds, notes, or other obligations issued or incurred for projects or services that directly or indirectly benefit the public transportation financing area through the expansion, improvement, rehabilitation, or enhancement of transportation service by the authority under the service plan; and

(4) pay any capital recovery fee required by the authority.

Sec. 460.607. AGREEMENT WITH COMPTROLLER. Before pledging or otherwise committing money in the tax increment account under Section 460.606, the governing body of a municipality must enter into an agreement under Subchapter E, Chapter 271, Local Government Code, to authorize and direct the comptroller to:

(1) withhold from any payment to which the municipality may be entitled the amount of the payment due to the tax increment account;

(2) deposit that amount into the tax increment account; and

(3) continue withholding and making additional payments into the tax increment account until an amount sufficient to satisfy the amount due to the account has been met.

Sec. 460.608. ACCOUNTING OF MAINTENANCE AND OPERATING EXPENSES. An authority shall, under an agreement under Section 460.602:

(1) provide to the municipality an annual accounting, with supporting documentation, of the annual maintenance and operating expenses of providing service to the public transportation financing area; and

(2) notify the municipality when amounts owed for all previous years' maintenance and operating expenses and for any capital cost incurred for the benefit of the public transportation financing area have been fully paid.

Sec. 460.609. CAPITAL RECOVERY FEE. An agreement to provide services to a public transportation financing area may require the municipality to pay the authority a capital recovery fee. An authority that requires a capital recovery fee shall:

(1) apply toward the amount owed for the capital recovery fee any amount in the tax increment account that exceeds the amount necessary to compensate the authority for:

(A) the annual maintenance and operating expenses of providing service to the public transportation financing area, including amounts for expansion, improvement, rehabilitation, or enhancement that may be owed for previous years' maintenance and operating expenses; and

(B) any capital cost incurred for the benefit of the public transportation financing area; and

(2) notify the municipality when the amount owed for the capital recovery fee has been fully paid.

Sec. 460.610. USE OF SURPLUS TAX INCREMENT PAYMENT AMOUNTS. After any applicable capital recovery fee has been paid, the authority and the municipality shall negotiate to determine use of the amount of tax increment payments that exceeds the amount necessary to compensate the authority for the annual maintenance and operating expenses of providing service to the public transportation financing area. The excess amounts may be used to develop infrastructure enhancement, replacement, or improvement projects in the public transportation financing area that benefit both the municipality and the authority.

Sec. 460.611. TERMINATION OF PUBLIC TRANSPORTATION FINANCING AREA. If the tax increment is pledged to the payment of bonds and interest on the bonds or to the payment of any other obligations, the public transportation financing area or an agreement for services under Section 460.602 may not be terminated by agreement of the parties unless the municipality that created the public transportation financing area deposits or causes to be deposited with a trustee or other escrow agent authorized by law funds in an amount that, together with the interest on the investment of the funds in direct obligations of the United States, will be sufficient to pay:

(1) the principal of, premium, if any, and interest on all bonds issued on behalf of the public transportation financing area at maturity or at the date fixed for redemption of the bonds; and

(2) any other amounts that may become due, including compensation due or to become due to the trustee or escrow agent, as well as to pay the principal of and interest on any other obligations incurred on behalf of the public transportation financing area.

SECTION 5. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 1422**.

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

SENATE BILL 1649 WITH HOUSE AMENDMENT

Senator Watson called **SB 1649** 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 1649** (house committee report) in SECTION 1 of the bill by striking proposed Section 772.0071(a)(2), Government Code (page 2, lines 1 through 12), and substituting the following:

(2) "Border region" means the portion of this state that is located in a county that is adjacent to:

(A) an international border; or

(B) a county described by Paragraph (A).

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 1649**.

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

SENATE BILL 760 WITH HOUSE AMENDMENT

Senator West called **SB 760** 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 760** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the term of interlocal contracts.

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

SECTION 1. Section 791.011, Government Code, is amended by amending Subsection (f) and adding Subsection (i) to read as follows:

(f) An interlocal contract may be renewed [~~annually~~].

(i) Notwithstanding Subsection (d), an interlocal contract may have a specified term of years.

SECTION 2. This Act takes effect on the date on which the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, to authorize 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 is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 760**.

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

SENATE BILL 1179 WITH HOUSE AMENDMENT

Senator Nelson called **SB 1179** 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 1179** (house committee report) as follows:

- (1) Strike Section 20 of the bill, amending Section 122.0095(a), Human Resources Code (page 13, lines 3-13).
- (2) In Section 26 of the bill, strike Subdivision (124) of that section repealing Sections 122.0095(b)-(c), Human Resources Code (page 23, lines 12 and 13).
- (3) Renumber the SECTIONS of the bill and the subdivisions within those sections accordingly.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 1179**.

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

SENATE BILL 1234 WITH HOUSE AMENDMENT

Senator West called **SB 1234** 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 1234** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to municipal management districts.

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

SECTION 1. Sections 375.003(3) and (4), Local Government Code, are amended to read as follows:

(3) "Commission" means the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

(4) "Disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians;

(B) a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described by Paragraph (A);

(C) a partnership that is formed for the purpose of making a profit, in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A), and in which minority or women partners have a proportionate interest in the control, operation, and management of the partnership affairs;

(D) a joint venture between minority and women's group members formed for the purpose of making a profit and the minority participation in which is based on the sharing of real economic interest, including equally proportionate control over management, interest in capital, and interest earnings, other than a joint venture in which majority group members own or control debt securities, leasehold interest, management contracts, or other interests; [✗]

(E) a supplier contract between persons described in Paragraph (A) and a prime contractor in which the disadvantaged business is directly involved for the manufacture or distribution of the supplies or materials or otherwise for warehousing and shipping the supplies; or

(F) a person certified as a disadvantaged business by:

(i) this state;

(ii) a political subdivision of this state; or

(iii) a regional planning commission, council of governments, or

similar regional planning agency created under Chapter 391.

SECTION 2. Section 375.022(c), Local Government Code, is amended to read as follows:

(c) The petition must:

(1) describe the boundaries of the proposed district:

(A) by metes and bounds;

(B) by verifiable landmarks, including a road, creek, or railroad line; or

(C) if there is a recorded map or plat and survey of the area, by lot and block number;

(2) state the specific purposes for which the district will be created;

(3) state the general nature of the work, projects, or services proposed to be provided, the necessity for those services, and the costs as estimated by the persons filing the petition;

(4) include a name of the district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District";

(5) include a proposed list of initial directors that includes the directors' experience and initial term of service; and

(6) include a resolution of the governing body of the municipality in support of the creation of the district.

SECTION 3. Section 375.043, Local Government Code, is amended to read as follows:

Sec. 375.043. ANNEXATION. A district may annex land as provided by Section 49.301 and Chapter 54, Water Code, subject to the approval of the governing body of the municipality.

SECTION 4. Section 375.044(b), Local Government Code, is amended to read as follows:

(b) The board shall call a hearing on the exclusion of land or other property from the district if a signed petition evidencing the consent of the owners of a majority of the acreage in the district, according to the most recent certified tax roll of the county, is filed [landowner or property owner in the district files] with the secretary of the board [~~a written petition~~] requesting the hearing before the issuance of bonds.

SECTION 5. Section 375.061, Local Government Code, is amended to read as follows:

Sec. 375.061. NUMBER OF DIRECTORS; TERMS. A district is governed by a board of at least five [~~nine~~] but not more than 30 directors who serve staggered four-year terms.

SECTION 6. Section 375.071, Local Government Code, is amended to read as follows:

Sec. 375.071. QUORUM. One-half of the serving directors constitutes a quorum, and a concurrence of a majority of a quorum of directors is required for any official action of the district. The written consent of at least two-thirds of the directors is required to authorize the levy of assessments, the levy of taxes, the imposition of impact fees, or the issuance of bonds.

SECTION 7. Section 375.091, Local Government Code, is amended to read as follows:

Sec. 375.091. GENERAL POWERS OF DISTRICT. [~~(a)~~] A district has the rights, powers, privileges, authority, and functions conferred by the general law of this state applicable to conservation and reclamation districts created under Article XVI, Section 59, of the Texas Constitution, including those conferred by Chapter 54, Water Code.

~~[(b) The district may contract and manage its affairs and funds for any corporate purpose in accordance with Chapter 54, Water Code.~~

~~[(c) The district has all the rights, powers, privileges, authority, and functions of road districts and road utility districts created pursuant to Article III, Section 52, of the Texas Constitution, including the power to levy ad valorem taxes for the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes, or in aid thereof. This power includes the power to levy ad valorem taxes to provide for mass transit systems in the manner and subject to the limitations provided in Article III, Section 52, and Article III, Section 52(a), of the Texas Constitution.~~

~~[(d) A district has those powers conferred by Chapters 365 and 441, Transportation Code, and the additional rights, privileges, authority, and functions contained in those chapters.]~~

SECTION 8. Subchapter E, Chapter 375, Local Government Code, is amended by adding Sections 375.0921 and 375.0922 to read as follows:

Sec. 375.0921. AUTHORITY FOR ROAD PROJECTS. (a) Under Section 52, Article III, Texas Constitution, a district may design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

(b) The district may impose ad valorem taxes to provide for mass transit systems in the manner and subject to the limitations provided by Section 52, Article III, and Section 52-a, Article III, Texas Constitution.

Sec. 375.0922. ROAD STANDARDS AND REQUIREMENTS. (a) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

(b) If a road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, the road project must meet all applicable construction standards, subdivision requirements, and regulations of each county in which the road project is located.

(c) If the state will maintain and operate the road, the Texas Transportation Commission must approve the plans and specifications of the road project.

SECTION 9. Section 375.097(a), Local Government Code, is amended to read as follows:

(a) The board may appoint a hearings examiner to conduct any hearing called by the board, including a hearing required by Chapter 395. The hearings examiner may be an employee or contractor of the district, or a member of the district's board.

SECTION 10. Subchapter E, Chapter 375, Local Government Code, is amended by adding Section 375.098 to read as follows:

Sec. 375.098. DISTRICT ACT OR PROCEEDING PRESUMED VALID. (a) A governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(4) a matter that on the effective date of this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

SECTION 11. Section 375.112(a)(1), Local Government Code, is amended to read as follows

(1) landscaping, lighting, banners, and signs; streets and sidewalks; pedestrian skywalks, crosswalks, and tunnels; seawalls; marinas; drainage and navigation improvements; pedestrian malls; solid waste, water, sewer and power facilities, including electrical, gas, steam, cogeneration, and chilled water facilities; parks, plazas, lakes, rivers, bayous, ponds, and recreation and scenic areas; historic areas; fountains; works of art; off-street parking facilities, bus terminals, heliports, and mass transit systems; theatres, studios, exhibition halls, production facilities and ancillary facilities in support of the foregoing; and the cost of any demolition in connection with providing any of the improvement projects;

SECTION 12. Section 375.114, Local Government Code, is amended to read as follows:

Sec. 375.114. PETITION REQUIRED. The board may not finance services and improvement projects under this chapter unless a written petition has been filed with the board requesting those improvements or services signed by:

(1) the owners of 50 percent or more of the assessed value of the property in the district subject to assessment, according to ~~[as determined from]~~ the most recent certified county property tax rolls; or

(2) the owners of 50 percent or more of the surface area of the district, excluding roads, streets, highways, and utility rights-of-way, other public areas, and any other property exempt from assessment under Section 375.162 or 375.163, according to ~~[as determined from]~~ the most recent certified county property tax rolls.

SECTION 13. Section 375.202(e), Local Government Code, is amended to read as follows:

(e) If provided by the bond order or resolution, the proceeds from the sale of bonds may be used to pay interest on the bonds during and after the period of the acquisition or construction of any improvement project to be provided through the issuance of the bonds, to pay administrative and operation expenses to create a reserve fund for the payment of the principal of and interest on the bonds, to pay costs associated with the issuance of the bonds, and to create any other funds. The proceeds of the bonds may be placed on time deposit or invested, until needed, in securities in the manner provided by the bond order or resolution.

SECTION 14. Section 375.205(a), Local Government Code, is amended to read as follows:

(a) The district shall submit bonds and the appropriate proceedings authorizing their issuance to the attorney general for examination. This subsection applies only to bonds that are public securities, as that term is defined by Section 1202.001, Government Code.

SECTION 15. Subchapter J, Chapter 375, Local Government Code, is amended by adding Section 375.209 to read as follows:

Sec. 375.209. 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 annual ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

SECTION 16. Section 375.221, Local Government Code, is amended to read as follows:

Sec. 375.221. APPLICABILITY OF WATER DISTRICTS LAW TO COMPETITIVE BIDDING ON CERTAIN ~~[PUBLIC WORKS]~~ CONTRACTS. (a) Except as provided by Subsection (b) of this section, Subchapter I, Chapter 49, Water Code, applies to a district contract for construction work, equipment, materials, or machinery.

~~(b) [A contract, other than a contract for services, for more than \$50,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, and other property, except real property, may be entered into only after competitive bids. Notice of the contract for the purpose of soliciting bids shall be published once a week for two consecutive weeks in a newspaper with general circulation in the area in which the district is located. The first publication of notice must be not later than the 14th day before the date set for receiving bids.]~~ The board may adopt rules governing receipt of bids and the award of the contract and providing for the waiver of the competitive bid requirement if:

- (1) there is an emergency;
- (2) the needed materials are available from only one source;
- (3) in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement; or
- (4) after solicitation, it is ascertained that there will be only one bidder.

~~[(b) If a proposed contract for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials, or supplies is for an estimated amount of more than \$50,000 or for a duration of more than two years, competitive sealed proposals shall be asked from at least three persons.]~~

SECTION 17. Section 375.263(a), Local Government Code, is amended to read as follows:

(a) ~~The [Except as limited by Section 375.264, the]~~ governing body of a municipality in which a district is wholly located, by a vote of not less than two-thirds of its membership, may adopt an ordinance dissolving the district.

SECTION 18. Section 375.264, Local Government Code, is amended to read as follows:

Sec. 375.264. LIMITATION ON DISSOLUTION BY BOARD. A district may not be dissolved by its board ~~[or by a municipality]~~ if the district has any outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

SECTION 19. Subchapter N, Chapter 375, Local Government Code, is amended by adding Section 375.282 to read as follows:

Sec. 375.282. STRATEGIC PARTNERSHIP AGREEMENT. A district with territory in the extraterritorial jurisdiction of a municipality may negotiate and enter into a written strategic partnership with the municipality under Section 43.0751.

SECTION 20. Sections 375.021, 375.027, and 375.064(f), Local Government Code, are repealed.

SECTION 21. The change in law made by this Act to Section 375.221, Local Government Code, applies only to a contract awarded on or after January 1, 2012. A contract awarded before January 1, 2012, is governed by the law in effect on the date the contract was awarded, and that law is continued in effect for that purpose.

SECTION 22. This Act takes effect September 1, 2011.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 1234**.

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

Nays: Ogden.

SENATE BILL 1616 WITH HOUSE AMENDMENT

Senator West called **SB 1616** 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 1616** (engrossed version) with the following:

- (1) Section 1 Article 38.43, Code of Criminal Procedure (page 3, line 20 and 21) unstrike "~~described by Subsection (b)~~"
- (2) On page 3, line 21, replace "~~(b)~~" with "(a)".
- (3) On page 3, line 21 and 22, strike "after expiration of the retention period specified by Subsection (c)".
- (4) On page 3, line 22, unstrike ", ~~but only~~".

The amendment was read.

Senator West moved to concur in the House amendment to **SB 1616**.

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

SENATE BILL 197 WITH HOUSE AMENDMENTS

Senator West called **SB 197** 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 197** (house committee report) as follows:

(1) In SECTION 5 of the bill, after added Section 548.6015(b), Transportation Code, insert the following:

(c) A penalty imposed under this section is in lieu of a civil or administrative penalty imposed under another provision of this chapter for the same violation.

(2) In SECTION 6 of the bill, in added Section 548.6036(a), Transportation Code, after "subject to", add "an administrative or civil penalty or criminal".

Floor Amendment No. 2

Amend **SB 197** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) The Department of Public Safety and the Texas Department of Motor Vehicles shall conduct a study regarding the feasibility of and best practices for using an electronic motor vehicle inspection system to consolidate the inspection and registration of motor vehicles in this state.

(b) Not later than December 1, 2012, the Department of Public Safety and the Texas Department of Motor Vehicles shall report the results of the study conducted under this section to the standing committees in the senate and the house of representatives that have primary jurisdiction over transportation.

The amendments were read.

Senator West moved to concur in the House amendments to **SB 197**.

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 462 WITH HOUSE AMENDMENTS

Senator West called **SB 462** 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 462** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the expunction of records and files relating to a person's arrest.

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

SECTION 1. Article 55.01, Code of Criminal Procedure, is amended by amending Subsections (a) and (a-1) and adding Subsection (a-2) to read as follows:

(a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c) [~~of this section~~]; or

(B) convicted and subsequently pardoned; or

(2) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision under Article 42.12 for the offense, unless the offense is a Class C misdemeanor, provided that [each of the following conditions exist]:

(A) regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired, an indictment or information charging the person with the commission of a felony or misdemeanor offense arising out of the transaction for which the person was arrested:

(i) has not been presented against the person at any time following the arrest, and:

(a) at least 180 days have elapsed from the date of arrest if the arrest was for an offense punishable as a Class C misdemeanor;

(b) at least one year has elapsed from the date of arrest if the arrest was for an offense punishable as a Class B or A misdemeanor;

(c) at least three years have elapsed from the date of arrest if the arrest was for an offense punishable as a felony; or

(d) the attorney representing the state certifies that the applicable arrest records and files are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person; or

(ii) [for an offense arising out of the transaction for which the person was arrested or,] if [an indictment or information charging the person with commission of a felony was] presented at any time following the arrest, was[, the indictment or information has been] dismissed or quashed, and[;

[(i) the limitations period expired before the date on which a petition for expunction was filed under Article 55.02; or

[(ii)] the court finds that the indictment or information was dismissed or quashed because the person completed a pretrial intervention program authorized under Section 76.011, Government Code, [or] because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense, or because the indictment or information [is] was void; or

(B) prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired [the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision under Article 42.12 for any offense other than a Class C misdemeanor; and

[(C) the person has not been convicted of a felony in the five years preceding the date of the arrest].

(a-1) Notwithstanding any other provision of this article, a person may not expunge records and files relating to an arrest that occurs pursuant to a warrant issued under Section 21, Article 42.12 [Subsection (a)(2)(C), a person's conviction of a felony in the five years preceding the date of the arrest does not affect the person's entitlement to expunction for purposes of an ex parte petition filed on behalf of the person by the director of the Department of Public Safety under Section 2(e), Article 55.02].

(a-2) Notwithstanding any other provision of this article, a person who intentionally or knowingly absconds from the jurisdiction after being released under Chapter 17 following an arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or (c) or Subsection (a)(2)(B) for an expunction of the records and files relating to that arrest.

SECTION 2. Section 4, Article 55.02, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. (a) If the state establishes that the person who is the subject of an expunction order is still subject to conviction for an offense arising out of the transaction for which the person was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against the person for the offense, the court may provide in its expunction order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

(a-1) The court shall provide in its expunction order that the applicable law enforcement agency and prosecuting attorney may retain the arrest records and files of any person who becomes entitled to an expunction of those records and files based on the expiration of a period described by Article 55.01(a)(2)(A)(i)(a), (b), or (c), but without the certification of the prosecuting attorney as described by Article 55.01(a)(2)(A)(i)(d).

(a-2) In the case of a person who is the subject of an expunction order on the basis of an acquittal, the court may provide in the expunction order that the law enforcement agency and the prosecuting attorney retain records and files if:

(1) the records and files are necessary to conduct a subsequent investigation and prosecution of a person other than the person who is the subject of the expunction order; or

(2) the state establishes that the records and files are necessary for use in:

(A) another criminal case, including a prosecution, motion to adjudicate or revoke community supervision, parole revocation hearing, mandatory supervision revocation hearing, punishment hearing, or bond hearing; or

(B) a civil case, including a civil suit or suit for possession of or access to a child.

(b) Unless the person who is the subject of the expunction order is again arrested for or charged with an offense arising out of the transaction for which the person was arrested or unless the court provides for the retention of records and files under Subsection (a-1) or (a-2) [~~(a) of this section~~], the provisions of Articles 55.03 and 55.04 [~~of this code~~] apply to files and records retained under this section.

SECTION 3. This Act applies to an expunction of arrest records and files for any criminal offense that occurred before, on, or after the effective date of this Act.

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

Floor Amendment No. 1

Amend **CSSB 462** (house committee report) in SECTION 1 of the bill as follows:

(1) In amended Article 55.01(a)(2)(A), Code of Criminal Procedure (page 2, lines 1 and 2), 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 2, lines 6-14), 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 amendments were read.

Senator West moved to concur in the House amendments to **SB 462**.

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

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

Nays: Fraser, Harris, Nelson, Nichols, Patrick.

SENATE BILL 1000 WITH HOUSE AMENDMENT

Senator Eltife called **SB 1000** 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 1000** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to self-directed and semi-independent status of the Texas Real Estate Commission; making an appropriation.

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

SECTION 1. 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 \$750,000 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 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. The agency's liability under this section includes liability for any lease entered into by the 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 commission 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 commission's and the board's transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

SECTION 2. 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 3. 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 4. Section 1103.103(b), Occupations Code, is repealed.

SECTION 5. (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 6. 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 7. 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 8. 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 9. 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.

SECTION 10. This Act takes effect September 1, 2011.

The amendment was read.

Senator Eltife moved to concur in the House amendment to **SB 1000**.

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

SENATE BILL 1760 WITH HOUSE AMENDMENT

Senator Lucio called **SB 1760** 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

Amend **SB 1760** (engrossed), on page 1, lines 19 and 20 by striking "THE (NAME OF COUNTY) AND THE SHERIFF'S DEPARTMENT ARE ACTING ONLY AS CONDUITS OF INFORMATION.".

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1760**.

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

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

Nays: Birdwell, Harris, Nelson, Patrick, Wentworth.

SENATE BILL 1413 WITH HOUSE AMENDMENT

Senator Hegar called **SB 1413** 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 1413** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the authority of certain counties to impose a county hotel occupancy tax and to the rate of the tax.

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

SECTION 1. Section 352.002, Tax Code, is amended by adding Subsection (p) to read as follows:

(p) The commissioners court of a county that has a population of 80,000 or less, in which two state parks are located, and through which the Colorado River flows but that is not bordered by that river may impose a tax as authorized by Subsection (a).

SECTION 2. Section 352.003, Tax Code, is amended by adding Subsection (o) to read as follows:

(o) Except as otherwise provided by this subsection, the tax rate in a county authorized to impose the tax under Section 352.002(p) may not exceed seven percent of the price paid for a room in a hotel. The county shall impose the tax authorized under Section 352.002(p) at a rate that may not exceed 0.75 percent of the price paid for a room in a hotel if the hotel is located in:

(1) a municipality that imposes a tax under Chapter 351 applicable to the hotel; or

(2) the extraterritorial jurisdiction of that municipality and the municipality imposes a tax in that area under Section 351.0025 applicable to the hotel.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 1413**.

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

SENATE BILL 8 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 8** 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 8** (house committee printing) as follows:

(1) In SECTION 2.01 of the bill, in added Section 1002.001, Health and Safety Code (page 4, line 3, through page 5, line 27), strike Subdivisions (8), (9), (10), (11), (12), and (13) and substitute:

(8) "Potentially preventable admission" means an admission of a person to a hospital or long-term care facility that may have reasonably been prevented with adequate access to ambulatory care or health care coordination.

(9) "Potentially preventable ancillary service" means a health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not be reasonably necessary for the provision of quality health care or treatment.

(10) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(11) "Potentially preventable event" means a potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events.

(12) "Potentially preventable emergency room visit" means treatment of a person in a hospital emergency room or freestanding emergency medical care facility for a condition that may not require emergency medical attention because the condition could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

(13) "Potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided; or

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome.

(2) In SECTION 2.01 of the bill, in added Section 1002.052(b)(7), Health and Safety Code (page 7, line 1), strike "and".

(3) In SECTION 2.01 of the bill, in added Section 1002.052(b), Health and Safety Code (page 7, line 2), between "(8)" and "a representative", insert: the commissioner of the Department of Aging and Disability Services;

(9) the executive director of the Texas Workforce Commission;

(10) the commissioner of the Texas Higher Education Coordinating Board;

and

(11)

(4) In SECTION 2.01 of the bill, strike added Section 1002.053(a), Health and Safety Code (page 7, lines 12-14), and substitute:

(a) Appointed members of the board serve staggered terms of four years, with the terms of as close to one-half of the members as possible expiring January 31 of each odd-numbered year.

(5) In SECTION 2.01 of the bill, in added Section 1002.061(c), Health and Safety Code (page 10, line 16), strike "Each" and substitute "Except as otherwise prohibited by law, each".

(6) In SECTION 2.01 of the bill, in added Section 1002.061, Health and Safety Code (page 10, between lines 20 and 21), insert:

(d) This section does not permit the sale of information that is confidential under Section 1002.060.

(7) In SECTION 2.01 of the bill, in added Section 1002.101(1)(C), Health and Safety Code (page 11, line 9), between "efficiency" and the underlined semicolon, insert:

∴

(i) using nationally accredited measures; or

(ii) if no nationally accredited measures exist, using measures

based on expert consensus

(8) In SECTION 2.01 of the bill, in added Section 1002.102(a)(2), Health and Safety Code (page 12, line 1), after the underlined semicolon, strike "and".

(9) In SECTION 2.01 of the bill, in added Section 1002.102(a), Health and Safety Code (page 12, line 5), between "care" and the underlined period, insert:

; and

(4) meaningful use of electronic health records by providers and electronic exchange of health information among providers

(10) In SECTION 2.01 of the bill, immediately after added Section 1002.102(b), Health and Safety Code (page 12, between lines 14 and 15), insert the following new subsections and reletter the subsequent subsections of Section 1002.102 appropriately:

(c) In developing recommendations under Subsection (b), the institute shall use nationally accredited measures or, if no nationally accredited measures exist, measures based on expert consensus.

(d) The institute may study and develop recommendations for measuring the quality of care and efficiency in state or federally funded health care delivery systems other than those described by Subsection (b).

(11) In SECTION 2.01 of the bill, in added Section 1002.151(b)(5), Health and Safety Code (page 13, line 10), after the underlined semicolon, strike "and".

(12) In SECTION 2.01 of the bill, in added Section 1002.151(b)(6), Health and Safety Code (page 13, line 11), between "satisfaction" and the underlined period, insert:

; and

(7) the meaningful use of electronic health records by providers and electronic exchange of health information among providers

(13) In SECTION 2.01 of the bill, in added Section 1002.201(a), Health and Safety Code (page 13, line 17), strike "state and how the public and health care providers" and substitute "state, what information is available to the public, and how the public and health care providers currently benefit and could potentially".

(14) In SECTION 2.01 of the bill, in added Section 1002.201(b)(1), Health and Safety Code (page 13, line 23), between "providers" and the underlined semicolon, insert "and payors".

(15) In SECTION 2.01 of the bill, immediately after added Section 1002.202(a), Health and Safety Code (page 14, between lines 8 and 9), insert:

(b) The study described by Subsection (a) shall:

(1) use the assessment described by Section 1002.201 to develop recommendations relating to the adequacy of existing data sources for carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(2) determine whether the establishment of an all payor claims database would reduce the need for some data submissions provided by payors;

(3) identify the best available sources of data necessary for the state's purposes under this chapter and Chapter 848, Insurance Code, that are not collected by the state under existing law;

(4) describe how an all payor claims database may facilitate carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(5) identify national standards for claims data collection and use, including standardized data sets, standardized methodology, and standard outcome measures of health care quality and efficiency; and

(6) estimate the costs of implementing an all payor claims database, including:

(A) the costs to the state for collecting and processing data;

(B) the cost to the payors for supplying the data; and

(C) the available funding mechanisms that might support an all payor claims database.

(16) In SECTION 2.01 of the bill, in added Section 1002.202, Health and Safety Code (page 14, line 9), reletter Subsection (b) as Subsection (c).

(17) In SECTION 2.04 of the bill (page 14, line 25), between "SECTION 2.04." and "The governor", insert "(a)".

(18) After SECTION 2.04 of the bill (page 15, between lines 2 and 3), insert:

(b) In making the initial appointments under this section, the governor shall designate seven members to terms expiring January 31, 2013, and eight members to terms expiring January 31, 2015.

(19) In SECTION 2.05(a)(4) of the bill (page 15, line 17), between "micro businesses," and "and health care providers", insert "payors,".

(20) In SECTION 2.05(b)(2) of the bill (page 16, lines 1-2), strike "Subsection (b)" and substitute "Subsection (c)".

(21) In SECTION 2.05(b)(4) of the bill (page 16, line 7), between "micro businesses," and "and health care providers", insert "payors,".

(22) In SECTION 3.01 of the bill, strike added Section 848.001(2), Insurance Code (page 16, line 18, through page 17, line 3), and substitute:

(2) "Health care collaborative" means an entity:

(A) that undertakes to arrange for medical and health care services for insurers, health maintenance organizations, and other payors in exchange for payments in cash or in kind;

(B) that accepts and distributes payments for medical and health care services;

(C) that consists of:

(i) physicians;

(ii) physicians and other health care providers;

(iii) physicians and insurers or health maintenance organizations; or

(iv) physicians, other health care providers, and insurers or health maintenance organizations; and

(D) that is certified by the commissioner under this chapter to lawfully accept and distribute payments to physicians and other health care providers using the reimbursement methodologies authorized by this chapter.

(23) In SECTION 3.01 of the bill, in added Section 848.004, Insurance Code (page 19, line 25), between "LAWS." and "An", insert "(a)".

(24) In SECTION 3.01 of the bill, in added Section 848.004, Insurance Code (page 20, between lines 4 and 5), insert:

(b) The following provisions of this code apply to a health care collaborative in the same manner and to the same extent as they apply to an individual or entity otherwise subject to the provision:

(1) Section 38.001;

(2) Subchapter A, Chapter 542;

(3) Chapter 541;

(4) Chapter 543;

(5) Chapter 602;

(6) Chapter 701;

(7) Chapter 803; and

(8) Chapter 804.

(25) In SECTION 3.01 of the bill, strike added Section 848.005, Insurance Code (page 20, lines 5-10), and substitute:

Sec. 848.005. CERTAIN INFORMATION CONFIDENTIAL. (a) Except as provided by Subsection (b), an application, filing, or report required under this chapter is public information subject to disclosure under Chapter 552, Government Code.

(b) The following information is confidential and is not subject to disclosure under Chapter 552, Government Code:

(1) a contract, agreement, or document that establishes another arrangement:

(A) between a health care collaborative and a governmental or private entity for all or part of health care services provided or arranged for by the health care collaborative; or

(B) between a health care collaborative and participating physicians and health care providers;

(2) a written description of a contract, agreement, or other arrangement described by Subdivision (1);

(3) information relating to bidding, pricing, or other trade secrets submitted to:

(A) the department under Sections 848.057(5) and (6); or

(B) the attorney general under Section 848.059;

(4) information relating to the diagnosis, treatment, or health of a patient who receives health care services from a health care collaborative under a contract for services; and

(5) information relating to quality improvement or peer review activities of a health care collaborative.

(26) In SECTION 3.01 of the bill, in added Section 848.052(e), Insurance Code (page 21, lines 17-18), strike "may include nonvoting ex officio members" and substitute "must include at least three nonvoting ex officio members who represent the community in which the health care collaborative operates".

(27) In SECTION 3.01 of the bill, in the heading to added Section 848.053, Insurance Code (page 22, line 12), strike "COMMITTEE." and substitute "COMMITTEE; SHARING OF CERTAIN DATA. (a)".

(28) In SECTION 3.01 of the bill, after added Section 848.053, Insurance Code (page 22, after line 27), insert:

(b) A health care collaborative shall establish and enforce policies to prevent the sharing of charge, fee, and payment data among nonparticipating physicians and health care providers.

(29) In SECTION 3.01 of the bill, after added Section 848.055(b), Insurance Code (page 23, between lines 18 and 19), insert:

(c) A medical school, medical and dental unit, or health science center as described by Section 61.003, 61.501, or 74.601, Education Code, is not required to obtain a certificate of authority under this chapter to the extent that the medical school, medical and dental unit, or health science center contracts to deliver medical care services within a health care collaborative. This chapter is otherwise applicable to a medical school, medical and dental unit, or health science center.

(d) An entity licensed under the Health and Safety Code that employs a physician under a specific statutory authority is not required to obtain a certificate of authority under this chapter to the extent that the entity contracts to deliver medical care services and health care services within a health care collaborative. This chapter is otherwise applicable to the entity.

(30) In SECTION 3.01 of the bill, after added Section 848.056(c), Insurance Code (page 24, between lines 14 and 15), insert:

(d) The commissioner by rule may:

(1) extend the date by which an application is due under this section; and

(2) require the disclosure of any additional information necessary to implement and administer this chapter, including information necessary to antitrust review and oversight.

(31) In SECTION 3.01 of the bill, in added Section 848.057, Insurance Code (page 24, line 15), after "APPLICATION.", insert "(a)".

(32) In SECTION 3.01 of the bill, in added Section 848.057(2)(A)(ii), Insurance Code (page 25, line 1), between "promotes" and "quality-based", insert "improvement in".

(33) In SECTION 3.01 of the bill, in added Section 848.057(2)(A)(ii), Insurance Code (page 25, line 2), between "outcomes," and "patient", insert "patient safety".

(34) In SECTION 3.01 of the bill, in added Section 848.057(2)(C), Insurance Code (page 25, line 8), between "statistics" and "relating", insert "on performance measures".

(35) In SECTION 3.01 of the bill, after added Section 848.057, Insurance Code (page 26, between lines 1 and 2), insert:

(b) A certificate of authority is effective for a period of one year, subject to Section 848.060(d).

(36) In SECTION 3.01 of the bill, strike added Section 848.059, Insurance Code (page 26, line 10, through page 27, line 15), and substitute:

Sec. 848.059. CONCURRENCE OF ATTORNEY GENERAL. (a) If the commissioner determines that an application for a certificate of authority filed under Section 848.056 complies with the requirements of Section 848.057, the commissioner shall forward the application, and all data, documents, and analysis considered by the commissioner in making the determination, to the attorney general. The attorney general shall review the application and the data, documents, and analysis and, if the attorney general concurs with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(b) If the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(c) A determination under this section shall be made not later than the 60th day after the date the attorney general receives the application and the data, documents, and analysis from the commissioner.

(d) If the attorney general lacks sufficient information to make a determination under Sections 848.057(a)(5) and (6), within 60 days of the attorney general's receipt of the application and the data, documents, and analysis the attorney general shall inform the commissioner that the attorney general lacks sufficient information as well as what information the attorney general requires. The commissioner shall then either provide the additional information to the attorney general or request the additional information from the applicant. The commissioner shall promptly deliver any such additional information to the attorney general. The attorney general shall then have 30 days from receipt of the additional information to make a determination under Subsection (a) or (b).

(e) If the attorney general notifies the commissioner that the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), then, notwithstanding any other provision of this subchapter, the commissioner shall deny the application.

(f) In reviewing the commissioner's determination, the attorney general shall consider the findings, conclusions, or analyses contained in any other governmental entity's evaluation of the health care collaborative.

(g) The attorney general at any time may request from the commissioner additional time to consider an application under this section. The commissioner shall grant the request and notify the applicant of the request. A request by the attorney general or an order by the commissioner granting a request under this section is not subject to administrative or judicial review.

(37) In SECTION 3.01 of the bill, in added Section 848.060(a), Insurance Code (page 27, line 19), between "issued" and the underlined comma, insert "or most recently renewed".

(38) In SECTION 3.01 of the bill, in added Section 848.060(b)(2)(E), Insurance Code (page 28, line 13), after the underlined semicolon, strike "and".

(39) In SECTION 3.01 of the bill, in added Section 848.060(b)(2)(F), Insurance Code (page 28, line 16), strike "848.107." and substitute "848.107; and".

(40) In SECTION 3.01 of the bill, after added Section 848.060(b)(2)(F), Insurance Code (page 28, between lines 16 and 17), insert:

(G) any other information required by the commissioner.

(41) In SECTION 3.01 of the bill, strike added Section 848.060(c)(1), Insurance Code (page 28, lines 19-22), and substitute:

(1) the commissioner shall conduct a review under Section 848.057 as if the application for renewal were a new application, and, on approval by the commissioner, the attorney general shall review the application under Section 848.059 as if the application for renewal were a new application; and

(42) In SECTION 3.01 of the bill, in added Section 848.060(d), Insurance Code (page 29, line 2), between "issued" and the comma, insert "or renewed".

(43) In SECTION 3.01 of the bill, after added Section 848.060(d), Insurance Code (page 29, between lines 6 and 7), insert:

(e) A health care collaborative shall report to the department a material change in the size or composition of the collaborative. On receipt of a report under this subsection, the department may require the collaborative to file an application for renewal before the date required by Subsection (a).

(44) In SECTION 3.01 of the bill, strike added Section 848.103(b), Insurance Code (page 31, lines 5-10), and substitute:

(b) Notwithstanding any other law, a health care collaborative that is in compliance with this code, including Chapters 841, 842, and 843, as applicable, may contract for, accept, and distribute payments from governmental or private payors based on fee-for-service or alternative payment mechanisms, including:

(1) episode-based or condition-based bundled payments;

(2) capitation or global payments; or

(3) pay-for-performance or quality-based payments.

(c) Except as provided by Subsection (d), a health care collaborative may not contract for and accept from a governmental or private entity payments on a prospective basis, including bundled or global payments, unless the health care collaborative is licensed under Chapter 843.

(d) A health care collaborative may contract for and accept from an insurance company or a health maintenance organization payments on a prospective basis, including bundled or global payments.

(45) In SECTION 3.01 of the bill, in added Section 848.106(a)(2), Insurance Code (page 32, line 5), strike "and monitoring" and substitute "monitoring, and evaluation".

(46) In SECTION 3.01 of the bill, in added Section 848.106(a)(3), Insurance Code (page 32, line 11), strike "and monitoring" and substitute "monitoring, and evaluation".

(47) In SECTION 3.01 of the bill, in added Section 848.106(a)(4), Insurance Code (page 32, lines 15-16), strike "participating physicians and health care providers" and substitute "participating physicians, health care providers, and patients".

(48) In SECTION 3.01 of the bill, in added Section 848.153(a), Insurance Code (page 36, line 9), strike "attorney general" and substitute "commissioner".

(49) In SECTION 3.01 of the bill, after added Section 848.153(d), Insurance Code (page 36, after line 27), insert:

(e) The commissioner or attorney general may disclose the results of an examination conducted under this section or documentation provided under this section to a governmental agency that contracts with a health care collaborative for the purpose of determining financial stability, readiness, or other contractual compliance needs.

(50) In SECTION 3.01 of the bill, in added Section 848.201(b)(7), Insurance Code (page 38, line 8), after the underlined semicolon, strike "or".

(51) In SECTION 3.01 of the bill, in added Section 848.201(b)(8), Insurance Code (page 38, line 15), strike "reasonable." and substitute "reasonable; or".

(52) In SECTION 3.01 of the bill, after added Section 848.201(b)(8), Insurance Code (page 38, between lines 15 and 16), insert:

(9) has or is utilizing market power in an anticompetitive manner, in accordance with established antitrust principles of market power analysis.

(53) In SECTION 3.01 of the bill, after added Section 848.203, Insurance Code (page 39, between lines 13 and 14), insert:

Sec. 848.204. NOTICE. The commissioner shall:

(1) report any action taken under this subchapter to:

(A) the relevant state licensing or certifying agency or board; and

(B) the United States Department of Health and Human Services

National Practitioner Data Bank; and

(2) post notice of the action on the department's Internet website.

Sec. 848.205. INDEPENDENT AUTHORITY OF ATTORNEY GENERAL. (a)

The attorney general may:

(1) investigate a health care collaborative with respect to anticompetitive behavior that is contrary to the goals and requirements of this chapter; and

(2) request that the commissioner:

(A) impose a penalty or sanction;

(B) issue a cease and desist order; or

(C) suspend or revoke the health care collaborative's certificate of

authority.

(b) This section does not limit any other authority or power of the attorney general.

(54) In SECTION 3.03 of the bill, in the recital (page 40, line 4), strike "Sections 1301.0625 and 1301.0626" and substitute "Section 1301.0625".

(55) In SECTION 3.03 of the bill, strike added Sections 1301.0625 and 1301.0626, Insurance Code (page 40, lines 6-26), and substitute:

Sec. 1301.0625. HEALTH CARE COLLABORATIVES. (a) Subject to the requirements of this chapter, a health care collaborative may be designated as a preferred provider under a preferred provider benefit plan and may offer enhanced benefits for care provided by the health care collaborative.

(b) A preferred provider contract between an insurer and a health care collaborative may use a payment methodology other than a fee-for-service or discounted fee methodology. A reimbursement methodology used in a contract under this subsection is not subject to Chapter 843.

(c) A contract authorized by Subsection (b) must specify that the health care collaborative and the physicians or providers providing health care services on behalf of the collaborative will hold an insured harmless for payment of the cost of covered health care services if the insurer or the health care collaborative do not pay the physician or health care provider for the services.

(d) An insurer issuing an exclusive provider benefit plan authorized by another law of this state may limit access to only preferred providers participating in a health care collaborative if the limitation is consistent with all requirements applicable to exclusive provider benefit plans.

(56) Strike SECTION 3.04 of the bill (page 40, line 27, through page 41, line 11) and substitute:

SECTION 3.04. Subtitle F, Title 4, Health and Safety Code, is amended by adding Chapter 315 to read as follows:

CHAPTER 315. ESTABLISHMENT OF HEALTH CARE COLLABORATIVES

Sec. 315.001. AUTHORITY TO ESTABLISH HEALTH CARE COLLABORATIVE. A public hospital created under Subtitle C or D or a hospital district created under general or special law may form and sponsor a nonprofit health care collaborative that is certified under Chapter 848, Insurance Code.

(57) Strike SECTION 3.07 of the bill (page 43, lines 4-8) and substitute:

SECTION 3.07. Not later than September 1, 2012, the commissioner of insurance and the attorney general shall adopt rules as necessary to implement this article.

(58) Add the following appropriately numbered SECTION to ARTICLE 3 of the bill and renumber subsequent SECTIONS of the ARTICLE accordingly:

SECTION 3. _____. As soon as practicable after the effective date of this Act, the commissioner of insurance shall designate or employ staff with antitrust expertise sufficient to carry out the duties required by this Act.

(59) In the recital to SECTION 5.01 of the bill (page 44, line 16), strike "Subdivision (10-a)" and substitute "Subdivisions (8-a) and (10-a)".

(60) In SECTION 5.01 of the bill, in amended Section 98.001, Health and Safety Code, as added by Chapter 359 (SB 288), Acts of the 80th Legislature, Regular Session, 2007 (page 44, between lines 17 and 18), immediately after the recital, insert the following:

(8-a) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care facility.

(61) In SECTION 5.05 of the bill, strike added Section 98.1046(a), Health and Safety Code (page 46, lines 20-24), and substitute the following:

(a) In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the department, using data submitted under Chapter 108, shall publicly report for hospitals in this state risk-adjusted outcome rates for those potentially preventable complications and potentially preventable readmissions that the department, in consultation with the institute, has determined to be the most effective measures of quality and efficiency.

(62) In SECTION 5.05 of the bill, in added Section 98.1046(c), Health and Safety Code (page 47, line 2), strike "health care provider" and substitute "health care professional".

(63) In SECTION 5.05 of the bill, in added Section 98.1047(a), Health and Safety Code (page 47, line 5), after "(a)", strike "The" and substitute "In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the".

(64) In SECTION 5.08 of the bill, strike added Section 98.1065, Health and Safety Code (page 48, line 20, through page 49, line 4), and substitute the following:

Sec. 98.1065. STUDY OF INCENTIVES AND RECOGNITION FOR HEALTH CARE QUALITY. The department, in consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, shall conduct a study on developing a recognition program to recognize exemplary health care facilities for superior quality of health care and make recommendations based on that study.

(65) In SECTION 5.10 of the bill, in amended Section 98.110, Health and Safety Code, as added by Chapter 359 (**SB 288**), Acts of the 80th Legislature, Regular Session, 2007 (page 50, lines 2-3), between "Centers for Disease Control and Prevention" and "for public health research", insert "," or any other agency of the United States Department of Health and Human Services,".

(66) Add the following appropriately numbered SECTIONS to ARTICLE 5 of the bill and renumber subsequent SECTIONS of the ARTICLE accordingly:

SECTION 5.____. Section 98.109(a), Health and Safety Code, as added by Chapter 359 (**SB 288**), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(a) Except as provided by Sections 98.1046, 98.106, and 98.110, all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

SECTION 5.____. (a) Not later than December 1, 2012, the Department of State Health Services shall submit a report regarding recommendations for improved health care reporting to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate standing committees of the legislature outlining:

(1) the initial assessment in the study conducted under Section 98.1065, Health and Safety Code, as added by this Act;

(2) based on the study described by Subdivision (1) of this subsection, the feasibility and desirability of establishing a recognition program to recognize exemplary health care facilities for superior quality of health care;

(3) the recommendations developed under Section 98.1065, Health and Safety Code, as added by this Act; and

(4) the changes in existing law that would be necessary to implement the recommendations described by Subdivision (3) of this subsection.

Floor Amendment No. 2

Amend Amendment No. 1 by Kolkhorst (82R29960) to **SB 8** (house committee printing) as follows:

(1) In item 24 of the amendment, in added Section 848.004(b), Insurance Code (page 7, line 20), strike "The" and substitute "Except as provided by Subsection (c), the".

(2) In item 24 of the amendment, after added Section 848.004(b), Insurance Code (page 7, after line 31), add the following:

(c) The remedies available under this chapter in the manner provided by Chapter 541 do not include:

(1) a private cause of action under Subchapter D, Chapter 541; or

(2) a class action under Subchapter F, Chapter 541.

(3) Add the following appropriately numbered item to the amendment and renumber subsequent items of the amendment accordingly:

() In SECTION 3.01 of the bill, strike added Section 848.057(6), Insurance Code (page 25, line 27, through page 26, line 1), and substitute the following:

(6) the pro-competitive benefits of the applicant's proposed health care collaborative are likely to substantially outweigh the anti-competitive effects of any increase in market power.

Floor Amendment No. 3

Amend **SB 8** (house committee printing) in SECTION 2.01 of the bill as follows:

(1) Strike added Section 1002.001(6)(E), Health and Safety Code (page 3, lines 22-23), and reletter subsequent paragraphs of Subdivision (6) accordingly.

(2) Strike added Sections 1002.001(13)(B)-(D), Health and Safety Code (page 5, lines 20-27), and substitute the following:

(B) an infection or other complication resulting from care previously provided; or

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome.

(3) Strike added Section 1002.061(b), Health and Safety Code (page 10, lines 13-15), and reletter subsequent subsections of Section 1002.061 accordingly.

Floor Amendment No. 4

Amend **SB 8** (house committee printing) in SECTION 2.01 of the bill, in added Section 1002.054(a), Health and Safety Code (page 7, line 17), following "commission.", by adding the following:

The commission shall collaborate with other health-related institutes to provide administrative support to the institute.

Floor Amendment No. 5

Amend **SB 8** (house committee printing) in ARTICLE 2 of the bill by adding the following appropriately numbered SECTION to that ARTICLE and renumbering subsequent SECTIONS of that ARTICLE appropriately:

SECTION 2.____. (a) The Texas Institute of Health Care Quality and Efficiency under Chapter 1002, Health and Safety Code, as added by this Act, shall conduct a study:

(1) evaluating how the legislature may promote a consumer-driven health care system, including by increasing the adoption of high-deductible insurance products with health savings accounts by consumers and employers to lower health care costs and increase personal responsibility for health care; and

(2) examining the issue of differing amounts of payment in full accepted by a provider for the same or similar health care services or supplies, including bundled health care services and supplies, and addressing:

(A) the extent of the differences in the amounts accepted as payment in full for a service or supply;

(B) the reasons that amounts accepted as payment in full differ for the same or similar services or supplies;

(C) the availability of information to the consumer regarding the amount accepted as payment in full for a service or supply;

(D) the effects on consumers of differing amounts accepted as payment in full; and

(E) potential methods for improving consumers' access to information in relation to the amounts accepted as payment in full for health care services or supplies, including the feasibility and desirability of requiring providers to:

(i) publicly post the amount that is accepted as payment in full for a service or supply; and

(ii) adhere to the posted amount.

(b) The institute shall submit a report to the legislature outlining the results of the study conducted under this section and any recommendations for potential legislation not later than January 1, 2013.

(c) This section expires September 1, 2013.

Floor Amendment No. 8

Amend **SB 8** (house committee printing) in SECTION 3.01 of the bill, in added Section 848.101(c), Insurance Code (page 29, lines 22-23), by striking "after the termination of the physician's contract with the health care collaborative".

Floor Amendment No. 10

Amend **SB 8** (house committee report) as follows:

(1) In the recital to SECTION 6.04 of the bill, amending Section 108.013, Health and Safety Code (page 51, line 22), strike "(n)" and substitute "(o)".

(2) In SECTION 6.04 of the bill, immediately following proposed Section 108.013(n), Health and Safety Code (page 54, between lines 5 and 6), insert the following:

(o) The department as the department determines appropriate may, subject to Section 166.054(c), include data collected in Section 166.054 in the data collected or disclosed under this section.

(3) Add the following appropriately numbered SECTION to ARTICLE 6 of the bill and renumber subsequent SECTIONS of ARTICLE 6 accordingly:

SECTION _____. Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.054 to read as follows:

Sec. 166.054. REPORTING REQUIREMENTS. (a) The executive commissioner of the Health and Human Services Commission by rule shall require appropriate health care facilities in this state to annually provide to the department the following information:

(1) for cases in which an attending physician refused to comply with an advance directive or health care or treatment decision and did not wish to follow the procedure established by Section 166.046:

(A) the total number of cases;

(B) for each case:

(i) whether the attending physician objected to providing or to withholding treatment;

(ii) the patient's diagnosis and a statement as to whether the diagnosis is of an irreversible condition or terminal condition;

(iii) the race, gender, age, national origin, disability, if any, and financial status, including insurance status, of the patient;

(iv) the type of health care facility, including a hospital, long-term care facility, or institution licensed under Chapter 242, including a skilled nursing facility, to which a transfer was sought; and

(v) whether the transfer occurred; and

(C) for each case in which a transfer was not made:

(i) whether the patient died;

(ii) the number of days between the date on which the opportunity to transfer the patient was first afforded and the date of the patient's death, if applicable; and

(iii) whether life-sustaining treatment had been withheld or withdrawn before the patient's death;

(2) for cases in which an attending physician's refusal to honor an advance directive or health care or treatment decision made by or on behalf of a patient was reviewed under Section 166.046:

(A) the total number of cases;

(B) for each case:

(i) whether the attending physician objected to providing or to withholding treatment;

(ii) the patient's diagnosis and a statement as to whether the diagnosis is of an irreversible condition or terminal condition;

(iii) the race, gender, age, national origin, disability, if any, and financial status, including insurance status, of the patient;

(iv) whether an ethics or medical committee meeting was held;

(v) whether the ethics or medical committee agreed with the physician or with the patient or the person responsible for the health care decisions of the patient;

(vi) the type of health care facility, including a hospital, long-term care facility, or institution licensed under Chapter 242, including a skilled nursing facility, to which a transfer was sought;

(vii) whether the transfer occurred; and

(viii) the number of days between the date the person received the written explanation to which the person is entitled under Section 166.046(b)(4)(B) and the date of the patient's transfer or death, if applicable; and

(C) for each case in which a transfer was not made:

(i) whether the patient died;

(ii) the number of days between the date on which the opportunity to transfer the patient was first afforded and the date of the patient's death, if applicable; and

(iii) whether life-sustaining treatment had been withheld or withdrawn before the patient's death; and

(3) for each case in which the health care facility or its agents attempted to assist in finding another facility willing and able to accept transfer of the patient:

(A) the number of other facilities contacted and asked to consider accepting transfer; and

(B) to the extent provided to the reporting facility, the reasons given by the other facilities for refusing to accept or for accepting transfer.

(b) Not later than February 1 of each year, the department shall issue a public report cumulating the data reported under Subsection (a) for the previous calendar year and provide a copy of the report to the governor, lieutenant governor, and speaker of the house of representatives. The report must include the aggregate data for the entire state and, subject to Subsection (c), data for each reporting health care facility. The department must allow researchers access to the database of reported data to conduct studies based on cross-tabulation, subject to Subsection (c).

(c) Except to the extent waived by a patient or the patient's legally authorized representative, the department shall ensure that information made public or available to researchers under Subsection (b) does not compromise patient confidentiality.

(d) The reporting required under this section shall be integrated, to the extent practicable, with the uniform reporting and collection system established under Section 311.032. The department shall encourage the use of electronic reporting to the extent practicable. The department shall consult with the Department of Information Resources on developing an appropriate format for use in implementing this subsection.

Floor Amendment No. 11

Amend Amendment No. 10 by Hughes to **SB 8** (house committee printing) by adding the following appropriately numbered item to the amendment:

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

ARTICLE ____ . INTERIM STUDY OF ADVANCE DIRECTIVES AND HEALTH CARE AND TREATMENT DECISIONS

SECTION ____ .01. INTERIM STUDY OF ADVANCE DIRECTIVES AND HEALTH CARE AND TREATMENT DECISIONS. (a) The lieutenant governor shall issue an interim charge to the standing committee of the senate with jurisdiction over health care treatment to conduct a study as described by Subsection (b).

(b) The study must examine the provisions of Chapter 166, Health and Safety Code, including:

- (1) the scope of medical and physical conditions covered by the chapter;
- (2) forms for executing advance directives;
- (3) operational issues, including the conflict resolution process;
- (4) reporting requirements;
- (5) due process provisions;
- (6) forms for executing physicians' orders; and

(7) court intervention that was sought, for damages or injunctive relief, during or arising from the health care provided and treatment decisions made pursuant to Chapter 166, Health and Safety Code.

(c) Not later than January 1, 2013, the committee shall report the committee's findings and recommendations to the lieutenant governor, the speaker of the house, and the governor. The committee shall include in its recommendations specific changes to statutes and agency rules that may be necessary, based on the results of the committee's study conducted under this section.

(d) Not later than November 1, 2011, the lieutenant governor shall issue the interim charge required by this section.

(e) This section expires January 1, 2013.

Floor Amendment No. 13

Amend **SB 8** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE ____ . MONITORING AND ENHANCEMENT OF HEALTH AND HUMAN SERVICES INFORMATION TECHNOLOGY SYSTEMS

SECTION ____ .01. Section 531.458, Government Code, is amended to read as follows:

Sec. 531.458. EXPIRATION. This subchapter expires September 1, 2015 [~~2011~~].

Floor Amendment No. 14

Amend **SB 8** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter D, Chapter 62, Health and Safety Code, is amended by adding Section 62.160 to read as follows:

Sec. 62.160. PILOT PROJECT TO INCREASE ENROLLEE ACCESS TO PRIMARY CARE SERVICES AND SIMPLIFY ENROLLMENT PROCEDURES.

(a) In this section:

(1) "CPT code" means the number assigned to identify a specific health care procedure performed by a health care provider under the American Medical Association's "Current Procedural Terminology 2011 Professional Edition" or a subsequent edition of that publication adopted by the executive commissioner of the Health and Human Services Commission by rule.

(2) "Lower-cost medical setting" means a facility, clinic, center, office, or other setting primarily used to provide primary care services.

(3) "Primary care services" means health services generally provided through a general, family, internal medicine, or pediatrics practice. The term does not include services provided through a hospital emergency room or surgical services.

(4) "Service area" means the geographical area determined by the commission that is coterminous with one or more Medicaid service areas and in which the pilot project is established.

(b) The commission shall establish a two-year pilot project in one or more Medicaid service areas that is designed to:

- (1) increase child health plan enrollee access to primary care services; and
- (2) simplify child health plan enrollment procedures.

(c) In establishing the pilot project under this section, the executive commissioner of the Health and Human Services Commission shall:

(1) for each service area, establish health care provider reimbursement rates for primary care services provided in lower-cost medical settings that are comparable to the federal Medicare program rates for the same or similar services;

(2) identify CPT codes that represent primary care services for purposes of Subdivision (1);

(3) prescribe and use an alternative application for child health plan coverage that is written on a sixth-grade reading comprehension level; and

(4) require any enrollment services provider in a service area to reduce application processing delays and procedural denials and increase renewal rates.

(d) An individual who resides in the service area and who is determined eligible for coverage under the child health plan remains eligible for benefits until the expiration of the period provided by Section 62.102(a), subject to Section 62.102(b).

(e) The commission shall provide at least one point of service contact in each county in the service area where trained personnel are available to personally assist interested individuals who reside in the service area with the application form and procedures for child health plan coverage.

(f) The commission may enroll an individual in the child health plan program under the pilot project established under this section during only the first year of the project.

(g) Not later than January 1, 2013, the commission shall submit an initial report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of the senate and house of

representatives having primary jurisdiction over the child health plan program. The report must evaluate the operation of the pilot project and make recommendations regarding the continuation or expansion of the pilot project. The report must:

(1) state whether:

(A) a higher percentage of eligible individuals in the service area enrolled in the child health plan as a result of the pilot project, as compared to percentages in other areas;

(B) a higher percentage of health plan providers in the service area participated in the child health plan as a result of the pilot project, as compared to percentages in other areas; and

(C) the enrollment changes implemented under the pilot project:

(i) reduced application processing delays and procedural denials;
and

(ii) affected reenrollment rates; and

(2) include recommendations for the statewide implementation of successful pilot project strategies.

(h) The commission shall submit a final report regarding the results of the pilot project in the manner prescribed by Subsection (g) not later than the 60th day after the date the pilot project terminates. The report must contain the information required by Subsection (g).

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

(j) This section expires January 1, 2015.

SECTION _____. (a) Subject to Subsection (b) of this section, not later than October 1, 2011, the Health and Human Services Commission shall establish the pilot project required under Section 62.160, Health and Safety Code, as added by this Act.

(b) If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

Floor Amendment No. 15

Amend **SB 8** (house committee printing) as follows:

(1) In SECTION 2.01 of the bill, in added Section 1002.101(2), Health and Safety Code (page 11, line 17), following the underlined semicolon, strike "and".

(2) In SECTION 2.01 of the bill, in added Section 1002.101(3), Health and Safety Code (page 11, line 20), following "Insurance Code", strike the underlined period and substitute "; and".

(3) In SECTION 2.01 of the bill, in added Section 1002.101, Health and Safety Code (page 11, between lines 20 and 21), insert the following:

(4) establishing a database of ambulatory surgical centers licensed under Chapter 243 to enable those centers to be reimbursed using a charge-based methodology to promote competition in accordance with Chapter 1301, Insurance Code.

Floor Amendment No. 16

Amend **SB 8** (house committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE _____. **ADOPTION OF VACCINE PREVENTABLE DISEASES POLICY BY HEALTH CARE FACILITIES**

SECTION _____.01. The heading to Subtitle A, Title 4, Health and Safety Code, is amended to read as follows:

SUBTITLE A. **FINANCING, CONSTRUCTING, REGULATING, AND INSPECTING HEALTH FACILITIES**

SECTION _____.02. Subtitle A, Title 4, Health and Safety Code, is amended by adding Chapter 224 to read as follows:

CHAPTER 224. POLICY ON VACCINE PREVENTABLE DISEASES

Sec. 224.001. DEFINITIONS. In this chapter:

(1) "Covered individual" means:

(A) an employee of the health care facility;

(B) an individual providing direct patient care under a contract with a health care facility; or

(C) an individual to whom a health care facility has granted privileges to provide direct patient care.

(2) "Health care facility" means:

(A) a facility licensed under Subtitle B, including a hospital as defined by Section 241.003; or

(B) a hospital maintained or operated by this state.

(3) "Regulatory authority" means a state agency that regulates a health care facility under this code.

(4) "Vaccine preventable diseases" means the diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Sec. 224.002. VACCINE PREVENTABLE DISEASES POLICY REQUIRED.

(a) Each health care facility shall develop and implement a policy to protect its patients from vaccine preventable diseases.

(b) The policy must:

(1) require covered individuals to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(2) specify the vaccines a covered individual is required to receive based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(3) include procedures for verifying whether a covered individual has complied with the policy;

(4) include procedures for a covered individual to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a covered individual who is exempt from the required vaccines, include procedures the individual must follow to protect facility patients from exposure to disease, such as the use of protective medical equipment, such as gloves and masks, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(6) prohibit discrimination or retaliatory action against a covered individual who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the health care facility to maintain a written or electronic record of each covered individual's compliance with or exemption from the policy; and

(8) include disciplinary actions the health care facility is authorized to take against a covered individual who fails to comply with the policy.

(c) The policy may include procedures for a covered individual to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

Sec. 224.003. DISASTER EXEMPTION. (a) In this section, "public health disaster" has the meaning assigned by Section 81.003.

(b) During a public health disaster, a health care facility may prohibit a covered individual who is exempt from the vaccines required in the policy developed by the facility under Section 224.002 from having contact with facility patients.

Sec. 224.004. DISCIPLINARY ACTION. A health care facility that violates this chapter is subject to an administrative or civil penalty in the same manner, and subject to the same procedures, as if the facility had violated a provision of this code that specifically governs the facility.

Sec. 224.005. RULES. The appropriate rulemaking authority for each regulatory authority shall adopt rules necessary to implement this chapter.

SECTION ____ .03. Not later than June 1, 2012, a state agency that regulates a health care facility subject to Chapter 224, Health and Safety Code, as added by this article, shall adopt the rules necessary to implement that chapter.

SECTION ____ .04. Notwithstanding Chapter 224, Health and Safety Code, as added by this article, a health care facility subject to that chapter is not required to have a policy on vaccine preventable diseases in effect until September 1, 2012.

Floor Amendment No. 17

Amend **SB 8** (senate engrossed version) in SECTION 3.01 of the bill, after added Section 848.005, Insurance Code (page 20, between lines 10 and 11), by inserting:

Sec. 848.006. COVERAGE BY HEALTH CARE COLLABORATIVE NOT REQUIRED. (a) Except as provided by Subsection (b), an individual may not be required to obtain or maintain coverage under:

(1) an individual health insurance policy written through a health care collaborative; or

(2) any plan or program for health care services provided on an individual basis through a health care collaborative.

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

(1) who is required to obtain or maintain health benefit plan coverage:

(A) written by an institution of higher education at which the individual is or will be enrolled as a student; or

(B) under an order requiring medical support for a child; or

(2) who voluntarily applies for benefits under a state administered program under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), or Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.).

(c) Except as provided by Subsection (d), a fine or penalty may not be imposed on an individual if the individual chooses not to obtain or maintain coverage described by Subsection (a).

(d) Subsection (c) does not apply to a fine or penalty imposed on an individual described in Subsection (b) for the individual's failure to obtain or maintain health benefit plan coverage.

Floor Amendment No. 18

Amend Amendment No. 17 by Creighton to **SB 8** (house committee printing) as follows:

(1) in added Section 848.006(a), Insurance Code (page 1, line 5), between "(b)" and the underlined comma, insert "and subject to Chapter 843 and Section 1301.0625".

(2) After added Section 848.006(a), Insurance Code (page 1, between lines 11 and 12), insert:

(a-1) This chapter does not require an individual to obtain or maintain health insurance coverage.

Floor Amendment No. 19

Amend **SB 8** (senate engrossed version) in SECTION 4 of the bill by inserting the following appropriately lettered subsection to the SECTION and relettering subsequent subsections of the SECTION accordingly:

SECTION ____ Chapter 1560, Insurance Code, is amended by adding Section 1560.005 to read as follows:

Sec. 1560.005. REVIEW OF PHARMACY CLAIMS. (a) The state auditor may conduct a biennial review of prescriptions intended for a 90-day supply to determine compliance with this chapter and to verify community retail and mail order pharmacies' parity in all factors of reimbursement, including average wholesale price and maximum allowable cost.

(b) The state auditor shall submit a review conducted under this section to the board of trustees for the Employees Retirement System of Texas and the trustee for the Teacher Retirement System of Texas.

(c) The Employees Retirement System of Texas and the Teacher Retirement System of Texas shall reimburse the state auditor for all costs of a review under this section.

(d) If in the course of a review the state auditor finds evidence of improper practices or illegal transactions, the state auditor shall report the evidence in accordance with Section 321.016, Government Code.

Floor Amendment No. 20

Amend **SB 8** (house committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE ____ PROVIDER NETWORK CONTRACT ARRANGEMENTS

SECTION ____ .001. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1458 to read as follows:

CHAPTER 1458. PROVIDER NETWORK CONTRACT ARRANGEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1458.001. GENERAL DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(2) "Contracting entity" means a person who:

(A) enters into a direct contract with a provider for the delivery of health care services to covered individuals; and

(B) in the ordinary course of business establishes a provider network or networks for access by another party.

(3) "Covered individual" means an individual who is covered under a health benefit plan.

(4) "Direct notification" means a written or electronic communication from a contracting entity to a physician or other health care provider documenting third party access to a provider network.

(5) "Health care services" means services provided for the diagnosis, prevention, treatment, or cure of a health condition, illness, injury, or disease.

(6) "Person" has the meaning assigned by Section 823.002.

(7) "Provider" means a physician, a professional association composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code, a partnership composed solely of physicians, a physician-hospital organization that acts exclusively as an administrator for a provider to facilitate the provider's participation in health care contracts, or an institution that is licensed under Chapter 241, Health and Safety Code. The term does not include a physician-hospital organization that leases or rents the physician-hospital organization's network to a third party.

(8) "Provider network contract" means a contract between a contracting entity and a provider for the delivery of, and payment for, health care services to a covered individual.

(9) "Third party" means a person that contracts with a contracting entity or another party to gain access to a provider network contract.

Sec. 1458.002. DEFINITION OF HEALTH BENEFIT PLAN. (a) In this chapter, "health benefit plan" means:

(1) a hospital and medical expense incurred policy;

(2) a nonprofit health care service plan contract;

(3) a health maintenance organization subscriber contract; or

(4) any other health care plan or arrangement that pays for or furnishes medical or health care services.

(b) "Health benefit plan" does not include one or more or any combination of the following:

(1) coverage only for accident or disability income insurance or any combination of those coverages;

(2) credit-only insurance;

(3) coverage issued as a supplement to liability insurance;

(4) liability insurance, including general liability insurance and automobile liability insurance;

(5) workers' compensation or similar insurance;

(6) a discount health care program, as defined by Section 7001.001;

(7) coverage for on-site medical clinics;

(8) automobile medical payment insurance; or

(9) other similar insurance coverage, as specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the coverage:

(1) dental or vision benefits;

(2) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these benefits;

(3) other similar, limited benefits, including benefits specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); or

(4) a Medicare supplement benefit plan described by Section 1652.002.

(d) "Health benefit plan" does not include coverage limited to a specified disease or illness or hospital indemnity coverage or other fixed indemnity insurance coverage if:

(1) the coverage is provided under a separate policy, certificate, or contract of insurance;

(2) there is no coordination between the provision of the coverage and any exclusion of benefits under any group health benefit plan maintained by the same plan sponsor; and

(3) the coverage is paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health benefit plan maintained by the same plan sponsor.

Sec. 1458.003. EXEMPTIONS. This chapter does not apply:

(1) to a provider network contract for services provided to a beneficiary under the Medicaid program, the Medicare program, or the state child health plan established under Chapter 62, Health and Safety Code, or the comparable plan under Chapter 63, Health and Safety Code;

(2) under circumstances in which access to the provider network is granted to an entity that operates under the same brand licensee program as the contracting entity; or

(3) to a contract between a contracting entity and a discount health care program operator, as defined by Section 7001.001.

[Sections 1458.004-1458.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 1458.051. REGISTRATION REQUIRED. (a) Unless the person holds a certificate of authority issued by the department to engage in the business of insurance in this state or operate a health maintenance organization under Chapter 843, a person must register with the department not later than the 30th day after the date on which the person begins acting as a contracting entity in this state.

(b) Notwithstanding Subsection (a), under Section 1458.055 a contracting entity that holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization shall file with the commissioner an application for exemption from registration under which the affiliates may access the contracting entity's network.

(c) An application for an exemption filed under Subsection (b) must be accompanied by a list of the contracting entity's affiliates. The contracting entity shall update the list with the commissioner on an annual basis.

(d) A list of affiliates filed with the commissioner under Subsection (c) is public information and is not exempt from disclosure under Chapter 552, Government Code.

Sec. 1458.052. DISCLOSURE OF INFORMATION. (a) A person required to register under Section 1458.051 must disclose:

(1) all names used by the contracting entity, including any name under which the contracting entity intends to engage or has engaged in business in this state;

(2) the mailing address and main telephone number of the contracting entity's headquarters;

(3) the name and telephone number of the contracting entity's primary contact for the department; and

(4) any other information required by the commissioner by rule.

(b) The disclosure made under Subsection (a) must include a description or a copy of the applicant's basic organizational structure documents and a copy of organizational charts and lists that show:

(1) the relationships between the contracting entity and any affiliates of the contracting entity, including subsidiary networks or other networks; and

(2) the internal organizational structure of the contracting entity's management.

Sec. 1458.053. SUBMISSION OF INFORMATION. Information required under this subchapter must be submitted in a written or electronic format adopted by the commissioner by rule.

Sec. 1458.054. FEES. The department may collect a reasonable fee set by the commissioner as necessary to administer the registration process. Fees collected under this chapter shall be deposited in the Texas Department of Insurance operating fund.

Sec. 1458.055. EXEMPTION FOR AFFILIATES. (a) The commissioner shall grant an exemption for affiliates of a contracting entity if the contracting entity holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization if the commissioner determines that:

(1) the affiliate is not subject to a disclaimer of affiliation under Chapter 823; and

(2) the relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks, are disclosed and clearly defined.

(b) An exemption granted under this section applies only to registration. An entity granted an exemption is otherwise subject to this chapter.

(c) The commissioner shall establish a reasonable fee as necessary to administer the exemption process.

[Sections 1458.056-1458.100 reserved for expansion]

SUBCHAPTER C. RIGHTS AND RESPONSIBILITIES OF A CONTRACTING ENTITY

Sec. 1458.101. CONTRACT REQUIREMENTS. A contracting entity may not provide a person access to health care services or contractual discounts under a provider network contract unless the provider network contract specifically states that:

(1) the contracting entity may contract with a third party to provide access to the contracting entity's rights and responsibilities under a provider network contract; and

(2) the third party must comply with all applicable terms, limitations, and conditions of the provider network contract.

Sec. 1458.102. DUTIES OF CONTRACTING ENTITY. (a) A contracting entity that has granted access to health care services and contractual discounts under a provider network contract shall:

(1) notify each provider of the identity of, and contact information for, each third party that has or may obtain access to the provider's health care services and contractual discounts;

(2) provide each third party with sufficient information regarding the provider network contract to enable the third party to comply with all relevant terms, limitations, and conditions of the provider network contract;

(3) require each third party to disclose the identity of the contracting entity and the existence of a provider network contract on each remittance advice or explanation of payment form; and

(4) notify each third party of the termination of the provider network contract not later than the 30th day after the effective date of the contract termination.

(b) If a contracting entity knows that a third party is making claims under a terminated contract, the contracting entity must take reasonable steps to cause the third party to cease making claims under the provider network contract. If the steps taken by the contracting entity are unsuccessful and the third party continues to make claims under the terminated provider network contract, the contracting entity must:

(1) terminate the contracting entity's contract with the third party; or

(2) notify the commissioner, if termination of the contract is not feasible.

(c) Any notice provided by a contracting entity to a third party under Subsection (b) must include a statement regarding the third party's potential liability under this chapter for using a provider's contractual discount for services provided after the termination date of the provider network contract.

(d) The notice required under Subsection (a)(1):

(1) must be provided by:

(A) providing for a subscription to receive the notice by e-mail; or

(B) posting the information on an Internet website at least once each calendar quarter; and

(2) must include a separate prominent section that lists:

(A) each third party that the contracting entity knows will have access to a discounted fee of the provider in the succeeding calendar quarter; and

(B) the effective date and termination or renewal dates, if any, of the third party's contract to access the network.

(e) The e-mail notice described by Subsection (d) may contain a link to an Internet web page that contains a list of third parties that complies with this section.

(f) The notice described by Subsection (a)(1) is not required to include information regarding payors who are not insurers or health maintenance organizations.

Sec. 1458.103. EFFECT OF CONTRACT TERMINATION. Subject to continuity of care requirements, agreements, or contractual provisions:

(1) a third party may not access health care services and contractual discounts after the date the provider network contract terminates;

(2) claims for health care services performed after the termination date may not be processed or paid under the provider network contract after the termination; and

(3) claims for health care services performed before the termination date and processed after the termination date may be processed and paid under the provider network contract after the date of termination.

Sec. 1458.104. AVAILABILITY OF CODING GUIDELINES. (a) A contract between a contracting entity and a provider must provide that:

(1) the provider may request a description and copy of the coding guidelines, including any underlying bundling, recoding, or other payment process and fee schedules applicable to specific procedures that the provider will receive under the contract;

(2) the contracting entity or the contracting entity's agent will provide the coding guidelines and fee schedules not later than the 30th day after the date the contracting entity receives the request;

(3) the contracting entity or the contracting entity's agent will provide notice of changes to the coding guidelines and fee schedules that will result in a change of payment to the provider not later than the 90th day before the date the changes take effect and will not make retroactive revisions to the coding guidelines and fee schedules; and

(4) if the requested information indicates a reduction in payment to the provider from the amounts agreed to on the effective date of the contract, the contract may be terminated by the provider on written notice to the contracting entity on or

before the 30th day after the date the provider receives information requested under this subsection without penalty or discrimination in participation in other health care products or plans.

(b) A provider who receives information under Subsection (a) may only:

(1) use or disclose the information for the purpose of practice management, billing activities, and other business operations; and

(2) disclose the information to a governmental agency involved in the regulation of health care or insurance.

(c) The contracting entity shall, on request of the provider, provide the name, edition, and model version of the software that the contracting entity uses to determine bundling and unbundling of claims.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

(e) If a contracting entity is unable to provide the information described by Subsection (a)(1), (a)(3), or (c), the contracting entity shall by telephone provide a readily available medium in which providers may obtain the information, which may include an Internet website.

[Sections 1458.105-1458.150 reserved for expansion]

SUBCHAPTER D. RIGHTS AND RESPONSIBILITIES OF THIRD PARTY

Sec. 1458.151. THIRD-PARTY RIGHTS AND RESPONSIBILITIES. A third party that leases, sells, aggregates, assigns, or otherwise conveys a provider's contractual discount to another party, who is not a covered individual, must comply with the responsibilities of a contracting entity under Subchapters C and E.

Sec. 1458.152. DISCLOSURE BY THIRD PARTY. (a) A third party shall disclose, to the contracting entity and providers under the provider network contract, the identity of a person, who is not a covered individual, to whom the third party leases, sells, aggregates, assigns, or otherwise conveys a provider's contractual discount through an electronic notification that complies with Section 1458.102 and includes a link to the Internet website described by Section 1458.102(d).

(b) A third party that uses an Internet website under this section must update the website on a quarterly basis. On request, a contracting entity shall disclose the information by telephone or through direct notification.

[Sections 1458.153-1458.200 reserved for expansion]

SUBCHAPTER E. UNAUTHORIZED ACCESS TO PROVIDER NETWORK CONTRACTS

Sec. 1458.201. UNAUTHORIZED ACCESS TO OR USE OF DISCOUNT. (a) A person who knowingly accesses or uses a provider's contractual discount under a provider network contract without a contractual relationship established under this chapter commits an unfair or deceptive act in the business of insurance that violates Subchapter B, Chapter 541. The remedies available for a violation of Subchapter B, Chapter 541, under this subsection do not include a private cause of action under Subchapter D, Chapter 541, or a class action under Subchapter F, Chapter 541.

(b) A contracting entity or third party must comply with the disclosure requirements under Sections 1458.102 and 1458.152 concerning the services listed on a remittance advice or explanation of payment. A provider may refuse a discount taken without a contract under this chapter or in violation of those sections.

(c) Notwithstanding Subsection (b), an error in the remittance advice or explanation of payment may be corrected by a contracting entity or third party not later than the 30th day after the date the provider notifies in writing the contracting entity or third party of the error.

Sec. 1458.202. ACCESS TO THIRD PARTY. A contracting entity may not provide a third party access to a provider network contract unless the third party is:

(1) a payor or person who administers or processes claims on behalf of the payor;

(2) a preferred provider benefit plan issuer or preferred provider network, including a physician-hospital organization; or

(3) a person who transports claims electronically between the contracting entity and the payor and does not provide access to the provider's services and discounts to any other third party.

[Sections 1458.203-1458.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

Sec. 1458.251. UNFAIR CLAIM SETTLEMENT PRACTICE. (a) A contracting entity that violates this chapter commits an unfair claim settlement practice under Subchapter A, Chapter 542, and is subject to sanctions under that subchapter as if the contracting entity were an insurer.

(b) A provider who is adversely affected by a violation of this chapter may make a complaint under Subchapter A, Chapter 542.

Sec. 1458.252. REMEDIES NOT EXCLUSIVE. The remedies provided by this subchapter are in addition to any other defense, remedy, or procedure provided by law, including common law.

SECTION ____ .002. The change in law made by this article applies only to a provider network contract entered into or renewed on or after January 1, 2012. A provider network contract entered into or renewed before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Floor Amendment No. 21

Amend **SB 8** (house committee printing) as follows:

(1) Add the following SECTION to Article 6 of the bill to read as follows:

SECTION 6. ____ . Chapter 108, Health and Safety Code, is amended by adding Section 108.0131 to read as follows:

Sec. 108.0131. NOTICE REQUIRED. (a) A provider who submits data under Section 108.009 shall provide notice to the provider's patients that:

(1) the provider may submit data as required by this chapter; and

(2) the data may be sold, collected, identified, or distributed to third parties.

(b) The department shall post on the department's Internet website a list of each entity that purchases or receives data collected under this chapter.

(2) Renumber subsequent SECTIONS of the Article accordingly.

Floor Amendment No. 22

Amend **SB 8** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering the remaining ARTICLES and SECTIONS of the bill accordingly:

ARTICLE ____ . FISCAL AND ADMINISTRATIVE MATTERS CONCERNING
THE TEXAS EMERGENCY AND TRAUMA CARE EDUCATION
PARTNERSHIP PROGRAM

SECTION ____ .01. Chapter 61, Education Code, is amended by adding Subchapter GG to read as follows:

SUBCHAPTER GG. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION
PARTNERSHIP PROGRAM

Sec. 61.9801. DEFINITIONS. In this subchapter:

(1) "Emergency and trauma care education partnership" means a partnership that:

(A) consists of one or more hospitals in this state and one or more graduate professional nursing or graduate medical education programs in this state; and

(B) serves to increase training opportunities in emergency and trauma care for doctors and registered nurses at participating graduate medical education and graduate professional nursing programs.

(2) "Participating education program" means a graduate professional nursing program as that term is defined by Section 54.221 or a graduate medical education program leading to board certification by the American Board of Medical Specialties that participates in an emergency and trauma care education partnership.

Sec. 61.9802. PROGRAM: ESTABLISHMENT; ADMINISTRATION; PURPOSE. (a) The Texas emergency and trauma care education partnership program is established.

(b) The board shall administer the program in accordance with this subchapter and rules adopted under this subchapter.

(c) Under the program, to the extent funds are available under Section 61.9805, the board shall make grants to emergency and trauma care education partnerships to assist those partnerships to meet the state's needs for doctors and registered nurses with training in emergency and trauma care by offering one-year or two-year fellowships to students enrolled in graduate professional nursing or graduate medical education programs through collaboration between hospitals and graduate professional nursing or graduate medical education programs and the use of the existing expertise and facilities of those hospitals and programs.

Sec. 61.9803. GRANTS: CONDITIONS; LIMITATIONS. (a) The board may make a grant under this subchapter to an emergency and trauma care education partnership only if the board determines that:

(1) the partnership will meet applicable standards for instruction and student competency for each program offered by each participating education program;

(2) each participating education program will, as a result of the partnership, enroll in the education program a sufficient number of additional students as established by the board;

(3) each hospital participating in an emergency and trauma care education partnership will provide to students enrolled in a participating education program clinical placements that:

(A) allow the students to take part in providing or to observe, as appropriate, emergency and trauma care services offered by the hospital; and

(B) meet the clinical education needs of the students; and
(4) the partnership will satisfy any other requirement established by board rule.

(b) A grant under this subchapter may be spent only on costs related to the development or operation of any emergency and trauma care education partnership that prepares a student to complete a graduate professional nursing program with a specialty focus on emergency and trauma care or earn board certification by the American Board of Medical Specialties.

Sec. 61.9804. PRIORITY FOR FUNDING. In awarding a grant under this subchapter, the board shall give priority to an emergency and trauma care education partnership that submits a proposal that:

(1) provides for collaborative educational models between one or more participating hospitals and one or more participating education programs that have signed a memorandum of understanding or other written agreement under which the participants agree to comply with standards established by the board, including any standards the board may establish that:

(A) provide for program management that offers a centralized decision-making process allowing for inclusion of each entity participating in the partnership;

(B) provide for access to clinical training positions for students in graduate professional nursing and graduate medical education programs that are not participating in the partnership; and

(C) specify the details of any requirement relating to a student in a participating education program being employed after graduation in a hospital participating in the partnership, including any details relating to the employment of students who do not complete the program, are not offered a position at the hospital, or choose to pursue other employment;

(2) includes a demonstrable education model to:

(A) increase the number of students enrolled in, the number of students graduating from, and the number of faculty employed by each participating education program; and

(B) improve student or resident retention in each participating education program;

(3) indicates the availability of money to match a portion of the grant money, including matching money or in-kind services approved by the board from a hospital, private or nonprofit entity, or institution of higher education;

(4) can be replicated by other emergency and trauma care education partnerships or other graduate professional nursing or graduate medical education programs; and

(5) includes plans for sustainability of the partnership.

Sec. 61.9805. GRANTS, GIFTS, AND DONATIONS. In addition to money appropriated by the legislature, the board may solicit, accept, and spend grants, gifts, and donations from any public or private source for the purposes of this subchapter.

Sec. 61.9806. RULES. The board shall adopt rules for the administration of the Texas emergency and trauma care education partnership program. The rules must include:

(1) provisions relating to applying for a grant under this subchapter; and
(2) standards of accountability consistent with other graduate professional nursing and graduate medical education programs to be met by any emergency and trauma care education partnership awarded a grant under this subchapter.

Sec. 61.9807. ADMINISTRATIVE COSTS. A reasonable amount, not to exceed three percent, of any money appropriated for purposes of this subchapter may be used to pay the costs of administering this subchapter.

SECTION ____ .02. As soon as practicable after the effective date of this article, the Texas Higher Education Coordinating Board shall adopt rules for the implementation and administration of the Texas emergency and trauma care education partnership program established under Subchapter GG, Chapter 61, Education Code, as added by this article. The board may adopt the initial rules in the manner provided by law for emergency rules.

Floor Amendment No. 1 on Third Reading

Amend **SB 8** on third reading by adding the following appropriately numbered ARTICLE to the bill and renumbering the subsequent ARTICLES of the bill accordingly:

ARTICLE ____ . INTERSTATE HEALTH CARE COMPACT

SECTION ____ .01. Title 15, Insurance Code, is amended by adding Chapter 5002 to read as follows:

CHAPTER 5002. INTERSTATE HEALTH CARE COMPACT

Sec. 5002.001. EXECUTION OF COMPACT. This state enacts the Interstate Health Care Compact and enters into the compact with all other states legally joining in the compact in substantially the following form:

Whereas, the separation of powers, both between the branches of the Federal government and between Federal and State authority, is essential to the preservation of individual liberty;

Whereas, the Constitution creates a Federal government of limited and enumerated powers, and reserves to the States or to the people those powers not granted to the Federal government;

Whereas, the Federal government has enacted many laws that have preempted State laws with respect to Health Care, and placed increasing strain on State budgets, impairing other responsibilities such as education, infrastructure, and public safety;

Whereas, the Member States seek to protect individual liberty and personal control over Health Care decisions, and believe the best method to achieve these ends is by vesting regulatory authority over Health Care in the States;

Whereas, by acting in concert, the Member States may express and inspire confidence in the ability of each Member State to govern Health Care effectively; and

Whereas, the Member States recognize that consent of Congress may be more easily secured if the Member States collectively seek consent through an interstate compact;

NOW THEREFORE, the Member States hereto resolve, and by the adoption into law under their respective State Constitutions of this Health Care Compact, agree, as follows:

Sec. 1. Definitions. As used in this Compact, unless the context clearly indicates otherwise:

"Commission" means the Interstate Advisory Health Care Commission.

"Effective Date" means the date upon which this Compact shall become effective for purposes of the operation of State and Federal law in a Member State, which shall be the later of:

a) the date upon which this Compact shall be adopted under the laws of the Member State, and

b) the date upon which this Compact receives the consent of Congress pursuant to Article I, Section 10, of the United States Constitution, after at least two Member States adopt this Compact.

"Health Care" means care, services, supplies, or plans related to the health of an individual and includes but is not limited to:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body, and

(b) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription, and

(c) an individual or group plan that provides, or pays the cost of, care, services, or supplies related to the health of an individual, except any care, services, supplies, or plans provided by the United States Department of Defense and United States Department of Veteran Affairs, or provided to Native Americans.

"Member State" means a State that is signatory to this Compact and has adopted it under the laws of that State.

"Member State Base Funding Level" means a number equal to the total Federal spending on Health Care in the Member State during Federal fiscal year 2010. On or before the Effective Date, each Member State shall determine the Member State Base Funding Level for its State, and that number shall be binding upon that Member State.

"Member State Current Year Funding Level" means the Member State Base Funding Level multiplied by the Member State Current Year Population Adjustment Factor multiplied by the Current Year Inflation Adjustment Factor.

"Member State Current Year Population Adjustment Factor" means the average population of the Member State in the current year less the average population of the Member State in Federal fiscal year 2010, divided by the average population of the Member State in Federal fiscal year 2010, plus 1. Average population in a Member State shall be determined by the United States Census Bureau.

"Current Year Inflation Adjustment Factor" means the Total Gross Domestic Product Deflator in the current year divided by the Total Gross Domestic Product Deflator in Federal fiscal year 2010. Total Gross Domestic Product Deflator shall be determined by the Bureau of Economic Analysis of the United States Department of Commerce.

Sec. 2. Pledge. The Member States shall take joint and separate action to secure the consent of the United States Congress to this Compact in order to return the authority to regulate Health Care to the Member States consistent with the goals and principles articulated in this Compact. The Member States shall improve Health Care policy within their respective jurisdictions and according to the judgment and discretion of each Member State.

Sec. 3. Legislative Power. The legislatures of the Member States have the primary responsibility to regulate Health Care in their respective States.

Sec. 4. State Control. Each Member State, within its State, may suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding Health Care that are inconsistent with the laws and regulations adopted by the Member State pursuant to this Compact. Federal and State laws, rules, regulations, and orders regarding Health Care will remain in effect unless a Member State expressly suspends them pursuant to its authority under this Compact. For any federal law, rule, regulation, or order that remains in effect in a Member State after the Effective Date, that Member State shall be responsible for the associated funding obligations in its State.

Sec. 5. Funding. (a) Each Federal fiscal year, each Member State shall have the right to Federal monies up to an amount equal to its Member State Current Year Funding Level for that Federal fiscal year, funded by Congress as mandatory spending and not subject to annual appropriation, to support the exercise of Member State authority under this Compact. This funding shall not be conditional on any action of or regulation, policy, law, or rule being adopted by the Member State.

(b) By the start of each Federal fiscal year, Congress shall establish an initial Member State Current Year Funding Level for each Member State, based upon reasonable estimates. The final Member State Current Year Funding Level shall be calculated, and funding shall be reconciled by the United States Congress based upon information provided by each Member State and audited by the United States Government Accountability Office.

Sec. 6. Interstate Advisory Health Care Commission. (a) The Interstate Advisory Health Care Commission is established. The Commission consists of members appointed by each Member State through a process to be determined by each Member State. A Member State may not appoint more than two members to the Commission and may withdraw membership from the Commission at any time. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the Commission's total membership.

(b) The Commission may elect from among its membership a Chairperson. The Commission may adopt and publish bylaws and policies that are not inconsistent with this Compact. The Commission shall meet at least once a year, and may meet more frequently.

(c) The Commission may study issues of Health Care regulation that are of particular concern to the Member States. The Commission may make non-binding recommendations to the Member States. The legislatures of the Member States may consider these recommendations in determining the appropriate Health Care policies in their respective States.

(d) The Commission shall collect information and data to assist the Member States in their regulation of Health Care, including assessing the performance of various State Health Care programs and compiling information on the prices of Health Care. The Commission shall make this information and data available to the legislatures of the Member States. Notwithstanding any other provision in this

Compact, no Member State shall disclose to the Commission the health information of any individual, nor shall the Commission disclose the health information of any individual.

(e) The Commission shall be funded by the Member States as agreed to by the Member States. The Commission shall have the responsibilities and duties as may be conferred upon it by subsequent action of the respective legislatures of the Member States in accordance with the terms of this Compact.

(f) The Commission shall not take any action within a Member State that contravenes any State law of that Member State.

Sec. 7. Congressional Consent. This Compact shall be effective on its adoption by at least two Member States and consent of the United States Congress. This Compact shall be effective unless the United States Congress, in consenting to this Compact, alters the fundamental purposes of this Compact, which are:

(a) To secure the right of the Member States to regulate Health Care in their respective States pursuant to this Compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their States; and

(b) To secure Federal funding for Member States that choose to invoke their authority under this Compact, as prescribed by Section 5 above.

Sec. 8. Amendments. The Member States, by unanimous agreement, may amend this Compact from time to time without the prior consent or approval of Congress and any amendment shall be effective unless, within one year, the Congress disapproves that amendment. Any State may join this Compact after the date on which Congress consents to the Compact by adoption into law under its State Constitution.

Sec. 9. Withdrawal; Dissolution. Any Member State may withdraw from this Compact by adopting a law to that effect, but no such withdrawal shall take effect until six months after the Governor of the withdrawing Member State has given notice of the withdrawal to the other Member States. A withdrawing State shall be liable for any obligations that it may have incurred prior to the date on which its withdrawal becomes effective. This Compact shall be dissolved upon the withdrawal of all but one of the Member States.

SECTION ____ .02. This article takes effect immediately if the Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

Floor Amendment No. 2 on Third Reading

Amend **SB 8** on third reading by striking added Section 1560.005(c), Insurance Code (as added by Floor Amendment No. ____ by Miller), and relettering subsequent subsections of that section accordingly.

Floor Amendment No. 3 on Third Reading

Amend **SB 8** on third reading by inserting the following new sections, appropriately numbered, and renumbering subsequent sections accordingly:

SECTION ____ . Section 1451.109, Insurance Code, is amended to read as follows:

Sec. 1451.109. **SELECTION OF CHIROPRACTOR.** (a) An insured may select a chiropractor to provide the medical or surgical services or procedures scheduled in the health insurance policy that are within the scope of the chiropractor's license.

(b) If physical modalities and procedures are covered services under a health insurance policy and within the scope of the license of a chiropractor and one or more other type of practitioner, a health insurance policy issuer may not:

(1) deny payment or reimbursement for physical modalities and procedures provided by a chiropractor if:

(A) the chiropractor provides the modalities and procedures in strict compliance with laws and rules relating to a chiropractor's license; and

(B) the health insurance policy issuer allows payment or reimbursement for the same physical modalities and procedures performed by another type of practitioner;

(2) make payment or reimbursement for particular covered physical modalities and procedures within the scope of a chiropractor's practice contingent on treatment or examination by a practitioner that is not a chiropractor; or

(3) establish other limitations on the provision of covered physical modalities and procedures that would prohibit an insured from seeking the covered physical modalities and procedures from a chiropractor to the same extent that the insured may obtain covered physical modalities and procedures from another type of practitioner.

(c) Nothing in this section requires a health insurance policy issuer to cover particular services or affects the ability of a health insurance policy issuer to determine whether specific procedures for which payment or reimbursement is requested are medically necessary.

(d) This section does not apply to:

(1) workers' compensation insurance coverage as defined by Section 401.011, Labor Code;

(2) a self-insured employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(3) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(4) a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

SECTION _____. The changes in law made by this Act to Section 1451.109, Insurance Code, apply only to a health insurance policy that is delivered, issued for delivery, or renewed on or after the effective date of this Act. A policy delivered, issued for delivery, or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Floor Amendment No. 4 on Third Reading

Amend **SB 8** on third reading as amended by Floor Amendment No. ____ in Section 2.01 of the bill as follows:

(1) In added Section 1002.101, add the following subsection (3), renumbering the succeeding subsection accordingly:

(3) improving the utilization of diagnostic imaging services and the quality and efficiency of the provision of those services in offices, clinics, imaging centers, and other locations where those services are provided; and

(2) In added section 1002.202(b), add the following subsection (5), renumbering the succeeding subsections accordingly:

(5) determine the feasibility of obtaining from offices, clinics, imaging centers and other locations where diagnostic imaging services are provided data regarding the quality and efficiency of the operation of diagnostic imaging equipment and the provision of diagnostic imaging services;

Floor Amendment No. 5 on Third Reading

Amend **SB 8** on third reading in added Section 224.002(c), Health and Safety Code, between "The policy" and "include", by striking "may" and substituting "must".

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 Pro Tempore asked if there were any motions to instruct the conference committee on **SB 8** before appointment.

Senator Carona moved to instruct the conferees to retain the language of House Third Reading Floor Amendment No. 3, which amends Section 1451.109, Insurance Code, relating to the reimbursement of chiropractors by health insurance policy issuers. This language is a portion of SB 1001, which was passed unanimously by the Senate.

The motion to instruct the conferees prevailed without objection.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Huffman, Shapiro, Patrick, and Carona.

CONFERENCE COMMITTEE ON HOUSE BILL 300

Senator Nelson 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 300** 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 300** 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 Nelson, Chair; Huffman, Uresti, Shapiro, and Nichols.

CONFERENCE COMMITTEE ON HOUSE BILL 272

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 272** 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 272** 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; Fraser, Nelson, Nichols, and Watson.

CONFERENCE COMMITTEE ON HOUSE BILL 1103

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 1103** 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 1103** 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 Ellis, Chair; Seliger, Lucio, Whitmire, and Huffman.

ACKNOWLEDGMENT

The President Pro Tempore acknowledged the presence of Governor Rick Perry.

The Senate welcomed its guest.

CONFERENCE COMMITTEE ON HOUSE BILL 3246

Senator West called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3246** 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 3246** before appointment.

There were no motions offered.

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

CONFERENCE COMMITTEE ON HOUSE BILL 1400

Senator West called from the President Pro Tempore 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 1400** 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 1400** before appointment.

There were no motions offered.

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

CONFERENCE COMMITTEE ON HOUSE BILL 2093

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 2093** 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 2093** 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; Duncan, Deuell, Jackson, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 213

Senator Lucio 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 213** 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 213** 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 Lucio, Chair; Carona, Estes, Eltife, and Van de Putte.

SENATE BILL 1733 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1733** 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 1733** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the occupational licensing of spouses of members of the military.

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

SECTION 1. The heading to Chapter 55, Occupations Code, is amended to read as follows:

CHAPTER 55. ~~[RENEWAL OF]~~ LICENSE WHILE ON MILITARY DUTY AND
FOR MILITARY SPOUSE

SECTION 2. Chapter 55, Occupations Code, is amended by adding Section 55.004 to read as follows:

Sec. 55.004. ALTERNATIVE LICENSE PROCEDURE FOR MILITARY SPOUSE. (a) A state agency that issues a license shall adopt rules for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(b) Rules adopted under this section must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining the license.

(c) The executive director of a state agency may issue a license by endorsement in the same manner as the Texas Commission of Licensing and Regulation under Section 51.404 to an applicant described by Subsection (a).

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 Van de Putte moved to concur in the House amendment to **SB 1733**.

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

SENATE BILL 1736 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1736** 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 1736** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the establishment of the College Credit for Heroes program.

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

SECTION 1. Subchapter A, Chapter 302, Labor Code, is amended by adding Section 302.0031 to read as follows:

Sec. 302.0031. COLLEGE CREDIT FOR HEROES PROGRAM. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) The commission shall establish and administer the College Credit for Heroes demonstration program to identify, develop, and support methods to maximize academic or workforce education credit awarded by institutions of higher education to veterans and military servicemembers for military experience, education, and training obtained during military service in order to expedite the entry of veterans and military servicemembers into the workforce.

(c) The commission shall work cooperatively with other state agencies, including the Texas Higher Education Coordinating Board, public junior colleges, and other institutions of higher education, to accomplish the purposes of this section.

(d) The commission may award grants to state, local, or private entities that perform activities related to the purposes of this section.

(e) The commission shall administer the program using money previously appropriated to the commission or received from federal or other sources.

(f) The commission may adopt rules as necessary for the administration of this section.

(g) Not later than November 1, 2012, the commission, after consultation with the Texas Higher Education Coordinating Board, shall report to the legislature and the governor on:

(1) the results of any grants awarded under this section;

(2) the best practices for veterans and military servicemembers to achieve maximum academic or workforce education credit at institutions of higher education for military experience, education, and training obtained during military service;

(3) measures needed to facilitate the award of academic or workforce education credit by institutions of higher education for military experience, education, and training obtained during military service; and

(4) other related measures needed to facilitate the entry of trained, qualified veterans and military servicemembers into the workforce.

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

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 Van de Putte moved to concur in the House amendment to **SB 1736**.

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

SENATE BILL 1796 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1796** 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 1796** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 434.153(3), Government Code (page 1, line 38), strike "and".

(2) In SECTION 1 of the bill, in added Section 434.153(4), Government Code (page 1, line 39), strike the period and substitute "; and".

(3) In SECTION 1 of the bill, in added Section 434.153, Government Code (page 1, between lines 39 and 40), insert the following:

(5) the State Bar of Texas.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1796**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 1517

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 1517** 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 1517** 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; Zaffirini, Wentworth, Ellis, and Huffman.

SENATE BILL 542 WITH HOUSE AMENDMENTS

Senator Hegar called **SB 542** 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 542** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the SECTIONS of the bill accordingly:

SECTION _____. The heading to Section 96.641, Education Code, is amended to read as follows:

Sec. 96.641. INITIAL TRAINING AND CONTINUING EDUCATION FOR POLICE CHIEFS AND COMMAND STAFF.

SECTION _____. Section 96.641, Education Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The institute may establish and offer a continuing education program for command staff for individuals who are second in command to police chiefs. The command staff continuing education program must satisfy the requirements for the police chief continuing education program under Subsection (a).

SECTION _____. Section 1701.351, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) A peace officer who is second in command to a police chief of a law enforcement agency and who attends a continuing education program for command staff provided by the Bill Blackwood Law Enforcement Management Institute of Texas under Section 96.641, Education Code, is exempt from the continuing education requirements of this subchapter.

Floor Amendment No. 2

Amend **SB 542** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. The heading to Subchapter M, Chapter 1701, Occupations Code, is amended to read as follows:

SUBCHAPTER M. SCHOOL ~~[VISITING]~~ RESOURCE OFFICERS AND [OFFICER IN PUBLIC] SCHOOL DISTRICT PEACE OFFICERS

SECTION _____. Subchapter M, Chapter 1701, Occupations Code, is amended by adding Section 1701.604 to read as follows:

Sec. 1701.604. EDUCATION AND TRAINING PROGRAM. (a) Except as provided by Subsection (b), this section applies only to:

(1) a school district peace officer commissioned under Section 37.081, Education Code; or

(2) a school resource officer, as defined by Section 1701.601.

(b) This section does not apply to a peace officer while the peace officer is assigned to a school-sponsored event at which formal classroom instruction is not offered.

(c) A peace officer may not serve as a school district peace officer for more than 30 days unless the peace officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided by Subsection (d), and has received a certificate under Subsection (e). A peace officer may not serve as a school resource officer for more than 90 days unless the officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided by Subsection (d), and has received a certificate under Subsection (e).

(d) A peace officer who has received comparable education and training through the Bexar County children's crisis intervention training program or the Texas School Safety Center at Texas State University is not required to complete the education and training program approved by the commission under this section to serve as a school district peace officer or school resource officer.

(e) The commission shall issue a professional achievement or proficiency certificate to a peace officer on successful completion of an education and training program:

(1) approved by the commission under this section; or

(2) described by Subsection (d).

(f) The commission shall appoint 12 members to a school resource curriculum committee to develop the curriculum for the education and training program under this section. The school resource curriculum committee shall be composed as follows:

(1) one representative of the Bexar County children's crisis intervention training program;

(2) one representative of the Texas School Safety Center at Texas State University;

(3) one representative of the commission;

(4) one representative of the Texas Municipal Police Association;

(5) one representative of the Texas Education Agency;

(6) one representative of a local mental health authority, as defined by Section 571.003, Health and Safety Code;

(7) a peace officer with certification in crisis intervention;

(8) a school district peace officer;

(9) one representative of an organization that advocates for juvenile justice;

(10) one representative of an organization that advocates for civil liberties;

(11) one representative of an organization representing parents of public school students; and

(12) one representative of the Texas School District Police Chiefs' Association.

(g) Members of the school resource curriculum committee serve terms of two years.

(h) The school resource curriculum committee shall develop the curriculum for the education and training program under this section based on the model curriculum used for the Bexar County children's crisis intervention training program and in accordance with Subsection (i). The curriculum must be approved by the commission. After developing the program, the committee may review and revise the curriculum for the program annually or as the committee determines necessary. Any revision must be approved by the commission. In carrying out its duties, the committee may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses.

(i) The curriculum for the education and training program under this section must incorporate learning objectives regarding:

(1) child and adolescent development and psychology;

(2) positive behavioral interventions and supports, conflict resolution techniques, and restorative justice techniques;

(3) force usage limitations, including physical restraint, and de-escalation techniques;

(4) children with disabilities or special needs, including mental or behavioral health needs; and

(5) cultural competency.

(j) The education and training program under this section may be provided:

(1) as a collaborative model within a community that:

(A) involves local stakeholders; and

(B) incorporates didactic and experiential training using the best practice model of the Bexar County children's crisis intervention training program;

(2) by a school determined appropriate for operation under Section 1701.251; or

(3) as an online training program sponsored by an online training provider if the training provider also provides training under Section 1701.251.

(k) A school district may offer additional, commission-approved preparatory education or training to its school district peace officers and school resource officers.

(l) The superintendent of a school district that employs a peace officer or to which a school resource officer is assigned shall maintain on file the certification issued to the officer under Subsection (e).

(m) Notwithstanding Section 1701.351(a), the commission may not suspend the license of a peace officer solely because the peace officer fails to meet the requirements of this section.

SECTION _____. Not later than March 31, 2012, the Commission on Law Enforcement Officer Standards and Education shall approve the curriculum for the education and training program as required by Section 1701.604, Occupations Code, as added by this Act.

SECTION _____. Section 1701.604, Occupations Code, as added by this Act, applies only to a school district peace officer or school resource officer who is serving or has been assigned, appointed, commissioned, or employed by a school district to serve in that capacity on or after March 31, 2012.

Floor Amendment No. 1 on Third Reading

Amend **SB 542** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. The heading to Subchapter M, Chapter 1701, Occupations Code, is amended to read as follows:

SUBCHAPTER M. SCHOOL ~~[VISITING]~~ RESOURCE OFFICERS AND
~~[OFFICER IN PUBLIC]~~ SCHOOL DISTRICT PEACE OFFICERS

SECTION _____. Subchapter M, Chapter 1701, Occupations Code, is amended by adding Section 1701.604 to read as follows:

Sec. 1701.604. EDUCATION AND TRAINING PROGRAM. (a) Except as provided by Subsection (b), this section applies only to:

(1) a school district peace officer commissioned under Section 37.081, Education Code; or

(2) a school resource officer, as defined by Section 1701.601.

(b) This section does not apply to a peace officer while the peace officer is assigned to a school-sponsored event at which formal classroom instruction is not offered.

(c) A peace officer may not serve as a school district peace officer for more than one calendar year unless the peace officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided by Subsection (d), and has received a certificate under Subsection (e). A peace officer may not serve as a school resource officer for more than one calendar year unless the officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided

by Subsection (d), and has received a certificate under Subsection (e). This subsection applies only after the commission determines that regular and online education and training courses are available in the major regions of this state.

(d) A peace officer who has received comparable education and training through the Bexar County children's crisis intervention training program or the Texas School Safety Center at Texas State University is not required to complete the education and training program approved by the commission under this section to serve as a school district peace officer or school resource officer.

(e) The commission shall issue a professional achievement or proficiency certificate to a peace officer on successful completion of an education and training program:

(1) approved by the commission under this section; or

(2) described by Subsection (d).

(f) The commission shall appoint 12 members to a school resource curriculum committee to develop the curriculum for the education and training program under this section. The school resource curriculum committee shall be composed as follows:

(1) one representative of the Bexar County children's crisis intervention training program;

(2) one representative of the Texas School Safety Center at Texas State University;

(3) one representative of the commission;

(4) one representative of the Texas Municipal Police Association;

(5) one representative of the Texas Education Agency;

(6) one representative of a local mental health authority, as defined by

Section 571.003, Health and Safety Code;

(7) a peace officer with certification in crisis intervention;

(8) a school district peace officer;

(9) one representative of an organization that advocates for juvenile justice;

(10) one representative of an organization that advocates for civil liberties;

(11) one representative of an organization representing parents of public school students; and

(12) one representative of the Texas School District Police Chiefs' Association.

(g) Members of the school resource curriculum committee serve terms of two years.

(h) The school resource curriculum committee shall develop the curriculum for the education and training program under this section based on the model curriculum used for the Bexar County children's crisis intervention training program and in accordance with Subsection (i). The curriculum must be approved by the commission. After developing the program, the committee may review and revise the curriculum for the program annually or as the committee determines necessary. Any revision must be approved by the commission. In carrying out its duties, the committee may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses. Not later than December 1 of each even-numbered year, the commission

shall review the committee's continuation and functions and make any recommendations to the legislature concerning statutory changes regarding the committee that the commission considers appropriate.

(i) The curriculum for the education and training program under this section must incorporate learning objectives regarding:

- (1) child and adolescent development and psychology;
- (2) positive behavioral interventions and supports, conflict resolution techniques, and restorative justice techniques;
- (3) force usage limitations, including physical restraint, and de-escalation techniques;
- (4) children with disabilities or special needs, including mental or behavioral health needs; and
- (5) cultural competency.

(j) The education and training program under this section may be provided:

- (1) as a collaborative model within a community that:
 - (A) involves local stakeholders; and
 - (B) incorporates didactic and experiential training using the best practice model of the Bexar County children's crisis intervention training program;
- (2) by a school determined appropriate for operation under Section 1701.251; or
- (3) as an online training program sponsored by an online training provider if the training provider also provides training under Section 1701.251.

(k) A school district may offer additional, commission-approved preparatory education or training to its school district peace officers and school resource officers.

(l) The superintendent of a school district that employs a peace officer or to which a school resource officer is assigned shall maintain on file the certification issued to the officer under Subsection (e).

(m) Notwithstanding Section 1701.351(a), the commission may not suspend the license of a peace officer solely because the peace officer fails to meet the requirements of this section.

SECTION _____. Not later than March 31, 2012, the Commission on Law Enforcement Officer Standards and Education shall approve the curriculum for the education and training program as required by Section 1701.604, Occupations Code, as added by this Act.

SECTION _____. Section 1701.604, Occupations Code, as added by this Act, applies only to a school district peace officer or school resource officer who is serving or has been assigned, appointed, commissioned, or employed by a school district to serve in that capacity on or after March 31, 2012.

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 542** 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; Huffman, Whitmire, Williams, and Seliger.

SENATE BILL 1130 WITH HOUSE AMENDMENTS

Senator Hegar called **SB 1130** 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 1130** on third reading as follows:

Add the following appropriately numbered SECTIONS to the bill:

SECTION ____ . Section 11.1826, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) For purposes of determining whether an organization has satisfied the requirements of Subsection (b) or (e) of this section in order to qualify for an exemption under Section 11.1825 or 11.182, respectively, an opinion included in an audit of the organization prepared by an independent auditor who is licensed by this state as a certified public accountant or a determination of tax-exempt status under Section 501(c), Internal Revenue Code of 1986, issued by the United States Internal Revenue Service is prima facie evidence of the facts stated in the opinion or determination.

SECTION ____ . This Act applies only to ad valorem taxes imposed for a tax year beginning on or after the effective date of this Act.

Floor Amendment No. 2 on Third Reading

Amend **SB 1130** on third reading by inserting the following appropriately-numbered SECTION and renumbering any subsequent SECTIONS and updating any cross-references accordingly:

SECTION ____ . Section 1151.204, Occupations Code, is amended to read as follows:

Sec. 1151.204. DISMISSAL OF COMPLAINTS [~~COMPLAINT RELATING TO APPRAISED VALUE~~]. (a) After investigation, the department may dismiss a complaint, in part or entirely, without conducting a hearing if [:

~~(1) the complaint [challenges only the appraised value of a property or another matter for which Title I, Tax Code, specifies a remedy and] does not credibly allege a violation of this chapter or the standards established by the commission for registrants under this chapter[; and~~

~~(2) the disagreement has not been resolved in the complaint's favor by an appraisal review board or court].~~

(b) After investigation, the department shall dismiss a complaint, in part or entirely, without conducting a hearing if:

(1) the complaint challenges:

(A) the imposition of or failure to waive penalties or interest under Sections 33.01 and 33.011, Tax Code;

(B) the appraised value of a property;

(C) the appraisal methodology;

(D) the grant or denial of an exemption from taxation; or

(E) any matter for which Title 1, Tax Code, specifies a remedy, including an action that a property owner is entitled to protest before an appraisal review board under Section 41.41(a), Tax Code; and

(2) the subject matter of the complaint has not been finally resolved in the complainant's favor by an appraisal review board, a governing body, an arbitrator, a court, or the State Office of Administrative Hearings under Section 2003.901, Government Code.

(c) This section does not apply to:

(1) a matter referred to the department by the comptroller under Section 5.102, Tax Code, or a successor statute;

(2) a complaint concerning a registrant's failure to comply with the registration and certification requirements of this chapter; or

(3) a complaint concerning a newly appointed chief appraiser's failure to complete the training program described by Section 1151.164.

SECTION ____ . The change in law made by this Act to Section 1151.204, Occupations Code, applies only to a complaint filed on or after the effective date of this Act. A complaint filed before that date is governed by the law in effect on the date the complaint was filed, and the former law is continued in effect for that purpose.

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 1130** 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; Wentworth, Deuell, Eltife, and Birdwell.

CONFERENCE COMMITTEE ON HOUSE BILL 2910

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 2910** 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 2910** 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; Watson, Carona, Wentworth, and Eltife.

CONFERENCE COMMITTEE ON HOUSE BILL 1560

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 1560** 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 1560** 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; Ogden, Watson, Jackson, and Birdwell.

CONFERENCE COMMITTEE ON HOUSE BILL 335

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 335** 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 335** 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; Nelson, Patrick, Ellis, and Huffman.

CONFERENCE COMMITTEE ON HOUSE BILL 2439

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 2439** 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 2439** 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; Ellis, Whitmire, Carona, and Jackson.

CONFERENCE COMMITTEE ON HOUSE BILL 1242

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 1242** 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 1242** 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; Jackson, Lucio, Estes, and Watson.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Friday, May 27, 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:

HCR 173 Thompson

Instructing the enrolling clerk of the house to make corrections in H.B. No. 1451.

THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 232 (144 Yeas, 0 Nays, 2 Present, not voting)

HB 1760 (143 Yeas, 1 Nays, 2 Present, not voting)

HB 2004 (143 Yeas, 0 Nays, 2 Present, not voting)

HB 2596 (141 Yeas, 0 Nays, 2 Present, not voting)

HB 2853 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 2857 (141 Yeas, 1 Nays, 2 Present, not voting)

HB 2909 (139 Yeas, 0 Nays, 2 Present, not voting)

HB 3771 (91 Yeas, 47 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 6 (non-record vote)

House Conferees with Instructions: Eissler - Chair/Branch/Hochberg/Huberty/Strama

HB 362 (non-record vote)

House Conferees: Solomons - Chair/Bohac/Deshotel/Giddings/Orr

HB 1000 (non-record vote)

House Conferees: Branch - Chair/Button/Geren/Johnson/Madden

HB 2194 (non-record vote)

House Conferees: Taylor, Larry - Chair/Davis, Sarah/Farias/King, Phil/Pena

HB 2549 (non-record vote)

House Conferees: Crownover - Chair/Davis, John/Lewis/McClendon/Taylor, Larry

HB 2847 (non-record vote)

House Conferees: Madden - Chair/Button/Carter/Lozano/Taylor, Van

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

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:

HB 3580, HB 3597, HB 3674, HB 3724, HB 3730, HB 3746, HB 3813, HB 3831, HB 3834, HB 3837, HB 3840, HB 3842, HB 3843, HB 3844, HB 3856, HB 3866, HCR 129, HCR 142, HCR 162.

HOUSE CONCURRENT RESOLUTION 172

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

WHEREAS, House Bill No. 2643 has been adopted by the house of representatives and the senate 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 house of representatives be instructed to correct House Bill No. 2643, in the SECTION of the bill amending Section 1302.263, Occupations Code, by striking "A person licensed as a contractor under this subchapter [~~chapter~~]" and substituting "A person licensed as a contractor under this chapter".

WATSON

HCR 172 was read.

On motion of Senator Watson, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Friday, May 27, 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 CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 218 (134 Yeas, 6 Nays, 2 Present, not voting)

HB 422 (128 Yeas, 10 Nays, 2 Present, not voting)

HB 680 (140 Yeas, 0 Nays, 2 Present, not voting)

HB 992 (107 Yeas, 32 Nays, 3 Present, not voting)

HB 1199 (141 Yeas, 2 Nays, 2 Present, not voting)

HB 1638 (139 Yeas, 0 Nays, 2 Present, not voting)

HB 2102 (136 Yeas, 5 Nays, 2 Present, not voting)

HB 2265 (98 Yeas, 45 Nays, 2 Present, not voting)

HB 2655 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 2662 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 2931 (137 Yeas, 0 Nays, 3 Present, not voting)

HB 3395 (140 Yeas, 1 Nays, 2 Present, not voting)

HB 3453 (77 Yeas, 62 Nays, 2 Present, not voting)

HB 3743 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 3804 (140 Yeas, 0 Nays, 2 Present, not voting)

HB 3845 (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 2327 (non-record vote)

House Conferees: McClendon - Chair/Fletcher/Harper-Brown/Pickett/Rodriguez, Eddie

HB 3025 (non-record vote)

House Conferees: Branch - Chair/Bonnen/Howard, Donna/Johnson/Ritter

HB 3117 (non-record vote)

House Conferees: Vo - Chair/Eiland/Sheets/Smithee/Taylor, Larry

HB 3468 (non-record vote)

House Conferees: Patrick, Diane - Chair/Aycock/Branch/Howard, Donna/Shelton

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

HB 3691 (140 Yeas, 1 Nays, 2 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RESOLUTION 1177

Senator Hegar offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 321 (employee's transportation and storage of certain firearms or ammunition while on certain property owned or controlled by the employee's employer) to consider and take action on the following matter:

Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in proposed SECTION 1 of the bill, in added Section 52.063, Labor Code, to read as follows:

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.

Explanation: This change is necessary to clarify the responsibilities and immunity from civil liability of persons under this Act.

SR 1177 was read and was adopted by the following vote: Yeas 29, Nays 2.

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

Nays: Rodriguez, West.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 321 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **SB 321**. The Conference Committee Report was filed with the Senate on Monday, May 23, 2011.

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

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

Nays: Rodriguez, West.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3302 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **HB 3302**. The Conference Committee Report was filed with the Senate on Tuesday, May 24, 2011.

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

**CONFERENCE COMMITTEE ON HOUSE BILL 6
(Motion In Writing)**

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 6** 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 6** 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 Shapiro, Chair; Duncan, Van de Putte, Carona, and Nelson.

CONFERENCE COMMITTEE ON HOUSE BILL 2770
(Motion In Writing)

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 2770** 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 2770** 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; Ellis, Whitmire, Jackson, and Nichols.

CONFERENCE COMMITTEE ON HOUSE BILL 2365
(Motion In Writing)

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 2365** 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 2365** 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 Shapiro, Chair; Carona, Nelson, Huffman, and Birdwell.

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:

HB 2256, HB 2266, HB 2296, HB 2310, HB 2315, HB 2330, HB 2338, HB 2346, HB 2363, HB 2396, HB 2460, HB 2492, HB 2496, HB 2541, HB 2575, HB 2577, HB 2584, HB 2636, HB 2651, HB 2678, HB 2722, HB 2869, HB 2960, HB 2966, HB 2996, HB 2997, HB 3003, HB 3030, HB 3076, HB 3079, HB 3096, HB 3125, HB 3197, HB 3208, HB 3216, HB 3369, HB 3384, HB 3399, HB 3462, HB 3474, HB 3475.

HOUSE CONCURRENT RESOLUTION 166

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

WHEREAS, May 18, 2011, marked the 10th anniversary of the untimely passing of John Austin Pena of Edinburg, and a new drug treatment center being completed in Hidalgo County has been named the John Austin Pena Memorial Center in honor of this beloved young man; and

WHEREAS, We stand together in commemoration of John's life with his loving family members: his father and stepmother, Aaron Pena, Jr., and Monica Pena; his mother, Criselda Pena; his dear siblings, Adrienne Pena-Garza, Aaron Leonel Pena, Alyssa Victoria Pena, and Michael Anthony Pena; his beloved young daughter, Chelsea Pena, and all his other relatives; and

WHEREAS, John Austin Pena was born at Park Place Hospital in Houston on October 4, 1984; he was a bright, spirited, cheerful young man who had many good friends; his broad spectrum of interests ranged from sports—especially basketball, soccer, and baseball—to skateboarding and playing laser tag with his pals and playing video games with his younger brother "Mikey"; endowed with a lively imagination and curiosity, he also enjoyed writing and traveling; and

WHEREAS, On May 18, 2001, the limitless potential that was embodied in the life of John Austin Pena was tragically brought to an untimely end when he and two other young people attending a social gathering were encouraged to ingest a substance, distributed at the gathering, that later proved to be deadly to all three; his death and absence caused considerable anguish among his friends and relatives, particularly his parents and siblings; many were led to channel their deep remorse by seeking solutions to the growing drug epidemic among our youth, with particular attention to those living along the Texas-Mexico border; and

WHEREAS, In June 2002, John's father, Aaron Pena, embarked on a journey to examine how Texas was dealing with rising drug abuse; he began visiting drug treatment centers across Texas to raise awareness of the growing problem, and the endeavor culminated with a visit to La Hacienda Drug Treatment Center in Hunt; in order to bring attention to the lack of treatment facilities in Texas, Representative Pena walked 125 miles from La Hacienda treatment center to our state Capitol in Austin; as a result of that visit, he made a promise to bring a drug treatment center to South Texas; and

WHEREAS, In 2004, to further this goal of drug abuse awareness, the John Austin Pena Memorial Scholarship was established in John's memory by the Texas Association of Addiction Professionals; the scholarship is presented annually to a student in recovery who is pursuing a college degree; and

WHEREAS, On May 18, 2007, through the diligent work of his father, State Representative Aaron Pena, the Texas House of Representatives gave budgetary approval for a drug treatment facility in the Rio Grande Valley; on March 26, 2010, Hidalgo County held a ground-breaking ceremony for the substance abuse treatment facility located at 3341 E. Richardson Road in Edinburg; and

WHEREAS, On May 17, 2011, the Hidalgo County Commissioners Court unanimously voted to not only memorialize the legacy of a young life cut short, but also recognize the efforts of those inspired by that tragedy to combat the evils of drug abuse, by ordering that the Hidalgo County Substance Abuse Treatment Facility be designated the John Austin Pena Memorial Center; and

WHEREAS, The new John Austin Pena Memorial Center, opening in the fall of 2011, will provide substance abuse treatment services to adolescents on an outpatient basis; although John Pena is deeply missed by his loved ones, the scholarship and the

drug treatment center that bear his name increase awareness and offer hope of a brighter future to young people struggling to move beyond addiction; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby pay tribute to the memory of John Austin Pena on the 10th anniversary of his passing and commemorate the naming of the John Austin Pena Memorial Center in his honor.

LUCIO

HCR 166 was read.

On motion of Senator Lucio, 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 2194

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 2194** 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 2194** 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; Duncan, Huffman, Van de Putte, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 1000

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 1000** 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 1000** 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; Williams, Shapiro, Wentworth, and Ellis.

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:

HB 1930, HB 1967, HB 1969, HB 1981, HB 1994, HB 2119, HB 2124, HB 2133, HB 2136, HB 2138, HB 2141, HB 2220, HB 2247.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Friday, May 27, 2011 - 5
(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 CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

- HB 550** (139 Yeas, 0 Nays, 2 Present, not voting)
- HB 742** (140 Yeas, 2 Nays, 2 Present, not voting)
- HB 811** (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 1111** (141 Yeas, 0 Nays, 2 Present, not voting)
- HB 1413** (143 Yeas, 0 Nays, 2 Present, not voting)
- HB 1496** (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 2089** (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 2463** (143 Yeas, 0 Nays, 2 Present, not voting)
- HB 2702** (140 Yeas, 2 Nays, 2 Present, not voting)
- HB 2947** (139 Yeas, 0 Nays, 2 Present, not voting)
- HB 2949** (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 2975** (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 2981** (140 Yeas, 1 Nays, 2 Present, not voting)
- HB 3099** (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 3409** (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 3827** (139 Yeas, 3 Nays, 3 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 3328 (non-record vote)

House Conferees: Keffer - Chair/Burnam/Crownover/Parker/Strama

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 2847
(Motion In Writing)

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 2847** 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 2847** 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 Whitmire, Chair; Huffman, Hegar, Patrick, and Hinojosa.

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:

HB 1651, HB 1690, HB 1721, HB 1737, HB 1750, HB 1784, HB 1823, HB 1856, HB 1887, HB 1891, HB 1897.

SENATE BILL 660 WITH HOUSE AMENDMENTS

Senator Hinojosa called **SB 660** 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 660** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

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

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

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

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

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

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

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

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

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

(c) The board shall:

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

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

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

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

(1) "Default" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the recipient is not:

(A) a municipality or county; or

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

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

(1) perform audits;

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

(3) fund reserve accounts;

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

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

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

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

(f) On a showing of good cause by the financial assistance program recipient, the court may dissolve the receivership.

SECTION 3. Section 6.154, Water Code, is amended to read as follows:

Sec. 6.154. COMPLAINT FILE. (a) The board shall maintain a system to promptly and efficiently act on complaints [~~file on each written complaint~~] filed with the board. The board shall maintain information about parties to the complaint, [~~file must include:~~

[(1) the name of the person who filed the complaint;

[(2) the date the complaint is received by the board;

[(3) the subject matter of the complaint,];

[(4) the name of each person contacted in relation to the complaint;

[(5) a summary of the results of the review or investigation of the complaint, and the complaint's disposition]; and

[(6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint].

(b) The board shall make information available describing its [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and~~] procedures for [~~relating to~~] complaint investigation and resolution.

SECTION 4. Section 6.155, Water Code, is amended to read as follows:

Sec. 6.155. NOTICE OF COMPLAINT. The board~~[-at least quarterly until final disposition of the complaint,]~~ shall periodically notify the ~~[person filing the]~~ complaint parties ~~[and each person who is a subject of the complaint]~~ of the status of the complaint until final disposition ~~[investigation unless the notice would jeopardize an undercover investigation].~~

SECTION 5. Section 11.1271, Water Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) The commission shall adopt rules:

(1) establishing criteria and deadlines for submission of water conservation plans, including any required amendments, and for submission of implementation reports; and

(2) requiring the uniform water use calculation system developed under Section 16.403 to be used in the water conservation plans required by this section.

(g) At a minimum, rules adopted under Subsection (f)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 6. Section 16.021, Water Code, is amended by amending Subsections (c), (d), and (e) and adding Subsections (d-1) and (g) to read as follows:

(c) The executive administrator shall designate the director of the Texas Natural Resources Information System to serve as the state geographic information officer. The state geographic information officer shall:

(1) coordinate the acquisition and use of high-priority imagery and data sets;

(2) establish, support, and disseminate authoritative statewide geographic data sets;

(3) support geographic data needs of emergency management responders during emergencies;

(4) monitor trends in geographic information technology; and

(5) support public access to state geographic data and resources [The Texas Geographic Information Council (TGIC) is created to provide strategic planning and coordination in the acquisition and use of geo-spatial data and related technologies in the State of Texas. The executive administrator and the executive director of the Department of Information Resources shall designate entities to be members of the TGIC. The chief administrative officer of each member entity shall select one representative to serve on the TGIC. The duties of the TGIC shall include providing guidance to the executive administrator in carrying out the executive administrator's duties under this section and guidance to the Department of Information Resources for development of rules related to statewide geo-spatial data and technology standards].

(d) Not later than December 1, 2016, and before the end of each successive five-year period after that date, the board shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report that contains recommendations regarding:

(1) statewide geographic data acquisition needs and priorities, including updates on progress in maintaining the statewide digital base maps described by Subsection (e)(6);

(2) policy initiatives to address the acquisition, use, storage, and sharing of geographic data across the state;

(3) funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and

(4) opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data
~~[Member entities of the TGIC that are state agencies shall, and member entities that are not state agencies may, provide information to the TGIC about their investments in geographic information and plans for its use. Not later than November 1 of each even-numbered year, the TGIC shall prepare and provide to the board, the Department of Information Resources, the governor, and the legislature a report that:~~

~~[(1) describes the progress made by each TGIC member entity toward achieving geographic information system goals and in implementing geographic information systems initiatives; and~~

~~[(2) recommends additional initiatives to improve the state's geographic information systems programs].~~

(d-1) The board shall consult with stakeholders in preparing the report required by Subsection (d).

(e) The [Under the guidance of the TGIC, the] executive administrator shall:

(1) further develop the Texas Natural Resources Information System by promoting and providing for effective acquisition, archiving, documentation, indexing, and dissemination of natural resource and related digital and nondigital data and information;

(2) obtain information in response to disagreements regarding names and name spellings for natural and cultural features in the state and provide this information to the Board on Geographic Names of the United States Department of the Interior;

(3) make recommendations to the Board on Geographic Names of the United States Department of the Interior for naming any natural or cultural feature subject to the limitations provided by Subsection (f);

(4) make recommendations to the Department of Information Resources to adopt and promote standards that facilitate sharing of digital natural resource data and related socioeconomic data among federal, state, and local governments and other interested parties;

(5) acquire and disseminate natural resource and related socioeconomic data describing the Texas-Mexico border region; and

(6) coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features.

(g) The board may establish one or more advisory committees to assist the board or the executive administrator in implementing this section, including by providing information in connection with the preparation of the report required by Subsection (d). In appointing members to an advisory committee, the board shall consider including representatives of:

(1) state agencies that are major users of geographic data;

(2) federal agencies;

- (3) local governments; and
- (4) the Department of Information Resources.

SECTION 7. Subsection (b), Section 16.023, Water Code, is amended to read as follows:

(b) The account may be appropriated only to the board to:

- (1) develop, administer, and implement the strategic mapping program;
- (2) provide grants to political subdivisions for projects related to the development, use, and dissemination of digital, geospatial information; and
- (3) administer, implement, and operate other programs of the Texas Natural Resources Information System, including:

(A) the operation of a Texas-Mexico border region information center for the purpose of implementing Section 16.021(e)(5);

(B) the acquisition, storage, and distribution of historical maps, photographs, and paper map products;

(C) the maintenance and enhancement of information technology; and

(D) the production, storage, and distribution of other digital base maps, as determined by the executive administrator [~~or a state agency that is a member of the Texas Geographic Information Council~~].

SECTION 8. Section 16.051, Water Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) The state water plan must include:

(1) an evaluation of the state's progress in meeting future water needs, including an evaluation of the extent to which water management strategies and projects implemented after the adoption of the preceding state water plan have affected that progress; and

(2) an analysis of the number of projects included in the preceding state water plan that received financial assistance from the board.

(a-2) To assist the board in evaluating the state's progress in meeting future water needs, the board may obtain implementation data from the regional water planning groups.

SECTION 9. Subsections (c) and (e), Section 16.053, Water Code, are amended to read as follows:

(c) No later than 60 days after the designation of the regions under Subsection (b), the board shall designate representatives within each regional water planning area to serve as the initial coordinating body for planning. The initial coordinating body may then designate additional representatives to serve on the regional water planning group. The initial coordinating body shall designate additional representatives if necessary to ensure adequate representation from the interests comprising that region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. The regional water planning group shall maintain adequate representation from those interests. In addition, the groundwater conservation districts located in each management area, as defined by Section 36.001, located in the regional water planning area shall appoint one representative of a groundwater conservation district located in the management area and in the regional water planning area to serve on the regional water planning group. In addition,

representatives of the board, the Parks and Wildlife Department, and the Department of Agriculture shall serve as ex officio members of each regional water planning group.

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the date the board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of managed available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder;

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists; and

(8) describes the impact of proposed water projects on water quality.

SECTION 10. Section 16.402, Water Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) The board and commission jointly shall adopt rules:

(1) identifying the minimum requirements and submission deadlines for the annual reports required by Subsection (b); ~~and~~

(2) requiring the uniform water use calculation system developed under Section 16.403 to be used in the reports required by Subsection (b); and

(3) providing for the enforcement of this section and rules adopted under this section.

(f) At a minimum, rules adopted under Subsection (e)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The board and commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 11. Subchapter K, Chapter 16, Water Code, is amended by adding Section 16.403 to read as follows:

Sec. 16.403. UNIFORM WATER USE CALCULATION SYSTEM. The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform system for calculating municipal water use in gallons per capita per day to be used by each entity required to submit a water conservation plan to the board or the commission under this code.

SECTION 12. Section 17.003, Water Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) Water financial assistance bonds that have been authorized but have not been issued are not considered to be state debt payable from the general revenue fund for purposes of Section 49-j, Article III, Texas Constitution, until the legislature makes an appropriation from the general revenue fund to the board to pay the debt service on the bonds.

(d) In requesting approval for the issuance of bonds under this chapter, the executive administrator shall certify to the bond review board whether the bonds are reasonably expected to be paid from:

(1) the general revenues of the state; or

(2) revenue sources other than the general revenues of the state.

(e) The bond review board shall verify whether debt service on bonds to be issued by the board under this chapter is state debt payable from the general revenues of the state, in accordance with the findings made by the board in the resolution authorizing the issuance of the bonds and the certification provided by the executive administrator under Subsection (d).

(f) Bonds issued under this chapter that are designed to be paid from the general revenues of the state shall cease to be considered bonds payable from those revenues if:

(1) the bonds are backed by insurance or another form of guarantee that ensures payment from a source other than the general revenues of the state; or

(2) the board demonstrates to the satisfaction of the bond review board that the bonds no longer require payment from the general revenues of the state and the bond review board so certifies to the Legislative Budget Board.

SECTION 13. Section 17.9022, Water Code, is amended to read as follows:

Sec. 17.9022. FINANCING OF GRANT OR LOAN FOR POLITICAL SUBDIVISION; DEFAULT; VENUE. ~~[(a)]~~ The board may make a loan or grant available to a political subdivision in any manner the board considers economically feasible, including purchase of bonds or securities of the political subdivision or execution of a loan or grant agreement with the political subdivision. The board may not purchase bonds or securities that have not been approved by the attorney general and registered by the comptroller.

~~[(b) In the event of a default in payment of the principal or interest on bonds or securities purchased by the board, or any other default as defined in the proceedings or indentures authorizing the issuance of bonds, or a default of any of the terms of a loan agreement, the attorney general shall seek a writ of mandamus or other legal remedy to compel the political subdivision or its officers, agents, and employees to cure the default by performing the duties they are legally obligated to perform. The proceedings shall be brought and venue is in a district court in Travis County. This subsection is cumulative of any other rights or remedies to which the board may be entitled.]~~

SECTION 14. Section 36.001, Water Code, is amended by adding Subdivision (30) to read as follows:

(30) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.

SECTION 15. Section 36.063, Water Code, is amended to read as follows:

Sec. 36.063. NOTICE OF MEETINGS. (a) Except as provided by Subsections (b) and (c), notice ~~[Notice]~~ of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

(b) At least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the board must post notice that includes:

- (1) the proposed desired future conditions and a list of any other agenda items;
- (2) the date, time, and location of the meeting or hearing;
- (3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
- (4) the names of the other districts in the district's management area; and
- (5) information on how the public may submit comments.
- (c) Except as provided by Subsection (b), notice of a hearing described by Subsection (b) must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).

SECTION 16. Subsections (a) and (e), Section 36.1071, Water Code, are amended to read as follows:

(a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues;
- (5) addressing natural resource issues;
- (6) addressing drought conditions;
- (7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and
- (8) addressing ~~[in a quantitative manner]~~ the desired future conditions adopted by the district under Section 36.108 ~~[of the groundwater resources]~~.

(e) In the management plan described under Subsection (a), the district shall:

- (1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);
- (2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;
- (3) include estimates of the following:
 - (A) managed available groundwater in the district based on the desired future condition adopted ~~[established]~~ under Section 36.108;
 - (B) the amount of groundwater being used within the district on an annual basis;
 - (C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;
 - (D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;
 - (E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the district according to the most recently adopted state water plan; and

(4) consider the water supply needs and water management strategies included in the adopted state water plan.

SECTION 17. Subchapter D, Chapter 36, Water Code, is amended by amending Section 36.108 and adding Sections 36.1081 through 36.1087 to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In this section:

(1) "Development [~~development~~] board" means the Texas Water Development Board.

(2) "District representative" means the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area.

(b) If two or more districts are located within the boundaries of the same management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. On completion and approval of the plan as required by Section 36.1072, each district shall forward a copy of the new or revised management plan to the other districts in the management area. The boards of the districts shall consider the plans individually and shall compare them to other management plans then in force in the management area.

(c) The district representatives [~~The presiding officer, or the presiding officer's designee, of each district located in whole or in part in the management area~~] shall meet at least annually to conduct joint planning with the other districts in the management area and to review the management plans, the [~~and~~] accomplishments of [~~for~~] the management area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area; and

(4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption [~~establish~~] desired future conditions for the relevant aquifers within the management area. Before voting on the proposed [~~In establishing the~~] desired future conditions of the aquifers under Subsection (d-2) [~~this section~~], the districts shall consider:

(1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;

(2) the water supply needs and water management strategies included in the state water plan;

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

(5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) whether the desired future conditions are physically possible; and

(9) any other information relevant to the specific desired future conditions [uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another].

(d-1) The districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d-2) [~~(d-1)~~] The desired future conditions proposed [established] under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved [adopted] by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 30 or more than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on the proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the public hearing, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions [present at a meeting:

(1) at which at least two-thirds of the districts located in whole or in part in the management area have a voting representative in attendance; and

(2) for which all districts located in whole or in part in the management area provide public notice in accordance with Chapter 551, Government Code.

[(d-2) Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process].

(d-3) After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period under Subsection (d-2), the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

(1) identify each desired future condition;

(2) provide the policy and technical justifications for each desired future condition;

(3) include documentation that the factors under Subsection (d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;

(4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and

(5) discuss reasons why recommendations made by advisory committees and public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) As soon as possible after a district receives the desired future conditions resolution and explanatory report under Subsection (d-3), the district shall adopt the desired future conditions in the resolution and report that apply to the district.

(e) Except as provided by this section, a [A] joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. The district representatives may elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. Notice of a joint [the] meeting must be provided at least 10 days before the date of the meeting by:

(1) providing notice to the secretary of state;

(2) providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and

(3) posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.

(e-1) The secretary of state and the county clerk of each county described by Subsection (e) shall post notice of the meeting in the manner provided by Section 551.053, Government Code.

(e-2) Notice of a joint meeting must include:

(1) the date, time, and location of the meeting;

(2) a summary of any action proposed to be taken;

(3) the name of each district located wholly or partly in the management area; and

(4) the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.

(e-3) The failure or refusal of one or more districts to post notice for a joint meeting under Subsection (e)(3) does not invalidate an action taken at the joint meeting [shall be given in accordance with the requirements for notice of district board of directors meetings under that Act].

Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT PLANNING. (a) On request, the commission and the Texas Water Development Board shall make technical staff available to serve in a nonvoting advisory capacity to assist with the development of desired future conditions during the joint planning process under Section 36.108.

(b) During the joint planning process under Section 36.108, the district representatives may appoint and convene nonvoting advisory subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions.

Sec. 36.1082. PETITION FOR INQUIRY. (a) In this section, "affected person" means, with respect to a management area:

(1) an owner of land in the management area;

(2) a district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area;

(5) a person who, under Section 36.002, has an ownership interest in groundwater in the management area; or

(6) any other person defined as affected by commission rule.

(b) An affected person [~~(f) A district or person with a legally defined interest in the groundwater within the management area~~] may file a petition with the commission requesting an inquiry for any of the following reasons:

(1) a district fails to submit its management plan to the executive administrator;

(2) [~~if~~] a district fails [~~or districts refused~~] to participate [~~join~~] in the joint planning process under Section 36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) [~~or the process failed to result in adequate planning, including the establishment of reasonable future desired conditions of the aquifers, and the petition provides evidence that:~~

~~(1) a district in the groundwater management area has failed to adopt rules;~~
~~(2) the rules adopted by a district are not designed to achieve the desired future conditions adopted by [condition of the groundwater resources in] the [groundwater] management area [established] during the joint planning process;~~

~~(8) [(3)] the groundwater in the management area is not adequately protected by the rules adopted by a district; or~~

~~(9) [(4)] the groundwater in the [groundwater] management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.~~

~~(c) [(e)]~~ Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:

(1) dismiss the petition if the commission finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection ~~(d) [(h)]~~.

~~(d) [(h)]~~ If the petition is not dismissed under Subsection ~~(c) [(e)]~~, the commission shall appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the [groundwater] management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

~~(e) [(f)]~~ Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the [groundwater] management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.

~~(f) [(g)]~~ In its report, the review panel shall include:

(1) a summary of all evidence taken in any hearing on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and

(3) any other information the panel considers appropriate.

~~(g) [(h)]~~ The review panel shall submit its report to the commission. The commission may take action under Section 36.3011.

Sec. 36.1083. ADMINISTRATIVE APPEAL OF DESIRED FUTURE CONDITIONS. (a) In this section:

(1) "Affected person" has the meaning assigned by Section 36.1082.

(2) "Development board" means the Texas Water Development Board.

(3) "Office" means the State Office of Administrative Hearings.

(b) Not later than the 180th day after the date on which a district adopted a desired future condition under Section 36.108(d-4), an affected person may file a petition with the district requesting that the district contract with the office to conduct a hearing to appeal the desired future condition, including the reasonableness of the desired future condition.

(c) Not later than the 45th day after receiving a request under Subsection (b), the district shall:

- (1) contract with the office;
- (2) request a contested case hearing; and
- (3) submit a copy of the petition to the office.

(d) The hearing must be held at a location described by Section 36.403(c). The hearing shall be conducted in accordance with Chapter 2001, Government Code, and rules of the office.

(e) The district may adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules of the office. In the manner prescribed by district and office rules, the district shall provide general notice of the hearing and individual notice of the hearing to the petitioner, any other party in the hearing identified under Subsection (f)(3), each nonparty district and regional water planning group in the management area, the development board, and the commission. Only an affected person may participate as a party in the hearing.

(f) The office shall hold a prehearing conference to determine preliminary matters including:

- (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
- (2) whether a person is an affected person and eligible to participate as a party in the hearing; and
- (3) naming parties to the hearing.

(g) The petitioner shall pay all costs associated with the contract for the hearing and shall deposit with the district an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the district shall refund any excess money to the petitioner.

(h) If the administrative law judge finds that a technical analysis is needed related to the hydrogeology of the area or matters within the development board's expertise, the judge may request a study from the development board. In conducting the technical analysis, the development board shall consider any relevant information provided in the petition, as well as any groundwater availability models, published studies, or other information the development board considers relevant. The study must be completed and delivered to the office not later than the 120th day after the date of the request for admission into the evidentiary record for consideration at the hearing. The development board shall make available the relevant staff as expert witnesses during the hearing if requested by any party or the administrative law judge.

(i) On receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition under Subsection (f), the district's board shall issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge in the same manner as a state agency under Section 2001.058(e), Government Code. If the district in its final order finds that a desired future condition is unreasonable, the districts in the management area shall reconvene in a joint planning meeting not later than the 30th day after the date of the final order to revise the desired future condition.

(j) A district's final order finding that a desired future condition is unreasonable does not invalidate the desired future condition for a district not subject to the petition.

Sec. 36.1084. COURT APPEAL OF DESIRED FUTURE CONDITION. A final district order under Section 36.1083 may be appealed to a court under the substantial evidence standard of review as provided by Section 2001.174, Government Code. The venue for an appeal is a district court with jurisdiction over any part of the territory in the management area that includes the district whose final order is being appealed. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the management area to reconvene in a joint planning meeting not later than the 30th day after the date of the court's decision to revise the desired future condition.

Sec. 36.1085. MANAGED AVAILABLE GROUNDWATER. (a) ~~The Texas Water Development Board shall require the~~ ~~[(4) A person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area may file a petition with the development board appealing the approval of the desired future conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area.]~~

~~[(m) The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.]~~

~~[(n) The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the groundwater management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.]~~

~~[(o) The] districts in a management area to [shall] submit to the executive administrator not later than the 60th day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):~~

~~(1) the desired future conditions adopted [established] under Section 36.108;~~

~~(2) proof that notice was posted for the joint planning meeting; and~~

~~(3) the desired future conditions explanatory report [this section to the executive administrator].~~

(b) The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the managed available groundwater in the management area based upon the desired future conditions adopted by the districts ~~[condition of the groundwater resources established under this section].~~

Sec. 36.1086. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

Sec. 36.1087. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA. ~~[(P)]~~ Districts located within the same ~~[groundwater]~~ management areas or in adjacent management areas may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

SECTION 18. Section 36.3011, Water Code, is amended to read as follows:

Sec. 36.3011. COMMISSION ACTION REGARDING ~~[FAILURE OF]~~ DISTRICT DUTIES ~~[TO CONDUCT JOINT PLANNING]~~. Not later than the 45th day after receiving the review panel's report under Section 36.1082 ~~[36.108]~~, the executive director or the commission shall take action to implement any or all of the panel's recommendations. The commission may take any action against a district it considers necessary in accordance with Section 36.303 if the commission finds that:

- (1) the [a] district has failed to submit its management plan to the executive administrator;
- (2) the district has failed to participate in the joint planning process under Section 36.108;
- (3) the ~~[(2)-a]~~ district has failed to adopt rules;
- (4) the district has failed to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
- (5) the district has failed to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
- (6) the district has failed to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;
- (7) ~~[(3)]~~ the rules adopted by the district are not designed to achieve the desired future conditions adopted by ~~[condition of the groundwater resources in]~~ the ~~[groundwater]~~ management area during the joint planning process; ~~[or]~~
- (8) ~~[(4)]~~ the groundwater in the management area is not adequately protected by the rules adopted by the district; ~~;~~ [5] or
- (9) the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules.

SECTION 19. Sections 15.908 and 17.180, Water Code, are repealed.

SECTION 20. As soon as practicable after the effective date of this Act, groundwater conservation districts shall appoint initial representatives to regional water planning groups as required by Subsection (c), Section 16.053, Water Code, as amended by this Act.

SECTION 21. Not later than January 1, 2013:

(1) the Texas Commission on Environmental Quality shall adopt rules under Subsection (f), Section 11.1271, Water Code, as amended by this Act;

(2) the Texas Water Development Board and the Texas Commission on Environmental Quality jointly shall adopt rules under Subsection (e), Section 16.402, Water Code, as amended by this Act; and

(3) the Texas Water Development Board and the Texas Commission on Environmental Quality, in consultation with the Water Conservation Advisory Council, shall develop the water use calculation system required by Section 16.403, Water Code, as added by this Act.

SECTION 22. The notice provisions of Subsections (b) and (c), Section 36.063, Water Code, as added by this Act, apply only to a meeting or hearing of a groundwater conservation district or a joint planning meeting of groundwater conservation districts held on or after the effective date of this Act. A meeting or hearing held before the effective date of this Act is subject to the notice provisions in effect at the time of the meeting or hearing, and those provisions are continued in effect for that purpose.

SECTION 23. The requirement that a groundwater conservation district's management plan under Subsection (e), Section 36.1071, Water Code, as amended by this Act, include the desired future conditions adopted under Section 36.108, Water Code, as amended by this Act, for submission to the executive administrator of the Texas Water Development Board before the plan is considered administratively complete applies only to a district management plan submitted to the executive administrator on or after the effective date of this Act. A management plan submitted before the effective date of this Act is governed by the law in effect on the date the plan was submitted, and that law is continued in effect for that purpose.

SECTION 24. The procedures for the adoption and reporting of desired future conditions of groundwater resources in a management area under Section 36.108, Water Code, as amended by this Act, and Section 36.1085, Water Code, as added by this Act, apply only to the adoption of desired future conditions that occurs on or after the effective date of this Act. Desired future conditions adopted before the effective date of this Act are governed by the law in effect on the date the desired future conditions were adopted, and that law is continued in effect for that purpose.

SECTION 25. A petition filed and pending on the effective date of this Act before the Texas Water Development Board to appeal the adoption of desired future conditions by a groundwater management area under former Subsection (l), Section 36.108, Water Code, shall be handled by the Texas Water Development Board in compliance with Subsections (l), (m), and (n), Section 36.108, Water Code, as those subsections existed before the effective date of this Act.

SECTION 26. This Act takes effect September 1, 2011.

Floor Amendment No. 1

Amend **CSSB 660** (house committee printing) as follows:

(1) In SECTION 9 of the bill, in Section 16.053(e)(3)(A), Water Code (page 13, line 5), strike "managed" and substitute "modeled [~~managed~~]".

(2) In SECTION 16 of the bill, in amended Section 36.1071(e)(3)(A), Water Code (page 20, line 7), strike "managed" and substitute "modeled [~~managed~~]".

(3) In SECTION 16 of the bill, in amended Section 36.1071(e)(3)(A), Water Code (page 20, lines 8-9), strike "adopted [~~established~~]" and substitute "established".

(4) In SECTION 17 of the bill, strike added Section 36.108(d)(8), Water Code (page 23, lines 14-15), and substitute the following:

(8) the feasibility of achieving the desired future condition; and

(5) In SECTION 17 of the bill, in added Section 36.108(d-2), Water Code (page 24, line 13), strike "than 30 or more".

(6) In SECTION 17 of the bill, in added Section 36.108(d-2), Water Code (page 24, line 17), strike "the proposed desired future conditions relevant" and substitute "any proposed desired future conditions relevant".

(7) In SECTION 17 of the bill, in added Section 36.108(d-3)(5), Water Code (page 26, line 7), between "and" and "public", insert "relevant".

(8) In SECTION 17 of the bill, in the heading to added Section 36.1085, Water Code (page 34, line 10), strike "MANAGED" and substitute "MODELED".

(9) In SECTION 17 of the bill, in added Section 36.1085(b), Water Code (page 35, line 24), strike "managed" and substitute "modeled [~~managed~~]".

Floor Amendment No. 2

Amend **CSSB 660** (senate committee printing) as follows:

(1) In SECTION 5 of the bill, in added Section 11.1271(f)(2), Water Code (page 3, line 16), strike "uniform water use calculation system" and substitute "methodology and guidance for calculating water use and conservation".

(2) In SECTION 10 of the bill, in amended Section 16.402(e)(2), Water Code (page 6, line 49), strike "uniform water use calculation system" and substitute "methodology and guidance for calculating water use and conservation".

(3) In SECTION 11 of the bill, in the recital (page 6, line 61), strike "Section 16.403" and substitute "Sections 16.403 and 16.404".

(4) In SECTION 11 of the bill, strike added Section 16.403, Water Code (page 6, lines 62-67), and substitute the following:

Sec. 16.403. WATER USE REPORTING. (a) The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and preparing reports required under this code. At a minimum, the methodology and guidance must include:

(1) a method of calculating water use for each sector of water users served by a municipality or water utility;

(2) a method of classifying water users within sectors;

(3) a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day;

(4) a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a municipality's population or the number of customers served by a water utility; and

(5) guidelines on the use of service populations by a municipality or water utility in developing a per-capita-based method of calculation, including guidance on the use of permanent and temporary populations in making calculations.

(b) The board or the commission, as appropriate, shall use the methodology and guidance developed under Subsection (a) in evaluating a water conservation plan, program of water conservation, survey, or other report relating to water conservation submitted to the board or the commission under:

- (1) Section 11.1271;
- (2) Section 13.146;
- (3) Section 15.106;
- (4) Section 15.607;
- (5) Section 15.975;
- (6) Section 15.995;
- (7) Section 16.012(m);
- (8) Section 16.402;
- (9) Section 17.125;
- (10) Section 17.277;
- (11) Section 17.857; or
- (12) Section 17.927.

(c) The board, in consultation with the commission and the Water Conservation Advisory Council, shall develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

(d) Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that includes the most recent data relating to:

- (1) statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and
- (2) the data collection and reporting program developed under Subsection

(c).

Sec. 16.404. RULES AND STANDARDS. The commission and the board, as appropriate, shall adopt rules and standards as necessary to implement this subchapter.

(5) In SECTION 19(3) of the bill (page 13, line 60), strike "calculation system required by Section 16.403" and substitute "and conservation calculation methodology and guidance and the data collection and reporting program required by Sections 16.403(a) and (c)".

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

SECTION _____. Not later than January 1, 2015, the Texas Water Development Board shall submit to the legislature the first report required by Section 16.403(d), Water Code, as added by this Act.

Floor Amendment No. 3

Amend Amendment No. 2 by Laubenberg to **CSSB 660** (house committee printing) as follows:

(1) In the introductory language (page 1, line 1), strike "Senate" and substitute "house".

(2) In Item (1) of the amendment (page 1, line 4), strike "page 3, line 16" and substitute "page 6, line 14".

(3) In Item (2) of the amendment (page 1, line 8), strike "page 6, line 49" and substitute "page 15, line 11".

(4) In Item (3) of the amendment (page 1, lines 11-12), strike "page 6, line 61" and substitute "page 15, line 23".

(5) In Item (4) of the amendment (page 1, line 15), strike "page 6, lines 62-67" and substitute "page 15, line 24, through page 16, line 2".

(6) In Item (4) of the amendment, at the end of added Section 16.403, Water Code (page 3, between lines 6 and 7), add the following:

(e) Data included in a water conservation plan or report required under this code and submitted to the board or commission must be interpreted in the context of variations in local water use. The data may not be the only factor considered by the commission in determining the highest practicable level of water conservation and efficiency achievable in the jurisdiction of a municipality or water utility for purposes of Section 11.085(l).

(7) In Item (5) of the amendment (page 3, line 10), strike "SECTION 19(3)" and substitute "SECTION 21(3)".

(8) In Item (5) of the amendment (page 3, line 10), strike "page 13, line 60" and substitute "page 38, line 20".

Floor Amendment No. 4

Amend **CSSB 660** (house committee printing) as follows:

(1) In SECTION 17 of the bill, in added Section 36.1082(b), Water Code (page 28, line 13), between "affected person" and "~~[(f) A district~~", insert "who seeks to appeal a desired future condition adopted under Section 36.108 must file a petition under Section 36.1083. Additionally, an affected person".

(2) In SECTION 17 of the bill, in added Section 36.1083(b), Water Code (page 31, line 17), after the period, add "An affected person may not request a hearing under this section for a reason described by Section 36.1082(b)."

(3) In SECTION 17 of the bill, in added Section 36.1083(c), Water Code (page 31, line 18), strike "receiving a request" and substitute "the deadline for filing a petition".

(4) In SECTION 17 of the bill, in added Section 36.1083(c)(3), Water Code (page 31, line 22), strike "copy of the petition to the office" and substitute "copy of any petitions received by the district to the office".

(5) In SECTION 17 of the bill, in added Section 36.1083, Water Code (page 33, between lines 24 and 25), insert the following:

(k) If the administrative law judge considers it appropriate, the administrative law judge may consolidate hearings requested under this section by two or more districts and shall specify the location for the consolidated hearing from the possible locations under Subsection (d). The administrative law judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

(6) In SECTION 17 of the bill, in added Section 36.1084, Water Code (page 33, line 25), between "CONDITION." and "A", insert "(a)".

(7) In SECTION 17 of the bill, in added Section 36.1084, Water Code (page 34, between lines 9 and 10), insert the following:

(b) A court's finding under this section does not apply to a desired future condition that is not a matter before the court.

(c) A petitioner may file a consolidated suit under this section to appeal the final orders of two or more districts.

Floor Amendment No. 5

Amend **CSSB 660** as follows by adding the following new section to the Water Code:

SECTION ____ . Sec. 6.301. HYDRAULIC FRACTURING DRINKING WATER STUDY. The board shall conduct a study on the costs, benefits, and effect on both current and future water resources in relation to use of hydraulic fracturing treatment in this state. The study must include considerations of:

(1) the necessity 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.

Floor Amendment No. 6

Amend Amendment No. 5 by Martinez Fischer to **CSSB 660** (house committee report) by striking the text of the amendment and substituting the following:

Amend **CSSB 660** (house committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ____ . (a) Not later than January 1, 2013, the Texas Water Development Board shall conduct a study and provide a report to the legislature on the costs and benefits to this state of hydraulic fracturing treatments and the effects of hydraulic fracturing treatments on the current and future water resources of this state. The study must include consideration of:

(1) the desirability of requiring disclosure of information related to hydraulic fracturing treatments, such as the identity of the base fluids, additives, and chemical constituents used by a person in performing a hydraulic fracturing treatment; and

(2) the need to protect groundwater and surface water in this state.

(b) The board may request, accept, and administer grants, gifts, appropriations, or other money from any source to implement this section.

(c) Notwithstanding Subsection (a) of this section, the board is required to implement this section only if a sufficient amount of money from appropriations or other sources is available for that purpose.

Floor Amendment No. 1 on Third Reading

Amend, on third reading, the amendment by Martinez Fischer to **CSSB 660** that was adopted on second reading by striking the amendment and substituting the following:

Amend **CSSB 660** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ____ . Chapter 91, Natural Resources Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. DISCLOSURE OF WATER USAGE AND COMPOSITION OF
HYDRAULIC FRACTURING FLUIDS

Sec. 91.851. DISCLOSURE OF WATER USAGE AND COMPOSITION OF
HYDRAULIC FRACTURING FLUIDS. (a) Texas Water Development Board shall
use the data provided by an annual report submitted by the commission indicating
total water usage reported by operators under this subchapter for statewide water
planning purposes.

(b) The commission by rule shall:

(1) require an operator of a well on which a hydraulic fracturing treatment is
performed to:

(A) complete the form posted on the hydraulic fracturing chemical
registry Internet website of the Ground Water Protection Council and the Interstate Oil
and Gas Compact Commission with regard to the well;

(B) include in the form completed under Paragraph (A):

(i) the total volume of water used in the hydraulic fracturing
treatment; and

(ii) each chemical ingredient that is subject to the requirements of
29 C.F.R. Section 1910.1200(g)(2);

(C) post the completed form described by Paragraph (A) on the website
described by that paragraph or, if the website is discontinued or permanently
inoperable, post the completed form on another publicly accessible Internet website
specified by the commission;

(D) submit the completed form described by Paragraph (A) to the
commission with the well completion report for the well; and

(E) in addition to the completed form specified in Paragraph (D),
provide to the commission a list, to be made available on a publicly accessible
website, of all other chemical ingredients not listed on the completed form that were
intentionally included and used for the purpose of creating a hydraulic fracturing
treatment for the well. The commission rule shall ensure that an operator, service
company, or supplier is not responsible for disclosing ingredients that:

(i) were not purposely added to the hydraulic fracturing treatment;

(ii) occur incidentally or are otherwise unintentionally present in
the treatment; or

(iii) in the case of the operator, are not disclosed to the operator by
a service company or supplier. The commission rule shall not require that the
ingredients be identified based on the additive in which they are found or that the
concentration of such ingredients be provided;

(2) require a service company that performs a hydraulic fracturing treatment
on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well
to provide the operator of the well with the information necessary for the operator to
comply with Subdivision (1);

(3) prescribe a process by which an entity required to comply with
Subdivision (1) or (2) may withhold and declare certain information as a trade secret
for purposes of Section 552.110, Government Code, including the identity and
amount of the chemical ingredient used in a hydraulic fracturing treatment;

(4) require a person who desires to challenge a claim of entitlement to trade secret protection under Subdivision (3) to file the challenge not later than the second anniversary of the date the relevant well completion report is filed with the commission;

(5) limit the persons who may challenge a claim of entitlement to trade secret protection under Subdivision (3) to:

(A) the landowner on whose property the relevant well is located;

(B) a landowner who owns property adjacent to property described by Paragraph (A); or

(C) a department or agency of this state; and

(6) prescribe an efficient process for an entity described by Subdivision (1) or (2) to provide information, including information that is a trade secret as defined by Appendix D to 29 C.F.R. Section 1910.1200, to a health professional or emergency responder who needs the information in accordance with Subsection (i) of that section.

(c) The commission shall provide an annual report of the total water usage reported under this subchapter to the Texas Water Development Board.

SECTION _____. Subchapter S, Chapter 91, 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 date the initial rules adopted by the Railroad Commission of Texas under that subchapter take effect. A hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued before the date the initial rules take effect 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 Railroad Commission of Texas shall adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, not later than January 1, 2012.

The amendments were read.

Senator Hinojosa 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.

Senator Fraser raised a point of order that the House amendments to **SB 660** were not germane.

Senator Fraser withdrew the point of order.

The motion to not concur in the House amendments prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 660** 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 Hinojosa, Chair; Hegar, Duncan, Fraser, and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 3468
(Motion In Writing)

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 3468** 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 3468** 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 Shapiro, Chair; Nelson, Seliger, West, and Carona.

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:

HB 14, HB 25, HB 42, HB 78, HB 174, HB 274, HB 275 (Signed subject to Sec. 49-a, Art. III, Texas Constitution), **HB 289, HB 336, HB 359, HB 360, HB 371, HB 384, HB 398, HB 427, HB 452, HB 554, HB 559, HB 645, HB 673, HB 709, HB 710, HB 718, HB 748, HB 782, HB 788, HB 790, HB 805, HB 807, HB 844, HB 850, HB 896, HB 961, HB 1009, HB 1033, HB 1083, HB 1118, HB 1205, HB 1247, HB 1293, HB 1301, HB 1314, HB 1330, HB 1376, HB 1402, HB 1429, HB 1473, HB 1476, HB 1500.**

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Friday, May 27, 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 CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 9 (127 Yeas, 14 Nays, 2 Present, not voting)

HB 167 (137 Yeas, 3 Nays, 2 Present, not voting)

HB 351 (138 Yeas, 0 Nays, 3 Present, not voting)

HB 2337 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 2516 (130 Yeas, 9 Nays, 2 Present, not voting)

HB 2810 (137 Yeas, 5 Nays, 2 Present, not voting)

HCR 84 (130 Yeas, 6 Nays, 3 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 1940 (non-record vote)

House Conferees: Perry - Chair/Allen/Cain/Madden/Parker

HB 3459 (non-record vote)

House Conferees: Eiland - Chair/Dutton/Madden/Perry/Turner

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

SB 8 (non-record vote)

House Conferees with Instructions: Kolkhorst - Chair/
Coleman/Geren/Hunter/Schwertner

SB 100 (non-record vote)

House Conferees: Taylor, Van - Chair/Branch/Madden/Pickett/Taylor, Larry

SB 293 (non-record vote)

House Conferees: Davis, John - Chair/Hopson/Menendez/Sheets/Truitt

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 3025

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 3025** 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 3025** 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; Duncan, Watson, Wentworth, and Carona.

MOTION TO ADJOURN

On motion of Senator Jackson and by unanimous consent, the Senate at 6:38 p.m. agreed to adjourn, upon completion of the Joint Session, until 2:00 p.m. tomorrow.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2048**

Senator Deuell 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 2048** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DEUELL

NELSON

SELIGER

HINOJOSA

WHITMIRE

On the part of the Senate

LYNE

THOMPSON

MURPHY

FLYNN

GONZALEZ

On the part of the House

The Conference Committee Report on **HB 2048** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 156**

Senator Huffman 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 156** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HUFFMAN

DEUELL

DUNCAN

NELSON

URESTI

On the part of the Senate

V. GONZALES

COLEMAN

J. DAVIS

KOLKHORST

ZERWAS

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to health care data collected by the Department of State Health Services and access to certain confidential patient information within the department, including data and confidential patient information concerning bleeding and clotting disorders, and other issues related to bleeding and clotting disorders.

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

SECTION 1. 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 may 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. EXPIRATION. This chapter expires and the council is abolished September 1, 2015.

SECTION 2. Section 108.002, Health and Safety Code, is amended by amending Subdivision (7) and adding Subdivision (8-a) to read as follows:

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

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

SECTION 3. Chapter 108, Health and Safety Code, is amended by adding Section 108.0026 to read as follows:

Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL.

(a) The powers and duties of the Texas Health Care Information Council under this chapter were transferred to the Department of State Health Services in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

(b) In this chapter or other law, a reference to the Texas Health Care Information Council means the Department of State Health Services.

SECTION 4. Subsection (h), Section 108.009, Health and Safety Code, is amended to read as follows:

(h) The department ~~[council]~~ shall coordinate data collection with the data submission formats used by hospitals and other providers. The department ~~[council]~~ shall accept data in the format developed by the American National Standards Institute ~~[National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA 1500]~~ or its successor ~~[their successors]~~ or other nationally ~~[universally]~~ accepted standardized forms that hospitals and other providers use for other complementary purposes.

SECTION 5. Section 108.013, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (d), (g), (i), and (j) and adding Subsections (k), (l), (m), and (n) to read as follows:

(a) The data received by the department under this chapter ~~[council]~~ shall be used by the department ~~[council]~~ for the benefit of the public. Subject to specific limitations established by this chapter and executive commissioner ~~[council]~~ rule, the department ~~[council]~~ shall make determinations on requests for information in favor of access.

(b) The executive commissioner ~~[council]~~ by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department ~~[council]~~ may not release and a person or entity may not gain access to any data obtained under this chapter:

- (1) that could reasonably be expected to reveal the identity of a patient;
- (2) that could reasonably be expected to reveal the identity of a physician;
- (3) disclosing provider discounts or differentials between payments and billed charges;
- (4) relating to actual payments to an identified provider made by a payer; or
- (5) submitted to the department ~~[council]~~ in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all [All] data collected and used by the department ~~[and the council]~~ under this chapter is subject to the confidentiality provisions and criminal penalties of:

- (1) Section 311.037;
- (2) Section 81.103; and
- (3) Section 159.002, Occupations Code.

(g) Except as provided by Subsection (i), the department ~~[The council]~~ may not release data elements in a manner that will reveal the identity of:

- (1) a patient; or
- (2) ~~[- The council may not release data elements in a manner that will reveal the identity of]~~ a physician.

(i) Notwithstanding any other law, the ~~[council and the]~~ department may ~~[not]~~ provide information made confidential by this section to the Health and Human Services Commission or a health and human services agency as defined by Section 531.001(4), Government Code, provided that the receiving agency has appropriate controls in place to ensure the confidentiality of any personal information contained in the information shared by the department under this subsection is subject to the limits on further disclosure described by Subsection (d) ~~[any other agency of this state].~~

(j) The executive commissioner ~~[council]~~ shall by rule ~~[- with the assistance of the advisory committee under Section 108.003(g)(5);]~~ develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any program within the department if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Confidential data collected under this chapter that is disclosed to a program within the department remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department program:

- (1) Section 81.103;
- (2) Sections 108.010(g) and (h);
- (3) Sections 108.011(e) and (f);
- (4) Section 311.037; and

(5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

SECTION 6. Section 108.0135, Health and Safety Code, is amended to read as follows:

Sec. 108.0135. INSTITUTIONAL [SCIENTIFIC] REVIEW BOARD [PANEL]. (a) The department [council] shall establish an institutional [a scientific] review board [panel] to review and approve requests for access to data not contained in [information other than] public use data. The members of the institutional review board must [panel shall] have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board [panel] in determining whether to approve a request for information, the executive commissioner [council] shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' [Health Care Financing Administration's] guidelines on releasing data.

(c) A request for information other than public use data must be made on the form prescribed [created] by the department [council].

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

SECTION 7. Subdivision (5), Section 108.002, Health and Safety Code, is repealed.

SECTION 8. 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.

SECTION 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 156** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 647**

Senator Hegar 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 647** 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
NELSON
URESTI
HUFFMAN
BIRDWELL

On the part of the Senate

L. TAYLOR
SMITHEE
VO
HANCOCK

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and operation of the office of public insurance counsel.

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

SECTION 1. Section 501.003, Insurance Code, is amended to read as follows:

Sec. 501.003. 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, 2023 ~~[2011]~~.

SECTION 2. Subchapter D, Chapter 501, Insurance Code, is amended by adding Section 501.160 to read as follows:

Sec. 501.160. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The office shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

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

(c) The office 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.

SECTION 3. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 647** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1951**

Senator Hegar 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 1951** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR
NELSON
WILLIAMS
URESTI

HUFFMAN
On the part of the Senate

L. TAYLOR
SMITHEE
BONNEN
VO

HANCOCK
On the part of the House

The Conference Committee Report on **HB 1951** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 200**

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 **HB 200** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WHITMIRE
ELLIS
HEGAR
HUFFMAN
PATRICK

On the part of the Senate

PARKER
WHITE
MARQUEZ
MADDEN
PERRY

On the part of the House

The Conference Committee Report on **HB 200** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1732**

Senator Hinojosa 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 1732** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HINOJOSA
NELSON
WHITMIRE
WILLIAMS
SELIGER

RITTER
PRICE
KEFFER
T. KING

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1732** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2560**

Senator Estes submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2560** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ESTES
HEGAR
HUFFMAN

SHEFFIELD
LAVENDER
LOZANO

LUCIO
WENTWORTH
On the part of the Senate

FLETCHER
LEGLER
On the part of the House

The Conference Committee Report on **HB 2560** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1335**

Senator Van de Putte 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 1335** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE
CARONA
LUCIO
SHAPIRO
ZAFFIRINI
On the part of the Senate

ALLEN
REYNOLDS
NASH
MALLORY CARAWAY
THOMPSON
On the part of the House

The Conference Committee Report on **HB 1335** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 144**

Senator West 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 144** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WEST
CARONA
ELLIS
HEGAR
HUFFMAN
On the part of the Senate

THOMPSON
ALONZO
Y. DAVIS
DUTTON
GALLEGO
On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to allowing a person who successfully completes a term of deferred adjudication community supervision to be eligible for a pardon.

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

SECTION 1. Article 48.01, Code of Criminal Procedure, is amended to read as follows:

Art. 48.01. GOVERNOR MAY PARDON. (a) In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction or successful completion of a term of deferred adjudication community supervision, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishments and pardons; and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed 30 days; and he shall have power to revoke conditional pardons. With the advice and consent of the Legislature, the Governor may grant reprieves, commutations of punishment and pardons in cases of treason.

(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; and

(2) 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.

SECTION 2. This Act takes effect January 1, 2012, but only if the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

The Conference Committee Report on **SB 144** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 377**

Senator Huffman 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 377** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HUFFMAN
ELTIFE
PATRICK
NELSON
WHITMIRE

On the part of the Senate

RIDDLE
WEBER
FLETCHER

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the murder of a child as a capital offense.

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

SECTION 1. Subsection (a), Section 19.03, Penal Code, is amended to read as follows:

(a) A person commits an offense if the person commits murder as defined under Section 19.02(b)(1) and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation, or terroristic threat under Section 22.07(a)(1), (3), (4), (5), or (6);

(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution;

(5) the person, while incarcerated in a penal institution, murders another:

(A) who is employed in the operation of the penal institution; or

(B) with the intent to establish, maintain, or participate in a combination or in the profits of a combination;

(6) the person:

(A) while incarcerated for an offense under this section or Section 19.02, murders another; or

(B) while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another;

(7) the person murders more than one person:

(A) during the same criminal transaction; or

(B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct;

(8) the person murders an individual under 10 [~~six~~] years of age; or

(9) the person murders another person in retaliation for or on account of the service or status of the other person 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.

SECTION 2. 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 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 3. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 377** was filed with the Secretary of the Senate on Friday, May 27, 2011.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2226

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2226** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARONA
ELTIFE
GALLEGOS
NICHOLS
ZAFFIRINI

On the part of the Senate

TRUITT
C. ANDERSON
HERNANDEZ LUNA
LEGLER
VEASEY

On the part of the House

The Conference Committee Report on **HB 2226** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2729**

Senator Watson 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 2729** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WATSON

ELLIS

ELTIFE

JACKSON

ZAFFIRINI

On the part of the Senate

CALLEGARI

CAIN

LOZANO

HUNTER

PARKER

On the part of the House

The Conference Committee Report on **HB 2729** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2490**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2490** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARONA

ELTIFE

LUCIO

VAN DE PUTTE

ZAFFIRINI

On the part of the Senate

SOLOMONS

ALISEDA

CHISUM

LEGLER

W. SMITH

On the part of the House

The Conference Committee Report on **HB 2490** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1420**

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1420** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HINOJOSA
HEGAR
NICHOLS
NELSON
WILLIAMS

HARPER-BROWN
MCCLENDON
PHILLIPS
PICKETT

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas Department of Transportation; providing penalties.

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

SECTION 1. (a) Section 12.0011, Parks and Wildlife Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Recommendations and information submitted by the department under Subsection (b) in response to a request for comments from the Texas Department of Transportation must be submitted not later than the 45th day after the date the department receives the request.

(b) Subsection (b-1), Section 12.0011, Parks and Wildlife Code, as added by this section, applies only to a request for comments from the Texas Department of Transportation received on or after the effective date of this Act.

SECTION 2. Section 201.001, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) In this chapter, "local transportation entity" means an entity that participates in the transportation planning process, including:

- (1) a regional tollway authority under Chapter 366;
- (2) a rapid transportation authority under Chapter 451;
- (3) a regional transportation authority under Chapter 452;

- (4) a rural transit district under Chapter 458;
- (5) a coordinated county transportation authority under Chapter 460; or
- (6) a metropolitan planning organization under Subchapter D, Chapter 472.

SECTION 3. (a) Section 201.051, Transportation Code, is amended by amending Subsections (b), (d), (f), (g), (h), and (j) and adding Subsection (b-1) to read as follows:

(b) The members shall be appointed to reflect the diverse geographic regions and population groups of this state. One member must reside in a rural area and be a registered voter of a county with a population of less than 150,000.

(b-1) A member of the commission may not accept a contribution to a campaign for election to an elected office. If a commissioner accepts a campaign contribution, the person is considered to have resigned from the office and the office immediately becomes vacant. The vacancy shall be filled in the manner provided by law.

(d) A ~~[Except as provided by Subsection (e), a]~~ person is not eligible to serve ~~[for appointment]~~ as a member of the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the department;

(2) directly or indirectly owns or controls more than 10 percent interest in a business entity or other organization that is regulated by or receives funds from the department;

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(4) is registered, certified, or licensed by the department.

(f) An officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising is not eligible to serve as ~~[or a Texas trade association of automobile dealers may not be]~~ a member of the commission.

(g) The spouse of an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising is not eligible to serve as ~~[or a Texas association of automobile dealers may not be]~~ a member of the commission.

(h) A person required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department is not eligible to ~~[may not]~~ serve as a member of the commission.

(j) In this section, "Texas trade association" means a ~~[nonprofit,]~~ cooperative~~;~~ and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) Subsection (b), Section 201.051, Transportation Code, as amended by this section, does not affect the right of a commissioner serving on the effective date of this Act to complete the commissioner's term. The requirement of Subsection (b), Section 201.051, Transportation Code, as amended by this section, applies at the time a vacancy occurs in the position held by the person serving as the rural designee on the effective date of this Act.

SECTION 4. Subsection (a), Section 201.053, Transportation Code, is amended to read as follows:

(a) The governor [~~periodically~~] shall designate one commissioner as the chair of the commission, who shall serve as presiding officer of the commission.

SECTION 5. Subsection (a), Section 201.057, Transportation Code, is amended to read as follows:

(a) It is a ground for removal from the commission if a commissioner:

(1) does not have at the time of taking office [~~appointment~~] or maintain during service on the commission the qualifications required by Section 201.051;

(2) violates a prohibition provided by Section 201.051;

(3) cannot discharge the commissioner's duties for a substantial part of the term for which the commissioner is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled commission meetings that the commissioner is eligible to attend during a calendar year, unless the absence is excused by majority vote of the commission.

SECTION 6. Section 201.058, Transportation Code, is amended to read as follows:

Sec. 201.058. INFORMATION ON QUALIFICATIONS AND CONDUCT.

The department shall provide to the members of the commission, as often as necessary, information concerning the members' qualifications for office [~~under Subchapter B~~] and their responsibilities under applicable laws relating to standards of conduct for state officers.

SECTION 7. Subchapter C, Chapter 201, Transportation Code, is amended by adding Section 201.1075 to read as follows:

Sec. 201.1075. CHIEF FINANCIAL OFFICER. (a) The chief financial officer shall ensure that the department's financial activities are conducted in a transparent and reliable manner.

(b) The chief financial officer shall certify each month that any state highway construction and maintenance contracts to be awarded by the department during that month will not create state liability that exceeds the department's most recent cash flow forecast.

SECTION 8. Subchapter C, Chapter 201, Transportation Code, is amended by adding Sections 201.118 and 201.119 to read as follows:

Sec. 201.118. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (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 department 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 department's jurisdiction.

(b) The department'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 department shall:

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

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

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

Sec. 201.119. LEGISLATIVE APPROPRIATIONS REQUEST. (a) Department staff shall deliver the department's legislative appropriations request to the commission in an open meeting not later than the 30th day before the date the department submits the legislative appropriations request to the Legislative Budget Board.

(b) The commission may adopt the legislative appropriations request in the meeting described by Subsection (a) or in a subsequent open meeting.

SECTION 9. Subchapter Y, Chapter 201, Transportation Code, is amended by adding Section 201.2002 to read as follows:

Sec. 201.2002. EDMUND P. KUEMPEL REST AREAS. (a) The eastbound and westbound rest areas located on Interstate Highway 10 in Guadalupe County are designated as the Edmund P. Kuempel Rest Areas.

(b) The department shall design and construct markers at each rest area described by Subsection (a) indicating the designation of those rest areas as the Edmund P. Kuempel Rest Areas and any other appropriate information.

(c) The department shall erect markers at appropriate locations at the rest areas.

(d) Notwithstanding Subsections (b) and (c), the department is not required to design, construct, or erect a marker under this section unless a grant or donation of private funds is made to the department to cover the cost of the design, construction, and erection of the marker.

(e) Money received under Subsection (d) shall be deposited to the credit of the state highway fund.

SECTION 10. Section 201.204, Transportation Code, is amended to read as follows:

Sec. 201.204. SUNSET PROVISION. The Texas Department of Transportation 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, 2015 [2014].

SECTION 11. Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.2041 to read as follows:

Sec. 201.2041. SUBMISSION OF FINANCIAL AUDIT TO SUNSET COMMISSION. (a) The department shall submit with its agency report under Section 325.007, Government Code, a complete and detailed financial audit conducted by an independent certified public accountant.

(b) Subsection (a) does not apply if the department is subject to sunset review during the previous two-year period.

SECTION 12. Subchapter D, Chapter 201, Transportation Code, is amended by adding Sections 201.210 and 201.211 to read as follows:

Sec. 201.210. LEGISLATIVE LOBBYING. (a) In addition to Section 556.006, Government Code, the commission or a department employee may not use money under the department's control or engage in an activity to influence the passage or defeat of legislation.

(b) Violation of Subsection (a) is grounds for dismissal of an employee.

(c) This section does not prohibit the commission or department employee from using state resources to:

(1) provide public information or information responsive to a request; or

(2) communicate with officers and employees of the federal government in pursuit of federal appropriations or programs.

(d) The department may not spend from funds appropriated to the department any money for the purpose of selecting, hiring, or retaining a person required to register under Chapter 305, Government Code, or the Lobbying Disclosure Act of 1995 (2 U.S.C. Section 1601 et seq.), unless that expenditure is allowed under state law.

Sec. 201.211. ETHICS AFFIRMATION AND HOTLINE. (a) A department employee shall annually affirm the employee's adherence to the ethics policy adopted under Section 572.051(c), Government Code.

(b) The department shall establish and operate a telephone hotline that enables a person to call the hotline number, anonymously or not anonymously, to report alleged fraud, waste, or abuse or an alleged violation of the ethics policy adopted under Section 572.051(c), Government Code.

SECTION 13. (a) Subsections (a) and (b), Section 201.401, Transportation Code, are amended to read as follows:

(a) A person may not be an employee of the department who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), [exempt from the state's position classification plan or compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule] if the person is:

(1) an officer, employee, or paid consultant of a Texas trade association[-

[(A)] in the field of road construction or maintenance or outdoor advertising; or

[(B) of automobile dealers; or]

(2) the spouse of an officer, manager, or paid consultant described by Subdivision (1).

(b) A person may not act as general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department. A person who acts as general counsel to the department must be licensed as an attorney in this state.

(b) The changes in law made by this section to Section 201.401, Transportation Code, in the qualifications of the general counsel of the Texas Department of Transportation do not affect the eligibility of a person serving in that position immediately before the effective date of this Act to continue to carry out the position's

functions for the remainder of the person's employment as general counsel. The changes in law apply only to a general counsel hired on or after the effective date of this Act.

SECTION 14. Section 201.404, Transportation Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) If an annual performance evaluation indicates unsatisfactory performance by an employee employed in a position at or above the level of district engineer or division or office director, the commission shall consider whether the employee should be terminated. The annual performance evaluation of a position described by this subsection must include an evaluation of an employee's:

(1) professionalism;

(2) diligence; and

(3) responsiveness to directives and requests from the commission and the legislature.

(b-2) If an annual performance evaluation indicates unsatisfactory performance by an employee employed in a position that is below the level of district engineer, the department shall consider whether the employee should be terminated. The department shall provide a report to the commission regarding employees whose performances were unsatisfactory but who were not terminated.

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

SUBCHAPTER F-1. COMPLIANCE PROGRAM

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

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

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

(A) conduct described by Subdivision (1);

(B) criminal activity in the department;

(C) allegations of wrongdoing by department employees;

(D) crimes committed on department property; and

(E) serious breaches of department policy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 16. Section 201.601, Transportation Code, is amended to read as follows:

Sec. 201.601. STATEWIDE TRANSPORTATION PLAN. (a) The department shall develop a statewide transportation plan covering a period of 24 years that contains all modes of transportation, including:

- (1) highways and turnpikes;
- (2) aviation;
- (3) mass transportation;

(4) railroads and high-speed railroads; and

(5) water traffic.

(a-1) The plan must:

(1) contain specific, long-term transportation goals for the state and measurable targets for each goal;

(2) identify priority corridors, projects, or areas of the state that are of particular concern to the department in meeting the goals established under Subdivision (1); and

(3) contain a participation plan specifying methods for obtaining formal input on the goals and priorities identified under this subsection from:

(A) other state agencies;

(B) political subdivisions;

(C) local transportation entities; and

(D) the general public.

~~(b) [In developing the plan, the department shall seek opinions and assistance from other state agencies and political subdivisions that have responsibility for the modes of transportation listed by Subsection (a).] As appropriate, the department and the entities listed in Subsection (a-1)(3) [such an agency or political subdivision] shall enter into a memorandum of understanding relating to the planning of transportation services.~~

(c) The plan must include a component that is not financially constrained and identifies transportation improvements designed to relieve congestion. In developing this component of the plan, the department shall seek opinions and assistance from officials who have local responsibility for modes of transportation listed in Subsection (a).

~~(d) [The plan shall include a component, published annually, that describes the evaluation of transportation improvements based on performance measures, such as indices measuring delay reductions or travel time improvements.] The department shall consider the goals and measurable targets established under Subsection (a-1)(1) [performance measures] in selecting transportation projects [improvements].~~

(e) The department annually shall provide to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues an analysis of the department's progress in attaining the goals under Subsection (a-1)(1). The department shall make the information under this subsection available on its Internet website.

(f) The department shall update the plan every four years or more frequently as necessary.

SECTION 17. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. INTEGRATION OF PLANS AND POLICY EFFORTS. In developing each of its transportation plans and policy efforts, the department must clearly reference the statewide transportation plan under Section 201.601 and specify how the plan or policy effort supports or otherwise relates to the specific goals under that section.

SECTION 18. (a) Section 201.607, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Not later than January 1, 1997, and every fifth year after that date, the department and each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources shall examine and revise their memorandum of understanding that:

(1) describes the responsibilities of each agency entering into the memorandum relating to the review of the potential environmental, historical, or archeological effect of a highway project;

(2) specifies the responsibilities of each agency entering into the memorandum relating to the review of a highway project;

(3) specifies the types of information the department must provide to the reviewing agency and the period during which the department must provide the information;

(4) specifies the period during which the reviewing agency must review the highway project and provide comments to the department, as negotiated by the department and the agency but which may not exceed 45 days after the date the agency receives a request for comments from the department; [and]

(5) specifies that comments submitted to the department later than the period specified under Subdivision (4) will be considered by the department to the extent possible; and

(6) includes any other agreement necessary for the effective coordination of the review of the environmental, historical, or archeological effect of a highway project.

(c) The department by rule shall establish procedures concerning coordination with agencies in carrying out responsibilities under agreements under this section.

(b) Subsection (a), Section 201.607, Transportation Code, as amended by this section, applies only to a request for comments from the Texas Department of Transportation received by a state agency on or after the effective date of this Act. As necessary, the Texas Department of Transportation and each affected state agency shall promptly revise the memorandum of understanding required by Section 201.607, Transportation Code, to implement the change made by this section to Subsection (a), Section 201.607, Transportation Code.

SECTION 19. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.620 to read as follows:

Sec. 201.620. COORDINATION WITH METROPOLITAN PLANNING ORGANIZATIONS TO DEVELOP LONG-TERM PLANNING ASSUMPTIONS. The department shall collaborate with metropolitan planning organizations to develop mutually acceptable assumptions for the purposes of long-range federal and state funding forecasts and use those assumptions to guide long-term planning in the statewide transportation plan under Section 201.601.

SECTION 20. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.622 to read as follows:

Sec. 201.622. WILDFIRE EMERGENCY EVACUATION ROUTE. (a) Notwithstanding Section 418.018, Government Code, in a county with a population of less than 75,000 and with a verifiable history of wildfire, the department

may designate an emergency evacuation route for use in the event of a wildfire emergency. The department may establish criteria to determine which areas of a county are subject to a potential wildfire emergency.

(b) The department may assist in the improvement of a designated wildfire emergency evacuation route.

(c) Criteria for determining a wildfire emergency evacuation route must provide for evacuation of commercial establishments such as motels, hotels, and other businesses with overnight accommodations.

(d) A wildfire emergency evacuation route designated under Subsection (a) may include federal or state highways or county roads.

SECTION 21. (a) Chapter 201, Transportation Code, is amended by adding Subchapter I-1 to read as follows:

SUBCHAPTER I-1. ENVIRONMENTAL REVIEW PROCESS

Sec. 201.751. DEFINITIONS. In this subchapter:

(1) "Day" means a calendar day.

(2) "Federal Highway Administration" means the United States Department of Transportation Federal Highway Administration.

(3) "Highway project" means a highway or related improvement that is:

(A) part of the state highway system; or

(B) not part of the state highway system but funded wholly or partly by federal money.

(4) "Local government sponsor" means a political subdivision of the state that:

(A) elects to participate in the planning, development, design, funding, or financing of a highway project; and

(B) is a municipality or a county, a group of adjoining counties, a county acting under Chapter 284, a regional tollway authority operating under Chapter 366, a regional mobility authority operating under Chapter 370, a local government corporation, or a transportation corporation created under Chapter 431.

Sec. 201.752. STANDARDS. (a) The commission by rule shall establish standards for processing an environmental review document for a highway project. The standards must increase efficiency, minimize delays, and encourage collaboration and cooperation by the department with a local government sponsor, with a goal of prompt approval of legally sufficient documents.

(b) The standards apply regardless of whether the environmental review document is prepared by the department or a local government sponsor. The standards apply to work performed by the sponsor and to the department's review process and environmental decision.

(c) The standards must address, for each type of environmental review document:

(1) the issues and subject matter to be included in the project scope prepared under Section 201.754;

(2) the required content of a draft environmental review document;

(3) the process to be followed in considering each type of environmental review document; and

(4) review deadlines, including the deadlines in Section 201.759.

(d) The standards must include a process for resolving disputes arising under this subchapter, provided that the dispute resolution process must be concluded not later than the 60th day after the date either party requests dispute resolution.

(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).

Sec. 201.753. ENVIRONMENTAL REVIEW LIMITED TO CERTAIN PROJECTS. (a) A local government sponsor or the department may prepare an environmental review document for a highway project only if the highway project is:

(1) identified in the financially constrained portion of the approved state transportation improvement program or the financially constrained portion of the approved unified transportation program; or

(2) identified by the commission as being eligible for participation under this subchapter.

(b) Notwithstanding Subsection (a), a local government sponsor may prepare an environmental review document for a highway project that is not identified by the commission or in a program described by Subsection (a) if the sponsor submits with its notice under Section 201.755 a fee in an amount established by commission rule, but not to exceed the actual cost of reviewing the environmental review document.

(c) A fee received by the department under Subsection (b) must be deposited in the state highway fund and used to pay costs incurred under this subchapter.

Sec. 201.754. SCOPE OF PROJECT. If an environmental review document is prepared by a local government sponsor, the local government sponsor must prepare a detailed scope of the project in collaboration with the department before the department may process the environmental review document.

Sec. 201.755. NOTICE TO DEPARTMENT. (a) A local government sponsor may submit notice to the department proposing that the local government sponsor prepare the environmental review document for a highway project.

(b) The notice must include:

(1) the project scope prepared under Section 201.754; and

(2) a request for classification of the project.

Sec. 201.756. LOCAL GOVERNMENT SPONSOR RESPONSIBILITIES. A local government sponsor that submits notice under Section 201.755 is responsible for preparing all materials for:

(1) project scope determination;

(2) environmental reports;

(3) the environmental review document;

(4) environmental permits and conditions;

(5) coordination with resource agencies; and

(6) public participation.

Sec. 201.757. DETERMINATION OF ADMINISTRATIVELY COMPLETE ENVIRONMENTAL REVIEW DOCUMENT. (a) A local government sponsor's submission of an environmental review document must include a statement from the local government sponsor that the document is administratively complete, ready for technical review, and compliant with all applicable requirements.

(b) Not later than the 20th day after the date the department receives a local government sponsor's environmental review document, the department shall either:

(1) issue a letter confirming that the document is administratively complete and ready for technical review; or

(2) decline to issue a letter confirming that the document is administratively complete and ready for technical review, in accordance with Section 201.758.

Sec. 201.758. DEPARTMENT DECLINES TO CONFIRM THAT DOCUMENT IS ADMINISTRATIVELY COMPLETE. (a) The department may decline to issue a letter confirming that an environmental review document is administratively complete and ready for technical review only if the department sends a written response to the local government sponsor specifying in reasonable detail the basis for its conclusions, including a listing of any required information determined by the department to be missing from the document.

(b) If the department provides notice under Subsection (a), the department shall undertake all reasonable efforts to cooperate with the local government sponsor in a timely manner to ensure that the environmental review document is administratively complete.

(c) The local government sponsor may resubmit any environmental review document determined by the department under Section 201.757 not to be administratively complete, and the department shall issue a determination letter on the resubmitted document not later than the 20th day after the date the document is resubmitted.

Sec. 201.759. REVIEW DEADLINES. (a) The following deadlines must be included in the standards adopted under Section 201.752:

(1) the department shall issue a classification letter not later than the 30th day after the date the department receives notice from a local government sponsor under Section 201.755;

(2) for a project classified as a programmatic categorical exclusion, the environmental decision must be rendered not later than the 60th day after the date the supporting documentation is received by the department;

(3) for a project classified as a categorical exclusion, the environmental decision must be rendered not later than the 90th day after the date the supporting documentation is received by the department;

(4) for a project that requires the preparation of an environmental assessment:

(A) the department must provide all department comments on a draft environmental assessment not later than the 90th day after the date the draft is received by the department; and

(B) the department must render the environmental decision on the project not later than the 60th day after the later of:

(i) the date the revised environmental assessment is submitted to the department; or

(ii) the date the public involvement process concludes;

(5) the department must render the environmental decision on any reevaluation not later than the 120th day after the date the supporting documentation is received by the department; and

(6) for a project that requires the preparation of an environmental impact statement, the department shall render the environmental decision not later than the 120th day after the date the draft final environmental impact statement is submitted.

(b) Review deadlines under this section specify the date by which the department will render the environmental decision on a project or the time frames by which the department will make a recommendation to the Federal Highway Administration, as applicable.

(c) A deadline that falls on a weekend or official state holiday is considered to occur on the next business day.

Sec. 201.760. SUSPENSION OF TIME PERIODS. The computation of review deadlines under Section 201.759 does not begin until an environmental review document is determined to be administratively complete, and is suspended during any period in which:

(1) the document that is the subject of the review is being revised by or on behalf of the local government sponsor in response to department comments;

(2) the highway project is the subject of additional work, including a change in design of the project, and during the identification and resolution of new significant issues; or

(3) the local government sponsor is preparing a response to any issue raised by legal counsel for the department concerning compliance with applicable law.

Sec. 201.761. AGREEMENT BETWEEN LOCAL GOVERNMENT SPONSOR AND DEPARTMENT. Notwithstanding any provision of this subchapter or any other law, a local government sponsor and the department may enter into an agreement that defines the relative roles and responsibilities of the parties in the preparation and review of environmental review documents for a specific project. For a project for which an environmental decision requires the approval of the Federal Highway Administration and to the extent otherwise permitted by law, the Federal Highway Administration may also be a party to an agreement between a local government sponsor and the department under this section.

Sec. 201.762. REPORTS TO COMMISSION AND LEGISLATURE. (a) Not later than June 30 and December 31 of each year, the department shall submit a report to the commission at a regularly scheduled commission meeting identifying projects being processed under the procedures of this subchapter and the status of each project, including:

(1) how the project was classified for environmental review;

(2) the current status of the environmental review;

(3) the date on which the department is required to make an environmental decision under applicable deadlines;

(4) an explanation of any delays; and

(5) any deadline under Section 201.759 missed by the department.

(b) Not later than December 1 of each year, the department shall submit a report to the members of the standing legislative committees with primary jurisdiction over matters related to transportation regarding the implementation of this subchapter, including a status report for the preceding 12-month period that contains the information described in Subsection (a).

(c) The department shall post copies of the reports required under this section on its Internet website and shall provide a copy of the report required by Subsection (b) to each member of the legislature who has at least one project covered by the report in the member's district.

(d) The department shall make available on its Internet website and update regularly the status of projects being processed under this subchapter.

(b) The Texas Transportation Commission shall adopt rules to implement Subchapter I-1, Chapter 201, Transportation Code, as added by this section, not later than March 1, 2012.

(c) Subchapter I-1, Chapter 201, Transportation Code, as added by this section, applies only to a notice of a local government sponsor proposing the sponsor's preparation of an environmental review document that is received by the Texas Department of Transportation on or after the effective date of this Act. Submissions to the Texas Department of Transportation received before the effective date of this Act are governed by the law in effect on the date the submission was received, and that law is continued in effect for that purpose.

SECTION 22. (a) Section 201.801, Transportation Code, is amended to read as follows:

Sec. 201.801. ~~[INFORMATION ABOUT DEPARTMENT;]~~ COMPLAINTS.

(a) The department shall maintain a system to promptly and efficiently act on complaints filed with the department. The department shall maintain information about the parties to and the subject matter of a complaint and a summary of the results of the review or investigation of the complaint and the disposition of the complaint.

(b) The department shall make information available describing its procedures for complaint investigation and resolution ~~[prepare information of public interest describing the functions of the department and the department's procedures by which a complaint is filed with the department and resolved by the department. The department shall make the information available to the public and appropriate state agencies].~~

~~[(b) The commission by rule shall establish methods by which consumers and service recipients are notified of the department's name, mailing address, and telephone number for directing complaints to the department. The commission may provide for that notification:~~

~~(1) on each registration form, application, or written contract for services of an individual or entity regulated by the department;~~

~~(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the department; or~~

~~(3) in a bill for service provided by an individual or entity regulated by the department.]~~

(c) ~~The department shall:~~

~~[(1) keep an information file about each written complaint filed with the department that the department has the authority to resolve; and~~

~~[(2) provide the person who filed the complaint, and each person or entity that is the subject of the complaint, information about the department's policies and procedures relating to complaint investigation and resolution.~~

~~[(d)] The department[, at least quarterly and until final disposition of a written complaint that is filed with the department and that the department has the authority to resolve,] shall periodically notify the parties to the complaint of its status until final disposition unless the notice would jeopardize an undercover investigation.~~

~~(d) The commission shall adopt rules applicable to each division and district to establish a process to act on complaints filed with the department [(e) With regard to each complaint filed with the department, the department shall keep the following information:~~

~~[(1) the date the complaint is filed;~~

~~[(2) the name of the person filing the complaint;~~

~~[(3) the subject matter of the complaint;~~

~~[(4) a record of each person contacted in relation to the complaint;~~

~~[(5) a summary of the results of the review or investigation of the complaint; and~~

~~[(6) if the department takes no action on the complaint, an explanation of the reasons that no action was taken].~~

~~(e) The department shall develop a standard form for submitting a complaint and make the form available on its Internet website. The department shall establish a method to submit complaints electronically.~~

~~(f) The department shall develop a method for analyzing the sources and types of complaints and violations and establish categories for the complaints and violations. The department shall use the analysis to focus its information and education efforts on specific problem areas identified through the analysis.~~

~~(g) The department shall:~~

~~(1) compile:~~

~~(A) detailed statistics and analyze trends on complaint information,~~
including:

~~(i) the nature of the complaints;~~

~~(ii) their disposition; and~~

~~(iii) the length of time to resolve complaints;~~

~~(B) complaint information on a district and a divisional basis; and~~

~~(C) the number of similar complaints filed, and the number of persons who filed each complaint; and~~

~~(2) report the information on a monthly basis to the division directors, office directors, and district engineers and on a quarterly basis to the commission.~~

(b) The Texas Transportation Commission shall adopt rules under Section 201.801, Transportation Code, as amended by this section, not later than March 1, 2012.

SECTION 23. Subsection (a), Section 201.802, Transportation Code, is amended to read as follows:

(a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the department [~~commission~~].

SECTION 24. (a) Subchapter J, Chapter 201, Transportation Code, is amended by adding Sections 201.807, 201.808, 201.809, 201.810, and 201.811 to read as follows:

Sec. 201.807. PROJECT INFORMATION REPORTING SYSTEM. (a) In this section, "department project" means a highway project under the jurisdiction of the department, including a grouped rehabilitation and preventive maintenance project, that:

- (1) is being developed or is under construction; and
- (2) is identified in the work program required under Section 201.998.

(b) The department shall establish a project information reporting system that makes available in a central location on the department's Internet website easily accessible and searchable information regarding all of the department's transportation plans and programs, including the unified transportation program required by Section 201.991. The department shall post information on its Internet website as required by this subsection as the information becomes available to the department and in a manner that is not cost prohibitive. The project information reporting system shall contain information about:

- (1) each department project, including:
 - (A) the status of the project;
 - (B) each source of funding for the project;
 - (C) benchmarks for evaluating the progress of the project;
 - (D) timelines for completing the project;
 - (E) a list of the department employees responsible for the project,

including information to contact each person on that list; and

- (F) the results of the annual review required under Subsection (e); and

(2) the department's funds, including each source for the department's funds, and the amount and general type or purpose of each expenditure as described in the comptroller's statewide accounting system, reported by each:

- (A) department district;
- (B) program funding category as required by Section 201.991(b)(2);

and

(C) type of revenue, including revenue from a comprehensive development agreement or a toll project.

(c) In developing the project information reporting system, the department shall collaborate with:

- (1) the legislature;
- (2) local transportation entities; and
- (3) members of the public.

(d) The department shall make the statistical information provided under this section available on the department's Internet website in more than one downloadable electronic format.

(e) As a component of the project information reporting system required by this section, the department shall conduct an annual review of the benchmarks and timelines of each project included in the department's transportation plans, including the unified transportation program, to determine the completion rates of the projects and whether the projects were completed on time.

(f) The department shall update the information contained in the project information reporting system on a regular basis, as specified by commission rule.

Sec. 201.808. TRANSPORTATION EXPENDITURE PRIORITIES. (a) The department shall develop a process to identify and distinguish between the transportation projects that are required to maintain the state infrastructure and the transportation projects that would improve the state infrastructure in a manner consistent with the statewide transportation plan required by Section 201.601.

(b) The department shall establish a transportation expenditure reporting system that makes available in a central location on the department's Internet website easily accessible and searchable information regarding the priorities of transportation expenditures for the identified transportation projects.

(c) The department shall include in the transportation expenditure reporting system:

(1) reports prepared by the department or an institution of higher education that evaluate the effectiveness of the department's expenditures on transportation projects to achieve the transportation goal;

(2) information about the condition of the pavement for each highway under the jurisdiction of the department, including the percentage of pavement that the department determines to be in good or better condition;

(3) the condition of bridges, including information about bridge condition scores;

(4) information about peak-hour travel congestion in the eight largest metropolitan areas of the state; and

(5) information about the number of traffic fatalities per 100 million miles traveled.

(d) The department shall provide the information made available under Subsection (c) in a format that allows a person to conduct electronic searches for information regarding a specific county, highway under the jurisdiction of the department, or type of road.

(e) The department shall establish criteria to prioritize the transportation needs for the state that are consistent with the statewide transportation plan.

(f) Each department district shall enter information into the transportation expenditure reporting system, including information about:

(1) each district transportation project; and

(2) the category to which the project has been assigned and the priority of the project in the category under Section 201.995.

(g) The transportation expenditure reporting system shall allow a person to compare information produced by that system to information produced by the project information reporting system.

(h) To provide a means of verifying the accuracy of information being made available through the transportation expenditure reporting system, the department shall retain and archive appropriate documentation supporting the expenditure information or data summary that is detailed in the reporting system, by archiving copies of the original supporting documentation in a digital, electronic, or other appropriate format of storage or imaging that allows departmental management and retrieval of the records. Supporting documentation may include contract or transactional documents, letter agreements, invoices, statements, payment vouchers, requests for object of expenditure payments to be made by or on behalf of the department, and other items establishing the purpose and payment of the expenditure. The documentation shall be retained for the applicable period as set forth in rules for records retention and destruction promulgated by the Texas State Library and Archives Commission.

Sec. 201.809. STATEWIDE TRANSPORTATION REPORT. (a) The department annually shall evaluate and publish a report about the status of each transportation goal for this state. The report must include:

(1) information about the progress of each long-term transportation goal that is identified by the statewide transportation plan;

(2) the status of each project identified as a major priority;

(3) a summary of the number of statewide project implementation benchmarks that have been completed; and

(4) information about the accuracy of previous department financial forecasts.

(b) The department shall disaggregate the information in the report by department district.

(c) The department shall provide a copy of the district report to each member of the legislature for each department district located in the member's legislative district, and at the request of a member, a department employee shall meet with the member to explain the report.

(d) The department shall provide a copy of each district report to the political subdivisions located in the department district that is the subject of the report, including:

(1) a municipality;

(2) a county; and

(3) a local transportation entity.

Sec. 201.810. DEPARTMENT INFORMATION CONSOLIDATION. (a) To the extent practicable and to avoid duplication of reporting requirements, the department may combine the reports required under this subchapter with reports required under other provisions of this code.

(b) The department shall develop a central location on the department's Internet website that provides easily accessible and searchable information to the public contained in the reports required under this subchapter and other provisions of this code.

Sec. 201.811. PUBLIC INVOLVEMENT POLICY. (a) The department shall develop and implement a policy for public involvement that guides and encourages public involvement with the department. The policy must:

(1) provide for the use of public involvement techniques that target different groups and individuals;

(2) encourage continuous contact between the department and persons outside the department throughout the transportation decision-making process;

(3) require the department to make efforts toward:

(A) clearly tying public involvement to decisions made by the department; and

(B) providing clear information to the public about specific outcomes of public input;

(4) apply to all public input with the department, including input:

(A) on statewide transportation policy-making;

(B) in connection with the environmental process relating to specific projects; and

(C) into the commission's rulemaking procedures; and

(5) require a person who makes or submits a public comment, at the time the comment is made or disclosed, to disclose in writing on a witness card whether the person:

(A) does business with the department;

(B) may benefit monetarily from a project; or

(C) is an employee of the department.

(b) The department shall document the number of positive, negative, or neutral public comments received regarding all environmental impact statements as expressed by the public through the department's public involvement process. The department shall:

(1) present this information to the commission in an open meeting; and

(2) report this information on the department's Internet website in a timely manner.

(b) Not later than September 1, 2011, the Texas Department of Transportation shall establish the central location on the department's Internet website required by Section 201.810, Transportation Code, as added by this section.

SECTION 25. Chapter 201, Transportation Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. UNIFIED TRANSPORTATION PROGRAM

Sec. 201.991. UNIFIED TRANSPORTATION PROGRAM. (a) The department shall develop a unified transportation program covering a period of 10 years to guide the development of and authorize construction of transportation projects. The program must:

(1) annually identify target funding levels; and

(2) list all projects that the department intends to develop or begin construction of during the program period.

(b) The commission shall adopt rules that:

(1) specify the criteria for selecting projects to be included in the program;

(2) define program funding categories, including categories for safety, maintenance, and mobility; and

(3) define each phase of a major transportation project, including the planning, programming, implementation, and construction phases.

(c) The department shall publish the entire unified transportation program and summary documents highlighting project benchmarks, priorities, and forecasts in appropriate media and on the department's Internet website in a format that is easily understandable by the public.

(d) In developing the rules required by this section, the commission shall collaborate with local transportation entities.

Sec. 201.992. ANNUAL UPDATE TO UNIFIED TRANSPORTATION PROGRAM. (a) The department shall annually update the unified transportation program.

(b) The annual update must include:

(1) the annual funding forecast required by Section 201.993;

(2) the list of major transportation projects required by Section 201.994(b);

and

(3) the category to which the project has been assigned and the priority of the project in the category under Section 201.995.

(c) The department shall collaborate with local transportation entities to develop the annual update to the unified transportation program.

Sec. 201.993. ANNUAL FUNDING AND CASH FLOW FORECASTS.

(a) The department annually shall:

(1) develop and publish a forecast of all funds the department expects to receive, including funds from this state and the federal government; and

(2) use that forecast to guide planning for the unified transportation program.

(b) The department shall collaborate with local transportation entities to develop scenarios for the forecast required by Subsection (a) based on mutually acceptable funding assumptions.

(c) Not later than September 1 of each year, the department shall prepare and publish a cash flow forecast for a period of 20 years.

Sec. 201.994. MAJOR TRANSPORTATION PROJECTS. (a) The commission by rule shall:

(1) establish criteria for designating a project as a major transportation project;

(2) develop benchmarks for evaluating the progress of a major transportation project and timelines for implementation and construction of a major transportation project; and

(3) determine which critical benchmarks must be met before a major transportation project may enter the implementation phase of the unified transportation program.

(b) The department annually shall update the list of projects that are designated as major transportation projects.

(c) In adopting rules required by this section, the commission shall collaborate with local transportation entities.

Sec. 201.995. PRIORITY PROJECTS IN PROGRAM CATEGORIES. (a) The commission by rule shall:

(1) establish categories in the unified transportation program;

(2) assign each project identified in the program to a category; and

(3) designate the priority ranking of each project within each category.

(b) The department shall collaborate with local transportation entities when assigning each project included in the unified transportation program to a category established under Subsection (a).

(c) The highest priority projects within an applicable category of the unified transportation program must be projects designated as major transportation projects.

Sec. 201.996. FUNDING ALLOCATION. (a) For each funding category established under Section 201.991(b)(2), the commission by rule shall specify the formulas for allocating funds to districts and metropolitan planning organizations for:

(1) preventive maintenance and rehabilitation of the state highway system in all districts;

(2) mobility and added capacity projects in metropolitan and urban areas;

(3) mobility and added capacity projects on major state highways that provide statewide connectivity between urban areas and highway system corridors;

(4) congestion mitigation and air quality improvement projects in nonattainment areas;

(5) metropolitan mobility and added capacity projects within the boundaries of designated metropolitan planning areas of metropolitan planning organizations located in a transportation management area;

(6) transportation enhancements project funding; and

(7) projects eligible for federal or state funding, as determined by the applicable district engineer.

(b) Subject to applicable state and federal law, the commission shall determine the allocation of funds in all of the other categories established under Section 201.991(b)(2), including a category for projects of specific importance to the state, including projects that:

(1) promote economic opportunity;

(2) increase efficiency on military deployment routes or that retain military assets; and

(3) maintain the ability of appropriate entities to respond to emergencies.

(c) The commission shall update the formulas established under this section at least every four years.

Sec. 201.997. FUND DISTRIBUTION. (a) The department shall allocate funds to the department districts based on the formulas adopted under Section 201.996.

(b) In distributing funds to department districts, the department may not exceed the cash flow forecast prepared and published under Section 201.993(c).

Sec. 201.998. WORK PROGRAM. (a) Each department district shall develop a consistently formatted work program based on the unified transportation program covering a period of four years that contains all projects that the district proposes to implement during that period.

(b) The work program must contain:

(1) information regarding the progress of projects designated as major transportation projects, according to project implementation benchmarks and timelines established under Section 201.994; and

(2) a summary of the progress on other district projects.

(c) The department shall use the work program to:

- (1) monitor the performance of the district; and
- (2) evaluate the performance of district employees.

(d) The department shall publish the work program in appropriate media and on the department's Internet website.

SECTION 26. Section 202.021, Transportation Code, is amended by amending Subsection (e) and adding Subsection (e-1) to read as follows:

(e) The commission may waive payment for real property transferred to a governmental entity under this section if:

- (1) the estimated cost of future maintenance on the property equals or exceeds the fair value of the property; or
- (2) the property is a highway right-of-way and the governmental entity assumes or has assumed jurisdiction, control, and maintenance of the right-of-way for public road purposes.

(e-1) A grant transferring real property under Subsection (e)(2) must contain a reservation providing that if property described by that subsection ceases to be used for public road purposes, that real property shall immediately and automatically revert to this state.

SECTION 27. Subchapter A, Chapter 222, Transportation Code, is amended by adding Sections 222.005 and 222.006 to read as follows:

Sec. 222.005. AUTHORIZATION TO PROVIDE ASSISTANCE TO EXPEDITE ENVIRONMENTAL REVIEW. (a) The department, a county, a regional tollway authority operating under Chapter 366, or a regional mobility authority operating under Chapter 370 may enter into an agreement to provide funds to a state or federal agency to expedite the agency's performance of its duties related to the environmental review process for the applicable entity's transportation projects, including those listed in the applicable metropolitan planning organization's long-range transportation plan under 23 U.S.C. Section 134.

(b) Except as provided by Subsection (c), an agreement entered into under this section:

- (1) may specify transportation projects the applicable entity considers to be priorities for review; and
- (2) must require the agency receiving money to complete the environmental review in less time than is customary for the completion of environmental review by that agency.

(c) The department may enter into a separate agreement for a transportation project that the department determines has regional importance.

(d) An agreement entered into under this section does not diminish or modify the rights of the public regarding review and comment on transportation projects.

(e) An entity entering into an agreement under this section shall make the agreement available on the entity's Internet website.

Sec. 222.006. ENVIRONMENTAL REVIEW CERTIFICATION PROCESS. The department by rule shall establish a process to certify department district environmental specialists to work on all documents related to state and federal environmental review processes. The certification process must:

- (1) be available to department employees; and
- (2) require continuing education for recertification.

SECTION 28. Subsection (i), Section 222.106, Transportation Code, is amended to read as follows:

(i) All or the portion specified by the municipality of the money deposited to a tax increment account must be used to fund the transportation project for which the zone was designated, as well as aesthetic improvements within the zone. Any remaining money deposited to the tax increment account may be used for other purposes as determined by the municipality. A municipality may issue bonds to pay all or part of the cost of the transportation project and may pledge and assign all or a specified amount of money in the tax increment account to secure repayment of those bonds. [Money deposited to a tax increment account must be used to fund projects authorized under Section 222.104, including the repayment of amounts owed under an agreement entered into under that section.]

SECTION 29. Section 222.107, Transportation Code, is amended by amending Subsections (f) and (h) and adding Subsections (h-1) and (i-1) to read as follows:

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

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) provide that the zone takes effect immediately on adoption of the order or resolution and that the base year shall be the year of passage of the order or resolution or some year in the future; ~~and~~

(3) assign a name to the zone for identification, with the first zone designated by a county designated as "Transportation Reinvestment Zone Number One, County of (name of county)," and subsequently designated zones assigned names in the same form numbered consecutively in the order of their designation;

(4) designate the base year for purposes of establishing the tax increment base of the county; and

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

(h) The commissioners court may:

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

(2) by order or resolution [may] enter into an agreement with the owner of any real property located in the transportation reinvestment zone to abate all or a portion of the ad valorem taxes imposed by the county on the owner's property;

(3) by order or resolution elect to abate all or a portion of the ad valorem taxes imposed by the county on all real property in a zone; or

(4) grant other relief from ad valorem taxes on property in a zone.

(h-1) All abatements or other relief granted by the commissioners court in a transportation reinvestment zone must be equal in rate. [In the alternative, the commissioners court by order or resolution may elect to abate a portion of the ad valorem taxes imposed by the county on all real property located in the zone.] In any ad valorem tax year, the total amount of the taxes abated or the total amount of relief granted under this section may not exceed the amount calculated under Subsection

(a)(1) for that year, less any amounts allocated under previous agreements, including agreements under Section 381.004, Local Government Code, or Chapter 312, Tax Code.

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

SECTION 30. Section 223.002, Transportation Code, is amended to read as follows:

Sec. 223.002. NOTICE OF BIDS ~~[BY PUBLICATION]~~. ~~[(a)]~~ The department shall give ~~[publish]~~ notice regarding ~~[of]~~ the time and place at which bids on a contract will be opened and the contract awarded. The commission by rule shall determine the most effective method for providing the notice required by this section.

~~[(b) The notice must be published in a newspaper published in the county in which the improvement is to be made once a week for at least two weeks before the time set for awarding the contract and in two other newspapers that the department may designate.~~

~~[(c) Instead of the notice required by Subsection (b), if the department estimates that the contract involves an amount less than \$300,000, notice may be published in two successive issues of a newspaper published in the county in which the improvement is to be made.~~

~~[(d) If a newspaper is not published in the county in which the improvement is to be made, notice shall be published in a newspaper published in the county:~~

~~[(1) nearest the county seat of the county in which the improvement is to be made; and~~

~~[(2) in which a newspaper is published.]~~

SECTION 31. Section 223.201, Transportation Code, is amended by amending Subsections (f) and (i) and adding Subsections (j), (k), (l), and (m) to read as follows:

(f) The department may ~~[Except as provided by Subsections (h) and (i), the authority to]~~ enter into a comprehensive development agreement only for all or part of:

(1) the State Highway 99 (Grand Parkway) project;

(2) the Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;

(3) the North Tarrant Express project in Tarrant and Dallas Counties, including:

(A) on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E);

(B) on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and

(C) on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);

(4) the State Highway 183 managed lanes project in Dallas County from State Highway 161 to Interstate Highway 35E;

(5) the State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774;

(6) the State Highway 288 project in Brazoria County and Harris County; and

(7) the U.S. Highway 290 Hempstead managed lanes project in Harris County from Interstate Highway 610 to State Highway 99 [~~agreements provided by this section expires on August 31, 2009~~].

(i) The authority to enter into a comprehensive development agreement for a project described by Subsection (f), other than the State Highway 99 (Grand Parkway) project [~~exempted from Subsection (f) or Section 223.210(b)~~] expires August 31, 2015 [~~2011~~].

(j) Before the department may enter into a comprehensive development agreement under Subsection (f), the department must:

(1) obtain, not later than August 31, 2013, the appropriate environmental clearance for any project other than the State Highway 99 (Grand Parkway) project; and

(2) present to the commission a full financial plan for the project, including costing methodology and cost proposals.

(k) Not later than December 1, 2012, the department shall present a report to the commission on the status of a project described by Subsection (f). The report must include:

(1) the status of the project's environmental clearance;

(2) an explanation of any project delays; and

(3) if the procurement is not completed, the anticipated date for the completion of the procurement.

(l) In this section, "environmental clearance" means:

(1) a finding of no significant impact has been issued for the project; or

(2) for a project for which an environmental impact statement is prepared, a record of decision has been issued for that project.

(m) The department may not develop a project under this section as a project under Chapter 227.

SECTION 32. Subchapter E, Chapter 223, Transportation Code, is amended by adding Sections 223.2011 and 223.2012 to read as follows:

Sec. 223.2011. LIMITED AUTHORITY FOR CERTAIN PROJECTS USING COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Notwithstanding Sections 223.201(f) and 370.305(c), the department or an authority under Section 370.003 may enter into a comprehensive development agreement relating to improvements to, or construction of:

(1) the Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;

(2) the U.S. 183 (Bergstrom Expressway) project from Springdale Road to Patton Avenue; or

(3) a project consisting of the construction of:

(A) the Outer Parkway Project from U.S. Highway 77/83 to Farm-to-Market Road 1847; and

(B) the South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100.

(b) Before the department or an authority may enter into a comprehensive development agreement under this section, the department or the authority, as applicable, must meet the requirements under Section 223.201(j).

(c) Not later than December 1, 2012, the department or the authority, as applicable, shall present a report to the commission on the status of a project described by Subsection (a). The report must include:

(1) the status of the project's environmental clearance;

(2) an explanation of any project delays; and

(3) if the procurement is not completed, the anticipated date for the completion of the procurement.

(d) The department may not provide any financial assistance to an authority to pay for the costs of procuring an agreement under this section.

(e) In this section, "environmental clearance" means:

(1) a finding of no significant impact has been issued for the project; or

(2) for a project for which an environmental impact statement is prepared, a record of decision has been issued for that project.

(f) The authority to enter into a comprehensive development agreement under this section expires August 31, 2015.

Sec. 223.2012. NORTH TARRANT EXPRESS PROJECT PROVISIONS.

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

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

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

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

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

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

SECTION 33. Section 223.203, Transportation Code, is amended by adding Subsections (f-2), (l-1), (l-2), and (p) and amending Subsection (g) to read as follows:

(f-2) A private entity responding to a request for detailed proposals issued under Subsection (f) must identify:

(1) companies that will fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) entities that will serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(g) In issuing a request for detailed proposals under Subsection (f), the department may solicit input from entities qualified under Subsection (e) or any other person. The department may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f). A technical solution presented with a proposal must be fully responsive to, and have demonstrated resources to be able to fulfill, all technical requirements for the project, including specified quality assurance and quality control program requirements, safety program requirements, and environmental program requirements. A proposal that includes a technical solution that does not meet those requirements is ineligible for further consideration.

(l-1) A private entity selected for a comprehensive development agreement may not make changes to the companies or entities identified under Subsection (f-2) unless the original company or entity:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the private entity;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(l-2) If the private entity makes team changes in violation of Subsection (l-1), any cost savings resulting from the change accrue to the state and not to the private entity.

(p) All teaming agreements and subconsultant agreements must be executed and provided to the department before the execution of the comprehensive development agreement.

SECTION 34. Chapter 223, Transportation Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. DESIGN-BUILD CONTRACTS

Sec. 223.241. DEFINITIONS. In this subchapter:

(1) "Design-build contractor" means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of highway projects in this state.

(2) "Design-build method" means a project delivery method by which an entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Sec. 223.242. SCOPE OF AND LIMITATIONS ON CONTRACTS.

(a) Notwithstanding the requirements of Subchapter A and Chapter 2254, Government Code, the department may use the design-build method for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project.

(b) A design-build contract under this subchapter may not grant to a private entity:

- (1) a leasehold interest in the highway project; or
- (2) the right to operate or retain revenue from the operation of a toll project.

(c) In using the design-build method and in entering into a contract for the services of a design-build contractor, the department and the design-build contractor shall follow the procedures and requirements of this subchapter.

(d) The department may enter into a design-build contract for a highway project with a construction cost estimate of \$50 million or more to the department.

(d-1) The department may not enter into more than three contracts under this section in each fiscal year. This subsection expires August 31, 2015.

(e) Money disbursed by the department to pay engineering costs for the design of a project incurred by the design-build contractor under a design-build contract may not be included in the amounts under Section 223.041:

(1) required to be spent in a state fiscal biennium for engineering-related services; or

(2) appropriated in Strategy A.1.1, Plan/Design/Manage or Strategy A.1.2, Contracted Planning and Design of the General Appropriations Act.

Sec. 223.243. USE OF ENGINEER OR ENGINEERING FIRM. (a) To act as the department's representative, independent of a design-build contractor, for the procurement process and for the duration of the work on a highway project, the department shall select or designate:

(1) an engineer;

(2) a qualified firm, selected in accordance with Section 2254.004, Government Code, who is independent of the design-build contractor; or

(3) a general engineering consultant that was previously selected by the department and is selected or designated in accordance with Section 2254.004, Government Code.

(b) The selected or designated engineer or firm has full responsibility for complying with Chapter 1001, Occupations Code.

Sec. 223.244. OTHER PROFESSIONAL SERVICES. (a) The department shall provide or contract for, independently of the design-build contractor, the following services as necessary for the acceptance of the highway project by the department:

(1) inspection services;

(2) construction materials engineering and testing; and

(3) verification testing services.

(b) The department shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications.

(c) This section does not preclude a design-build contractor from providing construction quality assurance and quality control under a design-build contract.

Sec. 223.245. REQUEST FOR QUALIFICATIONS. (a) For any highway project to be delivered through the design-build method, the department must prepare and issue a request for qualifications. A request for qualifications must include:

(1) information regarding the proposed project's location, scope, and limits;

(2) information regarding funding that may be available for the project;

(3) criteria that will be used to evaluate the qualifications statements, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight to be given to the criteria; and

(5) the deadline by which qualifications statements must be received by the department.

(b) The department shall publish notice advertising the issuance of a request for qualifications in the Texas Register and on the department's Internet website.

(c) The department shall evaluate each qualifications statement received in response to a request for qualifications based on the criteria identified in the request. The department may interview responding proposers. Based on the department's evaluation of qualifications statements and interviews, if any, the department shall qualify or short-list proposers to submit proposals.

(d) The department shall qualify or short-list at least two private entities to submit proposals under Section 223.246, but may not qualify or short-list more private entities than the number of private entities designated on the request for qualifications.

(e) The department may withdraw a request for qualifications or request for proposals at any time.

Sec. 223.246. REQUEST FOR PROPOSALS. (a) The department shall issue a request for proposals to proposers short-listed under Section 223.245. A request for proposals must include:

(1) information on the overall project goals;

(2) publicly available cost estimates for the design-build portion of the project;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities, provided that the department is not required to undertake an effort to locate utilities;

(7) quality assurance and quality control requirements;

(8) the location of relevant structures;

(9) notice of any rules or goals adopted by the department relating to awarding contracts to disadvantaged business enterprises or small business enterprises;

(10) available geotechnical or other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal required under Subsection (d), including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals required under Subsection (d) and the formula by which the proposals will be evaluated and ranked; and

(14) the criteria to be used in evaluating the technical proposals, and the relative weighting of those criteria.

(b) The formula used to evaluate proposals under Subsection (a)(13) must allocate at least 70 percent of the weighting to the cost proposal.

(c) A request for proposals must also include a general form of the design-build contract that the department proposes and that may be modified as a result of negotiations prior to contract execution.

(d) Each response to a request for proposals must include a sealed technical proposal and a separate sealed cost proposal submitted to the department by the date specified in the request for proposals.

(e) The technical proposal must address:

(1) the proposer's qualifications and demonstrated technical competence, unless that information was submitted to the department and evaluated by the department under Section 223.245;

(2) the feasibility of developing the project as proposed, including identification of anticipated problems;

(3) the proposed solutions to anticipated problems;

(4) the ability of the proposer to meet schedules;

(5) the conceptual engineering design proposed; and

(6) any other information requested by the department.

(f) The department may provide for the submission of alternative technical concepts by a proposer. If the department provides for the submission of alternative technical concepts, the department must prescribe a process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

(g) The cost proposal must include:

(1) the cost of delivering the project; and

(2) the estimated number of days required to complete the project.

(h) A response to a request for proposals shall be due not later than the 180th day after the final request for proposals is issued by the department. This subsection does not preclude the release by the department of a draft request for proposals for purposes of receiving input from short-listed proposers.

(i) The department shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for proposals and assign points on the basis of the weighting specified in the request for proposals. The department may reject as nonresponsive any proposer that makes a significant change to the composition of its design-build team as initially submitted that was not approved by the department as provided in the request for proposals. The department shall subsequently open, evaluate, and score the cost proposals from proposers that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for proposals. The department shall rank the proposers in accordance with the formula provided in the request for proposals.

(j) If the department receives only one response to a request for proposals, an independent bid evaluation by the department must confirm and validate that:

(1) the project procurement delivered value for the public investment; and

(2) no anticompetitive practices were involved in the procurement.

Sec. 223.247. NEGOTIATION. (a) After ranking the proposers under Section 223.246(i), the department shall first attempt to negotiate a contract with the highest-ranked proposer. The department may include in the negotiations alternative technical concepts proposed by other proposers, subject to Section 223.249.

(b) If the department is unable to negotiate a satisfactory contract with the highest-ranked proposer, the department shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

Sec. 223.248. ASSUMPTION OF RISKS AND COSTS. (a) Except as provided by Subsection (b), the department shall assume:

(1) all risks and costs associated with:

(A) changes and modifications to the scope of the project requested by the department;

(B) unknown or differing conditions at the site of the project;

(C) applicable environmental clearance and other regulatory permitting necessary for the project; and

(D) natural disasters and other force majeure events; and

(2) all costs associated with property acquisition, other than costs associated with acquiring a temporary easement or work area used for staging or constructing the project.

(b) A design-build contractor may assume some or all of the risks or costs described by Subsection (a) if the terms of the assumption are reflected in the final request for proposals, including all supplements to the request.

Sec. 223.249. STIPEND AMOUNT FOR UNSUCCESSFUL PROPOSERS.

(a) The department shall pay an unsuccessful proposer that submits a responsive proposal a stipend for the work product contained in the proposal that the department determines can be used by the department in the performance of the department's functions. The stipend must be a minimum of twenty-five hundredths of one percent of the contract amount and must be specified in the initial request for proposals, but may not exceed the value of the work product contained in the proposal that the department determines can be used by the department in the performance of the department's functions. If the department determines that the value of the work product is less than the stipend amount, the department shall provide the proposer with a detailed explanation of the valuation, including the methodology and assumptions used by the department in determining the value of the work product. After payment of the stipend, the department may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipend under this subsection.

(b) In a request for proposals, the department shall provide for the payment of a partial stipend in the event that a procurement is terminated before the execution of a design-build contract.

Sec. 223.250. PERFORMANCE OR PAYMENT BOND. (a) The department shall require a design-build contractor to provide:

- (1) a performance and payment bond;
- (2) an alternative form of security; or
- (3) a combination of the forms of security described by Subdivisions (1) and

(2).

(b) Except as provided by Subsection (c), a performance and payment bond, alternative form of security, or combination of the forms shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the department determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the department shall set the amount of the security.

(d) A performance and payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(e) The department may require one or more of the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the department;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit provided by a bank meeting the requirements specified in the request for proposals; or

(4) any other form of security determined suitable by the department.

(f) Section 223.006 of this code and Chapter 2253, Government Code, do not apply to a bond or alternative form of security required under this section.

SECTION 35. Subsection (b), Section 228.012, Transportation Code, is amended to read as follows:

(b) The department shall hold money in a subaccount in trust for the benefit of the region in which a project or system is located and may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization in which the region is located for projects approved by the department. Except as provided by Subsection (c), at the time the project is approved by the department money shall be allocated and distributed to projects authorized by Section 228.0055 or Section 228.006, as applicable.

SECTION 36. Subchapter A, Chapter 228, Transportation Code, is amended by adding Section 228.013 to read as follows:

Sec. 228.013. DETERMINATION OF FINANCIAL TERMS FOR CERTAIN TOLL PROJECTS. (a) This section applies only to a proposed department toll project in which a private entity has a financial interest in the project's performance and for which:

(1) funds dedicated to or controlled by a region will be used;

(2) right-of-way is provided by a municipality or county; or

(3) revenues dedicated to or controlled by a municipality or county will be

used.

(b) The distribution of a project's financial risk, the method of financing for a project, and the tolling structure and methodology must be determined by a committee consisting of the following members:

- (1) a representative of the department;
- (2) a representative of any local toll project entity, as defined by Section 371.001, for the area in which the project is located;
- (3) a representative of the applicable metropolitan planning organization;
- and
- (4) a representative of each municipality or county that has provided revenue or right-of-way as described by Subsection (a).

SECTION 37. Section 370.305, Transportation Code, is amended to read as follows:

Sec. 370.305. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

(a) ~~[An authority may use a comprehensive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a transportation project.~~

~~[(b)]~~ A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design and construction of a transportation project, that ~~[and]~~ may ~~[also]~~ provide for the financing, acquisition, maintenance, or operation of a transportation project, and that entitles the private entity to:

- (1) a leasehold interest in the transportation project; or
- (2) the right to operate or retain revenue from the operation of the transportation project.

~~(b) [(e)]~~ An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

~~(c) [(d)]~~ Except as provided by this chapter, an authority's ~~[Subsections (e) and (f), the]~~ authority to enter into a comprehensive development agreement ~~[agreements under this section]~~ expires on August 31, 2011 ~~[2009]~~.

~~(e) Subsection (d) does not apply to a comprehensive development agreement that does not grant a private entity a right to finance a toll project or a comprehensive development agreement in connection with a project:~~

- ~~[(1) that includes one or more managed lane facilities to be added to an existing controlled access highway;~~
- ~~[(2) the major portion of which is located in a nonattainment or near nonattainment air quality area as designated by the United States Environmental Protection Agency; and~~
- ~~[(3) for which the department has issued a request for qualifications before the effective date of this subsection.~~

~~[(f) The authority to enter into a comprehensive development agreement for a project exempted from Subsection (d) or Section 223.210(b) expires August 31, 2011.]~~

SECTION 38. Chapter 370, Transportation Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. DESIGN-BUILD CONTRACTS

Sec. 370.401. SCOPE OF AND LIMITATIONS ON CONTRACTS.

(a) Notwithstanding the requirements of Chapter 2254, Government Code, an authority may use the design-build method for the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a transportation project.

(b) A design-build contract under this subchapter may not grant to a private entity:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

(c) In using the design-build method and in entering into a contract for the services of a design-build contractor, the authority and the design-build contractor shall follow the procedures and requirements of this subchapter.

(d) An authority may enter into not more than two design-build contracts for transportation projects in any fiscal year.

Sec. 370.402. DEFINITIONS. In this subchapter:

(1) "Design-build contractor" means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of transportation projects in this state.

(2) "Design-build method" means a project delivery method by which an entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Sec. 370.403. USE OF ENGINEER OR ENGINEERING FIRM. (a) To act as an authority's representative, independent of a design-build contractor, for the procurement process and for the duration of the work on a transportation project, an authority shall select or designate:

(1) an engineer;

(2) a qualified firm, selected in accordance with Section 2254.004, Government Code, that is independent of the design-build contractor; or

(3) a general engineering consultant that was previously selected by an authority and is selected or designated in accordance with Section 2254.004, Government Code.

(b) The selected or designated engineer or firm has full responsibility for complying with Chapter 1001, Occupations Code.

Sec. 370.404. OTHER PROFESSIONAL SERVICES. (a) An authority shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the transportation project by the authority:

(1) inspection services;

(2) construction materials engineering and testing; and

(3) verification testing services.

(b) An authority shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications.

(c) This section does not preclude the design-build contractor from providing construction quality assurance and quality control under a design-build contract.

Sec. 370.405. REQUEST FOR QUALIFICATIONS. (a) For any transportation project to be delivered through the design-build method, an authority must prepare and issue a request for qualifications. A request for qualifications must include:

(1) information regarding the proposed project's location, scope, and limits;
(2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable;

(3) criteria that will be used to evaluate the proposals, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight to be given to the criteria; and

(5) the deadline by which proposals must be received by the authority.

(b) An authority shall publish notice advertising the issuance of a request for qualifications in the Texas Register and on an Internet website maintained by the authority.

(c) An authority shall evaluate each qualifications statement received in response to a request for qualifications based on the criteria identified in the request. An authority may interview responding proposers. Based on the authority's evaluation of qualifications statements and interviews, if any, an authority shall qualify or short-list proposers to submit detailed proposals.

(d) An authority shall qualify or short-list at least two, but no more than five, firms to submit detailed proposals under Section 370.406. If an authority receives only one responsive proposal to a request for qualifications, the authority shall terminate the procurement.

(e) An authority may withdraw a request for qualifications or request for detailed proposals at any time.

Sec. 370.406. REQUEST FOR DETAILED PROPOSALS. (a) An authority shall issue a request for detailed proposals to proposers qualified or short-listed under Section 370.405. A request for detailed proposals must include:

(1) information on the overall project goals;

(2) the authority's cost estimates for the design-build portion of the work;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities, provided that an authority is not required to undertake an effort to locate utilities;

(7) quality assurance and quality control requirements;

(8) the location of relevant structures;

(9) notice of any rules or goals adopted by the authority pursuant to Section 370.183 relating to awarding contracts to disadvantaged businesses;

(10) available geotechnical or other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal required under Subsection (c), including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals required under Subsection (c) and the formula by which the proposals will be evaluated and ranked, provided that the formula shall allocate at least 70 percent of the weighting to the cost proposal; and

(14) the criteria and weighting for each element of the technical proposal.

(b) A request for detailed proposals shall also include a general form of the design-build contract that the authority proposes if the terms of the contract may be modified as a result of negotiations prior to contract execution.

(c) Each response to a request for detailed proposals must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

(1) the proposer's qualifications and demonstrated technical competence, provided that the proposer shall not be requested to resubmit any information that was submitted and evaluated pursuant to Section 370.405(a)(3);

(2) the feasibility of developing the project as proposed, including identification of anticipated problems;

(3) the proposed solutions to anticipated problems;

(4) the ability of the proposer to meet schedules;

(5) the conceptual engineering design proposed; and

(6) any other information requested by the authority.

(e) An authority may provide for the submission of alternative technical concepts by a proposer. If an authority provides for the submission of alternative technical concepts, the authority must prescribe a process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

(f) The cost proposal must include:

(1) the cost of delivering the project;

(2) the estimated number of days required to complete the project; and

(3) any terms for financing for the project that the proposer plans to provide.

(g) A response to a request for detailed proposals shall be due not later than the 180th day after the final request for detailed proposals is issued by the authority. This subsection does not preclude the release by the authority of a draft request for detailed proposals for purposes of receiving input from short-listed proposers.

(h) An authority shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for detailed proposals and assign points on the basis of the weighting specified in the request for detailed proposals. The authority may reject as nonresponsive any proposer that makes a significant change to the composition of its design-build team as initially submitted that was not approved by the authority as provided in the request for detailed proposals. The authority shall subsequently open, evaluate, and score the cost proposals from proposers that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for detailed proposals. The authority shall rank the proposers in accordance with the formula provided in the request for detailed proposals.

Sec. 370.407. NEGOTIATION. (a) After ranking the proposers under Section 370.406(h), an authority shall first attempt to negotiate a contract with the highest-ranked proposer. If an authority has committed to paying a stipend to unsuccessful proposers in accordance with Section 370.409, an authority may include in the negotiations alternative technical concepts proposed by other proposers.

(b) If an authority is unable to negotiate a satisfactory contract with the highest-ranked proposer, the authority shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

Sec. 370.408. ASSUMPTION OF RISKS. (a) Unless otherwise provided in the final request for detailed proposals, including all addenda and supplements to that request, the authority shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications, as requested by the authority;

(B) unknown or differing site conditions;

(C) environmental clearance and other regulatory permitting for the

project; and

(D) natural disasters and other force majeure events; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

(b) Nothing herein shall prevent the parties from agreeing that the design-build contractor should assume some or all of the risks or costs set forth in Subsection (a) provided that such agreement is reflected in the final request for detailed proposals, including all addenda and supplements to the agreement.

Sec. 370.409. STIPEND AMOUNT FOR UNSUCCESSFUL PROPOSERS.

(a) Pursuant to the provisions of the request for detailed proposals, an authority shall pay an unsuccessful proposer that submits a responsive proposal to the request for detailed proposals a stipend for work product contained in the proposal. The stipend must be specified in the initial request for detailed proposals in an amount of at least two-tenths of one percent of the contract amount, but may not exceed the value of the work product contained in the proposal to the authority. In the event the authority determines that the value of the work product is less than the stipend amount, the authority must provide the proposer with a detailed explanation of the valuation, including the methodology and assumptions used in determining value. After payment of the stipend, the authority may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipend under this subsection.

(b) An authority may provide in a request for detailed proposals for the payment of a partial stipend in the event a procurement is terminated prior to securing project financing and execution of a design-build contract.

Sec. 370.410. PERFORMANCE AND PAYMENT BOND. (a) An authority shall require a design-build contractor to provide:

- (1) a performance and payment bond;
- (2) an alternative form of security; or
- (3) a combination of the forms of security described by Subdivisions (1) and (2).

(b) Except as provided by Subsection (c), a performance and payment bond, alternative form of security, or combination of the forms of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the security.

(d) A performance and payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(e) An authority may require one or more of the following alternative forms of security:

- (1) a cashier's check drawn on a financial entity specified by the authority;
- (2) a United States bond or note;
- (3) an irrevocable bank letter of credit drawn from a federal or Texas chartered bank; or
- (4) any other form of security determined suitable by the authority.

(f) Chapter 2253, Government Code, does not apply to a bond or alternative form of security required under this section.

SECTION 39. Section 391.004, Transportation Code, is amended to read as follows:

Sec. 391.004. ~~DISPOSITION OF FEES [TEXAS HIGHWAY BEAUTIFICATION FUND ACCOUNT]. [The Texas highway beautification fund account is an account in the general revenue fund.]~~ Money the commission receives under this chapter shall be deposited to the credit of the state ~~[Texas]~~ highway ~~[beautification]~~ fund ~~[account]~~. The commission shall use money in the state ~~[Texas]~~ highway ~~[beautification]~~ fund ~~[account]~~ to administer this chapter and Chapter 394.

SECTION 40. (a) Subchapter A, Chapter 391, Transportation Code, is amended by adding Section 391.006 to read as follows:

Sec. 391.006. COMPLAINTS; RECORDS. (a) The commission by rule shall establish procedures for accepting and resolving written complaints related to outdoor advertising under this chapter. The rules must include:

- (1) a process to make information available describing the department's procedures for complaint investigation and resolution, including making information about the procedures available on the department's Internet website;
- (2) a system to prioritize complaints so that the most serious complaints receive attention before less serious complaints; and
- (3) a procedure for compiling and reporting detailed annual statistics about complaints.

(b) The department shall develop and provide a simple form for filing complaints with the department.

(c) The department shall provide to each person who files a written complaint with the department, and to each person who is the subject of a complaint, information about the department's policies and procedures relating to complaint investigation and resolution.

(d) The department shall keep, in accordance with the department's approved records retention schedule, an information file about each written complaint filed with the department that the department has authority to resolve. The department shall keep the following information for each complaint for the purpose of enforcing this chapter:

- (1) the date the complaint is filed;
- (2) the name of the person filing the complaint;
- (3) the subject matter of the complaint;
- (4) each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint;

and

(6) if the department does not take action on the complaint, an explanation of the reasons that action was not taken.

(e) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing department investigation.

(b) The Texas Transportation Commission shall adopt rules under Section 391.006, Transportation Code, as added by this section, not later than September 1, 2012.

SECTION 41. Subchapter B, Chapter 391, Transportation Code, is amended by adding Section 391.0355 to read as follows:

Sec. 391.0355. ADMINISTRATIVE PENALTY. (a) In lieu of a suit to collect a civil penalty, the commission, after notice and an opportunity for a hearing before the commission, may impose an administrative penalty against a person who violates this chapter or a rule adopted by the commission under this chapter. Each day a violation continues is a separate violation.

(b) The amount of the administrative penalty may not exceed the maximum amount of a civil penalty under Section 391.035.

(c) A proceeding under this section is a contested case under Chapter 2001, Government Code.

(d) Judicial review of an appeal of an administrative penalty imposed under this section is under the substantial evidence rule.

(e) An administrative penalty collected under this section shall be deposited to the credit of the state highway fund.

SECTION 42. Section 391.063, Transportation Code, is amended to read as follows:

Sec. 391.063. LICENSE FEE. The commission may set the amount of a license fee according to a scale graduated by the number of units of outdoor advertising and the number of off-premise signs under Chapter 394 owned by a license applicant.

SECTION 43. Subsection (b), Section 391.065, Transportation Code, is amended to read as follows:

(b) For the efficient management and administration of this chapter and to reduce the number of employees required to enforce this chapter, the commission shall adopt rules for issuing standardized forms that are for submission by license holders and applicants and that provide for an accurate showing of the number, location, or other information required by the commission for each license holder's or applicant's outdoor advertising or off-premise signs under Chapter 394.

SECTION 44. Section 391.066, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) The commission may deny the renewal of a license holder's license if the license holder has not complied with the permit requirements of this chapter or Chapter 394.

SECTION 45. Subchapter C, Chapter 391, Transportation Code, is amended by adding Section 391.0661 to read as follows:

Sec. 391.0661. APPLICABILITY OF LICENSE. In addition to authorizing a person to erect or maintain outdoor advertising, a license issued under this chapter authorizes a person to erect or maintain an off-premise sign under Chapter 394.

SECTION 46. Section 394.005, Transportation Code, is amended to read as follows:

Sec. 394.005. DISPOSITION OF FEES. Money the commission receives [~~A registration fee collected~~] under this chapter [~~Section 394.048 by the commission~~] shall be deposited to the credit of the state highway fund.

SECTION 47. (a) Subchapter A, Chapter 394, Transportation Code, is amended by adding Section 394.006 to read as follows:

Sec. 394.006. COMPLAINTS; RECORDS. (a) The commission by rule shall establish procedures for accepting and resolving written complaints related to signs under this chapter. The rules must include:

(1) a process to make information available describing the department's procedures for complaint investigation and resolution, including making information about the procedures available on the department's Internet website;

(2) a system to prioritize complaints so that the most serious complaints receive attention before less serious complaints; and

(3) a procedure for compiling and reporting detailed annual statistics about complaints.

(b) The department shall develop and provide a simple form for filing complaints with the department.

(c) The department shall provide to each person who files a written complaint with the department, and to each person who is the subject of a complaint, information about the department's policies and procedures relating to complaint investigation and resolution.

(d) The department shall keep, pursuant to the department's approved records retention schedule, an information file about each written complaint filed with the department that the department has authority to resolve. The department shall keep the following information for each complaint for the purpose of enforcing this chapter:

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

- (4) each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint;

and

(6) if the department does not take action on the complaint, an explanation of the reasons that action was not taken.

(e) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing department investigation.

(b) The Texas Transportation Commission shall adopt rules under Section 394.006, Transportation Code, as added by this section, not later than September 1, 2012.

SECTION 48. The heading to Subchapter B, Chapter 394, Transportation Code, is amended to read as follows:

SUBCHAPTER B. LICENSE AND PERMIT FOR OFF-PREMISE SIGN

SECTION 49. (a) Subchapter B, Chapter 394, Transportation Code, is amended by adding Sections 394.0201, 394.0202, 394.0203, 394.0204, 394.0205, 394.0206, 394.0207, 394.027, 394.028, and 394.029 to read as follows:

Sec. 394.0201. ERECTING OFF-PREMISE SIGN WITHOUT LICENSE; OFFENSE. (a) A person commits an offense if the person wilfully erects or maintains an off-premise sign on a rural road without a license under this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. Each day of the proscribed conduct is a separate offense.

(c) A person is not required to obtain a license to erect or maintain an on-premise sign.

Sec. 394.0202. ISSUANCE AND PERIOD OF LICENSE. (a) The commission shall issue a license to a person who:

(1) files with the commission a completed application form within the time specified by the commission;

(2) pays the appropriate license fee; and

(3) files with the commission a surety bond.

(b) A license may be issued for one year or longer.

(c) At least 30 days before the date on which a person's license expires, the commission shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the commission.

Sec. 394.0203. LICENSE FEE. The commission may set the amount of a license fee according to a scale graduated by the number of off-premise signs and units of outdoor advertising under Chapter 391 owned by a license applicant.

Sec. 394.0204. SURETY BOND. (a) The surety bond required of an applicant for a license under Section 394.0202 must be:

(1) in the amount of \$2,500 for each county in the state in which the person erects or maintains an off-premise sign; and

(2) payable to the commission for reimbursement for removal costs of an off-premise sign that the license holder unlawfully erects or maintains.

(b) A person may not be required to provide more than \$10,000 in surety bonds.

Sec. 394.0205. RULES; FORMS. (a) The commission may adopt rules to implement Sections 394.0201(a), 394.0202, 394.0203, 394.0204, and 394.0206.

(b) For the efficient management and administration of this chapter and to reduce the number of employees required to enforce this chapter, the commission shall adopt rules for issuing standardized forms that are for submission by license holders and applicants and that provide for an accurate showing of the number, location, or other information required by the commission for each license holder's or applicant's off-premise signs or outdoor advertising under Chapter 391.

(c) The commission may not adopt a rule under this chapter that restricts competitive bidding or advertising by the holder of a license issued under this chapter other than a rule to prohibit false, misleading, or deceptive practices. The limitation provided by this section applies only to rules relating to the occupation of outdoor advertiser and does not affect the commission's power to regulate the orderly and effective display of an off-premise sign under this chapter. A rule to prohibit false, misleading, or deceptive practices may not:

(1) restrict the use of:

(A) any legal medium for an advertisement;

(B) the license holder's advertisement under a trade name; or

(C) the license holder's personal appearance or voice in an advertisement, if the license holder is an individual; or

(2) relate to the size or duration of an advertisement by the license holder.

Sec. 394.0206. REVOCATION OR SUSPENSION OF LICENSE; APPEAL.

(a) The commission may revoke or suspend a license issued under this subchapter or place on probation a license holder whose license is suspended if the license holder violates this chapter or a rule adopted under this chapter. If the suspension of the license is probated, the department may require the license holder to report regularly to the commission on any matter that is the basis of the probation.

(b) The judicial appeal of the revocation or suspension of a license must be initiated not later than the 15th day after the date of the commission's action.

(c) The commission may adopt rules for the reissuance of a revoked or suspended license and may set fees for the reissuance.

(d) The commission may deny the renewal of a license holder's existing license if the license holder has not complied with the permit requirements of this chapter or Chapter 391.

Sec. 394.0207. APPLICABILITY OF LICENSE. In addition to authorizing a person to erect or maintain an off-premise sign, a license issued under this chapter authorizes a person to erect or maintain outdoor advertising under Chapter 391.

Sec. 394.027. DENIAL OF PERMIT; APPEAL. The commission may create a process by which an applicant may appeal a denial of a permit under this subchapter.

Sec. 394.028. FEE AMOUNTS. The license and permit fees required by this subchapter may not exceed an amount reasonably necessary to cover the administrative costs incurred to enforce this chapter.

Sec. 394.029. EXCEPTIONS FOR CERTAIN NONPROFIT ORGANIZATIONS. (a) The combined license and permit fees under this subchapter may not exceed \$10 for an off-premise sign erected and maintained by a nonprofit

organization in a municipality or a municipality's extraterritorial jurisdiction if the sign relates to or promotes only the municipality or a political subdivision whose jurisdiction is wholly or partly concurrent with the municipality.

(b) The nonprofit organization is not required to file a bond as provided by Section 394.0202(a)(3).

(b) The change in law made by Section 394.0201, Transportation Code, as added by this section, applies only to an off-premise sign erected or for which the permit expires on or after the effective date of this Act. An off-premise sign for which a permit is issued before the effective date of this Act is covered by the law in effect when the permit was issued, and the former law is continued in effect for that purpose.

SECTION 50. Section 394.050, Transportation Code, is amended to read as follows:

Sec. 394.050. ~~[BOARD OF]~~ VARIANCE. The commission or a person designated by the commission [shall provide for a board of variance that], in an appropriate case and subject to an appropriate condition or safeguard, may make a special exception to this chapter regarding a permit for an off-premise outdoor sign on a rural road.

SECTION 51. Subsections (a) and (d), Section 394.082, Transportation Code, are amended to read as follows:

(a) In lieu of a suit to collect a civil penalty, the commission, after notice and an opportunity for a hearing before the commission, may impose an administrative penalty against a person who ~~[intentionally]~~ violates this chapter or a rule adopted by the commission under this chapter. Each day a violation continues is a separate violation.

(d) Judicial review of an appeal of an administrative penalty imposed under this section is under the substantial evidence rule ~~[by trial de novo]~~.

SECTION 52. Subchapter D, Chapter 472, Transportation Code, is amended by adding Section 472.035 to read as follows:

Sec. 472.035. COORDINATION WITH DEPARTMENT TO DEVELOP LONG-TERM PLANNING ASSUMPTIONS. Each metropolitan planning organization shall work with the department to develop mutually acceptable assumptions for the purposes of long-range federal and state funding forecasts and use those assumptions to guide long-term planning in the organization's long-range transportation plan.

SECTION 53. Chapter 544, Transportation Code, is amended by adding Section 544.013 to read as follows:

Sec. 544.013. CHANGEABLE MESSAGE SIGN SYSTEM. (a) In this section, "changeable message sign" means a sign that conforms to the manual and specifications adopted under Section 544.001. The term includes a dynamic message sign.

(b) The Texas Department of Transportation in cooperation with local governments shall actively manage a system of changeable message signs located on highways under the jurisdiction of the department to mitigate traffic congestion by providing current information to the traveling public, including information about traffic incidents, weather conditions, road construction, and alternative routes when applicable.

SECTION 54. Section 621.001, Transportation Code, is amended by amending Subdivisions (3) and (4) and adding Subdivision (13) to read as follows:

(3) "Department" means the Texas Department of Motor Vehicles [Transportation].

(4) "Director" means the executive director of the Texas Department of Motor Vehicles [Transportation].

(13) "Board" means the board of the Texas Department of Motor Vehicles.

SECTION 55. Subsection (a), Section 621.003, Transportation Code, is amended to read as follows:

(a) The board [~~commission~~] by rule may authorize the director to enter into with the proper authority of another state an agreement that authorizes:

(1) the authority of the other state to issue on behalf of the department to the owner or operator of a vehicle, or combination of vehicles, that exceeds the weight or size limits allowed by this state a permit that authorizes the operation or transportation on a highway in this state of the vehicle or combination of vehicles; and

(2) the department to issue on behalf of the authority of the other state to the owner or operator of a vehicle, or combination of vehicles, that exceeds the weight or size limits allowed by that state a permit that authorizes the operation or transportation on a highway of that state of the vehicle or combination of vehicles.

SECTION 56. Section 621.004, Transportation Code, is amended to read as follows:

Sec. 621.004. **ADMISSIBILITY OF CERTIFICATE OF VERTICAL CLEARANCE.** In each civil or criminal proceeding in which a violation of this chapter may be an issue, a certificate of the vertical clearance of a structure, including a bridge or underpass, signed by the executive director of the Texas Department of Transportation is admissible in evidence for all purposes.

SECTION 57. Section 621.006, Transportation Code, is amended to read as follows:

Sec. 621.006. **RESTRICTED OPERATION ON CERTAIN HOLIDAYS.** The commission [department] by rule may impose restrictions on the weight and size of vehicles to be operated on state highways on the following holidays only:

- (1) New Year's Day;
- (2) Memorial Day;
- (3) Independence Day;
- (4) Labor Day;
- (5) Thanksgiving Day; and
- (6) Christmas Day.

SECTION 58. Subchapter A, Chapter 621, Transportation Code, is amended by adding Section 621.008 to read as follows:

Sec. 621.008. **RULEMAKING AUTHORITY.** The board may adopt rules necessary to implement and enforce this chapter.

SECTION 59. Section 621.102, Transportation Code, is amended to read as follows:

Sec. 621.102. **[COMMISSION'S] AUTHORITY TO SET MAXIMUM WEIGHTS.** (a) The executive director of the Texas Department of Transportation [commission] may set the maximum single axle weight, tandem axle weight, or gross

weight of a vehicle, or maximum single axle weight, tandem axle weight, or gross weight of a combination of vehicles and loads, that may be moved over a state highway or a farm or ranch road if the executive director [~~commission~~] finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge or culvert along the road. A maximum weight set under this subsection may not exceed the maximum set by statute for that weight.

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

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

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

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

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

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

SECTION 60. Subsections (a) and (b), Section 621.202, Transportation Code, are amended to read as follows:

(a) To comply with safety and operational requirements of federal law, the commission by order may set the maximum width of a vehicle, including the load on the vehicle, at eight feet for a designated highway or segment of a highway if the results of an engineering and traffic study, conducted by the Texas Department of Transportation, that includes an analysis of structural capacity of bridges and pavements, traffic volume, unique climatic conditions, and width of traffic lanes support the change.

(b) An order under this section becomes effective on the designated highway or segment when appropriate signs giving notice of the limitations are erected by the Texas Department of Transportation.

SECTION 61. Subsections (a) and (d), Section 621.301, Transportation Code, are amended to read as follows:

(a) The commissioners court of a county may establish load limits for any county road or bridge only with the concurrence of the Texas Department of Transportation [~~department~~]. A load limit shall be deemed concurred with by the Texas Department of Transportation [~~department~~] 30 days after the county submits to the Texas Department of Transportation [~~department~~] the load limit accompanied by supporting documentation and calculations reviewed and sealed by an engineer

licensed in this state, though the Texas Department of Transportation [~~department~~] may review the load limit and withdraw concurrence at any time after the 30-day period.

(d) A maximum weight set under this section becomes effective on a road when appropriate signs giving notice of the maximum weight are erected by the Texas Department of Transportation on the road under order of the commissioners court.

SECTION 62. Subsection (a), Section 621.352, Transportation Code, is amended to read as follows:

(a) The board [~~commission~~] by rule may establish fees for the administration of Section 621.003 in an amount that, when added to the other fees collected by the department, does not exceed the amount sufficient to recover the actual cost to the department of administering that section. An administrative fee collected under this section shall be sent to the comptroller for deposit to the credit of the state highway fund and may be appropriated only to the department for the administration of Section 621.003.

SECTION 63. Section 621.356, Transportation Code, is amended to read as follows:

Sec. 621.356. FORM OF PAYMENT. The board [~~commission~~] may adopt rules prescribing the method for payment of a fee for a permit issued by the department that authorizes the operation of a vehicle and its load or a combination of vehicles and load exceeding size or weight limitations. The rules may:

(1) authorize the use of electronic funds transfer or a credit card issued by:

(A) a financial institution chartered by a state or the federal government; or

(B) a nationally recognized credit organization approved by the board [~~commission~~]; and

(2) require the payment of a discount or service charge for a credit card payment in addition to the fee.

SECTION 64. Section 621.504, Transportation Code, is amended to read as follows:

Sec. 621.504. BRIDGE OR UNDERPASS CLEARANCE. A person may not operate or attempt to operate a vehicle over or on a bridge or through an underpass or similar structure unless the height of the vehicle, including load, is less than the vertical clearance of the structure as shown by the records of the Texas Department of Transportation [~~department~~].

SECTION 65. Section 622.001, Transportation Code, is amended to read as follows:

Sec. 622.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Commission" means the Texas Transportation Commission.

(2) "Department" [~~department~~] means the Texas Department of Motor Vehicles [~~Transportation~~].

SECTION 66. Subchapter A, Chapter 622, Transportation Code, is amended by adding Section 622.002 to read as follows:

Sec. 622.002. RULEMAKING AUTHORITY. The board of the department may adopt rules necessary to implement and enforce this chapter.

SECTION 67. Subsections (a) and (b), Section 622.013, Transportation Code, are amended to read as follows:

(a) The owner of a ready-mixed concrete truck with a tandem axle weight heavier than 34,000 pounds shall before operating the vehicle on a public highway of this state file with the department a surety bond subject to the approval of the Texas Department of Transportation [department] in the principal amount set by the Texas Department of Transportation [department] not to exceed \$15,000 for each truck.

(b) The bond must be conditioned that the owner of the truck will pay to the Texas Department of Transportation [state], within the limit of the bond, any damage to a highway caused by the operation of the truck.

SECTION 68. Subsections (a) and (b), Section 622.134, Transportation Code, are amended to read as follows:

(a) Except as provided by Subsection (c), the owner of a vehicle covered by this subchapter with a tandem axle weight heavier than 34,000 pounds shall before operating the vehicle on a public highway of this state file with the department a surety bond subject to the approval of the Texas Department of Transportation [department] in the principal amount set by the Texas Department of Transportation [department] not to exceed \$15,000 for each vehicle.

(b) The bond must be conditioned that the owner of the vehicle will pay, within the limits of the bond, to the Texas Department of Transportation [state] any damage to a highway, to a county any damage to a county road, and to a municipality any damage to a municipal street caused by the operation of the vehicle.

SECTION 69. Section 623.001, Transportation Code, is amended by amending Subdivision (1) and adding Subdivisions (4) and (5) to read as follows:

(1) "Department" means the Texas Department of Motor Vehicles [Transportation].

(4) "Board" means the board of the Texas Department of Motor Vehicles.

(5) "Commission" means the Texas Transportation Commission.

SECTION 70. Subchapter A, Chapter 623, Transportation Code, is amended by adding Sections 623.002 and 623.003 to read as follows:

Sec. 623.002. RULEMAKING AUTHORITY. The board may adopt rules necessary to implement and enforce this chapter.

Sec. 623.003. ROUTE DETERMINATION. (a) To the extent the department is required to determine a route under this chapter, the department shall base the department's routing decision on information provided by the Texas Department of Transportation.

(b) The Texas Department of Transportation shall provide the department with all routing information necessary to complete a permit issued under Section 623.071, 623.121, 623.142, or 623.192.

SECTION 71. Section 623.0112, Transportation Code, is amended to read as follows:

Sec. 623.0112. ADDITIONAL ADMINISTRATIVE FEE. When a person applies for a permit under Section 623.011, the person must pay in addition to other fees an administrative fee adopted by board [department] rule in an amount not to exceed the direct and indirect cost to the department of:

(1) issuing a sticker under Section 623.011(d);

- (2) distributing fees under Section 621.353; and
- (3) notifying counties under Section 623.013.

SECTION 72. Subsection (b), Section 623.012, Transportation Code, is amended to read as follows:

(b) The bond or letter of credit must:

(1) be in the amount of \$15,000 payable to the Texas Department of Transportation [department] and the counties of this state;

(2) be conditioned that the applicant will pay the Texas Department of Transportation [department] for any damage to a state highway, and a county for any damage to a road or bridge of the county, caused by the operation of the vehicle for which the permit is issued at a heavier weight than the maximum weights authorized by Subchapter B of Chapter 621 or Section 621.301; and

(3) provide that the issuer is to notify the Texas Department of Transportation [department] and the applicant in writing promptly after a payment is made by the issuer on the bond or letter of credit.

SECTION 73. Subsections (a) and (b), Section 623.016, Transportation Code, are amended to read as follows:

(a) The Texas Department of Transportation [department] or a county may recover on the bond or letter of credit required for a permit issued under Section 623.011 only by a suit against the permit holder and the issuer of the bond or letter of credit.

(b) Venue for a suit by the Texas Department of Transportation [department] is in a district court in:

(1) the county in which the defendant resides;

(2) the county in which the defendant has its principal place of business in this state if the defendant is a corporation or partnership; or

(3) Travis County if the defendant is a corporation or partnership that does not have a principal place of business in this state.

SECTION 74. Subsection (a), Section 623.051, Transportation Code, is amended to read as follows:

(a) A person may operate a vehicle that cannot comply with one or more of the restrictions of Subchapter C of Chapter 621 or Section 621.101 to cross the width of any road or highway under the jurisdiction of the Texas Department of Transportation [department], other than a controlled access highway as defined by Section 203.001, from private property to other private property if the person contracts with the commission to indemnify the Texas Department of Transportation [department] for the cost of maintenance and repair of the part of the highway crossed by the vehicle.

SECTION 75. Subsection (b), Section 623.052, Transportation Code, is amended to read as follows:

(b) Before a person may operate a vehicle under this section, the person must:

(1) contract with the Texas Department of Transportation [department] to indemnify the Texas Department of Transportation [department] for the cost of the maintenance and repair for damage caused by a vehicle crossing that part of the highway; and

(2) execute an adequate surety bond to compensate for the cost of maintenance and repair, approved by the comptroller and the attorney general, with a corporate surety authorized to do business in this state, conditioned on the person fulfilling each obligation of the agreement.

SECTION 76. Subsection (a), Section 623.075, Transportation Code, is amended to read as follows:

(a) Before the department may issue a permit under this subchapter, the applicant shall file with the department a bond in an amount set by the Texas Department of Transportation [department], payable to the Texas Department of Transportation [department], and conditioned that the applicant will pay to the Texas Department of Transportation [department] any damage that might be sustained to the highway because of the operation of the equipment for which a permit is issued.

SECTION 77. Subsections (b) and (c), Section 623.076, Transportation Code, are amended to read as follows:

(b) The board [Texas Transportation Commission] may adopt rules for the payment of a fee under Subsection (a). The rules may:

(1) authorize the use of electronic funds transfer;

(2) authorize the use of a credit card issued by:

(A) a financial institution chartered by a state or the United States; or

(B) a nationally recognized credit organization approved by the board [Texas Transportation Commission]; and

(3) require the payment of a discount or service charge for a credit card payment in addition to the fee prescribed by Subsection (a).

(c) An application for a permit under Section 623.071(c)(3) or (d) must be accompanied by the permit fee established by the board, in consultation with the commission, for the permit, not to exceed \$7,000. Of each fee collected under this subsection, the department shall send:

(1) the first \$1,000 to the comptroller for deposit to the credit of the general revenue fund; and

(2) any amount in excess of \$1,000 to the comptroller for deposit to the credit of the state highway fund.

SECTION 78. Section 623.078, Transportation Code, is amended to read as follows:

Sec. 623.078. VEHICLE SUPERVISION FEE. (a) Each applicant for a permit under this subchapter for a vehicle that is heavier than 200,000 pounds must also pay a vehicle supervision fee in an amount determined by the Texas Department of Transportation [department] and designed to recover the direct cost of providing safe transportation of the vehicle over the state highway system, including the cost of:

(1) bridge structural analysis;

(2) the monitoring of the trip process; and

(3) moving traffic control devices.

(b) The board [department] shall send each fee collected under Subsection (a) to the comptroller for deposit to the credit of the state highway fund.

SECTION 79. Subsection (a), Section 623.080, Transportation Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a permit under this subchapter must include:

- (1) the name of the applicant;
- (2) the date of issuance;
- (3) the signature of the director of the department [~~or of a division engineer~~];

(4) a statement of the kind of equipment to be transported over the highway, the weight and dimensions of the equipment, and the kind and weight of each commodity to be transported; and

- (5) a statement of any condition on which the permit is issued.

SECTION 80. Subsection (f), Section 623.093, Transportation Code, is amended to read as follows:

(f) If an application for a permit to move a manufactured house is accompanied by a copy of a writ of possession issued by a court of competent jurisdiction, the applicant is not required to submit the written statement from the chief appraiser [~~set forth in Subsection (d)~~].

SECTION 81. Subsection (b), Section 623.096, Transportation Code, is amended to read as follows:

(b) The board, in consultation with the Texas Department of Transportation, [~~department~~] shall adopt rules concerning fees for each annual permit issued under Section 623.095(c) at a cost not to exceed \$3,000.

SECTION 82. Subsection (e), Section 623.099, Transportation Code, is amended to read as follows:

(e) The Texas Department of Transportation [~~department~~] shall publish and annually revise a map or list of the bridges or overpasses that because of height or width require an escort flag vehicle to stop oncoming traffic while a manufactured house crosses the bridge or overpass.

SECTION 83. Subsections (b) and (c), Section 623.100, Transportation Code, are amended to read as follows:

(b) The Texas Department of Transportation [~~department~~] may limit the hours for travel on certain routes because of heavy traffic conditions.

(c) The Texas Department of Transportation [~~department~~] shall publish the limitation on movements prescribed by this section and the limitations adopted under Subsection (b) and shall make the publications available to the public. Each limitation adopted by the Texas Department of Transportation [~~department~~] must be made available to the public before it takes effect.

SECTION 84. Subsection (a), Section 623.126, Transportation Code, is amended to read as follows:

(a) A permit issued under this subchapter must:

- (1) contain the name of the applicant;
- (2) be dated and signed by the director of the department [~~a division engineer~~], or a designated agent;
- (3) state the make and model of the portable building unit or units to be transported over the highways;
- (4) state the make and model of the towing vehicle;

(5) state the combined length and width of the portable building unit or units and towing vehicle; and

(6) state each highway over which the portable building unit or units are to be moved.

SECTION 85. Subsection (a), Section 623.142, Transportation Code, is amended to read as follows:

(a) The department may, on application, issue a permit for the movement over a road or highway under the jurisdiction of the Texas Department of Transportation [~~department~~] of a vehicle that:

(1) is a piece of fixed-load mobile machinery or equipment used to service, clean out, or drill an oil well; and

(2) cannot comply with the restrictions set out in Subchapter C of Chapter 621 and Section 621.101.

SECTION 86. Sections 623.145 and 623.146, Transportation Code, are amended to read as follows:

Sec. 623.145. RULES; FORMS AND PROCEDURES; FEES. (a) The board, in consultation with the commission, [~~Texas Transportation Commission~~] by rule shall provide for the issuance of permits under this subchapter. The rules must include each matter the board and commission determine [~~determines~~] necessary to implement this subchapter and:

(1) requirements for forms and procedures used in applying for a permit;

(2) conditions with regard to route and time of movement;

(3) requirements for flags, flaggers, and warning devices;

(4) the fee for a permit; and

(5) standards to determine whether a permit is to be issued for one trip only or for a period established by the commission.

(b) In adopting a rule or establishing a fee, the board and commission shall consider and be guided by:

(1) the state's investment in its highway system;

(2) the safety and convenience of the general traveling public;

(3) the registration or license fee paid on the vehicle for which the permit is requested;

(4) the fees paid by vehicles operating within legal limits;

(5) the suitability of roadways and subgrades on the various classes of highways of the system;

(6) the variation in soil grade prevalent in the different regions of the state;

(7) the seasonal effects on highway load capacity;

(8) the highway shoulder design and other highway geometrics;

(9) the load capacity of the highway bridges;

(10) administrative costs;

(11) added wear on highways; and

(12) compensation for inconvenience and necessary delays to highway users.

Sec. 623.146. VIOLATION OF RULE. A permit under this subchapter is void on the failure of an owner or the owner's representative to comply with a rule of the board [~~commission~~] or with a condition placed on the permit, and immediately on the violation, further movement over the highway of an oversize or overweight vehicle violates the law regulating the size or weight of a vehicle on a public highway.

SECTION 87. Subsections (a) and (b), Section 623.163, Transportation Code, are amended to read as follows:

(a) The owner of a vehicle used exclusively to transport solid waste with a tandem axle load heavier than 34,000 pounds shall before operating the vehicle on a public highway of this state file with the department a surety bond subject to the approval of the Texas Department of Transportation [~~department~~] in the principal amount set by the Texas Department of Transportation [~~department~~] not to exceed \$15,000 for each vehicle.

(b) The bond must be conditioned that the owner of the vehicle will pay to the Texas Department of Transportation [~~state~~] and to any municipality in which the vehicle is operated on a municipal street, within the limit of the bond, any damages to a highway or municipal street caused by the operation of the vehicle.

SECTION 88. Subsection (a), Section 623.192, Transportation Code, is amended to read as follows:

(a) The department may, on application, issue a permit to a person to move over a road or highway under the jurisdiction of the Texas Department of Transportation [~~department~~] an unladen lift equipment motor vehicle that cannot comply with the restrictions set out in Subchapter C of Chapter 621 and Section 621.101.

SECTION 89. Sections 623.195 and 623.196, Transportation Code, are amended to read as follows:

Sec. 623.195. RULES; FORMS AND PROCEDURES; FEES. (a) The board, in consultation with the commission, [~~Texas Transportation Commission~~] by rule shall provide for the issuance of a permit under this subchapter. The rules must include each matter the board and the commission determine [~~determines~~] necessary to implement this subchapter and:

- (1) requirements for forms and procedures used in applying for a permit;
- (2) conditions with regard to route and time of movement;
- (3) requirements for flags, flaggers, and warning devices;
- (4) the fee for a permit; and
- (5) standards to determine whether a permit is to be issued for one trip only or for a period established by the commission.

(b) In adopting a rule or establishing a fee, the board and the commission shall consider and be guided by:

- (1) the state's investment in its highway system;
- (2) the safety and convenience of the general traveling public;
- (3) the registration or license fee paid on the vehicle for which the permit is requested;
- (4) the fees paid by vehicles operating within legal limits;
- (5) the suitability of roadways and subgrades on the various classes of highways of the system;
- (6) the variation in soil grade prevalent in the different regions of the state;

- (7) the seasonal effects on highway load capacity;
- (8) the highway shoulder design and other highway geometrics;
- (9) the load capacity of highway bridges;
- (10) administrative costs;
- (11) added wear on highways; and
- (12) compensation for inconvenience and necessary delays to highway

users.

Sec. 623.196. VIOLATION OF RULE. A permit under this subchapter is void on the failure of an owner or the owner's representative to comply with a rule of the board [~~commission~~] or with a condition placed on the permit, and immediately on the violation, further movement over a highway of an oversize or overweight vehicle violates the law regulating the size or weight of a vehicle on a public highway.

SECTION 90. Section 623.212, Transportation Code, is amended to read as follows:

Sec. 623.212. PERMITS BY PORT AUTHORITY. The commission [~~department~~] may authorize a port authority to issue permits for the movement of oversize or overweight vehicles carrying cargo on state highways located in counties contiguous to the Gulf of Mexico or a bay or inlet opening into the gulf and bordering the United Mexican States.

SECTION 91. Subsection (b), Section 623.215, Transportation Code, is amended to read as follows:

(b) A port authority shall report to the Texas Department of Transportation [~~department~~] all permits issued under this subchapter.

SECTION 92. Section 623.233, Transportation Code, is amended to read as follows:

Sec. 623.233. MAINTENANCE CONTRACTS. The district shall make payments to the Texas Department of Transportation [~~department~~] to provide funds for the maintenance of state highways subject to this subchapter.

SECTION 93. Subsection (b), Section 623.235, Transportation Code, is amended to read as follows:

(b) The district shall report to the Texas Department of Transportation [~~department~~] all permits issued under this subchapter.

SECTION 94. Section 623.253, Transportation Code, is amended to read as follows:

Sec. 623.253. MAINTENANCE CONTRACTS. The county shall make payments to the Texas Department of Transportation [~~department~~] to provide funds for the maintenance of state highways subject to this subchapter.

SECTION 95. Section 623.304, Transportation Code, is amended to read as follows:

Sec. 623.304. MAINTENANCE CONTRACTS. The port authority shall make payments to the Texas Department of Transportation [~~department~~] to provide funds for the maintenance of state highways subject to this subchapter.

SECTION 96. Subsection (c), Section 547.304, Transportation Code, is amended to read as follows:

(c) Except for Sections 547.323 and 547.324, a provision of this chapter that requires a vehicle to be equipped with lamps, reflectors, and lighting equipment does not apply to a mobile home if the mobile home:

(1) is moved under a permit issued by the Texas Department of Motor Vehicles [~~Transportation~~] under Subchapter D, Chapter 623; and

(2) is not moved at a time or under a condition specified by Section 547.302(a).

SECTION 97. Subsection (b), Section 1001.002, Transportation Code, is amended to read as follows:

(b) In addition to the other duties required of the Texas Department of Motor Vehicles, the department shall administer and enforce:

(1) Subtitle A;

(2) Chapters 621, 622, 623, 642, 643, 645, 646, and 648; and

(3) Chapters 2301 and 2302, Occupations Code.

SECTION 98. Subsections (a), (b), and (c), Section 1201.161, Occupations Code, are amended to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by the Texas Department of Motor Vehicles [~~Transportation~~] under Subchapter E, Chapter 623, Transportation Code.

(b) The department shall cooperate with the Texas Department of Motor Vehicles [~~Transportation~~] by providing current lists of licensed manufacturers, retailers, and installers.

(c) The Texas Department of Motor Vehicles [~~Transportation~~] shall send the department monthly:

(1) a copy of each permit issued in the preceding month for the movement of manufactured housing on the highways; or

(2) a list of the permits issued in the preceding month and the information on the permits.

SECTION 99. Section 201.0545, Subsection (h), Section 223.201, and Section 370.314, Transportation Code, are repealed.

SECTION 100. (a) A governmental act taken or a decision made by the Texas Department of Transportation and the Texas Transportation Commission under Subchapter E, Chapter 223, Transportation Code, before the effective date of this Act, to negotiate, execute, or otherwise enter into a comprehensive development agreement or facility agreement relating to the North Tarrant Express project is conclusively presumed, as of the date the act or decision occurred, to be valid and to have occurred in accordance with all applicable law.

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

(1) is inconsistent with Section 223.201, Transportation Code, as amended by this Act, and Section 223.2012, Transportation Code, as added by this Act, relating to the North Tarrant Express project;

(2) was void at the time the act or decision occurred;

(3) violates the terms of federal law or a federal waiver; or

(4) was a misdemeanor or a felony under a statute of this state or the United States at the time the act or decision occurred.

(c) This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment; or

(2) has been held invalid by a final court judgment.

SECTION 101. This section and the sections of this Act that amend Section 223.201, Transportation Code, add Sections 223.2011 and 223.2012, Transportation Code, repeal Subsection (h), Section 223.201, Transportation Code, and provide transitional information related to those sections 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, those provisions take effect September 1, 2011.

SECTION 102. (a) Except as otherwise provided by this Act, not later than January 1, 2012, the following are transferred from the Texas Department of Transportation to the Texas Department of Motor Vehicles:

(1) the powers, duties, functions, programs, activities, and rights of action of the Texas Department of Transportation relating to oversize and overweight vehicles under Chapters 621, 622, and 623, Transportation Code;

(2) any obligations, funds, negotiations, grants, memoranda of understanding, leases, rights, and contracts of the Texas Department of Transportation that are directly related to implementing a power, duty, function, program, activity, or right of action transferred under this subsection; and

(3) all personnel, furniture, computers, equipment, other property, records, and related materials in the custody of the Texas Department of Transportation that are related to a power, duty, function, program, activity, or right of action transferred under this subsection and all funds appropriated by the legislature for that power, duty, function, program, activity, or right of action.

(b) The Texas Department of Motor Vehicles shall continue any case or proceeding relating to oversize and overweight vehicles under Chapters 621, 622, and 623, Transportation Code, that was brought before the effective date of this Act in accordance with the law in effect on the date the case or proceeding was brought, and the former law is continued in effect for that purpose.

(c) A certificate, license, document, permit, registration, or other authorization issued by the Texas Department of Transportation relating to oversize and overweight vehicles under Chapters 621, 622, and 623, Transportation Code, that is in effect on the effective date of this Act remains valid for the period for which it was issued unless suspended or revoked by the Texas Department of Motor Vehicles.

(d) The unobligated and unexpended balance of any appropriations made to the Texas Department of Transportation in connection with or relating to oversize and overweight vehicles under Chapter 621, 622, or 623, Transportation Code, for the state fiscal biennium ending August 31, 2011, is transferred and reappropriated to the Texas Department of Motor Vehicles for the purpose of implementing the powers, duties, obligations, and rights of action transferred to that department.

(e) The Texas Department of Transportation shall continue, as necessary, to perform the duties and functions that are being transferred to the Texas Department of Motor Vehicles under this Act until the transfer of agency duties and functions is complete.

(f) A rule or form adopted by the Texas Department of Transportation that relates to a power, duty, function, program, activity, or right of action transferred under Subsection (a) of this section is a rule or form of the Texas Department of Motor Vehicles and remains in effect until altered by the Texas Department of Motor Vehicles.

(g) A reference in law to the Texas Department of Transportation that relates to a power, duty, function, program, activity, or right of action transferred under Subsection (a) of this section means the Texas Department of Motor Vehicles.

SECTION 103. (a) The Texas Department of Motor Vehicles may enter into a memorandum of understanding with a state agency, including the Texas Department of Transportation, if the board of the Texas Department of Motor Vehicles determines the memorandum is necessary or appropriate to implement the changes made by this Act to Chapters 621, 622, and 623, Transportation Code.

(b) The memorandum of understanding described by Subsection (a) of this section may:

(1) coordinate the Texas Department of Motor Vehicles' and the Texas Department of Transportation's information systems to allow for the sharing of information so each department may effectively and efficiently perform the functions and duties assigned to the department;

(2) provide for implementing the memorandum using existing personnel and resources from the Texas Department of Motor Vehicles and the Texas Department of Transportation;

(3) allow for the sharing of otherwise confidential information subject to the same confidentiality requirements and legal restrictions on access to the information that are imposed by law on the agency that originally obtained or collected the information;

(4) allow for the sharing of information without the consent of the person who is the subject of the information; and

(5) include an agreement for:

(A) the provision of office space, utilities, and other facility services;

(B) the need for full-time equivalent positions of the Texas Department of Transportation to provide support services in addition to the positions transferred to the Texas Department of Motor Vehicles under Subdivision (3), Subsection (a), Section 102 of this Act;

(C) support services; and

(D) the transfer of information technology as necessary or appropriate to effectuate the transfer of the powers and duties of the Texas Department of Transportation to the Texas Department of Motor Vehicles.

(c) The Texas Department of Motor Vehicles and the Texas Department of Transportation may not impose, collect, or charge a fee in connection with the sharing of information under a memorandum of understanding entered into or revised under this section.

SECTION 104. Except as otherwise provided by this Act, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1420** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 563**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 563** 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.

JACKSON

FRASER

HARRIS

ELTIFE

WATSON

On the part of the Senate

TORRES

GARZA

HARPER-BROWN

LUCIO

ZEDLER

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the efficiency of the operations of, and certain information regarding services provided by, the Texas Workforce Commission; providing a criminal penalty.

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

SECTION 1. 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) Not later than August 1, 2012, the commission shall submit a written report on the effectiveness of the pilot program 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.

(d) The commission shall implement the pilot program from available funds that may be used for that purpose.

(e) 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) submit the written report in the time and manner described by Subsection (c); and

(2) use available resources to fund the pilot program.

(f) A report required by this section may be submitted electronically.

(g) This section expires September 1, 2013.

SECTION 2. The heading to Section 301.085, Labor Code, is amended to read as follows:

Sec. 301.085. UNEMPLOYMENT COMPENSATION AND JOB MATCHING SERVICES INFORMATION; OFFENSE; PENALTY.

SECTION 3. Section 301.085, Labor Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (b-1) to read as follows:

(a) In this section:

(1) "Job matching services information" means information in the records of the commission that pertains to the commission's job matching services provided to employers and job seekers through the Internet, workforce centers, or other means.

(2) "Unemployment[; ~~unemployment~~] compensation information" means information in the records of the commission that pertains to the administration of Subtitle A, including any information collected, received, developed, or maintained in the administration of unemployment compensation benefits or the unemployment compensation tax system.

(b-1) The commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of job matching services information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in job matching services information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable.

(c) Unemployment compensation information and job matching services information are [is] not public information for purposes of Chapter 552, Government Code.

(d) Unless permitted by this subchapter or commission rule, a person commits an offense if the person solicits, discloses, receives, or uses, or authorizes, permits, participates in, or acquiesces in another person's use of, unemployment compensation information or job matching services information that reveals:

(1) identifying information regarding any individual or past or present employer or employing unit; or

(2) information that foreseeably could be combined with other publicly available information to reveal identifying information regarding any individual or past or present employer or employing unit.

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

The Conference Committee Report on **SB 563** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 158**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 158** 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.

WILLIAMS
ELTIFE
HINOJOSA
HUFFMAN
WEST

On the part of the Senate

FLETCHER
DESHOTEL
GALLEGRO
HOPSON
WOOLLEY

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to offenses involving the fraudulent or unlawful obtaining, delivering, dispensing, distributing, or diverting of a controlled substance; providing penalties.

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

SECTION 1. 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.

SECTION 2. Section 481.129, Health and Safety Code, is amended by adding Subsections (a-1) and (d-1) to read as follows:

(a-1) A person commits an offense if the person, with intent to obtain a controlled substance or combination of controlled substances that is not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtains or attempts to obtain from a practitioner a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subsection, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner.

(d-1) An offense under Subsection (a-1) is:

(1) a felony of the second degree if any controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if any controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if any controlled substance that is the subject of the offense is listed in Schedule V.

SECTION 3. Subsection (a), Section 71.02, Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 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 4. Subsections (b) and (c), Section 71.02, 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 5. Subsection (a), Section 71.05, Penal Code, as amended by Chapters 761 (H.B. 354) 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 6. Subsection (c), Section 71.05, 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 7. 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 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.

SECTION 8. 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 9. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 158** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 747

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 747** 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
JACKSON
LUCIO
WATSON
On the part of the Senate

HAMILTON
KUEMPEL
DRIVER
QUINTANILLA
THOMPSON
On the part of the House

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; ~~[(x)]~~

(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. Subsection (c), Section 1101.367, 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. Subsection (f), Section 1101.401, 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. Subsections (e) and (f), Section 1101.451, 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. Subsection (a), Section 1101.452, 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. Subsection (a), Section 1101.454, 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. Subsection (b), Section 1101.455, 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. Subsection (b), Section 1101.502, 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. Subsection (c), Section 1101.356, 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 Subsection (b-1), Section 1101.356, and Section 1101.458, Occupations Code, as added by this Act.

(b) Subsection (e), Section 1101.552, 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) Subsection (b), Section 1101.502, 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.

The Conference Committee Report on **SB 747** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 875

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 875** 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.

FRASER
DUNCAN
ESTES
JACKSON

HANCOCK
BONNEN
CHISUM
EILAND
W. SMITH

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.

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

SECTION 1. Subchapter F, Chapter 7, Water Code, is amended by adding Section 7.257 to read as follows:

Sec. 7.257. DEFENSE TO NUISANCE OR TRESPASS. (a) A person, as defined by Section 382.003, Health and Safety Code, who is subject to an administrative, civil, or criminal action brought under this chapter for nuisance or

trespass arising from greenhouse gas emissions has an affirmative defense to that action if the person's actions that resulted in the alleged nuisance or trespass were authorized by a rule, permit, order, license, certificate, registration, approval, or other form of authorization issued by the commission or the federal government or an agency of the federal government and:

(1) the person was in substantial compliance with that rule, permit, order, license, certificate, registration, approval, or other authorization while the alleged nuisance or trespass was occurring; or

(2) the commission or the federal government or an agency of the federal government exercised enforcement discretion in connection with the actions that resulted in the alleged nuisance or trespass.

(b) This section does not apply to nuisance actions solely based on a noxious odor.

SECTION 2. Section 7.257, Water Code, as added by this Act, applies only to an administrative enforcement action, a civil action, or a prosecution that is commenced on or after the effective date of this Act. An administrative enforcement action, a civil action, or a prosecution commenced before the effective date of this Act is governed by the law in effect on the date the action or prosecution commenced, and that 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 Conference Committee Report on **SB 875** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1134

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1134** 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
DEUELL
FRASER
JACKSON

CRADDICK
LOZANO
HANCOCK
SHEFFIELD

WHITMIRE
On the part of the Senate

W. SMITH
On the part of the House

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, 382.051963, and 382.051964 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).

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 site, 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 first two-digit major grouping of Standard Industrial Classification codes;

(3) are operationally dependant; and

(4) are located not more than one-quarter mile from a 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 facilities being aggregated; and

(C) is operationally dependant on the facilities being aggregated.

SECTION 2. (a) Sections 382.051961, 382.051962, 382.051963, and 382.051964, 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, 382.051962, and 382.051964, 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.

The Conference Committee Report on **SB 1134** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1331

Senator Watson 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 1331** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WATSON
WHITMIRE
ELLIS
HUFFMAN
CARONA

On the part of the Senate

GALLEGO
ALISEDA
CHRISTIAN
RODRIGUEZ
ZEDLER

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to criminal offenses regarding the possession or consumption of alcoholic beverages by a minor and providing alcoholic beverages to a minor.

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

SECTION 1. Section 106.04, Alcoholic Beverage Code, is amended by adding Subsection (e) to read as follows:

(e) Subsection (a) does not apply to a minor who:

(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(2) was the first person to make a request for medical assistance under Subdivision (1); and

(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:

(A) remained on the scene until the medical assistance arrived; and

(B) cooperated with medical assistance and law enforcement personnel.

SECTION 2. Section 106.05, Alcoholic Beverage Code, is amended by adding Subsection (d) to read as follows:

(d) Subsection (a) does not apply to a minor who:

(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(2) was the first person to make a request for medical assistance under Subdivision (1); and

(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:

(A) remained on the scene until the medical assistance arrived; and

(B) cooperated with medical assistance and law enforcement personnel.

SECTION 3. Section 106.06, Alcoholic Beverage Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A judge, acting under Article 42.12, Code of Criminal Procedure, who places a defendant charged with an offense under this section on community supervision under that article shall, if the defendant committed the offense at a

gathering where participants were involved in the abuse of alcohol, including binge drinking or forcing or coercing individuals to consume alcohol, in addition to any other condition imposed by the judge:

(1) require the defendant to:

(A) perform community service for not less than 20 or more than 40 hours; and

(B) attend an alcohol awareness program approved under Section 106.115; and

(2) order the Department of Public Safety to suspend the driver's license or permit of the defendant or, if the defendant does not have a driver's license or permit, to deny the issuance of a driver's license or permit to the defendant for 180 days.

(e) Community service ordered under Subsection (d) is in addition to any community service ordered by the judge under Section 16, Article 42.12, Code of Criminal Procedure, and must be related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that the court considers appropriate for rehabilitative purposes.

SECTION 4. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective 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 1331** was filed with the Secretary of the Senate on Friday, May 27, 2011.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1534

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas

May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1534** 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.

SHAPIRO

J. DAVIS

JACKSON
ZAFFIRINI
ELTIFE
HARRIS

On the part of the Senate

REYNOLDS
R. ANDERSON
MURPHY

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the operation, certification, and accountability of career schools or colleges.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

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

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

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

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

SECTION 2. Subdivisions (1) and (4), Section 132.001, 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 regional or 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 3. 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 4. 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 school or educational institution described by Section 132.001(1)(B) shall post a conspicuous notice on the home page of its website stating:

(1) that the career school or college is not regulated in Texas under this chapter;

(2) the name of any regulatory agencies that 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 5. Subsection (d), Section 132.059, Education Code, is repealed.

SECTION 6. 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 7. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1534** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1286**

Senator Davis submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1286** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DAVIS
DEUELL
NICHOLS
OGDEN
PATRICK

On the part of the Senate

D. HOWARD
DARBY
PATRICK
VEASEY
AYCOCK

On the part of the House

The Conference Committee Report on **HB 1286** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 958**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 958** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WENTWORTH

ELTIFE

HEGAR

URESTI

WATSON

On the part of the Senate

LARSON

KUEMPEL

GUILLEN

RODRIGUEZ

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of certain animals.

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

SECTION 1. 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 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.

SECTION 2. 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 3. 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;

(B) the American Sanctuary Association and that received initial verification or accreditation from that association before May 1, 2011; or

(C) 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 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 958** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 628

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 628** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON
FRASER
SELIGER
VAN DE PUTTE

CALLEGARI
HUNTER
P. KING
LUCIO
W. SMITH

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 628** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1711**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1711** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON
ELTIFE
HUFFMAN
LUCIO
WILLIAMS

J. DAVIS
R. ANDERSON
HARDCASTLE

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1711** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1816**

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 **SB 1816** 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
RODRIGUEZ
CARONA
FRASER
LUCIO

RAYMOND
MARGO
HILDERBRAN
PENA

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to county and municipal land development regulation.

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

SECTION 1. Section 405.021, Government Code, is amended by adding Subsection (g-1) to read as follows:

(g-1) A system described by Subsection (g):

(1) must include a method for a municipality or county, on a form prescribed by the secretary of state, to nominate an area for identification as a colonia; and

(2) may provide for the review of a nominated area by the Texas Water Development Board, the office of the attorney general, or any other appropriate state agency as determined by the secretary of state.

SECTION 2. Subsections (a) and (d), Section 232.022, Local Government Code, are amended to read as follows:

(a) This subchapter applies only to:

(1) a county any part of which is located within 50 miles of an international border; ~~or~~

(2) a county:

(A) any part of which is located within 100 miles of an international border;

(B) that contains the majority of the area of a municipality with a population of more than 250,000; and

(C) to which Subdivision (1) does not apply; or

(3) a county in which the commissioners court by order:

(A) has adopted the model rules adopted under Section 16.343, Water Code; and

(B) elects to operate under this subchapter.

(d) This subchapter does not apply if all ~~each~~ of the lots of the subdivision are more than ~~is~~ 10 ~~or more~~ acres.

SECTION 3. Section 232.023, Local Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A subdivider of land must have a plat of the subdivision prepared if at least one of the lots of the subdivision is five acres or less. A commissioners court by order may require a subdivider of land to prepare a plat if none of the lots is five acres or less but at least one of the lots of a subdivision is more than five acres but not more than 10 acres.

(a-1) A subdivision of a tract under this section ~~subsection~~ includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

SECTION 4. Section 232.072, Local Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The owner of a tract of land that divides the tract in any manner that creates at least one lot [lots] of five acres or less intended for residential purposes must have a plat of the subdivision prepared. A commissioners court by order may require each subdivider of land to prepare a plat if none of the lots is five acres or less but at least one of the lots of the subdivision is more than five acres but not more than 10 acres.

(a-1) A subdivision of a tract under this section includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

SECTION 5. Section 16.343, Water Code, is amended by adding Subsection (f) and amending Subsection (g) to read as follows:

(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 model rules.

(g) Before an application for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be considered by the board, if the applicant is located:

(1) in a municipality, the municipality must adopt and enforce the model rules in accordance with this section;

(2) in the extraterritorial jurisdiction of a municipality, the applicant must demonstrate that the model rules have been adopted and are enforced in the extraterritorial jurisdiction by the municipality or the county; or

(3) outside the extraterritorial jurisdiction of a municipality, the county must adopt and enforce the model rules in accordance with this section [~~a political subdivision must adopt the model rules pursuant to this section. If the applicant is a district, nonprofit water supply corporation, or colonia, the applicant must be located in a city or county that has adopted such rules. Applicants for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may not receive funds under those provisions unless the applicable political subdivision adopts and enforces the model rules].~~

SECTION 6. The changes in law made by this Act to Chapter 232, Local Government Code, apply only to a subdivision plat application submitted for approval on or after the effective date of this Act. A subdivision plat application submitted for approval before the effective date of this Act is governed by the law in effect when the application was submitted, 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 1816** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2457**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2457** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON
FRASER
ELTIFE
WATSON

On the part of the Senate

J. DAVIS
REYNOLDS
MURPHY
PENA

On the part of the House

The Conference Committee Report on **HB 2457** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 652**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 652** 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
HINOJOSA
HUFFMAN
NICHOLS
WHITMIRE
On the part of the Senate

BONNEN
ANCHIA
COOK
HARPER-BROWN
L. TAYLOR
On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to governmental and certain quasi-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. WINDHAM SCHOOL DISTRICT WITHIN TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Chapter 19, Education Code, is amended by adding Section 19.0021 to read as follows:

Sec. 19.0021. LIMITED PURPOSE REVIEW. (a) As part of its review of the Texas Department of Criminal Justice for the 83rd Legislature, the Sunset Advisory Commission shall conduct a limited purpose review of the structure, management, and operations of the Windham School District.

(b) The Sunset Advisory Commission shall include in the commission's report to the 83rd Legislature any recommendations relating to the Windham School District that the commission considers appropriate.

(c) This section 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. Subsection (b), Section 2210.002, 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 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 1.06. 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 1.07. RAILROAD COMMISSION OF TEXAS. (a) Section 81.01001, Natural Resources Code, is amended to read as follows:

Sec. 81.01001. **SUNSET PROVISION.** The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2013 ~~[2014]~~.

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

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

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

Sec. 12.005. **APPLICATION OF SUNSET ACT.** The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2013 ~~[2014]~~.

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

SECTION 1.09. ELECTRIC RELIABILITY COUNCIL OF TEXAS.

(a) Section 39.151, Utilities Code, is amended by adding Subsections (n) and (n-1) to read as follows:

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

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

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

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

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

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

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

(d) This section expires September 1, 2013.

ARTICLE 2. ENTITIES GIVEN 2015 SUNSET DATE

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

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

SECTION 2.02. 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 2.03. 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 2.04. 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 2.05. 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 2.06. 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 2.07. TAX DIVISION OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS. Subsection (b), Section 2003.102, 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 2.08. 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 2.09. 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 2.10. 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 2.11. 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 2.12. 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 2.13. 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 2.14. 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 2.15. 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 2.16. 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 2.17. 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 2.18. 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 2.19. 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 2.20. 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 2.21. 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 2.22. 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 2.23. 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. PROCESS SERVER REVIEW BOARD. 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 (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.

SECTION 3.04. 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 3.05. 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 3.06. 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 3.07. 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 3.08. 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 3.09. 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 3.10. 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. Subsection (c), Section 411.002, 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. Subsection (a), Section 434.002, 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. Subsection (a), Section 57.12, Education Code, is amended to read as follows:

(a) The Texas Guaranteed Student Loan Corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 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 GIVEN 2023 SUNSET DATE

SECTION 6.01. TEXAS INVASIVE SPECIES COORDINATING COMMITTEE. Subsection (a), Section 776.007, Government Code, is amended to read as follows:

(a) 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].

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

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

ARTICLE 7. ENTITIES REMOVED FROM SPECIFIC SUNSET REVIEW

SECTION 7.01. 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 for any reason, assessments approved, levied, or otherwise collectible on the date of discontinuance [abolishment] remain valid as necessary to pay the financial obligations of the corporation.

ARTICLE 8. SUNSET ADVISORY COMMISSION

SECTION 8.01. REVIEW OF AGENCIES REVIEWED FOR THE 82nd LEGISLATURE. For a state agency that was reviewed by the Sunset Advisory Commission in preparation for the work of the 82nd Legislature in Regular Session and the abolition date of which was extended to 2013, the commission, unless expressly provided otherwise, shall limit its review of the agency in preparation for the work of the 83rd Legislature in Regular Session to the appropriateness of recommendations made by the commission to the 82nd Legislature. In the commission's report to the 83rd Legislature, the commission may include any recommendations it considers appropriate. This section expires September 1, 2013.

ARTICLE 9. EFFECTIVE DATE

SECTION 9.01. 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.

The Conference Committee Report on **SB 652** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1010**

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1010** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HUFFMAN

HEGAR

PATRICK

NELSON

WHITMIRE

On the part of the Senate

WORKMAN

CARTER

GALLEGO

LUCIO

MADDEN

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to providing a victim, guardian of a victim, or close relative of a deceased victim with notice of a plea bargain agreement in certain criminal cases.

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

SECTION 1. Article 26.13, Code of Criminal Procedure, is amended by amending Subsections (a) and (e) and adding Subsection (e-1) to read as follows:

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of a ~~[any]~~ plea bargain agreement ~~[bargaining agreements]~~ between the state and the defendant and, if ~~[in the event that such]~~ an agreement exists, the court shall inform the defendant whether it will follow or reject ~~the~~ ~~[such]~~ agreement in open court and before any finding on the plea. Should ~~the~~ court reject the ~~[any-such]~~ agreement, the defendant shall be permitted to withdraw ~~the defendant's~~ ~~[his]~~ plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and ~~the defendant's~~ ~~[his]~~ attorney, the trial court must give its permission to the defendant before ~~the~~ ~~defendant~~ ~~[he]~~ may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law; and

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state;

(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.

SECTION 2. Article 56.08, Code of Criminal Procedure, is amended by amending Subsections (b) and (e) and adding Subsection (b-1) to read as follows:

(b) If requested by the victim, the attorney representing the state, as far as reasonably practical, shall give to the victim notice of any scheduled court proceedings, changes in that schedule, and the filing of a request for continuance of a trial setting~~[-, and any plea agreements to be presented to the court].~~

(b-1) The attorney representing the state, as far as reasonably practical, shall give to the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of any plea bargain agreement to be presented to the court.

(e) The brief general statement describing the plea bargaining stage in a criminal trial required by Subsection (a)(1) shall include a statement that:

(1) the victim impact statement provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the attorney representing the state in entering into the plea bargain agreement; and

(2) the judge before accepting the plea bargain agreement is required under Article ~~Section~~ 26.13(e) to ~~ask~~:

(A) 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.

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.

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

The Conference Committee Report on **SB 1010** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1338

Senator Eltife submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1338** 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.

ELTIFE
HEGAR
SELIGER
URESTI
ZAFFIRINI

On the part of the Senate

GEREN
HAMILTON
D. HOWARD
MARQUEZ
RITTER

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to the powers and duties of the State Preservation Board.

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

SECTION 1. Subsection (a), Section 443.0071, Government Code, is amended to read as follows:

(a) A proposal to construct a building, monument, or other improvement in the Capitol complex must be submitted to the board for its review and comment at the earliest planning stages of any such project [~~before contracts for the construction are executed~~].

SECTION 2. Subsection (a), Section 443.010, Government Code, is amended to read as follows:

(a) The board and the employees of the board shall develop plans and programs to solicit, and may solicit, gifts, money, and items of value from private persons, foundations, or organizations. Property provided by those entities and money donated to the board become the property of the state and are under the control of the board. The board shall use gifts of money made to the board for the purpose specified by the grantor, if any. To the extent practicable, the board shall use gifts of property made to the board for the purpose specified by the grantor. The board may refuse a gift if in the board's judgment the purpose specified by the grantor conflicts with the goal of preserving the historic character of the buildings under the board's control.

SECTION 3. Section 443.0103, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The board may transfer money from the capital renewal trust fund to any account of the Capitol fund, provided that money transferred shall only be used for the purposes outlined in Subsection (b).

SECTION 4. Subsection (a), Section 443.019, Government Code, is amended to read as follows:

(a) The board may require and collect a standardized deposit from a person or entity that uses the Capitol or the grounds of the Capitol for an event, exhibit, or other scheduled activity. The deposit is in an amount set by the board designed to recover the estimated direct and indirect costs to the state of the event, exhibit, or activity. The board shall set the amounts of deposits required under this section in a uniform and nondiscriminatory manner for similar events, exhibits, or other scheduled activities. The board may deduct from the deposit:

(1) the cost of damage to the Capitol or grounds of the Capitol that directly results from the event, exhibit, or other activity;

(2) the costs of ~~extra~~ labor, materials, and utilities directly or indirectly attributable to the event, exhibit, or other activity; and

(3) the costs of ~~extra~~ security requested by the person or entity for the event, exhibit, or other activity.

SECTION 5. Chapter 443, Government Code, is amended by adding Section 443.030 to read as follows:

Sec. 443.030. SUPPORT ORGANIZATIONS. The board may establish, maintain, and participate in the operation of one or more organizations of persons whose purpose is to raise funds for or provide services or other benefits to the board. Such an organization may be incorporated as a Texas nonprofit corporation.

SECTION 6. Subsection (e), Section 443.0101, Government Code, is repealed.

SECTION 7. 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 1338** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1178**

Senator Birdwell 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 1178** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIRDWELL

ESTES

HARRIS

VAN DE PUTTE

SELIGER

On the part of the Senate

FLYNN

BERMAN

GUILLEN

PENA

ZEDLER

On the part of the House

The Conference Committee Report on **HB 1178** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2734**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2734** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WILLIAMS

HINOJOSA

NICHOLS

SHAPIRO

WENTWORTH

On the part of the Senate

MADDEN

ALLEN

CAIN

HUNTER

PARKER

On the part of the House

The Conference Committee Report on **HB 2734** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 773**

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 **SB 773** 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

DEUELL

ELTIFE

VAN DE PUTTE

On the part of the Senate

GALLEGO

CHISUM

FRULLO

HILDERBRAN

MUNOZ, JR.

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to telecommunications service discounts for educational institutions, libraries, hospitals, and telemedicine centers.

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

SECTION 1. Section 58.252, Utilities Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Health center" means a federally qualified health center service delivery site.

SECTION 2. Subsection (a), Section 58.253, Utilities Code, is amended to read as follows:

(a) On customer request, an electing company shall provide private network services to:

- (1) an educational institution;
- (2) a library as defined in Section 57.021;
- (3) a nonprofit telemedicine center;
- (4) a public or not-for-profit hospital; ~~or~~
- (5) a legally constituted consortium or group of entities listed in this subsection; or

(6) a health center.

SECTION 3. Subsection (b), Section 58.255, Utilities Code, is amended to read as follows:

(b) An electing company shall offer private network service contracts under this subchapter at 110 [~~105~~] percent of the long run incremental cost of providing the private network service, including installation.

SECTION 4. Subsection (a), Section 58.258, Utilities Code, is amended to read as follows:

(a) Notwithstanding the pricing flexibility authorized by this subtitle, an electing company's rates for private network services may not be increased before January 1, 2016 [~~2012~~]. However, an electing company may increase a rate in accordance with the provisions of a customer specific contract.

SECTION 5. Subsection (b), Section 58.259, Utilities Code, is amended to read as follows:

(b) The tariff rate may not be:

(1) distance sensitive; or

(2) higher than 110 [~~105~~] percent of the service's statewide average long run incremental cost, including installation.

SECTION 6. Subsection (c), Section 58.260, Utilities Code, is amended to read as follows:

(c) The rate for the service may not be higher than 110 [~~105~~] percent of the service's long run incremental cost, including installation.

SECTION 7. Subsection (b), Section 58.261, Utilities Code, is amended to read as follows:

(b) The rate for the service may not be higher than 110 [~~105~~] percent of the service's long run incremental cost, including installation.

SECTION 8. Section 58.268, Utilities Code, is amended to read as follows:

Sec. 58.268. CONTINUATION OF OBLIGATION. Notwithstanding any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2016 [~~2012~~], regardless of:

(1) the date the company elected under this chapter; or

(2) any action taken in relation to that company under Chapter 65.

SECTION 9. Subsection (a), Section 59.077, Utilities Code, is amended to read as follows:

(a) Notwithstanding the pricing flexibility authorized by this subtitle, an electing company's rates for private network services may not be increased before January 1, 2016 [~~2012~~].

SECTION 10. Section 59.083, Utilities Code, is amended to read as follows:

Sec. 59.083. CONTINUATION OF OBLIGATION. Notwithstanding any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2016 [~~2012~~], regardless of:

(1) the date the company elected under this chapter; or

(2) any action taken in relation to that company under Chapter 65.

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

The Conference Committee Report on **SB 773** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1664**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1664** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

DUNCAN

DEUELL

ELLIS

VAN DE PUTTE

WILLIAMS

On the part of the Senate

TRUITT

HUNTER

RIDDLE

TURNER

On the part of the House

**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 judgment 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 [~~of~~] 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. (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) Subsection (e), Section 133.102, Local Government Code, is amended to read as follows:

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund

would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) abused children's counseling	0.0088 percent;
(2) crime stoppers assistance	0.2581 percent;
(3) breath alcohol testing	0.5507 percent;
(4) Bill Blackwood Law Enforcement Management Institute	2.1683 percent;
(5) law enforcement officers standards and education	5.0034 percent;
(6) comprehensive rehabilitation	5.3218 percent;
(7) law enforcement and custodial officer supplemental retirement fund	
[operator's and chauffeur's license]	11.1426 percent;
(8) criminal justice planning	12.5537 percent;
(9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University	1.2090 percent;
(10) compensation to victims of crime fund	37.6338 percent;
(11) fugitive apprehension account	12.0904 percent;
(12) judicial and court personnel training fund	4.8362 percent;
(13) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center Account	1.2090 percent; and
(14) fair defense account	6.0143 percent.

(c) Notwithstanding any other provision of this Act, this section takes effect September 1, 2013.

SECTION 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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,^[2] 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. (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 26. (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 27. 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 28. 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 29. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1664** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1517**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1517** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR
WENTWORTH
ZAFFIRINI
ELLIS
HUFFMAN

On the part of the Senate

ISAAC
PHILLIPS
RODRIGUEZ
KLEINSCHMIDT
LOZANO

On the part of the House

The Conference Committee Report on **HB 1517** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 341**

Senator Uresti submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 341** 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.

URESTI
FRASER
HEGAR
VAN DE PUTTE
WENTWORTH

On the part of the Senate

MENENDEZ
LARSON
FARIAS
MARTINEZ FISCHER
RITTER

On the part of the House

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, and 42 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) 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) From the effective date of the Act enacting this section until the date election results are certified to the Secretary of State under Article 2 or 2A of the Act enacting this section, 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. 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) From the effective date of the Act enacting this section until the date election results are certified to the Secretary of State under Article 2 or 2A of the Act enacting this section, 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 if the contract or other agreement is assumed 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.

(c) 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 (b)(2) of this section.

Sec. 42. From the effective date of the Act enacting this section until the date the election results are certified to the Secretary of State under Article 2 or 2A of the Act enacting this section, 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 solely on the question of dissolving the district and disposing of the district's assets and obligations.

Notwithstanding Subsection (b), Section 3.005, Election Code, the board shall call the election not later than the 90th day before the date the election is to be held or as soon as practicable, if the effective date of this Act is after the 90th day.

(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.

(h) The election directed to be held under this article is not intended to prohibit a regular or special election to elect board members.

SECTION 2.02. (a) Not later than the 10th day after the determination under Subsection (a), Section 67.005, Election Code, of the official results of the election, 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.

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.

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 United States 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 solely on the question of dissolving the district and disposing of the district's assets and obligations. Notwithstanding

Subsection (b), Section 3.005, Election Code, the board shall call the election not later than the 90th day before the date the election is to be held or as soon as practicable, if the effective date of this Act is after the 90th day.

(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.

(i) The election directed to be held under this article is not intended to prohibit a regular or special election to elect board members.

SECTION 2A.03. (a) Not later than the 10th day after the determination under Subsection (a), Section 67.005, Election Code, of the official results of the election, 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, 10B, and 43 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 from each person or organization in connection with each election in which the Director or 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.

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.

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 or 2A 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 to the System 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 or 2A 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 1973 et seq.), 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. (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 of this Act take effect September 1, 2011.

(b) Articles 3 and 4 of this Act take effect as provided by Articles 2 and 2A of this Act.

The Conference Committee Report on **SB 341** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1588**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1588** 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.

OGDEN
ESTES

PITTS
FRULLO

HINOJOSA

LUCIO

SELIGER

On the part of the Senate

CHISUM

GUILLEN

ZERWAS

On the part of the House

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;

(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;

(6) the low-level radioactive waste disposal compact commission account created as an account in the general revenue fund by House Bill No. 2694 or similar legislation;

(7) the Alamo complex account created as a separate account in the general revenue fund by House Bill No. 3726, Senate Bill No. 1841, or similar legislation; and

(8) the emergency radio infrastructure account created by House Bill No. 442 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 No. 1146, or similar legislation;

(15) the dedication of the revenue generated under House Bill No. 442, or similar legislation, for the purpose of creating an interoperable statewide emergency radio infrastructure;

(16) all dedications or rededications of revenue to an account of a Self-Directed, Semi-Independent Agency with the Texas Treasury Safekeeping Trust Company by any Act of the 82nd Legislature, Regular Session, 2011;

(17) all dedications or rededications of revenue to the Texas Department of Insurance Operating Account by any Act of the 82nd Legislature, Regular Session, 2011;

(18) all dedications or rededications of revenue to the State Highway Fund by any Act of the 82nd Legislature, Regular Session, 2011; and

(19) 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. 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 Senate Bill No. 1291 or similar legislation.

SECTION 14. TRANSFER OF CERTAIN FUNDS. (a) The comptroller of public accounts shall hold the revenue that under Subdivision (11), Subsection (e), Section 133.102, Local Government Code, would be deposited to the credit of the

fugitive apprehension account until the effective date of House Bill No. 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 House Bill No. 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.

SECTION 15. 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 16. 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 17. 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 18. 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 19. 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.

The Conference Committee Report on **SB 1588** was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 1220 by Ellis, In memory of Abdias do Nascimento.

SR 1230 by Seliger, In memory of Richard McDonald.

SR 1232 by Nelson, In memory of Bobby Ray Miller.

Congratulatory Resolutions

SR 1222 by Lucio, Recognizing Sigma Psi Delta Sorority on the occasion of its 15th anniversary.

SR 1223 by Seliger, Recognizing Candido Mejia of Roberts County on the occasion of his graduation from Miami High School.

SR 1224 by Seliger, Recognizing Valeria Mejia on the occasion of her graduation from Miami High School.

SR 1225 by Ellis and Huffman, Recognizing Leon Hale on the occasion of his 90th birthday.

SR 1226 by Lucio, Recognizing Rudy Villarreal for his service to the City of Alamo.

SR 1228 by Hinojosa, Recognizing Omar Ochoa on the occasion of his graduation from The University of Texas School of Law.

SR 1229 by Harris, Recognizing the Denton County Transportation Authority on its public launch of the first phase of its passenger rail.

SR 1233 by Davis, Recognizing John "Jason" Bonds on the occasion of his graduation from the United States Military Academy at West Point.

SR 1234 by Davis, Recognizing Tiné Valencic for winning the 2011 National Geographic Bee.

SR 1235 by Davis, Recognizing Gregory S. Smith for his service to his community.

SR 1236 by Davis, Recognizing Fort Worth Commercial Real Estate Women, Incorporated.

SR 1237 by Davis, Recognizing Fred M. Willoughby and Terri Elizabeth Watson Willoughby for their service to their community.

SR 1238 by Van de Putte, Recognizing the men and women who have served our country in the armed forces.

SR 1239 by Davis, Recognizing Melody Johnson on the occasion of her retirement as superintendent of the Fort Worth Independent School District.

HCR 115 (Gallegos), Honoring the Battleship Texas Foundation for its work to preserve the historic battleship.

RECESS

On motion of Senator Jackson, the Senate at 6:38 p.m. recessed until 11:00 a.m. tomorrow for the Joint Session.

APPENDIX

BILLS AND RESOLUTIONS ENROLLED

May 26, 2011

SB 17, SB 20, SB 167, SB 173, SB 181, SB 244, SB 327, SB 365, SB 475, SB 683, SB 717, SB 738, SB 761, SB 768, SB 781, SB 789, SB 801, SB 810, SB 819, SB 847, SB 937, SB 969, SB 1026, SB 1042, SB 1055, SB 1058, SB 1073, SB 1120, SB 1124, SB 1169, SB 1200, SB 1225, SB 1290, SB 1383, SB 1393, SB 1434, SB 1545, SB 1619, SB 1686, SB 1714, SB 1877, SB 1899, SB 1910, SB 1913, SB 1916, SB 1925, SB 1926, SCR 56, SR 1183, SR 1184, SR 1185, SR 1186, SR 1202, SR 1203, SR 1205, SR 1207, SR 1208, SR 1209, SR 1210, SR 1211, SR 1214, SR 1215, SR 1216, SR 1217

SENT TO SECRETARY OF STATE

May 27, 2011

SJR 9, SJR 14, SJR 26, SJR 37, SJR 50

SENT TO GOVERNORMay 27, 2011

SB 17, SB 20, SB 167, SB 173, SB 176, SB 181, SB 201, SB 218, SB 220, SB 229, SB 244, SB 271, SB 327, SB 329, SB 349, SB 364, SB 365, SB 370, SB 438, SB 460, SB 475, SB 479, SB 548, SB 683, SB 701, SB 717, SB 738, SB 761, SB 762, SB 766, SB 768, SB 781, SB 789, SB 801, SB 802, SB 804, SB 810, SB 812, SB 819, SB 847, SB 917, SB 937, SB 969, SB 975, SB 1009, SB 1026, SB 1042, SB 1055, SB 1058, SB 1073, SB 1120, SB 1124, SB 1169, SB 1200, SB 1225, SB 1290, SB 1360, SB 1383, SB 1386, SB 1393, SB 1434, SB 1477, SB 1504, SB 1545, SB 1560, SB 1617, SB 1619, SB 1686, SB 1714, SB 1726, SB 1799, SB 1877, SB 1899, SB 1910, SB 1913, SB 1916, SB 1925, SB 1926, SCR 2, SCR 56, SCR 58

SIGNED BY GOVERNORMay 27, 2011

SB 14, SB 198, SB 250, SB 279, SB 529, SB 551, SB 748, SB 758, SB 1024, SB 1107, SB 1478, SB 1505, SCR 45, SCR 46, SCR 52

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

SIXTY-NINTH DAY

(Continued)

(Saturday, May 28, 2011)

AFTER RECESS

JOINT SESSION

(To honor Texans killed while serving in the Global War on Terrorism)

The Senate met at 11:12 a.m. in Joint Session in the Hall of the House of Representatives for the purpose of a joint memorial session honoring the fallen heroes of Texas, pursuant to the provisions of **HCR 163**.

The Honorable Steve Ogden, President Pro Tempore of the Senate, called the Senate to order and announced a quorum of the Senate present.

The Honorable Joe Straus, Speaker of the House of Representatives, called the House to order, announced a quorum of the House present, and stated the purpose of the Joint Session. Speaker Straus also welcomed and thanked the family members of the fallen heroes being honored.

Representative Joe Pickett, Chair of the House Committee on Defense and Veterans Affairs, was recognized and thanked the Texas Army National Guard for the presentation of colors, Deon M. Green for singing the National Anthem, Senator Juan Hinojosa and Representative Ralph Sheffield for leading the pledges of allegiance to the United States and Texas flags, and Representative George Lavender for the invocation.

President Pro Tempore Ogden briefly addressed the Joint Session assemblage and acknowledged the presence of the following: Governor Rick Perry, Texas Veterans Commission Chairman T. P. O'Mahoney, Railroad Commissioner David Porter, State Comptroller Susan Combs, Brigadier General Orlando Salinas, and Supreme Court Justice Nathan Hecht.

President Pro Tempore Ogden introduced the Honorable Rick Perry, who addressed the Joint Session as follows:

Thank you, Senator Ogden, and my thanks also for the hard work put in by yourself and your colleagues in the Senate, as well as the House through what has been a challenging session.

It's a pleasure, and an honor, to be with you all today.

Every session, members from both chambers and both sides of the aisle take some time to put aside our differences and gather here in memory of those who have fallen in Afghanistan, Iraq and anywhere our forces have engaged against the minions of global terror. The global war on terror began as a response to an unprovoked attack, an attack designed to demoralize us as much as to destroy our way of life.

They miscalculated our ability, as a nation, to rise above the ruins, just as they miscalculated our resolve to continue the battle wherever it takes us, and our determination to bring to justice every organization and individual plotting death and destruction against the citizens of this nation.

Earlier this month, the United States scored a major victory in the Global War on Terror, as the main architect behind the Sept. 11 attacks and the global face of the jihad movement, finally met justice at the hands of the U.S. military.

This was once again a great credit to the bravery, hard work and determination of our men and women in the armed forces, along with the unsung heroes in our intelligence community who had spent years of their lives in the line of fire hunting down this man.

However, the death of bin Laden is not an end to the larger war, and the struggle to protect our homeland is ongoing.

So we will continue to call upon the best and brightest to stand between us and those who would do us harm, and join the long line that takes up arms to defend others.

Many of them, like many I've visited with over the last decade, will come home facing long roads back from debilitating injuries - some of the injuries visible, and some not.

All too many will not come home at all.

As we honor these brave Texans who made the ultimate sacrifice, we also continue to offer our heartfelt condolences to those who love them.

It can be no easy thing to balance admiration for your fallen warrior with the realities of a life that continues to unfold, one challenging day after another.

Please know that the people of Texas genuinely appreciate the service and sacrifice of our military personnel, and lift up their survivors in our thoughts and prayers.

As President Lincoln so eloquently wrote almost 150 years ago to a mourning mother,

"I pray that our Heavenly Father may assuage the anguish of your bereavement and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom."

In the days to come, I encourage you to live your life fully because you know that each day is precious, and be assured that the cause for which your loved ones fought and died is still a just and noble cause.

All of us in Texas must endeavor to live our lives in a fashion worthy of the sacrifices of your loved ones.

May God bless you and, through you, may He continue to bless the great state of Texas.

(Prepared text)

Senator Van de Putte introduced Senator Brian Birdwell and Representative Leo Berman for the reading of the names of fallen Texans. Senator Craig Estes and Representative Dan Flynn were introduced and joined by Governor Perry and Members from the House and Senate to make the presentation of flags to families of the fallen soldiers.

Speaker Straus requested a moment of silence. "Amazing Grace" was sung by Lieutenant Colonel Deon M. Green.

A cannon salute and "Taps" were conducted by the Texas Army National Guard.

Representative George Lavender offered the benediction.

CONCLUSION OF JOINT SESSION

The Speaker of the House of Representatives at 12:51 p.m. announced that the purpose for which the Joint Session was called having been completed, the House would stand At Ease pending the departure of its guests.

ADJOURNMENT

President Pro Tempore Ogden at 12:51 p.m. stated the purpose for which the Joint Session was called having been completed, the Senate, pursuant to a previously adopted motion, would stand adjourned until 2:00 p.m. today.

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

SEVENTIETH DAY

(Saturday, May 28, 2011)

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

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

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

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

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

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

The motion prevailed without objection.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Saturday, May 28, 2011 - 1

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

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

THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

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

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

HB 3708 (129 Yeas, 12 Nays, 2 Present, not voting)

THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 242 (non-record vote)

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

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

SB 40 (non-record vote)

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

SB 408 (non-record vote)

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

SB 542 (non-record vote)

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

SB 660 (non-record vote)

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

SB 1130 (non-record vote)

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

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

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

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

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

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

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

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

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

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 362

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

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 362** before appointment.

There were no motions offered.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 263 ADOPTED

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

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 144 ADOPTED

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

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 602 ADOPTED

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

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

SENATE RESOLUTION 1206

Senator Carona offered the following resolution:

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

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

(a) A cable service provider or a video service provider that currently has or had previously received a franchise to provide cable service or video service with respect to such municipalities is not eligible to seek a state-issued certificate of franchise authority under this chapter as to those municipalities until the expiration date of the existing franchise agreement, except as provided by Subsections (b), (b-1), (b-2), (b-3), and (c).

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

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

(b-1) Beginning September 1, 2011, a cable service provider or video service provider in a municipality with a population of less than 215,000 that was not allowed to or did not terminate a municipal franchise under Subsection (b) may elect to terminate not less than all unexpired franchises in municipalities with a population of less than 215,000 and seek a state-issued certificate of franchise authority for each area served under a terminated municipal franchise by providing written notice to the commission and each affected municipality before January 1, 2012. A municipal franchise is terminated on the date the commission issues a state-issued certificate of franchise authority to the provider for the area served under that terminated franchise.

(b-2) A cable service provider or video service provider in a municipality with a population of at least 215,000 may terminate a municipal franchise in that municipality in the manner described by Subsection (b-1) if:

(1) the cable service provider or video service provider is not the incumbent cable service provider in that municipality; and

(2) the incumbent cable service provider received a state-issued certificate of franchise authority from the commission before September 1, 2011.

(b-3) A municipality with a population of at least 215,000 may enter into an agreement with any cable service provider in the municipality to terminate a municipal cable franchise before the expiration of the franchise. To the extent that the

mutually agreed on terms and conditions for early termination of the unexpired municipal cable franchise conflict with a provision of this chapter, the agreed on terms and conditions control.

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

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

(c) A cable service provider ~~[that serves fewer than 40 percent of the total cable customers in a municipal franchise area and]~~ that elects under Subsection (b), (b-1), or (b-2) to terminate an existing municipal franchise is responsible for remitting to the affected municipality before the 91st day after the date the municipal franchise is terminated any accrued but unpaid franchise fees due under the terminated franchise. If the cable service provider has credit remaining from prepaid franchise fees, the provider may deduct the amount of the remaining credit from any future fees or taxes it must pay to the municipality, either directly or through the comptroller.

(f) Except as provided in this chapter, nothing in this chapter is intended to abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider or a video service provider before the date a franchise expires or the date a provider terminates a franchise under Subsection (b-1) or (b-2), as applicable, ~~[enactment of this chapter,]~~ and owed or owing to any private person, firm, partnership, corporation, or other entity including without limitation those obligations measured by and related to the gross revenue hereafter received by the holder of a state-issued certificate of franchise authority for services provided in the geographic area to which such prior franchise or permit applies. All liens, security interests, royalties, and other contracts, rights, and interests in effect on September 1, 2005, or the date a franchise is terminated under Subsection (b-1) or (b-2) shall continue in full force and effect, without the necessity for renewal, extension, or continuance, and shall be paid and performed by the holder of a state-issued certificate of franchise authority, and shall apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies. It shall be a condition to the issuance and continuance of a state-issued certificate of franchise authority that the private contractual rights and obligations herein described continue to be honored, paid, or performed to the same extent as though the cable service provider continued to operate under its prior franchise or permit, for the duration of such state-issued certificate of franchise authority and any renewals or extensions thereof, and that the applicant so agrees. Any person, firm, partnership, corporation, or other entity holding or claiming rights herein reserved may enforce same by an action brought in a court of competent jurisdiction.

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

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

(c) All fees paid to municipalities under this section are paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and may be used by the municipality as allowed by federal law; further, these payments are not chargeable as a credit against the franchise fee payments authorized under this chapter.

(c-2) A municipality that receives fees under this section:

(1) shall maintain revenue from the fees in a separate account established for that purpose;

(2) may not commingle revenue from the fees with any other money;

(3) shall maintain a record of each deposit to and disbursement from the separate account, including a record of the payee and purpose of each disbursement; and

(4) may not spend revenue from the fees except directly from the separate account.

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

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

(d) The following services shall continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise ~~[until January 1, 2008, or]~~ until the expiration or termination [term] of the franchise ~~[was to expire, whichever is later,]~~ and thereafter as provided in Subdivisions (1) and (2) below:

(1) institutional network capacity, however defined or referred to in the municipal cable franchise but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of expiration or [the] termination, provided that the municipality will compensate the provider for the actual incremental cost of the capacity; and

(2) cable services to community public buildings, such as municipal buildings and public schools, shall continue to be provided to the same extent provided immediately prior to the date of the termination. On [Beginning on January 1, 2008, or] the expiration or termination of the franchise agreement, ~~[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.

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

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

SECTION 6. (a) A municipality that received fees described by Section 66.006(c), Utilities Code, before September 1, 2011, shall, on September 1, 2011, transfer any fees that have not been disbursed to a separate account as required by Section 66.006(c-2), Utilities Code, as added by this Act.

(b) The change in law made by this Act in adding Section 66.006(c-2)(3), Utilities Code, applies only to transfers, deposits, and disbursements made on or after the effective date of this Act. A transfer, deposit, or disbursement made before the effective date of this Act is governed by the law in effect on the date the transfer, deposit, or disbursement was made, and the former law is continued in effect for that purpose.

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

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1087 ADOPTED

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

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 28, Nays 3.

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

Nays: Birdwell, Nichols, Patrick.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 249 ADOPTED

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

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

(Senator Eltife in Chair)

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

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

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

Nays: Nichols.

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

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

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

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

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

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

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

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

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

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

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

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

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

Nays: Birdwell, Shapiro.

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

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

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

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

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

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

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

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

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

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

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

SENATE RESOLUTION 1212

Senator Huffman offered the following resolution:

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

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

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

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

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

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

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

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2694 ADOPTED

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

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

REMARKS ORDERED PRINTED

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

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

Senator Huffman: Yes.

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

SENATE RESOLUTION 1219

Senator Nichols offered the following resolution:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nays: Ellis, Rodriguez.

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

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

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

SENATE BILL 81 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 81** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 81** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to food safety.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 431.227. FOOD SAFETY BEST PRACTICE EDUCATION PROGRAM.

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

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

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

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

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

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

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

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

and

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

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

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

Floor Amendment No. 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Floor Amendment No. 2

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

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

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

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

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

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

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

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

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

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

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

Floor Amendment No. 3

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

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

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

- (1) that has a population of less than 50,000; and
- (2) over which no local health department has jurisdiction.

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

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

- (1) that has a population of less than 50,000; and
- (2) over which no local health department has jurisdiction.

Floor Amendment No. 4

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

Floor Amendment No. 1 on Third Reading

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

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

(2) Add the following appropriately numbered SECTION:
SECTION _____. Chapter 437, Health and Safety Code, is amended by adding Sections 437.0193 and 437.0194 to read as follows:

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

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

(3) Renumber the SECTIONS of the bill accordingly.

Floor Amendment No. 2 on Third Reading

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

The amendments were read.

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

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

SENATE BILL 223 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 223** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 223** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

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

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

ARTICLE 1. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

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

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

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

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

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

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

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

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

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

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

(A) the specific nature of the survey;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The executive commissioner by rule shall:

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

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

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

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

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

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

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

(2) engages in conduct that violates Section 102.001, Occupations Code [461.091].

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

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

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

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

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

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

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

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

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

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

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

(5) clinical and business records;

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

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

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

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

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

ARTICLE 2. NURSING INSTITUTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

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

(1) the complete name, race, and sex of the employee;

(2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and

(3) the employee's date of birth.

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

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

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

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

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

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

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
- (3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (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 3.07. Subsections (a) and (b), Section 250.007, Health and Safety Code, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) "Participating agency" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the results of a criminal history check;

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

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

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

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

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

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

(B) any managing employees of the provider; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4. ADULT DAY-CARE FACILITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the history of previous violations;

(4) the deterrence of future violations; and

(5) the efforts to correct the violation.

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

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

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

(1) a violation that the department determines:

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

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

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

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

(3) a violation of Section 103.011.

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

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

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

(2) concluded that a violation has occurred.

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

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

(1) a brief summary of the charges;

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

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

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

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

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

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

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

(2) make a written request for a hearing.

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

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

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

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

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

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

(2) make a written request for a hearing.

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

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

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

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

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

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

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

(2) a violation has not occurred.

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

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

(1) the findings;

(2) the amount of the administrative penalty;

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

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

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

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

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

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

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

(1) the penalty is subject to interest; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6. WAIVER; EFFECTIVE DATE

SECTION 6.01. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

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

Floor Amendment No. 1 on Third Reading

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

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

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

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

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

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

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

The amendments were read.

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

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2048 ADOPTED

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

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1951 ADOPTED

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

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

Nays: Watson.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 156 ADOPTED

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

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

CONFERENCE COMMITTEE ON HOUSE BILL 3459

Senator Whitmire called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3459** and moved that the request be granted.

The motion prevailed without objection.

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

There were no motions offered.

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

CONFERENCE COMMITTEE ON HOUSE BILL 2327

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

The motion prevailed without objection.

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

There were no motions offered.

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

CONFERENCE COMMITTEE ON HOUSE BILL 242

Senator Hegar called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 242** and moved that the request be granted.

The motion prevailed without objection.

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

There were no motions offered.

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

RECESS

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

AFTER RECESS

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

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

Saturday, May 28, 2011 - 2

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

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

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

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

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

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

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

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

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

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

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

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

SENATE RESOLUTION 1218

Senator Nichols offered the following resolution:

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

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

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

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

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

(c) This section expires September 1, 2015.

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

- (1) the Legislative Budget Board;
- (2) the speaker of the house of representatives;
- (3) the lieutenant governor; and
- (4) the chairs of the house and senate committees with primary oversight

over the comptroller's purchasing functions.

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

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

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

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

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

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

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

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

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

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

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

Nays: Ogden.

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

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

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

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

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

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

Nays: Rodriguez.

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

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

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

SENATE RESOLUTION 1246

Senator Hinojosa offered the following resolution:

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

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

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

SUBCHAPTER F-1. COMPLIANCE PROGRAM

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

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

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

(A) conduct described by Subdivision (1);

(B) criminal activity in the department;

(C) allegations of wrongdoing by department employees;

(D) crimes committed on department property; and

(E) serious breaches of department policy;

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

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

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

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

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

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

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

(1) authorization from the commission;

(2) approval of the director of the compliance office;

(3) approval of the director or deputy executive director of the department;

or

(4) commission rules.

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

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

(1) reports of investigations; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The commissioners court may:

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

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

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

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

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

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

Sec. 223.2012. NORTH TARRANT EXPRESS PROJECT PROVISIONS.

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

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

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

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

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

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

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

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

. . . .

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

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

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

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

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

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

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

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

(f) [(g)] This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

Explanation: The addition of text is necessary to allow the executive director of the Texas Department of Transportation to set maximum weights for state highways, roads, and bridges.

SR 1246 was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1420 ADOPTED

Senator Hinojosa called from the President's table the Conference Committee Report on **SB 1420**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hinojosa, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

REMARKS ORDERED PRINTED

On motion of Senator Williams and by unanimous consent, the remarks by Senators Williams and Hinojosa regarding **SB 1420** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Williams: SH 288 and US 290 Hempstead are included in the projects to be developed as a CDA. The counties (Harris and Brazoria) have primacy rights to develop these projects under existing law, but is it the intent that if the counties waive their primacy development rights or decline to develop the projects under existing law, then these projects may be developed by TxDOT?

Senator Hinojosa: Yes. SB 1420 adds Section 223.201(f)(6)&(7) to the Transportation Code, authorizing TxDOT to enter into a Comprehensive Development Agreement (CDA) for those projects. Those projects are also included in Section 228.011(a), Transportation Code, meaning that a county acting under Chapter 284, Transportation Code has primary responsibility for the financing, construction, and operation of those projects. The addition of those projects in this bill is intended to provide TxDOT with a procurement option in the event that the

counties waive their primary development rights or decline to develop the projects under existing law. If the counties waive or decline to develop the projects, then TxDOT would have the opportunity to enter into a contract to develop the projects.

SENATE RESOLUTION 1240

Senator Hegar offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 652 (governmental and certain quasi-governmental entities subject to the sunset review process) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add text on matters not included in either the house or senate version of the bill by adding the following:

SECTION 1.07. RAILROAD COMMISSION OF TEXAS. (a) Section 81.01001, Natural Resources Code, is amended to read as follows:

Sec. 81.01001. SUNSET PROVISION. The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2013 [~~2011~~].

(b) This section takes effect only if the 82nd Legislature, Regular Session, 2011, does not enact other legislation that becomes law and that amends Section 81.01001, Natural Resources Code, to extend the sunset date of the Railroad Commission of Texas. If the 82nd Legislature, Regular Session, 2011, enacts legislation of that kind, this section has no effect.

(c) The review of the Railroad Commission of Texas by the Sunset Advisory Commission in preparation for the work of the 83rd Legislature in Regular Session is not limited to the appropriateness of recommendations made by the commission to the 82nd Legislature. In the commission's report to the 83rd Legislature, the commission may include any recommendations it considers appropriate.

SECTION 1.08. PUBLIC UTILITY COMMISSION OF TEXAS. (a) Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2013 [~~2011~~].

(b) This section takes effect only if the 82nd Legislature, Regular Session, 2011, does not enact other legislation that becomes law and that amends Section 12.005, Utilities Code, to extend the sunset date of the Public Utility Commission of Texas. If the 82nd Legislature, Regular Session, 2011, enacts legislation of that kind, this section has no effect.

SECTION 1.09. ELECTRIC RELIABILITY COUNCIL OF TEXAS. (a) Section 39.151, Utilities Code, is amended by adding Subsections (n) and (n-1) to read as follows:

(n) An independent organization certified by the commission under this section is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The independent organization shall be reviewed during the periods in which the Public Utility Commission of Texas is reviewed.

(n-1) Notwithstanding Subsection (n), an independent organization certified by the commission under this section is not subject to review in preparation for the work of the 83rd Legislature in Regular Session. This subsection expires September 1, 2013.

(b) This section takes effect only if the 82nd Legislature, Regular Session, 2011, does not enact other legislation that becomes law and that amends Section 39.151, Utilities Code, to subject an independent organization certified by the Public Utility Commission of Texas under that section to sunset review during the periods in which the commission is reviewed. If the 82nd Legislature, Regular Session, 2011, enacts legislation of that kind, this section has no effect.

SECTION 1.10. PORT OF HOUSTON AUTHORITY. Chapter 97, Acts of the 40th Legislature, 1st Called Session, 1927, is amended by adding Section 9 to read as follows:

Sec. 9. SUNSET REVIEW. (a) The Port of Houston Authority is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency but may not be abolished under that chapter. The review shall be conducted as if the authority were scheduled to be abolished September 1, 2013.

(b) The reviews must assess the authority's governance, management, and operating structure, and the authority's compliance with legislative requirements.

(c) The authority shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the authority under this section. The Sunset Advisory Commission shall determine the cost, and the authority shall pay the amount promptly on receipt of a statement from the Sunset Advisory Commission detailing the cost.

(d) This section expires September 1, 2013.

SECTION 2.01. REGIONAL EDUCATION SERVICE CENTERS. Subchapter A, Chapter 8, Education Code, is amended by adding Section 8.010 to read as follows:

Sec. 8.010. SUNSET PROVISION. Regional education service centers are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the centers are abolished and this chapter expires September 1, 2015.

SECTION 6.02. OFFICE OF PUBLIC UTILITY COUNSEL. Section 13.002, Utilities Code, is amended to read as follows:

Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2023 [2014].

ARTICLE 8. SUNSET ADVISORY COMMISSION

SECTION 8.01. REVIEW OF AGENCIES REVIEWED FOR THE 82nd LEGISLATURE. For a state agency that was reviewed by the Sunset Advisory Commission in preparation for the work of the 82nd Legislature in Regular Session

and the abolition date of which was extended to 2013, the commission, unless expressly provided otherwise, shall limit its review of the agency in preparation for the work of the 83rd Legislature in Regular Session to the appropriateness of recommendations made by the commission to the 82nd Legislature. In the commission's report to the 83rd Legislature, the commission may include any recommendations it considers appropriate. This section expires September 1, 2013.

Explanation: This addition is necessary to change the sunset review date for various state agencies, to subject the Electric Reliability Council of Texas to sunset review during the periods in which the Public Utility Commission of Texas is reviewed, to subject the Port of Houston Authority and regional education service centers to sunset review, and to limit the review of state agencies that were reviewed by the Sunset Advisory Commission in preparation for the work of the 82nd Legislature in Regular Session.

SR 1240 was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 652 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **SB 652**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1134 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **SB 1134**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 26, Nays 5.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Davis, Ellis, Gallegos, Rodriguez, Watson.

SENATE RESOLUTION 1231

Senator Hegar offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 1517 (disposition of fines for traffic violations collected by certain counties and municipalities) to consider and take action on the following matter:

Senate Rule 12.03(3) is suspended to permit the committee, in SECTION 1 of the bill, in Section 542.402, Transportation Code, to add text on a matter which is not in disagreement to read as follows:

(g) This subsection and Subsection (f) expire on September 1, 2021.

Explanation: The addition is necessary for Section 542.402(f), Transportation Code, to expire on September 1, 2021.

SR 1231 was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1517 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **HB 1517**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 958 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **SB 958**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Fraser.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 773 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **SB 773**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 27, Nays 4.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Estes, Nelson, Ogden.

CONFERENCE COMMITTEE ON HOUSE BILL 3328

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3328** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 3328** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Nelson, Hegar, Hinojosa, and Eltife.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 628 ADOPTED

Senator Jackson called from the President's table the Conference Committee Report on **HB 628**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Saturday, May 28, 2011 - 3

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1178 (146 Yeas, 0 Nays, 2 Present, not voting)

HB 1711 (146 Yeas, 1 Nays, 2 Present, not voting)

HB 1951 (143 Yeas, 5 Nays, 2 Present, not voting)

HB 2048 (143 Yeas, 1 Nays, 1 Present, not voting)

HB 2226 (148 Yeas, 0 Nays, 1 Present, not voting)

HB 2490 (146 Yeas, 0 Nays, 2 Present, not voting)

HB 2729 (147 Yeas, 0 Nays, 1 Present, not voting)

HB 2734 (146 Yeas, 0 Nays, 1 Present, not voting)

SB 377 (132 Yeas, 14 Nays, 2 Present, not voting)

SB 563 (148 Yeas, 0 Nays, 2 Present, not voting)

SB 647 (146 Yeas, 2 Nays, 1 Present, not voting)

SB 773 (109 Yeas, 37 Nays, 2 Present, not voting)

SB 875 (135 Yeas, 7 Nays, 1 Present, not voting)

SB 1338 (147 Yeas, 0 Nays, 2 Present, not voting)

SB 1489 (146 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1816 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **SB 1816**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(President in Chair)

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1711 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **HB 1711**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1213

Senator Ogden offered the following resolution:

SR 1213, Suspending limitations on conference committee jurisdiction, H.B. No. 1.

The resolution was read and was adopted by the following vote: Yeas 29, Nays 2.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, Whitmire, Williams.

Nays: West, Zaffirini.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **HB 1**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

(Senator Eltife in Chair)

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 20, Nays 11.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

REASON FOR VOTE

Senator Uresti submitted the following reason for vote on the adoption of the Conference Committee Report on **HB 1**:

I want to thank Senator Ogden for the work he put into this bill. The Finance Committee began the session with an impossible task and roadblocks were thrown in its way that made meaningful compromise on the budget extremely difficult and ultimately, impossible.

The budget brought to the Senate today is better than the one that came over from the House. There is no doubt of that. But compared to that bill, just about anything would look better.

This budget gives schools about \$4 billion less than they'd get under current law, inevitably leading to teacher layoffs or local property tax increases for districts that haven't reached their cap.

The last Census showed Texas to be one of the fastest growing states in the nation, but this budget doesn't come close to funding anticipated enrollment growth.

The cuts it imposes will ripple through the economies of the small communities I represent in West Texas, weakening their ability to sustain families and businesses.

I can't vote for this budget just because it's better than the original bill. Better isn't enough.

In the area of Health and Human Services, under this bill nursing homes may not close, but they will face staffing shortages and make fewer beds available to an aging population. Hospitals will take an 8 percent cut under this bill, and family planning is reduced by \$73 million.

The Legislature passed and the governor signed a sonogram bill because we want to reduce the number of abortions in Texas. We have one of the highest teen pregnancy rates in the nation, yet we are cutting a program that could do something about that.

And in the rural parts of my district, family planning services are the only health care that many women get. That's true as well for districts represented by Senator Seliger, Senator Duncan, and other rural senators.

The Health and Human Services agency overall takes a 17.2 percent cut under this bill, more than \$11 billion. In the area of Child Protective Services, there's no funding for expected caseload growth for in-home and relative support.

Full time direct delivery staff employees are reduced by 8 percent from what we appropriated for CPS reform in 2009. Adoption subsidies for 2012-13 are funded at about 85 percent of the projected need, adoption support services are cut about 30 percent, and child abuse and neglect prevention is cut by 44 percent.

So no, better isn't enough.

What troubles me most is that it doesn't have to be this way. No one throughout this entire debate has been able to give a good answer to one simple question: Why not use the rainy day fund now for the next biennium. We're going to have to do it in two years anyway.

When we come back in 2013, we will need to find almost \$5 billion for Medicaid. This bill makes us take out a state credit card, and we're not even supposed to have one.

I take Senator Ogden at his word when he says this is all the Senate could get in its negotiations with the House. I understand that, and I commend him for all his hard work.

But I can't vote for this bill because better just isn't enough.

URESTI

SENATE RESOLUTION 1227

Senator Shapiro offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 1534 (the operation, certification, and accountability of career schools or colleges) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by adding the following new SECTION to the bill:

SECTION 1. Section 61.0904, Education Code, is amended to read as follows:

Sec. 61.0904. REVIEW OF INSTITUTIONAL GROUPINGS. (a) At least once every 10 years, the board shall conduct a review of the institutional groupings under the board's higher education accountability system, including a review of the criteria for and definitions assigned to those groupings.

(b) The board shall include within the board's higher education accountability system any career schools and colleges in this state that offer degree programs. Regardless of whether the board is conducting a periodic review of institutional groupings as required by Subsection (a), the board shall determine whether to create one or more separate institutional groupings for entities to which this subsection applies. In implementing this subsection, the board shall:

(1) consult with affected career schools and colleges regarding the imposition of reporting requirements on those entities; and

(2) adopt rules that clearly define the types and amounts of information to be reported to the board.

(c) In advance of each regular session of the legislature, the board shall report to each standing legislative committee with primary jurisdiction over higher education regarding any entities to which Subsection (b) applies that do not participate in the board's higher education accountability system as provided by that subsection.

Explanation: The addition of text is necessary to authorize and direct the Texas Higher Education Coordinating Board to include career schools and colleges in the board's higher education accountability system.

SR 1227 was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1534 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **SB 1534**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Shapiro, the Conference Committee Report was adopted by the following vote: Yeas 29, Nays 2.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Lucio, Van de Putte.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 563 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **SB 563**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 341 ADOPTED**

Senator Uresti called from the President's table the Conference Committee Report on **SB 341**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Uresti, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Zaffirini.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 875 ADOPTED**

Senator Fraser called from the President's table the Conference Committee Report on **SB 875**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Fraser, the Conference Committee Report was adopted by the following vote: Yeas 23, Nays 8.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, Whitmire, Williams.

Nays: Davis, Ellis, Gallegos, Rodriguez, Van de Putte, Watson, West, Zaffirini.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3726**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3726** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE
ELTIFE
URESTI

GUILLEN
KUEMPEL
DESHOTEL
LARSON

On the part of the Senate

On the part of the House

The corrected Conference Committee Report on **HB 3726** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 542**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 542** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HEGAR
HUFFMAN
SELIGER
WHITMIRE
WILLIAMS

On the part of the Senate

FLETCHER
DRIVER
LAVENDER
DESHOTEL
P. KING

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of law enforcement officers by the Commission on Law Enforcement Officer Standards and Education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (c), Section 1701.055, Occupations Code, is amended to read as follows:

(c) Five members~~[-excluding ex-officio members,]~~ constitute a quorum.

SECTION 2. Subsections (a) and (b), Section 1701.306, Occupations Code, are amended to read as follows:

(a) The commission may not issue a license to a person ~~[as an officer or county jailer]~~ unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a ~~[physical examination,]~~ blood test~~[-]~~ or other medical test.

(b) An agency hiring a person for whom a license ~~[as an officer or county jailer]~~ is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

SECTION 3. Subsection (e), Section 1701.310, Occupations Code, is amended to read as follows:

(e) A person trained and certified by the Texas Department of Criminal Justice to serve as a corrections officer in that agency's correctional institutions division is not required to complete the training requirements of this section to be appointed a part-time county jailer. Examinations under Section 1701.304 and psychological ~~[and physical]~~ examinations under Section 1701.306 apply.

SECTION 4. Section 1701.353, Occupations Code, is amended to read as follows:

Sec. 1701.353. CONTINUING EDUCATION PROCEDURES. (a) The commission by rule shall adopt procedures to:

(1) ensure the timely and accurate reporting by agencies and persons licensed under this chapter [~~peace officers~~] of information related to training programs offered under this subchapter, including procedures for creating training records for license holders [~~individual peace officers~~]; and

(2) provide adequate notice to agencies and license holders [~~peace officers~~] of impending noncompliance with the training requirements of this subchapter so that the agencies and license holders [~~peace officers~~] may comply within the 24-month period or 48-month period, as appropriate.

(b) The commission shall require agencies to report to the commission in a timely manner the reasons that a license holder [~~peace officer~~] is in noncompliance after the agency receives notice by the commission of the license holder's [~~peace officer's~~] noncompliance. The commission shall, following receipt of an agency's report or on a determination that the agency has failed to report in a timely manner, notify the license holder [~~peace officer~~] by certified mail of the reasons the license holder [~~peace officer~~] is in noncompliance and that the commission at the request of the license holder [~~peace officer~~] will hold a hearing as provided by this subsection if the license holder [~~peace officer~~] fails to obtain the required training within 60 days after the date the license holder [~~peace officer~~] receives notice under this subsection. The commission shall conduct a hearing consistent with Section 1701.504 if the license holder [~~peace officer~~] claims that:

(1) mitigating circumstances exist; or

(2) the license holder [~~peace officer~~] failed to complete the required training because the license holder's [~~peace officer's~~] employing agency did not provide an adequate opportunity for the license holder [~~peace officer~~] to attend the required training course.

SECTION 5. Subchapter H, Chapter 1701, Occupations Code, is amended by adding Section 1701.358 to read as follows:

Sec. 1701.358. INITIAL TRAINING AND CONTINUING EDUCATION FOR POLICE CHIEFS. A police chief shall complete the initial training and continuing education required under Section 96.641, Education Code.

SECTION 6. Subsection (d), Section 1701.055, Occupations Code, is repealed.

SECTION 7. The changes in law made by this Act to Section 1701.306, Occupations Code, apply to a license for which an application is filed on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 542** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2817**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2817** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DUNCAN
JACKSON
WILLIAMS
ELLIS
VAN DE PUTTE
On the part of the Senate

L. TAYLOR
BURKETT
P. KING
BRANCH
HERNANDEZ LUNA
On the part of the House

The Conference Committee Report on **HB 2817** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 753**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 753** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI
RODRIGUEZ
CARONA
ELTIFE
On the part of the Senate

RAYMOND
GONZALEZ
HUNTER
On the part of the House

The Conference Committee Report on **HB 753** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 516**

Senator Patrick submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 516** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PATRICK
HUFFMAN
BIRDWELL
HINOJOSA

FLETCHER
BERMAN
P. KING
C. ANDERSON
BONNEN

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the exemption from ad valorem taxation of all or part of the appraised value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 11.131, Tax Code, is amended by adding Subdivision (3) to read as follows:

(3) "Surviving spouse" means the individual who was married to a disabled veteran at the time of the veteran's death.

SECTION 2. Section 11.131, Tax Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The surviving spouse of a disabled veteran who qualified for an exemption under Subsection (b) when the disabled veteran died is entitled to an exemption from taxation of the total appraised value of the same property to which the disabled veteran's exemption applied if:

(1) the surviving spouse has not remarried since the death of the disabled veteran; and

(2) the property:

(A) was the residence homestead of the surviving spouse when the disabled veteran died; and

(B) remains the residence homestead of the surviving spouse.

(d) If a surviving spouse who qualifies for an exemption under Subsection (c) subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption from taxation of the former homestead under Subsection (c) in the last year in which the surviving spouse received an exemption under that subsection for that homestead if the surviving spouse has not remarried since the death of the disabled veteran. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the former residence homestead was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified homestead.

SECTION 3. Subsection (a), Section 11.431, Tax Code, is amended to read as follows:

(a) The chief appraiser shall accept and approve or deny an application for a residence homestead exemption, including an [a disabled veteran residence homestead] exemption under Section 11.131 for the residence homestead of a disabled veteran or the surviving spouse of a disabled veteran, after the deadline for filing it has passed if it is filed not later than one year after the delinquency date for the taxes on the homestead.

SECTION 4. Section 11.131, Tax Code, as amended by this Act, applies only to a tax year beginning on or after January 1, 2012.

SECTION 5. This Act takes effect January 1, 2012, but only if the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

The Conference Committee Report on **SB 516** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1103

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1103** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS
WHITMIRE
LUCIO
SELIGER
HUFFMAN

On the part of the Senate

LUCIO
PENA
SCOTT
THOMPSON
WOOLLEY

On the part of the House

The Conference Committee Report on **HB 1103** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1600**

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1600** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WHITMIRE
GALLEGOS
HINOJOSA
HUFFMAN
NELSON

On the part of the Senate

P. KING
BECK
FLETCHER

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the registration of peace officers as private security officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1702.322, Occupations Code, is amended to read as follows:

Sec. 1702.322. **LAW ENFORCEMENT PERSONNEL.** This chapter does not apply to:

(1) a person who has full-time employment as a peace officer and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if the officer:

(A) is employed in an employee-employer relationship or employed on an individual contractual basis:

(i) directly by the recipient of the services; or

(ii) by a company licensed under this chapter;

(B) is not in the employ of another peace officer;

(C) is not a reserve peace officer; and

(D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;

(2) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and is being compensated solely by that county;

(3) a peace officer acting in an official capacity in responding to a burglar alarm or detection device; or

(4) a person engaged in the business of electronic monitoring of an individual as a condition of that individual's community supervision, parole, mandatory supervision, or release on bail, if the person does not perform any other service that requires a license under this chapter.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1600** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3109

Senator Seliger submitted the following Conference Committee Report:

Austin, Texas

May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3109** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SELIGER
DUNCAN
ELTIFE
URESTI
HINOJOSA

On the part of the Senate

CRADDICK
DARBY
LEWIS
S. KING
PARKER

On the part of the House

The Conference Committee Report on **HB 3109** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 414**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 414** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR
SELIGER
ESTES
JACKSON
HINOJOSA

On the part of the Senate

AYCOCK
S. MILLER
D. HOWARD
LANDTROOP
GEREN

On the part of the House

The Conference Committee Report on **HB 414** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1400**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1400** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST
NICHOLS
SHAPIRO
WATSON

WENTWORTH

On the part of the Senate

ELKINS
ANCHIA
BONNEN
T. KING

On the part of the House

The Conference Committee Report on **HB 1400** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3246**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3246** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST
NICHOLS
SHAPIRO
WATSON

WENTWORTH

On the part of the Senate

ELKINS
JACKSON
T. KING
D. MILLER
PAXTON

On the part of the House

The Conference Committee Report on **HB 3246** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3275**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3275** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS
WEST
JACKSON
WATSON

COLEMAN
Y. DAVIS
J. DAVIS
MURPHY
HUBERTY

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 3275** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 660**

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 660** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HINOJOSA
DUNCAN
FRASER
HEGAR
WHITMIRE

RITTER
T. KING
KEFFER

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the review and functions of the Texas Water Development Board, including the functions of the board and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SECTION 6.013, Water Code, is amended to read as follows:

Sec. 6.013. SUNSET PROVISION. The Texas Water Development Board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the period in which state agencies abolished in 2023 [~~2014~~] and every 12th year after 2023 [~~2014~~] are reviewed.

SECTION 2. Subchapter D, Chapter 6, Water Code, is amended by adding Sections 6.113, 6.114, and 6.115 to read as follows:

Sec. 6.113. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Sec. 6.114. FINANCIAL ASSISTANCE PROGRAMS: DEFAULT, REMEDIES, AND ENFORCEMENT. (a) In this section:

(1) "Default" means:

(A) default in payment of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board;

(B) failure to perform any covenant related to a bond, security, or other obligation purchased or acquired by the board;

(C) a failure to perform any of the terms of a loan, grant, or other financing agreement; or

(D) any other failure to perform an obligation, breach of a term of an agreement, or default as provided by any proceeding or agreement evidencing an obligation or agreement of a recipient, beneficiary, or guarantor of financial assistance provided by the board.

(2) "Financial assistance program recipient" means a recipient or beneficiary of funds administered by the board under this code, including a borrower, grantee, guarantor, or other beneficiary.

(b) In the event of a default and on request by the board, the attorney general shall seek:

(1) a writ of mandamus to compel a financial assistance program recipient or the financial assistance program recipient's officers, agents, and employees to cure the default; and

(2) any other legal or equitable remedy the board and the attorney general consider necessary and appropriate.

(c) A proceeding authorized by this section shall be brought and venue is in a district court in Travis County.

(d) In a proceeding under this section, the attorney general may recover reasonable attorney's fees, investigative costs, and court costs incurred on behalf of the state in the proceeding in the same manner as provided by general law for a private litigant.

Sec. 6.115. RECEIVERSHIP. (a) In this section, "financial assistance program recipient" has the meaning assigned by Section 6.114.

(b) In addition to the remedies available under Section 6.114, at the request of the board, the attorney general shall bring suit in a district court in Travis County for the appointment of a receiver to collect the assets and carry on the business of a financial assistance program recipient if:

(1) the action is necessary to cure a default by the recipient; and

(2) the recipient is not:

(A) a municipality or county; or

(B) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(c) The court shall vest a receiver appointed by the court with any power or duty the court finds necessary to cure the default, including the power or duty to:

(1) perform audits;

(2) raise wholesale or retail water or sewer rates or other fees;

(3) fund reserve accounts;

(4) make payments of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board; and

(5) take any other action necessary to prevent or to remedy the default.

(d) The receiver shall execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties.

(e) After appointment and execution of bond, the receiver shall take possession of the books, records, accounts, and assets of the financial assistance program recipient specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs and shall strictly observe the final order involved.

(f) On a showing of good cause by the financial assistance program recipient, the court may dissolve the receivership.

SECTION 3. Section 6.154, Water Code, is amended to read as follows:

Sec. 6.154. COMPLAINT FILE. (a) The board shall maintain a system to promptly and efficiently act on complaints ~~[file on each written complaint]~~ filed with the board. The board shall maintain information about parties to the complaint, [file must include:

~~[(1) the name of the person who filed the complaint;~~

~~[(2) the date the complaint is received by the board;~~

~~[(3) the subject matter of the complaint,];~~

~~[(4) the name of each person contacted in relation to the complaint;~~

~~[(5) a summary of the results of the review or investigation of the complaint, and the complaint's disposition]; and~~

~~[(6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint].~~

(b) The board shall make information available describing its ~~[provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and]~~ procedures for ~~[relating to]~~ complaint investigation and resolution.

SECTION 4. Section 6.155, Water Code, is amended to read as follows:

Sec. 6.155. NOTICE OF COMPLAINT. The board ~~[-at least quarterly until final disposition of the complaint,]~~ shall periodically notify the ~~[person filing the]~~ complaint parties ~~[and each person who is a subject of the complaint]~~ of the status of the complaint until final disposition ~~[investigation unless the notice would jeopardize an undercover investigation].~~

SECTION 5. Section 11.1271, Water Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) The commission shall adopt rules:

(1) establishing criteria and deadlines for submission of water conservation plans, including any required amendments, and for submission of implementation reports; and

(2) requiring the methodology and guidance for calculating water use and conservation developed under Section 16.403 to be used in the water conservation plans required by this section.

(g) At a minimum, rules adopted under Subsection (f)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 6. Section 16.021, Water Code, is amended by amending Subsections (c), (d), and (e) and adding Subsections (d-1) and (g) to read as follows:

(c) The executive administrator shall designate the director of the Texas Natural Resources Information System to serve as the state geographic information officer. The state geographic information officer shall:

(1) coordinate the acquisition and use of high-priority imagery and data sets;

(2) establish, support, and disseminate authoritative statewide geographic data sets;

(3) support geographic data needs of emergency management responders during emergencies;

(4) monitor trends in geographic information technology; and

(5) support public access to state geographic data and resources [The Texas Geographic Information Council (TGIC) is created to provide strategic planning and coordination in the acquisition and use of geo-spatial data and related technologies in the State of Texas. The executive administrator and the executive director of the Department of Information Resources shall designate entities to be members of the TGIC. The chief administrative officer of each member entity shall select one representative to serve on the TGIC. The duties of the TGIC shall include providing guidance to the executive administrator in carrying out the executive administrator's duties under this section and guidance to the Department of Information Resources for development of rules related to statewide geo-spatial data and technology standards].

(d) Not later than December 1, 2016, and before the end of each successive five-year period after that date, the board shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report that contains recommendations regarding:

(1) statewide geographic data acquisition needs and priorities, including updates on progress in maintaining the statewide digital base maps described by Subsection (e)(6);

(2) policy initiatives to address the acquisition, use, storage, and sharing of geographic data across the state;

(3) funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and

(4) opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data [Member entities of the TGIC that are state agencies shall, and member entities that are not state agencies may, provide information to the TGIC about their investments in geographic information and plans for its use. Not later than November 1 of each even-numbered year, the TGIC shall prepare and provide to the board, the Department of Information Resources, the governor, and the legislature a report that:

(1) describes the progress made by each TGIC member entity toward achieving geographic information system goals and in implementing geographic information systems initiatives; and

(2) recommends additional initiatives to improve the state's geographic information systems programs].

(d-1) The board shall consult with stakeholders in preparing the report required by Subsection (d).

(e) The [Under the guidance of the TGIC, the] executive administrator shall:

(1) further develop the Texas Natural Resources Information System by promoting and providing for effective acquisition, archiving, documentation, indexing, and dissemination of natural resource and related digital and nondigital data and information;

(2) obtain information in response to disagreements regarding names and name spellings for natural and cultural features in the state and provide this information to the Board on Geographic Names of the United States Department of the Interior;

(3) make recommendations to the Board on Geographic Names of the United States Department of the Interior for naming any natural or cultural feature subject to the limitations provided by Subsection (f);

(4) make recommendations to the Department of Information Resources to adopt and promote standards that facilitate sharing of digital natural resource data and related socioeconomic data among federal, state, and local governments and other interested parties;

(5) acquire and disseminate natural resource and related socioeconomic data describing the Texas-Mexico border region; and

(6) coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features.

(g) The board may establish one or more advisory committees to assist the board or the executive administrator in implementing this section, including by providing information in connection with the preparation of the report required by Subsection

(d). In appointing members to an advisory committee, the board shall consider including representatives of:

(1) state agencies that are major users of geographic data;

(2) federal agencies;

(3) local governments; and

(4) the Department of Information Resources.

SECTION 7. Subsection (b), Section 16.023, Water Code, is amended to read as follows:

(b) The account may be appropriated only to the board to:

(1) develop, administer, and implement the strategic mapping program;

(2) provide grants to political subdivisions for projects related to the development, use, and dissemination of digital, geospatial information; and

(3) administer, implement, and operate other programs of the Texas Natural Resources Information System, including:

(A) the operation of a Texas-Mexico border region information center for the purpose of implementing Section 16.021(e)(5);

(B) the acquisition, storage, and distribution of historical maps, photographs, and paper map products;

(C) the maintenance and enhancement of information technology; and

(D) the production, storage, and distribution of other digital base maps, as determined by the executive administrator [~~or a state agency that is a member of the Texas Geographic Information Council~~].

SECTION 8. Section 16.051, Water Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) The state water plan must include:

(1) an evaluation of the state's progress in meeting future water needs, including an evaluation of the extent to which water management strategies and projects implemented after the adoption of the preceding state water plan have affected that progress; and

(2) an analysis of the number of projects included in the preceding state water plan that received financial assistance from the board.

(a-2) To assist the board in evaluating the state's progress in meeting future water needs, the board may obtain implementation data from the regional water planning groups.

SECTION 9. Subsections (c) and (e), Section 16.053, Water Code, are amended to read as follows:

(c) No later than 60 days after the designation of the regions under Subsection (b), the board shall designate representatives within each regional water planning area to serve as the initial coordinating body for planning. The initial coordinating body may then designate additional representatives to serve on the regional water planning group. The initial coordinating body shall designate additional representatives if necessary to ensure adequate representation from the interests comprising that region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. The regional water planning group shall maintain adequate representation from those interests. In addition, the groundwater conservation districts located in each management area, as defined by Section 36.001, located in the regional water planning area shall appoint one representative of a groundwater conservation district located in the management area and in the regional water planning area to serve on the regional water planning group. In addition, representatives of the board, the Parks and Wildlife Department, and the Department of Agriculture shall serve as ex officio members of each regional water planning group.

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the date the board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled ~~managed~~ available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder;

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists; and

(8) describes the impact of proposed water projects on water quality.

SECTION 10. Section 16.402, Water Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) The board and commission jointly shall adopt rules:

(1) identifying the minimum requirements and submission deadlines for the annual reports required by Subsection (b); ~~and~~

(2) requiring the methodology and guidance for calculating water use and conservation developed under Section 16.403 to be used in the reports required by Subsection (b); and

(3) providing for the enforcement of this section and rules adopted under this section.

(f) At a minimum, rules adopted under Subsection (e)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The board and commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 11. Subchapter K, Chapter 16, Water Code, is amended by adding Sections 16.403 and 16.404 to read as follows:

Sec. 16.403. WATER USE REPORTING. (a) The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and preparing reports required under this code. At a minimum, the methodology and guidance must include:

(1) a method of calculating water use for each sector of water users served by a municipality or water utility;

(2) a method of classifying water users within sectors;

(3) a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day;

(4) a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a municipality's population or the number of customers served by a water utility; and

(5) guidelines on the use of service populations by a municipality or water utility in developing a per-capita-based method of calculation, including guidance on the use of permanent and temporary populations in making calculations.

(b) The board or the commission, as appropriate, shall use the methodology and guidance developed under Subsection (a) in evaluating a water conservation plan, program of water conservation, survey, or other report relating to water conservation submitted to the board or the commission under:

(1) Section 11.1271;

(2) Section 13.146;

(3) Section 15.106;

(4) Section 15.607;

(5) Section 15.975;

(6) Section 15.995;

(7) Section 16.012(m);

(8) Section 16.402;

(9) Section 17.125;

(10) Section 17.277;

(11) Section 17.857; or

(12) Section 17.927.

(c) The board, in consultation with the commission and the Water Conservation Advisory Council, shall develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

(d) Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that includes the most recent data relating to:

(1) statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and

(2) the data collection and reporting program developed under Subsection

(c).

(e) Data included in a water conservation plan or report required under this code and submitted to the board or commission must be interpreted in the context of variations in local water use. The data may not be the only factor considered by the commission in determining the highest practicable level of water conservation and efficiency achievable in the jurisdiction of a municipality or water utility for purposes of Section 11.085(l).

Sec. 16.404. RULES AND STANDARDS. The commission and the board, as appropriate, shall adopt rules and standards as necessary to implement this subchapter.

SECTION 12. Section 17.003, Water Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) Water financial assistance bonds that have been authorized but have not been issued are not considered to be state debt payable from the general revenue fund for purposes of Section 49-j, Article III, Texas Constitution, until the legislature makes an appropriation from the general revenue fund to the board to pay the debt service on the bonds.

(d) In requesting approval for the issuance of bonds under this chapter, the executive administrator shall certify to the bond review board whether the bonds are reasonably expected to be paid from:

(1) the general revenues of the state; or

(2) revenue sources other than the general revenues of the state.

(e) The bond review board shall verify whether debt service on bonds to be issued by the board under this chapter is state debt payable from the general revenues of the state, in accordance with the findings made by the board in the resolution authorizing the issuance of the bonds and the certification provided by the executive administrator under Subsection (d).

(f) Bonds issued under this chapter that are designed to be paid from the general revenues of the state shall cease to be considered bonds payable from those revenues if:

(1) the bonds are backed by insurance or another form of guarantee that ensures payment from a source other than the general revenues of the state; or

(2) the board demonstrates to the satisfaction of the bond review board that the bonds no longer require payment from the general revenues of the state and the bond review board so certifies to the Legislative Budget Board.

SECTION 13. Section 17.9022, Water Code, is amended to read as follows:

Sec. 17.9022. FINANCING OF GRANT OR LOAN FOR POLITICAL SUBDIVISION; DEFAULT; VENUE. [(a)] The board may make a loan or grant available to a political subdivision in any manner the board considers economically feasible, including purchase of bonds or securities of the political subdivision or execution of a loan or grant agreement with the political subdivision. The board may not purchase bonds or securities that have not been approved by the attorney general and registered by the comptroller.

[(b) In the event of a default in payment of the principal of or interest on bonds or securities purchased by the board, or any other default as defined in the proceedings or indentures authorizing the issuance of bonds, or a default of any of the terms of a loan agreement, the attorney general shall seek a writ of mandamus or other legal remedy to compel the political subdivision or its officers, agents, and employees

~~to cure the default by performing the duties they are legally obligated to perform. The proceedings shall be brought and venue is in a district court in Travis County. This subsection is cumulative of any other rights or remedies to which the board may be entitled.]~~

SECTION 14. Section 36.001, Water Code, is amended by adding Subdivision (30) to read as follows:

(30) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.

SECTION 15. Section 36.063, Water Code, is amended to read as follows:

Sec. 36.063. NOTICE OF MEETINGS. (a) Except as provided by Subsections (b) and (c), notice [Notice] of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

(b) At least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the board must post notice that includes:

(1) the proposed desired future conditions and a list of any other agenda items;

(2) the date, time, and location of the meeting or hearing;

(3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

(4) the names of the other districts in the district's management area; and

(5) information on how the public may submit comments.

(c) Except as provided by Subsection (b), notice of a hearing described by Subsection (b) must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).

SECTION 16. Subsections (a) and (e), Section 36.1071, Water Code, are amended to read as follows:

(a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:

(1) providing the most efficient use of groundwater;

(2) controlling and preventing waste of groundwater;

(3) controlling and preventing subsidence;

(4) addressing conjunctive surface water management issues;

(5) addressing natural resource issues;

(6) addressing drought conditions;

(7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(8) addressing ~~[in a quantitative manner]~~ the desired future conditions ~~adopted by the district under Section 36.108 [of the groundwater resources].~~

(e) In the management plan described under Subsection (a), the district shall:

(1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);

(2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;

(3) include estimates of the following:

(A) modeled [~~managed~~] available groundwater in the district based on the desired future condition established under Section 36.108;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the district according to the most recently adopted state water plan; and

(4) consider the water supply needs and water management strategies included in the adopted state water plan.

SECTION 17. Subchapter D, Chapter 36, Water Code, is amended by amending Section 36.108 and adding Sections 36.1081 through 36.1086 to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In this section:

(1) "Development [~~development~~] board" means the Texas Water Development Board.

(2) "District representative" means the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area.

(b) If two or more districts are located within the boundaries of the same management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. On completion and approval of the plan as required by Section 36.1072, each district shall forward a copy of the new or revised management plan to the other districts in the management area. The boards of the districts shall consider the plans individually and shall compare them to other management plans then in force in the management area.

(c) The district representatives [~~presiding officer, or the presiding officer's designee, of each district located in whole or in part in the management area~~] shall meet at least annually to conduct joint planning with the other districts in the

management area and to review the management plans, ~~the~~ the [and] accomplishments of [for] the management area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:

- (1) the goals of each management plan and its impact on planning throughout the management area;
- (2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;
- (3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area; and
- (4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption [establish] desired future conditions for the relevant aquifers within the management area. Before voting on the proposed [In establishing the] desired future conditions of the aquifers under Subsection (d-2) [this section], the districts shall consider:

- (1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
- (2) the water supply needs and water management strategies included in the state water plan;
- (3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
- (4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
- (5) the impact on subsidence;
- (6) socioeconomic impacts reasonably expected to occur;
- (7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;
- (8) the feasibility of achieving the desired future condition; and
- (9) any other information relevant to the specific desired future conditions [uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another].

(d-1) The districts may establish different desired future conditions for:

- (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
- (2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d-2) ~~(d-1)~~ The desired future conditions proposed ~~[established]~~ under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions

that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved [adopted] by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the public hearing, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions [present at a meeting;

(1) at which at least two thirds of the districts located in whole or in part in the management area have a voting representative in attendance; and

(2) for which all districts located in whole or in part in the management area provide public notice in accordance with Chapter 551, Government Code.

(d-2) Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process].

(d-3) After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period under Subsection (d-2), the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

(1) identify each desired future condition;

(2) provide the policy and technical justifications for each desired future condition;

(3) include documentation that the factors under Subsection (d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;

(4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and

(5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) As soon as possible after a district receives the desired future conditions resolution and explanatory report under Subsection (d-3), the district shall adopt the desired future conditions in the resolution and report that apply to the district.

(e) Except as provided by this section, a [A] joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. The district representatives may elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. Notice of a joint [the] meeting must be provided at least 10 days before the date of the meeting by:

(1) providing notice to the secretary of state;

(2) providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and

(3) posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.

(e-1) The secretary of state and the county clerk of each county described by Subsection (e) shall post notice of the meeting in the manner provided by Section 551.053, Government Code.

(e-2) Notice of a joint meeting must include:

(1) the date, time, and location of the meeting;

(2) a summary of any action proposed to be taken;

(3) the name of each district located wholly or partly in the management area; and

(4) the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.

(e-3) The failure or refusal of one or more districts to post notice for a joint meeting under Subsection (e)(3) does not invalidate an action taken at the joint meeting [shall be given in accordance with the requirements for notice of district board of directors meetings under that Act].

Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT PLANNING. (a) On request, the commission and the Texas Water Development Board shall make technical staff available to serve in a nonvoting advisory capacity to assist with the development of desired future conditions during the joint planning process under Section 36.108.

(b) During the joint planning process under Section 36.108, the district representatives may appoint and convene nonvoting advisory subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions.

Sec. 36.1082. PETITION FOR INQUIRY. (a) In this section, "affected person" means, with respect to a management area:

(1) an owner of land in the management area;

(2) a district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area;

- (5) a person who has groundwater rights in the management area; or
- (6) any other person defined as affected by commission rule.

(b) An affected person ~~[(f) A district or person with a legally defined interest in the groundwater within the management area]~~ may file a petition with the commission requesting an inquiry for any of the following reasons:

(1) a district fails to submit its management plan to the executive administrator;

(2) [if] a district fails [or districts refused] to participate [join] in the joint planning process under Section 36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) [or the process failed to result in adequate planning, including the establishment of reasonable future desired conditions of the aquifers, and the petition provides evidence that:

[(1) a district in the groundwater management area has failed to adopt rules;

[(2) the rules adopted by a district are not designed to achieve the desired future conditions adopted by [condition of the groundwater resources in] the [groundwater] management area [established] during the joint planning process;

(8) [(3)] the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(9) [(4)] the groundwater in the [groundwater] management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(c) [(g)] Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:

(1) dismiss the petition if the commission finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection (d) [(h)].

(d) [(h)] If the petition is not dismissed under Subsection (c) [(g)], the commission shall appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the [groundwater] management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

(e) [(i)] Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may

direct the review panel to conduct public hearings at a location in the [groundwater] management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.

(f) [(+)] In its report, the review panel shall include:

- (1) a summary of all evidence taken in any hearing on the petition;
- (2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and
- (3) any other information the panel considers appropriate.

(g) [(+)] The review panel shall submit its report to the commission. The commission may take action under Section 36.3011.

Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS. (a) In this section, "development board" means the Texas Water Development Board.

(b) [(+)] A person with a legally defined interest in the groundwater in the [groundwater] management area, a district in or adjacent to the [groundwater] management area, or a regional water planning group for a region in the [groundwater] management area may file a petition with the development board appealing the approval of the desired future conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the [groundwater] management area.

(c) [(+)] The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.

(d) [(+)] The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the [groundwater] management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.

Sec. 36.1084. MODELED AVAILABLE GROUNDWATER. (a) The Texas Water Development Board shall require the [(+) The] districts in a management area to [shall] submit to the executive administrator not later than the 60th day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):

- (1) the desired future conditions adopted [established] under Section 36.108;
- (2) proof that notice was posted for the joint planning meeting; and
- (3) the desired future conditions explanatory report [this section to the executive administrator].

(b) The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the modeled [managed] available groundwater in the management area based upon the desired future conditions adopted by the districts [condition of the groundwater resources established under this section].

Sec. 36.1085. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

Sec. 36.1086. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA. ~~(p)~~ Districts located within the same ~~[groundwater]~~ management areas or in adjacent management areas may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

SECTION 18. Section 36.3011, Water Code, is amended to read as follows:

Sec. 36.3011. COMMISSION ACTION REGARDING [FAILURE OF] DISTRICT DUTIES [TO CONDUCT JOINT PLANNING]. Not later than the 45th day after receiving the review panel's report under Section 36.1082 ~~[36.108]~~, the executive director or the commission shall take action to implement any or all of the panel's recommendations. The commission may take any action against a district it considers necessary in accordance with Section 36.303 if the commission finds that:

(1) the [a] district has failed to submit its management plan to the executive administrator;

(2) the district has failed to participate in the joint planning process under Section 36.108;

(3) the [a] district has failed to adopt rules;

(4) the district has failed to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) the district has failed to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) the district has failed to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) ~~(3)~~ the rules adopted by the district are not designed to achieve the desired future conditions adopted by [condition of the groundwater resources in] the [groundwater] management area during the joint planning process; [or]

(8) ~~(4)~~ the groundwater in the management area is not adequately protected by the rules adopted by the district; [r] or

(9) the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules.

SECTION 19. Sections 15.908 and 17.180, Water Code, are repealed.

SECTION 20. As soon as practicable after the effective date of this Act, groundwater conservation districts shall appoint initial representatives to regional water planning groups as required by Subsection (c), Section 16.053, Water Code, as amended by this Act.

SECTION 21. Not later than January 1, 2013:

(1) the Texas Commission on Environmental Quality shall adopt rules under Subsection (f), Section 11.1271, Water Code, as amended by this Act;

(2) the Texas Water Development Board and the Texas Commission on Environmental Quality jointly shall adopt rules under Subsection (e), Section 16.402, Water Code, as amended by this Act; and

(3) the Texas Water Development Board and the Texas Commission on Environmental Quality, in consultation with the Water Conservation Advisory Council, shall develop the water use and conservation calculation methodology and guidance and the data collection and reporting program required by Subsections (a) and (c), Section 16.403, Water Code, as added by this Act.

SECTION 22. Not later than January 1, 2015, the Texas Water Development Board shall submit to the legislature the first report required by Subsection (d), Section 16.403, Water Code, as added by this Act.

SECTION 23. The notice provisions of Subsections (b) and (c), Section 36.063, Water Code, as added by this Act, apply only to a meeting or hearing of a groundwater conservation district or a joint planning meeting of groundwater conservation districts held on or after the effective date of this Act. A meeting or hearing held before the effective date of this Act is subject to the notice provisions in effect at the time of the meeting or hearing, and those provisions are continued in effect for that purpose.

SECTION 24. The requirement that a groundwater conservation district's management plan under Subsection (a), Section 36.1071, Water Code, as amended by this Act, include the desired future conditions adopted under Section 36.108, Water Code, as amended by this Act, for submission to the executive administrator of the Texas Water Development Board before the plan is considered administratively complete applies only to a district management plan submitted to the executive administrator on or after the effective date of this Act. A management plan submitted before the effective date of this Act is governed by the law in effect on the date the plan was submitted, and that law is continued in effect for that purpose.

SECTION 25. The procedures for the adoption and reporting of desired future conditions of groundwater resources in a management area under Section 36.108, Water Code, as amended by this Act, and Section 36.1084, Water Code, as added by this Act, apply only to the adoption of desired future conditions that occurs on or after the effective date of this Act. Desired future conditions adopted before the effective date of this Act are governed by the law in effect on the date the desired future conditions were adopted, and that law is continued in effect for that purpose.

SECTION 26. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 660** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2605**

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2605** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HUFFMAN
HEGAR
HINOJOSA
NELSON
WHITMIRE

On the part of the Senate

L. TAYLOR
COOK
MENENDEZ
SOLOMONS

On the part of the House

The Conference Committee Report on **HB 2605** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 89**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 26, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 89** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

LUCIO
DEUELL
SELIGER

RODRIGUEZ
LOZANO
ISAAC

VAN DE PUTTE
SHAPIRO

On the part of the Senate

MILES

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to summer nutrition programs provided for by school districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 12, Agriculture Code, is amended by adding Section 12.0029 to read as follows:

Sec. 12.0029. SUMMER NUTRITION PROGRAMS. (a) In this section:

(1) "Field office" means a field office of a nutrition program administered by the department.

(2) "Summer nutrition program" means the summer food service program under 42 U.S.C. Section 1761. The term includes the seamless summer option under 42 U.S.C. Section 1761(a)(8).

(b) Unless the department grants a school district a waiver under Subsection (f), a district in which 50 percent or more of the students are eligible to participate in the national free or reduced-price lunch program under 42 U.S.C. Section 1751 et seq. shall provide or arrange for the provision of a summer nutrition program for at least 30 days during the period in which district schools are recessed for the summer.

(c) Not later than October 31 of each year, the department shall notify each school district described by Subsection (b) of the district's responsibility concerning provision of a summer nutrition program during the next period in which school is recessed for the summer.

(d) Not later than November 30 of each year, the board of trustees of a school district that intends to request a waiver under Subsection (e)(2) must send written notice of the district's intention to the district's local school health advisory council. The notice must include an explanation of the district's reason for requesting a waiver of the requirement.

(e) Each school district that receives a notice under Subsection (c) shall, not later than January 31 of the year following the year in which the notice was received:

(1) inform the department in writing that the district intends to provide or arrange for the provision of a summer nutrition program during the next period in which district schools are recessed for the summer; or

(2) request in writing that the department grant the district a waiver of the requirement to provide or arrange for the provision of a summer nutrition program.

(f) The department may grant a school district a waiver of the requirement to provide or arrange for the provision of a summer nutrition program only if:

(1) the district:

(A) provides documentation, verified by the department, showing that:

(i) there are fewer than 100 children in the district currently eligible for the national free or reduced-price lunch program;

(ii) transportation to enable district students to participate in the program is an insurmountable obstacle to the district's ability to provide or arrange for the provision of the program despite consultation by the district with public transit providers;

(iii) the district is unable to provide or arrange for the provision of a program due to renovation or construction of district facilities and the unavailability of an appropriate alternate provider or site; or

(iv) the district is unable to provide or arrange for the provision of a program due to another specified extenuating circumstance and the unavailability of an appropriate alternate provider or site; and

(B) has worked with the field offices to identify another possible provider for the program in the district; or

(2) the cost to the district to provide or arrange for provision of a program would be cost-prohibitive, as determined by the department using the criteria and methodology established under Subsection (g).

(g) The department by rule shall establish criteria and a methodology for determining whether the cost to a school district to provide or arrange for provision of a summer nutrition program would be cost-prohibitive for purposes of granting a waiver under Subsection (f)(2).

(h) A waiver granted under Subsection (f) is for a one-year period.

(i) If a school district has requested a waiver under Subsection (e)(2) and has been unable to provide to the department a list of possible providers for the summer nutrition program, the field offices shall continue to attempt to identify an alternate provider for the district's summer nutrition program.

(j) Not later than December 31 of each even-numbered year, the department shall provide to the legislature by e-mail a report that, for each year of the biennium:

(1) states the name of each school district that receives a notice under Subsection (c) and indicates whether the district:

(A) has provided or arranged for the provision of a summer nutrition program; or

(B) has not provided or arranged for the provision of a program and did not receive a waiver;

(2) identifies the funds, other than federal funds, used by school districts and the state in complying with this section; and

(3) identifies the total amount of any profit made or loss incurred through summer nutrition programs under this section.

(k) The department shall post and maintain on the department's Internet website the most recent report required by Subsection (j).

SECTION 2. Section 33.024, Human Resources Code, is repealed.

SECTION 3. Not later than October 1, 2011, the Department of Agriculture shall adopt rules under Subsection (g), Section 12.0029, Agriculture Code, as added by this Act, establishing criteria and a methodology regarding costs of school district summer nutrition programs.

SECTION 4. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 89** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2380**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2380** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO
NELSON
CARONA
PATRICK
SELIGER

On the part of the Senate

SHELTON
PATRICK
REYNOLDS
FRULLO
VILLARREAL

On the part of the House

The Conference Committee Report on **HB 2380** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2357**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2357** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WILLIAMS
WENTWORTH
LUCIO
WATSON
NICHOLS

On the part of the Senate

PICKETT
PHILLIPS
HUNTER
LAVENDER

On the part of the House

The Conference Committee Report on **HB 2357** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 293**

Senator Watson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 293** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WATSON
HARRIS
NELSON
URESTI
WEST

J. DAVIS
SHEETS
HOPSON
TRUITT

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to telemedicine medical services, telehealth services, and home telemonitoring services provided to certain Medicaid recipients.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 531.001, Government Code, is amended by adding Subdivisions (4-a), (7), and (8) to read as follows:

(4-a) "Home telemonitoring service" means a health service that requires scheduled remote monitoring of data related to a patient's health and transmission of the data to a licensed home health agency or a hospital, as those terms are defined by Section 531.02164(a).

(7) "Telehealth service" means a health service, other than a telemedicine medical service, that is delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(8) "Telemedicine medical service" means a health care service that is initiated by a physician or provided by a health professional acting under physician delegation and supervision, that is provided for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

SECTION 2. Section 531.0216, Government Code, is amended to read as follows:

Sec. 531.0216. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS AND TELEHEALTH SERVICE PROVIDERS UNDER MEDICAID. (a) The commission by rule shall develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services or telehealth services.

(b) In developing the system, the executive commissioner by rule shall:

(1) review programs and pilot projects in other states to determine the most effective method for reimbursement;

(2) establish billing codes and a fee schedule for services;

(3) provide for an approval process before a provider can receive reimbursement for services;

(4) consult with the Department of State Health Services and the telemedicine and telehealth advisory committee to establish procedures to:

(A) identify clinical evidence supporting delivery of health care services using a telecommunications system; and

(B) [establish pilot studies for telemedicine medical service delivery; and

[(C)] annually review health care services, considering new clinical findings, to determine whether reimbursement for particular services should be denied or authorized;

(5) [establish pilot programs in designated areas of this state under which the commission, in administering government funded health programs, may reimburse a health professional participating in the pilot program for telehealth services authorized under the licensing law applicable to the health professional;

[(6)] establish a separate provider identifier for telemedicine medical services providers, telehealth services providers, and home telemonitoring services providers; and

(6) [(7)] establish a separate modifier for telemedicine medical services, telehealth services, and home telemonitoring services eligible for reimbursement.

(c) The commission shall encourage health care providers and health care facilities to participate as telemedicine medical service providers or telehealth service providers in the health care delivery system. The commission may not require that a service be provided to a patient through telemedicine medical services or telehealth services when the service can reasonably be provided by a physician through a face-to-face consultation with the patient in the community in which the patient resides or works. This subsection does not prohibit the authorization of the provision of any service to a patient through telemedicine medical services or telehealth services at the patient's request.

(d) Subject to Section 153.004, Occupations Code, the commission may adopt rules as necessary to implement this section. In the rules adopted under this section, the commission shall:

(1) refer to the site where the patient is physically located as the patient site; and

(2) refer to the site where the physician or health professional providing the telemedicine medical service or telehealth service is physically located as the distant site.

(e) The commission may not reimburse a health care facility for telemedicine medical services or telehealth services provided to a Medicaid recipient unless the facility complies with the minimum standards adopted under Section 531.02161.

(f) Not later than December 1 of each even-numbered year, the commission shall report to the speaker of the house of representatives and the lieutenant governor on the effects of telemedicine medical services, telehealth services, and home telemonitoring services on the Medicaid program in the state, including the number of physicians, ~~and~~ health professionals, and licensed health care facilities using telemedicine medical services, telehealth services, or home telemonitoring services, the geographic and demographic disposition of the physicians and health professionals, the number of patients receiving telemedicine medical services, telehealth services, and home telemonitoring services, the types of services being provided, and the cost of utilization of telemedicine medical services, telehealth services, and home telemonitoring services to the program.

~~[(g) In this section:~~

~~[(1) "Telehealth service" has the meaning assigned by Section 57.042, Utilities Code.~~

~~[(2) "Telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code.]~~

SECTION 3. The heading to Section 531.02161, Government Code, is amended to read as follows:

Sec. 531.02161. TELEMEDICINE, TELEHEALTH, AND HOME TELEMONITORING TECHNOLOGY STANDARDS.

SECTION 4. Subsection (b), Section 531.02161, Government Code, is amended to read as follows:

(b) The commission and the Telecommunications Infrastructure Fund Board by joint rule shall establish and adopt minimum standards for an operating system used in the provision of telemedicine medical services, telehealth services, or home telemonitoring services by a health care facility participating in the state Medicaid program, including standards for electronic transmission, software, and hardware.

SECTION 5. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02164 to read as follows:

Sec. 531.02164. MEDICAID SERVICES PROVIDED THROUGH HOME TELEMONITORING SERVICES. (a) In this section:

(1) "Home health agency" means a facility licensed under Chapter 142, Health and Safety Code, to provide home health services as defined by Section 142.001, Health and Safety Code.

(2) "Hospital" means a hospital licensed under Chapter 241, Health and Safety Code.

(b) If the commission determines that establishing a statewide program that permits reimbursement under the state Medicaid program for home telemonitoring services would be cost-effective and feasible, the executive commissioner by rule shall establish the program as provided under this section.

(c) The program required under this section must:

(1) provide that home telemonitoring services are available only to persons who:

(A) are diagnosed with one or more of the following conditions:

(i) pregnancy;

(ii) diabetes;

(iii) heart disease;

(iv) cancer;

(v) chronic obstructive pulmonary disease;

(vi) hypertension;

(vii) congestive heart failure;

(viii) mental illness or serious emotional disturbance;

(ix) asthma;

(x) myocardial infarction; or

(xi) stroke; and

(B) exhibit two or more of the following risk factors:

(i) two or more hospitalizations in the prior 12-month period;

(ii) frequent or recurrent emergency room admissions;

(iii) a documented history of poor adherence to ordered medication

regimens;

(iv) a documented history of falls in the prior six-month period;

(v) limited or absent informal support systems;

(vi) living alone or being home alone for extended periods of time;

and

(vii) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home health agency or hospital while providing home telemonitoring services is shared with the patient's physician; and

(3) ensure that the program does not duplicate disease management program services provided under Section 32.057, Human Resources Code.

(d) If, after implementation, the commission determines that the program established under this section is not cost-effective, the commission may discontinue the program and stop providing reimbursement under the state Medicaid program for home telemonitoring services, notwithstanding Section 531.0216 or any other law.

(e) The commission shall determine whether the provision of home telemonitoring services to persons who are eligible to receive benefits under both the Medicaid and Medicare programs achieves cost savings for the Medicare program.

SECTION 6. The heading to Section 531.02172, Government Code, is amended to read as follows:

Sec. 531.02172. TELEMEDICINE AND TELEHEALTH ADVISORY COMMITTEE.

SECTION 7. Subsections (a) and (b), Section 531.02172, Government Code, are amended to read as follows:

(a) The executive commissioner shall establish an advisory committee to assist the commission in:

(1) evaluating policies for telemedical consultations under Sections 531.02163 and 531.0217;

(2) ~~[evaluating policies for telemedicine medical services or telehealth services pilot programs established under Section 531.02174];~~

~~[(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 531.02174]~~; and

(4) ~~[(5)]~~ coordinating the activities of state agencies concerned with the use of telemedical consultations and telemedicine medical services or telehealth services.

(b) The advisory committee must include:

(1) representatives of health and human services agencies and other state agencies concerned with the use of telemedical and telehealth consultations and home telemonitoring services in the Medicaid program and the state child health plan program, including representatives of:

- (A) the commission;
- (B) the Department of State Health Services;
- (C) the Texas Department of Rural Affairs;
- (D) the Texas Department of Insurance;
- (E) the Texas Medical Board;
- (F) the Texas Board of Nursing; and
- (G) the Texas State Board of Pharmacy;

(2) representatives of health science centers in this state;

(3) experts on telemedicine, telemedical consultation, and telemedicine medical services or telehealth services; ~~[and]~~

(4) representatives of consumers of health services provided through telemedical consultations and telemedicine medical services or telehealth services; and

(5) representatives of providers of telemedicine medical services, telehealth services, and home telemonitoring services.

SECTION 8. Subsection (c), Section 531.02173, Government Code, is amended to read as follows:

(c) The commission shall perform its duties under this section with assistance from the telemedicine and telehealth advisory committee established under Section 531.02172.

SECTION 9. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02176 to read as follows:

Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR PROVISION OF HOME TELEMONITORING SERVICES. Notwithstanding any other law, the commission may not reimburse providers under the Medicaid program for the provision of home telemonitoring services on or after September 1, 2015.

SECTION 10. The following provisions of the Government Code are repealed:

- (1) Subsection (a), Section 531.02161;
- (2) Subdivisions (3) and (4), Subsection (a), Section 531.0217;
- (3) Section 531.02171, as added by Chapter 661 (H.B. 2700), Acts of the 77th Legislature, Regular Session, 2001; and
- (4) Section 531.02171, as added by Chapter 959 (S.B. 1536), Acts of the 77th Legislature, Regular Session, 2001.

SECTION 11. Not later than December 31, 2012, the Health and Human Services Commission shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the establishment and implementation of the program to permit reimbursement under the state Medicaid program for home telemonitoring services under Section 531.02164, Government Code, as added by this Act. The report must include:

- (1) the methods used by the commission to determine whether the program was cost-effective and feasible; and
- (2) if the program has been established, information regarding:
 - (A) the utilization of home telemonitoring services by Medicaid recipients under the program;
 - (B) the health outcomes of Medicaid recipients who receive home telemonitoring services under the program;
 - (C) the hospital admission rate of Medicaid recipients who receive home telemonitoring services under the program;
 - (D) the cost of the home telemonitoring services provided under the program; and
 - (E) the estimated cost savings to the state as a result of the program.

SECTION 12. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 13. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 293** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 90**

Senator Birdwell submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 90** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIRDWELL
NICHOLS
PATRICK
WILLIAMS

On the part of the Senate

COOK
LAVENDER
S. MILLER
PHILLIPS

On the part of the House

The Conference Committee Report on **HB 90** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2093**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2093** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE
DEUELL
DUNCAN
JACKSON

On the part of the Senate

THOMPSON
EILAND
SHEETS
SMITHEE

On the part of the House

The Conference Committee Report on **HB 2093** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1788**

Senator Patrick submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1788** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PATRICK
WEST
NELSON
HUFFMAN
SHAPIRO

On the part of the Senate

HUBERTY
STRAMA
L. TAYLOR
AYCOCK

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to planning for students enrolled in public school special education programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 29.005, Education Code, is amended by adding Subsection (f) to read as follows:

(f) The written statement of a student's individualized education program may be required to include only information included in the model form developed under Section 29.0051(a).

SECTION 2. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0051 to read as follows:

Sec. 29.0051. MODEL FORM. (a) The agency shall develop a model form for use in developing an individualized education program under Section 29.005(b). The form must be clear, concise, well organized, and understandable to parents and educators and may include only:

(1) the information included in the model form developed under 20 U.S.C. Section 1417(e)(1);

(2) a state-imposed requirement relevant to an individualized education program not required under federal law; and

(3) the requirements identified under 20 U.S.C. Section 1407(a)(2).

(b) The agency shall post on the agency's Internet website the form developed under Subsection (a).

(c) A school district may use the form developed under Subsection (a) to comply with the requirements for an individualized education program under 20 U.S.C. Section 1414(d).

SECTION 3. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0111 to read as follows:

Sec. 29.0111. BEGINNING OF TRANSITION PLANNING. Appropriate state transition planning under the procedure adopted under Section 29.011 must begin for a student not later than when the student reaches 14 years of age.

SECTION 4. Not later than December 1, 2011, the Texas Education Agency shall develop the model form required under Section 29.0051, Education Code, as added by this Act.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1788** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 100

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 100** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

VAN DE PUTTE
WILLIAMS
DUNCAN
SHAPIRO
SELIGER

On the part of the Senate

V. TAYLOR
BRANCH
MADDEN
PICKETT

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to the adoption of certain voting procedures and to certain elections, including procedures necessary to implement the federal Military and Overseas Voter Empowerment Act, deadlines for declaration of candidacy and dates for certain elections, and to terms of certain elected officials.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 101, Election Code, is amended to read as follows:

CHAPTER 101. VOTING BY RESIDENT FEDERAL POSTCARD APPLICANT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. ELIGIBILITY. A person is eligible for early voting by mail as provided by this chapter if:

- (1) the person is qualified to vote in this state or, if not registered to vote in this state, would be qualified if registered; and
- (2) the person is:
 - (A) a member of the armed forces of the United States, or the spouse or a dependent of a member;
 - (B) a member of the merchant marine of the United States, or the spouse or a dependent of a member; or
 - (C) domiciled in this state but temporarily living outside the territorial limits of the United States and the District of Columbia.

Sec. 101.002. GENERAL CONDUCT OF VOTING. Voting under this chapter shall be conducted and the results shall be processed as provided by Subtitle A for early voting by mail, except as otherwise provided by this chapter.

Sec. 101.003. DEFINITIONS. ~~[FORM AND CONTENTS OF APPLICATION. (a) An application for a ballot to be voted under this chapter must:~~
~~(1) be submitted on an official federal postcard application form; and~~
~~(2) include the information necessary to indicate that the applicant is eligible to vote in the election for which the ballot is requested.~~

~~[(b)]~~ In this chapter:

- (1) "Federal~~[-, "federal]~~ postcard application" means an application for a ballot to be voted under this chapter submitted on the official federal form prescribed under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.).
- (2) "FPCA registrant" means a person registered to vote under Section 101.055.

Sec. 101.004. NOTING FPCA REGISTRATION ON POLL LIST. For each FPCA registrant accepted to vote, a notation shall be made beside the voter's name on the early voting poll list indicating that the voter is an FPCA registrant.

Sec. 101.005. NOTING FPCA REGISTRATION AND E-MAIL ON EARLY VOTING ROSTER. The entry on the early voting roster pertaining to a voter under this chapter who is an FPCA registrant must include a notation indicating that the voter is an FPCA registrant. The early voting clerk shall note on the early voting by mail roster each e-mail of a ballot under Subchapter C.

Sec. 101.006. EXCLUDING FPCA REGISTRANT FROM PRECINCT EARLY VOTING LIST. A person to whom a ballot is provided under this chapter is not required to be included on the precinct early voting list if the person is an FPCA registrant.

Sec. 101.007. DESIGNATION OF SECRETARY OF STATE. (a) The secretary of state is designated as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to

the federal write-in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.).

(b) The secretary of state is designated as the state coordinator between military and overseas voters and county election officials. A county election official shall:

(1) cooperate with the secretary of state to ensure that military and overseas voters timely receive accurate balloting materials that a voter is able to cast in time for the election; and

(2) otherwise comply with the federal Military and Overseas Voter Empowerment Act (Pub. L. No. 111-84, Div. A, Title V, Subt. H).

(c) The secretary of state may adopt rules as necessary to implement this section.

Sec. 101.008. STATUS OF APPLICATION OR BALLOT VOTED. The secretary of state, in coordination with local election officials, shall implement an electronic free-access system by which a person eligible for early voting by mail under this chapter or Chapter 114 may determine by telephone, by e-mail, or over the Internet whether:

(1) the person's federal postcard application or other registration or ballot application has been received and accepted; and

(2) the person's ballot has been received and the current status of the ballot.

SUBCHAPTER B. SUBMISSION OF FEDERAL POSTCARD APPLICATION

Sec. 101.051. FORM AND CONTENTS OF APPLICATION. An application for a ballot to be voted under this subchapter must:

(1) be submitted on an official federal postcard application form; and

(2) include the information necessary to indicate that the applicant is eligible to vote in the election for which the ballot is requested.

Sec. 101.052 [~~101.004~~]. SUBMITTING APPLICATION. (a) A federal postcard application must be submitted to the early voting clerk for the election who serves the election precinct of the applicant's residence.

(a-1) A federal postcard application must be submitted by:

(1) mail; or

(2) electronic transmission of an image of the application under procedures prescribed by the secretary of state.

(b) A federal postcard application may be submitted at any time during the calendar year in which the election for which a ballot is requested occurs, but not later than the deadline for submitting a regular application for a ballot to be voted by mail.

(c) A federal postcard application requesting a ballot for an election to be held in January or February may be submitted in the preceding calendar year but not earlier than the earliest date for submitting a regular application for a ballot to be voted by mail.

(d) A timely application that is addressed to the wrong early voting clerk shall be forwarded to the proper early voting clerk not later than the day after the date it is received by the wrong clerk.

(e) An applicant who otherwise complies with applicable requirements is entitled to receive a full ballot to be voted by mail under this chapter if:

(1) the applicant submits a federal postcard application to the early voting clerk on or before the 20th day before election day; and

(2) the application contains the information that is required for registration under Title 2.

(f) The applicant is entitled to receive only a federal ballot to be voted by mail under Chapter 114 if:

(1) the applicant submits the federal postcard application to the early voting clerk after the date provided by Subsection (e)(1) and before the sixth day before election day; and

(2) the application contains the information that is required for registration under Title 2.

(g) An applicant who submits a federal postcard application to the early voting clerk on or after the sixth day before election day is not entitled to receive a ballot by mail for that election.

(h) If the applicant submits the federal postcard application within the time prescribed by Subsection (f)(1) and is a registered voter at the address contained on the application, the applicant is entitled to receive a full ballot to be voted by mail under this chapter.

(i) Except as provided by Subsections (l) and (m), for purposes of determining the date a federal postcard application is submitted to the early voting clerk, an application is considered to be submitted on the date it is placed and properly addressed in the United States mail. An application mailed from an Army/Air Force Post Office (APO) or Fleet Post Office (FPO) is considered placed in the United States mail. The date indicated by the post office cancellation mark, including a United States military post office cancellation mark, is considered to be the date the application was placed in the mail unless proven otherwise. For purposes of an application made under Subsection (e):

(1) an application that does not contain a cancellation mark is considered to be timely if it is received by the early voting clerk on or before the 15th day before election day; and

(2) if the 20th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is considered to be timely if it is submitted to the early voting clerk on or before the next regular business day.

(j) If the early voting clerk determines that an application that is submitted before the time prescribed by Subsection (e)(1) does not contain the information that is required for registration under Title 2, the clerk shall notify the applicant of that fact. If the applicant has provided a telephone number or an address for receiving mail over the Internet, the clerk shall notify the applicant by that medium.

(k) If the applicant submits the missing information before the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail under this chapter. If the applicant submits the missing information after the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail for the next election that occurs:

(1) in the same calendar year; and

(2) after the 30th day after the date the information is submitted.

(l) For purposes of determining the end of the period that an application may be submitted under Subsection (f)(1), an application is considered to be submitted at the time it is received by the early voting clerk.

(m) The secretary of state by rule shall establish the date on which a federal postcard application is considered to be electronically submitted to the early voting clerk.

Sec. 101.053 [~~101.0041~~]. ACTION BY EARLY VOTING CLERK ON CERTAIN APPLICATIONS. The early voting clerk shall notify the voter registrar of a federal postcard application submitted by an applicant that states a voting residence address located outside the registrar's county.

Sec. 101.054 [~~101.005~~]. APPLYING FOR MORE THAN ONE ELECTION IN SAME APPLICATION. (a) A person may apply with a single federal postcard application for a ballot for any one or more elections in which the early voting clerk to whom the application is submitted conducts early voting.

(b) An application that does not identify the election for which a ballot is requested shall be treated as if it requests a ballot for:

(1) each general election in which the clerk conducts early voting; and

(2) the general primary election if the application indicates party preference and is submitted to the early voting clerk for the primary.

(c) An application shall be treated as if it requests a ballot for[:

~~(+)~~ a runoff election that results from an election for which a ballot is requested~~]; and~~

~~(2) each election for a federal office, including a primary or runoff election, that occurs on or before the date of the second general election for state and county officers that occurs after the date the application is submitted].~~

(d) An application requesting a ballot for more than one election shall be preserved for the period for preserving the precinct election records for the last election for which the application is effective.

Sec. 101.055 [~~101.006~~]. FPCA VOTER REGISTRATION. (a) The submission of a federal postcard application that complies with the applicable requirements by an unregistered applicant constitutes registration by the applicant:

(1) for the purpose of voting in the election for which a ballot is requested; and

(2) under Title 2 unless the person indicates on the application that the person is residing outside the United States indefinitely.

(b) For purposes of registering to vote under this chapter, a person shall provide the address of the last place of residence of the person in this state or the last place of residence in this state of the person's parent or legal guardian.

(c) The registrar shall register the person at the address provided under Subsection (b) unless that address no longer is recognized as a residential address, in which event the registrar shall assign the person to an address under procedures prescribed by the secretary of state [In this chapter, "FPCA registrant" means a person registered to vote under this section].

Sec. 101.056 [~~101.007~~]. METHOD OF PROVIDING BALLOT; REQUIRED ADDRESS. (a) The balloting materials provided under this subchapter [~~chapter~~] shall be airmailed to the voter free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et

seq.), in an envelope labeled "Official Election Balloting Material - via Airmail." The secretary of state shall provide early voting clerks with instructions on compliance with this subsection.

(b) The address to which the balloting materials are sent to a voter must be:

(1) an address outside the county of the voter's residence; or

(2) an address in the United States for forwarding or delivery to the voter at a location outside the United States.

(c) If the address to which the balloting materials are to be sent is within the county served by the early voting clerk, the federal postcard application must indicate that the balloting materials will be forwarded or delivered to the voter at a location outside the United States.

Sec. 101.057 [~~101.008~~]. RETURN OF VOTED BALLOT. A ballot voted under this subchapter [~~chapter~~] may be returned to the early voting clerk by mail, common or contract carrier, or courier.

~~[Sec. 101.009. NOTING FPCA REGISTRATION ON POLL LIST. For each FPCA registrant accepted to vote, a notation shall be made beside the voter's name on the early voting poll list indicating that the voter is an FPCA registrant.~~

~~[Sec. 101.010. NOTING FPCA REGISTRATION ON EARLY VOTING ROSTER. The entry on the early voting roster pertaining to a voter under this chapter who is an FPCA registrant must include a notation indicating that the voter is an FPCA registrant.~~

~~[Sec. 101.011. EXCLUDING FPCA REGISTRANT FROM PRECINCT EARLY VOTING LIST. A person to whom a ballot is provided under this chapter is not required to be included on the precinct early voting list if the person is an FPCA registrant.]~~

Sec. 101.058 [~~101.012~~]. OFFICIAL CARRIER ENVELOPE. The officially prescribed carrier envelope for voting under this subchapter [~~chapter~~] shall be prepared so that it can be mailed free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.) [~~Federal Voting Assistance Act of 1955~~], and must contain the label prescribed by Section 101.056(a) [~~101.007(a)~~] for the envelope in which the balloting materials are sent to a voter. The secretary of state shall provide early voting clerks with instructions on compliance with this section.

SUBCHAPTER C. E-MAIL TRANSMISSION OF BALLOTING MATERIALS

Sec. 101.101. PURPOSE. The purpose of this subchapter is to implement the federal Military and Overseas Voter Empowerment Act (Pub. L. No. 111-84, Div. A, Title V, Subt. H).

Sec. 101.102. REQUEST FOR BALLOTING MATERIALS. (a) A person eligible to vote under this chapter may request from the appropriate early voting clerk e-mail transmission of balloting materials under this subchapter.

(b) The early voting clerk shall grant a request made under this section for the e-mail transmission of balloting materials if:

(1) the requestor has submitted a valid federal postcard application and:

(A) if the requestor is a person described by Section 101.001(2)(C), has provided a current mailing address that is located outside the United States; or

(B) if the requestor is a person described by Section 101.001(2)(A) or (B), has provided a current mailing address that is located outside the requestor's county of residence;

(2) the requestor provides an e-mail address:

(A) that corresponds to the address on file with the requestor's federal postcard application; or

(B) stated on a newly submitted federal postcard application;

(3) the request is submitted on or before the seventh day before the date of the election; and

(4) a marked ballot for the election from the requestor has not been received by the early voting clerk.

Sec. 101.103. CONFIDENTIALITY OF E-MAIL ADDRESS. An e-mail address used under this subchapter to request balloting materials is confidential and does not constitute public information for purposes of Chapter 552, Government Code. An early voting clerk shall ensure that a voter's e-mail address provided under this subchapter is excluded from public disclosure.

Sec. 101.104. ELECTIONS COVERED. The e-mail transmission of balloting materials under this subchapter is limited to:

(1) an election in which an office of the federal government appears on the ballot, including a primary election;

(2) an election to fill a vacancy in the legislature unless:

(A) the election is ordered as an emergency election under Section 41.0011; or

(B) the election is held as an expedited election under Section 203.013;

or

(3) an election held jointly with an election described by Subdivision (1) or

(2).

Sec. 101.105. BALLOTING MATERIALS TO BE SENT BY E-MAIL. Balloting materials to be sent by e-mail under this subchapter include:

(1) the appropriate ballot;

(2) ballot instructions, including instructions that inform a voter that the ballot must be returned by mail to be counted;

(3) instructions prescribed by the secretary of state on:

(A) how to print a return envelope from the federal Voting Assistance Program website; and

(B) how to create a carrier envelope or signature sheet for the ballot;

and

(4) a list of certified write-in candidates, if applicable.

Sec. 101.106. METHODS OF TRANSMISSION TO VOTER. (a) The balloting materials may be provided by e-mail to the voter in PDF format, through a scanned format, or by any other method of electronic transmission authorized by the secretary of state in writing.

(b) The secretary of state shall prescribe procedures for the retransmission of balloting materials following an unsuccessful transmission of the materials to a voter.

Sec. 101.107. RETURN OF BALLOT. (a) A voter described by Section 101.001(2)(A) or (B) must be voting from outside the voter's county of residence. A voter described by Section 101.001(2)(C) must be voting from outside the United States.

(b) A voter who receives a ballot under this subchapter must return the ballot in the same manner as required under Section 101.057 and, except as provided by Chapter 105, may not return the ballot by electronic transmission.

(c) A ballot that is not returned as required by Subsection (b) is considered a ballot not timely returned and is not sent to the early voting ballot board for processing.

(d) The deadline for the return of a ballot under this section is the same deadline as provided in Section 86.007.

Sec. 101.108. TRACKING OF BALLOTING MATERIALS. The secretary of state by rule shall create a tracking system under which an FPCA registrant may determine whether a voted ballot has been received by the early voting clerk. Each county that sends ballots to FPCA registrants shall provide information required by the secretary of state to implement the system.

Sec. 101.109. RULES. (a) The secretary of state may adopt rules as necessary to implement this subchapter.

(b) The secretary of state may provide for an alternate secure method of electronic ballot transmission under this subchapter instead of transmission by e-mail

~~[Sec. 101.013. DESIGNATION OF SECRETARY OF STATE. The secretary of state is designated as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), as amended].~~

SECTION 2. Section 2.025, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d) or as otherwise provided by this code, a runoff election shall be held not earlier than the 20th or later than the 45th day after the date the final canvass of the main election is completed.

(d) A runoff election for a special election to fill a vacancy in Congress or a special election to fill a vacancy in the legislature to which Section 101.104 applies shall be held not earlier than the 70th day or later than the 77th day after the date the final canvass of the main election is completed.

SECTION 3. Subsection (c), Section 3.005, Election Code, is amended to read as follows:

(c) For an election to be held on:

(1) the date of the general election for state and county officers, the election shall be ordered not later than the 78th [70th] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the election shall be ordered not later than the 71st day before election day.

SECTION 4. Section 41.001, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

(1) the second Saturday in May in an odd-numbered year;

(2) the second Saturday in May in an even-numbered year, for an election held by a political subdivision other than a county; or

(3) ~~(2)~~ the first Tuesday after the first Monday in November.

(d) Notwithstanding Section 31.093, a county elections administrator is not required to enter into a contract to furnish election services for an election held on the date described by Subsection (a)(2).

SECTION 5. Section 41.0052, Election Code, is amended to read as follows:

Sec. 41.0052. CHANGING GENERAL ELECTION DATE. (a) ~~[The governing body of a political subdivision other than a county may, not later than December 31, 2005, change the date on which it holds its general election for officers to another authorized uniform election date.]~~

~~[(a-1)]~~ The governing body of a political subdivision, other than a county, that holds its general election for officers on a date other than the November uniform election date may, not later than December 31, 2012 ~~[2010]~~, change the date on which it holds its general election for officers to the November uniform election date.

(b) A governing body changing an election date under this section shall adjust the terms of office to conform to the new election date.

(c) A home-rule city may implement the change authorized by Subsection (a) or provide for the election of all members of the governing body at the same election through the adoption of a resolution. The change contained in the resolution supersedes a city charter provision that requires a different general election date or that requires the terms of members of the governing body to be staggered.

(d) The holdover of a member of a governing body of a city in accordance with Section 17, Article XVI, Texas Constitution, so that a term of office may be conformed to a new election date chosen under this section does not constitute a vacancy for purposes of Section 11(b), Article XI, Texas Constitution.

SECTION 6. Subsection (b), Section 41.007, Election Code, is amended to read as follows:

(b) The runoff primary election date is the fourth Tuesday in May ~~[second Tuesday in April]~~ following the general primary election.

SECTION 7. Section 65.051, Election Code, is amended by adding Subsection (c) to read as follows:

(c) Section 1.006 does not apply to this section.

SECTION 8. Subsection (b), Section 86.004, Election Code, is amended to read as follows:

(b) For an election to which Section 101.104 applies ~~[the general election for state and county officers]~~, the balloting materials for a voter who indicates on the application for a ballot to be voted by mail or the federal postcard application that the voter is eligible to vote early by mail as a consequence of the voter's being outside the United States shall be mailed on or before the later of the 45th day before election day or the seventh calendar day after the date the clerk receives the application. However, if it is not possible to mail the ballots by the deadline of the 45th day before election day, the clerk shall notify the secretary of state within 24 hours of knowing that the

deadline will not be met. The secretary of state shall monitor the situation and advise the clerk, who shall mail the ballots as soon as possible in accordance with the secretary of state's guidelines.

SECTION 9. Subsection (b), Section 86.011, Election Code, is amended to read as follows:

(b) If the return is timely, the clerk shall enclose the carrier envelope and the voter's early voting ballot application in a jacket envelope. The clerk shall also include in the jacket envelope:

(1) a copy of the voter's federal postcard application if the ballot is voted under Chapter 101; and

(2) the signature cover sheet, if the ballot is voted under Chapter 105.

SECTION 10. Subchapter B, Chapter 87, Election Code, is amended by adding Section 87.0223 to read as follows:

Sec. 87.0223. TIME OF DELIVERY: BALLOTS SENT OUT BY REGULAR MAIL AND E-MAIL. (a) If the early voting clerk has provided a voter a ballot to be voted by mail by both regular mail and e-mail under Subchapter C, Chapter 101, the clerk may not deliver a jacket envelope containing the early voting ballot voted by mail by the voter to the board until:

(1) both ballots are returned; or

(2) the deadline for returning marked ballots under Section 86.007 has passed.

(b) If both the ballot provided by regular mail and the ballot provided by e-mail are returned before the deadline, the early voting clerk shall deliver only the jacket envelope containing the ballot provided by e-mail to the board. The ballot provided by regular mail is considered to be a ballot not timely returned.

SECTION 11. Section 87.041, Election Code, is amended by adding Subsection (f) to read as follows:

(f) In making the determination under Subsection (b)(2) for a ballot cast under Chapter 101 or 105, the board shall compare the signature on the carrier envelope or signature cover sheet with the signature of the voter on the federal postcard application.

SECTION 12. Section 87.043, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The early voting ballot board shall place the carrier envelopes containing rejected ballots in an envelope and shall seal the envelope. More than one envelope may be used if necessary. The board shall keep a record of the number of rejected ballots in each envelope.

(d) A notation must be made on the carrier envelope of any ballot that was rejected after the carrier envelope was opened and include the reason the envelope was opened and the ballot was rejected.

SECTION 13. Section 87.0431, Election Code, is amended to read as follows:

Sec. 87.0431. NOTICE OF REJECTED BALLOT. Not later than the 10th day after election day, the presiding judge of the early voting ballot board shall deliver written notice of the reason for the rejection of a ballot to the voter at the residence

address on the ballot application. If the ballot was transmitted to the voter by e-mail under Subchapter C, Chapter 101, the presiding judge shall also provide the notice to the e-mail address to which the ballot was sent.

SECTION 14. Subsection (a), Section 87.044, Election Code, is amended to read as follows:

(a) The early voting ballot board shall place each application for a ballot voted by mail in its corresponding jacket envelope. For a ballot voted under Chapter 101 or 105, the board shall also place the copy of the voter's federal postcard application or signature cover sheet in the same location as the carrier envelope. If the voter's ballot was accepted, the board shall also place the carrier envelope in the jacket envelope. However, if the jacket envelope is to be used in a subsequent election, the carrier envelope shall be retained elsewhere.

SECTION 15. Section 105.003, Election Code, is amended to read as follows:

Sec. 105.003. USE OF FEDERAL WRITE-IN ABSENTEE BALLOT FOR ELECTIONS FOR FEDERAL OFFICE. The secretary of state shall prescribe procedures to allow a voter who qualifies to vote by a federal write-in absentee ballot to vote through use of a federal write-in absentee ballot in:

- (1) any general, special, primary, or runoff election for federal office; or
- (2) an election for any office for which balloting materials may be sent

under Section 101.104.

SECTION 16. Subsection (b), Section 142.010, Election Code, is amended to read as follows:

(b) Not later than the 68th [~~55th~~] day before general election day, the certifying authority shall deliver the certification to the authority responsible for having the official ballot prepared in each county in which the candidate's name is to appear on the ballot.

SECTION 17. Subsection (c), Section 143.007, Election Code, is amended to read as follows:

(c) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 78th [~~70th~~] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 18. Subsection (d), Section 144.005, Election Code, is amended to read as follows:

(d) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 78th [~~70th~~] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 19. Subsection (b), Section 144.006, Election Code, is amended to read as follows:

(b) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 78th [67th] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 20. Subsection (e), Section 145.037, Election Code, is amended to read as follows:

(e) The certification must be delivered not later than 5 p.m. of the 71st [70th] day before election day.

SECTION 21. Subsection (b), Section 145.038, Election Code, is amended to read as follows:

(b) The state chair must deliver the certification of the replacement nominee not later than 5 p.m. of the 69th [67th] day before election day.

SECTION 22. Subsection (f), Section 145.092, Election Code, is amended to read as follows:

(f) A candidate in an election for which the filing deadline for an application for a place on the ballot is not later than 5 p.m. of the 78th [70th] day before election day may not withdraw from the election after 5 p.m. of the 71st [67th] day before election day.

SECTION 23. Subsection (a), Section 145.094, Election Code, is amended to read as follows:

(a) The name of a candidate shall be omitted from the ballot if the candidate:

(1) dies before the second day before the date of the deadline for filing the candidate's application for a place on the ballot;

(2) withdraws or is declared ineligible before 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a);

(3) withdraws or is declared ineligible before 5 p.m. of the 53rd day before election day, in an election subject to Section 145.092(b); or

(4) withdraws or is declared ineligible before 5 p.m. of the 71st [67th] day before election day, in an election subject to Section 145.092(f).

SECTION 24. Subsection (a), Section 145.096, Election Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a candidate's name shall be placed on the ballot if the candidate:

(1) dies on or after the second day before the deadline for filing the candidate's application for a place on the ballot;

(2) is declared ineligible after 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a);

(3) is declared ineligible after 5 p.m. of the 53rd day before election day, in an election subject to Section 145.092(b); or

(4) is declared ineligible after 5 p.m. of the 71st [67th] day before election day, in an election subject to Section 145.092(f).

SECTION 25. Subsections (a) and (b), Section 146.025, Election Code, are amended to read as follows:

(a) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 78th [~~70th~~] day before general election day, except as otherwise provided by this code. A declaration may not be filed earlier than the 30th day before the date of the regular filing deadline.

(b) If a candidate whose name is to appear on the general election ballot dies or is declared ineligible after the third day before the date of the filing deadline prescribed by Subsection (a), a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 75th [~~67th~~] day before election day.

SECTION 26. Subsection (c), Section 146.029, Election Code, is amended to read as follows:

(c) Not later than the 68th [~~62nd~~] day before election day, the certifying authority shall deliver the certification to the authority responsible for having the official ballot prepared in each county in which the office sought by the candidate is to be voted on.

SECTION 27. Subsection (b), Section 146.054, Election Code, is amended to read as follows:

(b) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 74th [~~67th~~] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 28. Subsection (b), Section 161.008, Election Code, is amended to read as follows:

(b) Not later than the 68th [~~62nd~~] day before general election day, the secretary of state shall deliver the certification to the authority responsible for having the official general election ballot prepared in each county in which the candidate's name is to appear on the ballot.

SECTION 29. Subsection (a), Section 172.023, Election Code, is amended to read as follows:

(a) An application for a place on the general primary election ballot must be filed not later than 6 p.m. on the second Monday in December of an odd-numbered year [~~January 2 in the primary election year~~] unless the filing deadline is extended under Subchapter C.

SECTION 30. Subsection (d), Section 171.0231, Election Code, is amended to read as follows:

(d) A declaration of write-in candidacy must be filed not later than 6 [~~5~~] p.m. of the fifth [~~62nd~~] day after the date of the filing deadline for the [~~before~~] general primary election [~~day. However, if a candidate whose name is to appear on the ballot for the office of county chair or precinct chair dies or is declared ineligible after the third day before the date of the regular filing deadline prescribed by this subsection, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 59th day before election day.~~].

SECTION 31. Subsection (b), Section 172.028, Election Code, is amended to read as follows:

(b) Not later than the 81st [~~57th~~] day before general primary election day, the state chair shall deliver the certification to the county chair in each county in which the candidate's name is to appear on the ballot.

SECTION 32. Subsection (a), Section 172.052, Election Code, is amended to read as follows:

(a) A candidate for nomination may not withdraw from the general primary election after the 79th [~~62nd~~] day before general primary election day.

SECTION 33. Subsections (a) and (b), Section 172.054, Election Code, are amended to read as follows:

(a) The deadline for filing an application for a place on the general primary election ballot is extended as provided by this section if a candidate who has made an application that complies with the applicable requirements:

(1) dies on or after the fifth day before the date of the regular filing deadline and on or before the 79th [~~62nd~~] day before general primary election day;

(2) holds the office for which the application was made and withdraws or is declared ineligible on or after the date of the regular filing deadline and on or before the 79th [~~62nd~~] day before general primary election day; or

(3) withdraws or is declared ineligible during the period prescribed by Subdivision (2), and at the time of the withdrawal or declaration of ineligibility no other candidate has made an application that complies with the applicable requirements for the office sought by the withdrawn or ineligible candidate.

(b) An application for an office sought by a withdrawn, deceased, or ineligible candidate must be filed not later than 6 p.m. of the 81st [~~60th~~] day before general primary election day. An application filed by mail with the state chair is not timely if received later than 5 p.m. of the 81st [~~60th~~] day before general primary election day.

SECTION 34. Section 172.057, Election Code, is amended to read as follows:

Sec. 172.057. WITHDRAWN, DECEASED, OR INELIGIBLE CANDIDATE'S NAME OMITTED FROM GENERAL PRIMARY BALLOT. A candidate's name shall be omitted from the general primary election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 79th [~~62nd~~] day before general primary election day.

SECTION 35. Subsection (a), Section 172.058, Election Code, is amended to read as follows:

(a) If a candidate who has made an application for a place on the general primary election ballot that complies with the applicable requirements dies or is declared ineligible after the 79th [~~62nd~~] day before general primary election day, the candidate's name shall be placed on the ballot and the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

SECTION 36. Subsection (a), Section 172.059, Election Code, is amended to read as follows:

(a) A candidate for nomination may not withdraw from the runoff primary election after 5 p.m. of the 8th [~~10th~~] day after general primary election day.

SECTION 37. Subsection (c), Section 172.082, Election Code, is amended to read as follows:

(c) The drawing shall be conducted at the county seat not later than the third Tuesday in December of an odd-numbered year [~~53rd day before general primary election day~~].

SECTION 38. Subsection (b), Section 192.033, Election Code, is amended to read as follows:

(b) The secretary of state shall deliver the certification to the authority responsible for having the official ballot prepared in each county before the later of the 68th [~~62nd~~] day before presidential election day or the second business day after the date of final adjournment of the party's national presidential nominating convention.

SECTION 39. Subsection (b), Section 201.051, Election Code, is amended to read as follows:

(b) For a vacancy to be filled by a special election to be held on the date of the general election for state and county officers, the election shall be ordered not later than the 78th [~~70th~~] day before election day.

SECTION 40. Subsection (f), Section 201.054, Election Code, is amended to read as follows:

(f) For a special election to be held on the date of the general election for state and county officers, the day of the filing deadline is the 75th [~~67th~~] day before election day.

SECTION 41. Section 501.109, Election Code, is amended to read as follows:

Sec. 501.109. ELECTION IN [~~CERTAIN~~] MUNICIPALITIES. (a) This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality [~~that is located in more than one county~~].

(b) An election to which this section applies shall be conducted by the municipality instead of a county [~~the counties~~]. For the purposes of an election conducted under this section, a reference in this chapter to:

- (1) the county is considered to refer to the municipality;
- (2) the commissioners court is considered to refer to the governing body of the municipality;
- (3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and
- (4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.

(d) An action to contest the election under Section 501.155 may be brought in the district court of any county in which the municipality is located.

SECTION 42. Subsections (a) and (c), Section 11.055, Education Code, are amended to read as follows:

(a) Except as provided by Subsection (c), an application of a candidate for a place on the ballot must be filed not later than 5 p.m. of the 71st [~~62nd~~] day before the date of the election. An application may not be filed earlier than the 30th day before the date of the filing deadline.

(c) For an election to be held on the date of the general election for state and county officers, the day of the filing deadline is the 78th ~~70th~~ day before election day.

SECTION 43. Subsection (b), Section 11.056, Education Code, is amended to read as follows:

(b) A ~~[Except as provided by Subsection (e), a]~~ declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed].

SECTION 44. Subsection (e), Section 11.059, Education Code, is amended to read as follows:

(e) Not later than December 31, 2011 ~~[2007]~~, the board of trustees may adopt a resolution changing the length of the terms of its trustees. The resolution must provide for staggered terms ~~[a term]~~ of either three or four years and specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for trustees that occurs after January 1, 2012 ~~[2008]~~, and a trustee who serves on that date shall serve the remainder of that term. This subsection expires January 1, 2017 ~~[2013]~~.

SECTION 45. Subsection (b), Section 130.0825, Education Code, is amended to read as follows:

(b) A ~~[Except as provided by Subsection (e), a]~~ declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed].

SECTION 46. Subsection (d), Section 285.131, Health and Safety Code, is amended to read as follows:

(d) A ~~[Except as provided by Subsection (g), a]~~ declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed].

SECTION 47. Subchapter A, Chapter 21, Local Government Code, is amended by adding Section 21.004 to read as follows:

Sec. 21.004. CHANGE OF LENGTH OR STAGGERING OF TERMS IN GENERAL-LAW MUNICIPALITY. (a) This section applies only to a general-law municipality whose governing body is composed of members that serve:

(1) a term of one or three years; or

(2) staggered terms.

(b) Not later than December 31, 2012, the governing body of the general-law municipality may adopt a resolution:

(1) changing the length of the terms of its members to two years; or

(2) providing for the election of all members of the governing body at the same election.

(c) The resolution must specify the manner in which the transition in the length of terms is made. The transition must begin with the first regular election for members of the governing body that occurs after January 1, 2013, and a member who serves on that date shall serve the remainder of that term.

(d) This section expires January 1, 2016.

SECTION 48. Subsection (d), Section 63.0945, Water Code, is amended to read as follows:

(d) A ~~[Except as provided by Subsection (f), a]~~ declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed].

SECTION 49. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment.

SECTION 50. The secretary of state shall adopt rules as necessary to implement this Act, including the adjustment or modification of any affected date, deadline, or procedure.

SECTION 51. The following are repealed:

- (1) Section 41.0053, Election Code;
- (2) Subsection (e), Section 11.056, and Subsection (e), Section 130.0825, Education Code;
- (3) Subsection (g), Section 285.131, Health and Safety Code; and
- (4) Subsection (f), Section 63.0945, Water Code.

SECTION 52. (a) This section applies only to a political subdivision that elects the members of its governing body to a term that consists of an odd number of years.

(b) Not later than December 31, 2012, the governing body of the political subdivision may adopt a resolution changing the length of the terms of its members to an even number of years. The resolution must specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for members of the governing body that occurs after January 1, 2013, and a member who serves on that date shall serve the remainder of that term.

(c) This section expires January 1, 2020.

SECTION 53. The changes in law made by this Act do not apply to an election held on November 8, 2011.

SECTION 54. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 100** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2608

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2608** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR
NICHOLS
ELTIFE

HARPER-BROWN
P. KING
L. TAYLOR
J. DAVIS
TURNER

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2608** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 472**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 472** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WEST
DAVIS
NICHOLS
NELSON
WENTWORTH

GIDDINGS
DESHOTEL
OTTO
SOLOMONS
TURNER

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to voting practices and elections of property owners' associations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 209.003, Property Code, is amended by adding Subsection (e) to read as follows:

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

(1) Section 209.0058; and

(2) Section 209.00593.

SECTION 2. Chapter 209, Property Code, is amended by adding Section 209.0041 to read as follows:

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS. (a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision; and

(2) a right to direct the size, shape, and composition of the subdivision.

(b) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(d) This section does not apply to the amendment of a declaration during a development period.

(e) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

(f) This section supersedes any contrary requirement in a dedicatory instrument.

(g) To the extent of any conflict with another provision of this title, this section prevails.

(h) Except as provided by this subsection, a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law. If the declaration contains a lower percentage, the percentage in the declaration controls.

(i) A bylaw may not be amended to conflict with the declaration.

SECTION 3. Chapter 209, Property Code, is amended by adding Sections 209.0058, 209.0059, 209.00592, 209.00593, and 209.00594 to read as follows:

Sec. 209.0058. BALLOTS. (a) Any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member.

(b) Electronic votes cast under Section 209.00593 constitute written and signed ballots.

(c) In an association-wide election, written and signed ballots are not required for uncontested races.

Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided by Subsection (b), a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.

(b) If a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of an owner may be cast or given:

(1) in person or by proxy at a meeting of the property owners' association;

(2) by absentee ballot in accordance with this section;

(3) by electronic ballot in accordance with this section; or

(4) by any method of representative or delegated voting provided by a dedicatory instrument.

(b) An absentee or electronic ballot:

(1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;

(2) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and

(3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

(c) A solicitation for votes by absentee ballot must include:

(1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;

(2) instructions for delivery of the completed absentee ballot, including the delivery location; and

(3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."

(d) For the purposes of this section, "electronic ballot" means a ballot:

(1) given by:

(A) e-mail;

(B) facsimile; or

(C) posting on an Internet website;

(2) for which the identity of the property owner submitting the ballot can be confirmed; and

(3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

(e) If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

(f) This section supersedes any contrary provision in a dedicatory instrument.

(g) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00594. TABULATION OF AND ACCESS TO BALLOTS.

(a) Notwithstanding any other provision of this chapter or any other law, a person who is a candidate in a property owners' association election or who is otherwise the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section.

(b) A person other than a person described by Subsection (a) may tabulate votes in an association election or vote but may not disclose to any other person how an individual voted.

(c) Notwithstanding any other provision of this chapter or any other law, a person other than a person who tabulates votes under Subsection (b), including a person described by Subsection (a), may be given access to the ballots cast in the election or vote only as part of a recount process authorized by law.

SECTION 4. Section 209.0059, Subsection (a), Section 209.00592, and Section 209.00593, Property Code, as added by this Act, apply to a provision in a dedicatory instrument enacted before, on, or after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 472** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 213**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 213** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO
CARONA
ESTES

ELTIFE
VAN DE PUTTE

On the part of the Senate

RODRIGUEZ

MUNOZ
ANCHIA

KEFFER
TRUITT

On the part of the House

The Conference Committee Report on **HB 213** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2770

Senator Williams submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2770** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WILLIAMS
ELLIS
JACKSON
NICHOLS
WHITMIRE

On the part of the Senate

W. SMITH
HUNTER
PHILLIPS

On the part of the House

The Conference Committee Report on **HB 2770** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 300

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 300** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NELSON
HUFFMAN
NICHOLS
SHAPIRO

KOLKHORST
FLYNN
LAUBENBERG
NAISHTAT
TRUITT

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 300** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1543**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1543** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WENTWORTH
CARONA
DAVIS
SELIGER
SHAPIRO

LARSON
KUEMPEL
GUILLEN
RODRIGUEZ

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the authority of an independent school district to invest in corporate bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 2256, Government Code, is amended by adding Section 2256.0204 to read as follows:

Sec. 2256.0204. AUTHORIZED INVESTMENTS: INDEPENDENT SCHOOL DISTRICTS. (a) In this section, "corporate bond" means a senior secured debt obligation issued by a domestic business entity and rated not lower than "AA-" or the equivalent by a nationally recognized investment rating firm. The term does not include a debt obligation that:

(1) on conversion, would result in the holder becoming a stockholder or shareholder in the entity, or any affiliate or subsidiary of the entity, that issued the debt obligation; or

(2) is an unsecured debt obligation.

(b) This section applies only to an independent school district that qualifies as an issuer as defined by Section 1371.001.

(c) In addition to authorized investments permitted by this subchapter, an independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds that, at the time of purchase, are rated by a nationally recognized investment rating firm "AA-" or the equivalent and have a stated final maturity that is not later than the third anniversary of the date the corporate bonds were purchased.

(d) An independent school district subject to this section is not authorized by this section to:

(1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds, reserves, and other funds held for the payment of debt service, in corporate bonds; or

(2) invest more than 25 percent of the funds invested in corporate bonds in any one domestic business entity, including subsidiaries and affiliates of the entity.

(e) An independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds if the governing body of the district:

(1) amends its investment policy to authorize corporate bonds as an eligible investment;

(2) adopts procedures to provide for:

(A) monitoring rating changes in corporate bonds acquired with public funds; and

(B) liquidating the investment in corporate bonds; and

(3) identifies the funds eligible to be invested in corporate bonds.

(f) The investment officer of an independent school district, acting on behalf of the district, shall sell corporate bonds in which the district has invested its funds not later than the seventh day after the date a nationally recognized investment rating firm:

(1) issues a release that places the corporate bonds or the domestic business entity that issued the corporate bonds on negative credit watch or the equivalent, if the corporate bonds are rated "AA-" or the equivalent at the time the release is issued; or

(2) changes the rating on the corporate bonds to a rating lower than "AA-" or the equivalent.

(g) Corporate bonds are not an eligible investment for a public funds investment pool.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1543** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2327**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2327** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WENTWORTH
RODRIGUEZ
ELTIFE
NICHOLS
HARRIS

On the part of the Senate

MCLENDON
RODRIGUEZ
FLETCHER
PICKETT

On the part of the House

The Conference Committee Report on **HB 2327** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 725**

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 725** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

FRASER

DEUELL

ELTIFE

WATSON

On the part of the Senate

CALLEGARI

HARDCASTLE

HOPSON

RITTER

On the part of the House

The Conference Committee Report on **HB 725** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 242**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas

May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 242** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR

WILLIAMS

OGDEN

On the part of the Senate

CRADDICK

ISAAC

COOK

MARTINEZ FISCHER

PARKER

On the part of the House

The Conference Committee Report on **HB 242** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 362**

Senator West submitted the following Conference Committee Report:

Austin, Texas

May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 362** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST
NICHOLS
WENTWORTH
PATRICK

SOLOMONS
BOHAC
DESHOTEL
GIDDINGS
ORR

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 362** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 23

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 23** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NELSON
DEUELL
HINOJOSA
SHAPIRO
WILLIAMS

ZERWAS
J. DAVIS
V. GONZALES
HOPSON
PITTS

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to the administration of and efficiency, cost-saving, fraud prevention, and funding measures for certain health and human services and health benefits programs, including the medical assistance and child health plan programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SEXUAL ASSAULT PROGRAM FUND; FEE IMPOSED ON CERTAIN SEXUALLY ORIENTED BUSINESSES. (a) Section 102.054, Business & Commerce Code, is amended to read as follows:

Sec. 102.054. ALLOCATION OF ~~[CERTAIN]~~ REVENUE FOR SEXUAL ASSAULT PROGRAMS. The comptroller shall deposit the amount ~~[first \$25 million]~~ received from the fee imposed under this subchapter ~~[in a state fiscal biennium]~~ to the credit of the sexual assault program fund.

(b) Section 420.008, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The legislature may appropriate money deposited to the credit of the fund only to:

(1) the attorney general, for:

(A) sexual violence awareness and prevention campaigns;

(B) grants to faith-based groups, independent school districts, and community action organizations for programs for the prevention of sexual assault and programs for victims of human trafficking;

(C) grants for equipment for sexual assault nurse examiner programs, to support the preceptorship of future sexual assault nurse examiners, and for the continuing education of sexual assault nurse examiners;

(D) grants to increase the level of sexual assault services in this state;

(E) grants to support victim assistance coordinators;

(F) grants to support technology in rape crisis centers;

(G) grants to and contracts with a statewide nonprofit organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986, having as a primary purpose ending sexual violence in this state, for programs for the prevention of sexual violence, outreach programs, and technical assistance to and support of youth and rape crisis centers working to prevent sexual violence; ~~[and]~~

(H) grants to regional nonprofit providers of civil legal services to provide legal assistance for sexual assault victims;

(I) grants to health science centers and related nonprofit entities exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code, for research relating to the prevention and mitigation of sexual assault; and

(J) Internet Crimes Against Children Task Force locations in this state recognized by the United States Department of Justice;

(2) the Department of State Health Services, to measure the prevalence of sexual assault in this state and for grants to support programs assisting victims of human trafficking;

(3) the Institute on Domestic Violence and Sexual Assault at The University of Texas at Austin, to conduct research on all aspects of sexual assault and domestic violence;

(4) Texas State University, for training and technical assistance to independent school districts for campus safety;

(5) the office of the governor, for grants to support sexual assault and human trafficking prosecution projects;

(6) the Department of Public Safety, to support sexual assault training for commissioned officers;

(7) the comptroller's judiciary section, for increasing the capacity of the sex offender civil commitment program;

(8) the Texas Department of Criminal Justice:

(A) for pilot projects for monitoring sex offenders on parole; and

(B) for increasing the number of adult incarcerated sex offenders receiving treatment;

(9) the Texas Youth Commission, for increasing the number of incarcerated juvenile sex offenders receiving treatment;

(10) the comptroller, for the administration of the fee imposed on sexually oriented businesses under Section 102.052, Business & Commerce Code; ~~and~~

(11) the supreme court, to be transferred to the Texas Equal Access to Justice Foundation, or a similar entity, to provide victim-related legal services to sexual assault victims, including legal assistance with protective orders, relocation-related matters, victim compensation, and actions to secure privacy protections available to victims under law; and

(12) the Department of Family and Protective Services for:

(A) programs related to sexual assault prevention and intervention; and

(B) research relating to how the department can effectively address the prevention of sexual assault.

(d) A board, commission, department, office, or other agency in the executive or judicial branch of state government to which money is appropriated from the sexual assault program fund under this section shall, not later than December 1 of each even-numbered year, provide to the Legislative Budget Board a report stating, for the preceding fiscal biennium:

(1) the amount appropriated to the entity under this section;

(2) the purposes for which the money was used; and

(3) any results of a program or research funded under this section.

(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. 1751), Acts of the 80th Legislature, Regular Session, 2007.

SECTION 2. OBJECTIVE ASSESSMENT PROCESSES FOR CERTAIN MEDICAID SERVICES. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02417, 531.024171, and 531.024172 to read as follows:

Sec. 531.02417. MEDICAID NURSING SERVICES ASSESSMENTS. (a) In this section, "acute nursing services" means home health skilled nursing services, home health aide services, and private duty nursing services.

(b) If cost-effective, the commission shall develop an objective assessment process for use in assessing a Medicaid recipient's needs for acute nursing services. If the commission develops an objective assessment process under this section, the commission shall require that:

(1) the assessment be conducted:

(A) by a state employee or contractor who is not the person who will deliver any necessary services to the recipient and is not affiliated with the person who will deliver those services; and

(B) in a timely manner so as to protect the health and safety of the recipient by avoiding unnecessary delays in service delivery; and

(2) the process include:

(A) an assessment of specified criteria and documentation of the assessment results on a standard form;

(B) an assessment of whether the recipient should be referred for additional assessments regarding the recipient's needs for therapy services, as defined by Section 531.024171, attendant care services, and durable medical equipment; and

(C) completion by the person conducting the assessment of any documents related to obtaining prior authorization for necessary nursing services.

(c) If the commission develops the objective assessment process under Subsection (b), the commission shall:

(1) implement the process within the Medicaid fee-for-service model and the primary care case management Medicaid managed care model; and

(2) take necessary actions, including modifying contracts with managed care organizations under Chapter 533 to the extent allowed by law, to implement the process within the STAR and STAR + PLUS Medicaid managed care programs.

(d) An assessment under Subsection (b)(2)(B) of whether a recipient should be referred for additional therapy services shall be waived if the recipient's need for therapy services has been established by a recommendation from a therapist providing care prior to discharge of the recipient from a licensed hospital or nursing home. The assessment may not be waived if the recommendation is made by a therapist who will deliver any services to the recipient or is affiliated with a person who will deliver those services when the recipient is discharged from the licensed hospital or nursing home.

(e) The executive commissioner shall adopt rules providing for a process by which a provider of acute nursing services who disagrees with the results of the assessment conducted under Subsection (b) may request and obtain a review of those results.

Sec. 531.024171. THERAPY SERVICES ASSESSMENTS. (a) In this section, "therapy services" includes occupational, physical, and speech therapy services.

(b) After implementing the objective assessment process for acute nursing services in accordance with Section 531.02417, the commission shall consider whether implementing age- and diagnosis-appropriate objective assessment processes for assessing the needs of a Medicaid recipient for therapy services would be feasible and beneficial.

(c) If the commission determines that implementing age- and diagnosis-appropriate processes with respect to one or more types of therapy services is feasible and would be beneficial, the commission may implement the processes within:

- (1) the Medicaid fee-for-service model;
- (2) the primary care case management Medicaid managed care model; and
- (3) the STAR and STAR + PLUS Medicaid managed care programs.

(d) An objective assessment process implemented under this section must include a process that allows a provider of therapy services to request and obtain a review of the results of an assessment conducted as provided by this section that is comparable to the process implemented under rules adopted under Section 531.02417(e).

Sec. 531.024172. ELECTRONIC VISIT VERIFICATION SYSTEM. (a) In this section, "acute nursing services" has the meaning assigned by Section 531.02417.

(b) If it is cost-effective and feasible, the commission shall implement an electronic visit verification system to electronically verify and document, through a telephone or computer-based system, basic information relating to the delivery of Medicaid acute nursing services, including:

- (1) the provider's name;
- (2) the recipient's name; and
- (3) the date and time the provider begins and ends each service delivery

visit.

(b) Not later than September 1, 2012, the Health and Human Services Commission shall implement the electronic visit verification system required by Section 531.024172, Government Code, as added by this section, if the commission determines that implementation of that system is cost-effective and feasible.

SECTION 3. MEDICAID MANAGED CARE PROGRAM. (a) Subsection (e), Section 533.0025, Government Code, is amended to read as follows:

(e) The commission shall determine the most cost-effective alignment of managed care service delivery areas. The commissioner may consider the number of lives impacted, the usual source of health care services for residents in an area, and other factors that impact the delivery of health care services in the area. [Notwithstanding Subsection (b)(1), the commission may not provide medical assistance using a health maintenance organization in Cameron County, Hidalgo County, or Maverick County.]

(b) Subchapter A, Chapter 533, Government Code, is amended by adding Sections 533.0027, 533.0028, and 533.0029 to read as follows:

Sec. 533.0027. PROCEDURES TO ENSURE CERTAIN RECIPIENTS ARE ENROLLED IN SAME MANAGED CARE PLAN. The commission shall ensure that all recipients who are children and who reside in the same household may, at the family's election, be enrolled in the same managed care plan.

Sec. 533.0028. EVALUATION OF CERTAIN STAR + PLUS MEDICAID MANAGED CARE PROGRAM SERVICES. The external quality review organization shall periodically conduct studies and surveys to assess the quality of care and satisfaction with health care services provided to enrollees in the STAR + PLUS Medicaid managed care program who are eligible to receive health care benefits under both the Medicaid and Medicare programs.

Sec. 533.0029. PROMOTION AND PRINCIPLES OF PATIENT-CENTERED MEDICAL AND HEALTH HOMES FOR RECIPIENTS. (a) For purposes of this section:

(1) "Patient-centered health home" means a health care relationship:

(A) between a primary health care provider, other than a physician, and a child or adult patient in which the provider:

(i) provides comprehensive primary care to the patient; and

(ii) facilitates partnerships between the provider, the patient, physicians and other health care providers, including acute care providers, and, when appropriate, the patient's family; and

(B) that encompasses the following primary principles:

(i) the patient has an ongoing relationship with the provider, and the provider is the first contact for the patient and provides continuous and comprehensive care to the patient;

(ii) the provider coordinates a team of individuals at the practice level who are collectively responsible for the ongoing care of the patient;

(iii) the provider is responsible for providing all of the care the patient needs or for coordinating with physicians or other qualified providers to provide care to the patient throughout the patient's life, including preventive care, acute care, chronic care, and end-of-life care;

(iv) the patient's care is coordinated across health care facilities and the patient's community and is facilitated by registries, information technology, and health information exchange systems to ensure that the patient receives care when and where the patient wants and needs the care and in a culturally and linguistically appropriate manner; and

(v) quality and safe care is provided.

(2) "Patient-centered medical home" means a medical relationship:

(A) between a primary care physician and a child or adult patient in which the physician:

(i) provides comprehensive primary care to the patient; and

(ii) facilitates partnerships between the physician, the patient, acute care and other care providers, and, when appropriate, the patient's family; and

(B) that encompasses the following primary principles:

(i) the patient has an ongoing relationship with the physician, who is trained to be the first contact for the patient and to provide continuous and comprehensive care to the patient;

(ii) the physician leads a team of individuals at the practice level who are collectively responsible for the ongoing care of the patient;

(iii) the physician is responsible for providing all of the care the patient needs or for coordinating with other qualified providers to provide care to the patient throughout the patient's life, including preventive care, acute care, chronic care, and end-of-life care;

(iv) the patient's care is coordinated across health care facilities and the patient's community and is facilitated by registries, information technology, and health information exchange systems to ensure that the patient receives care when and where the patient wants and needs the care and in a culturally and linguistically appropriate manner; and

(v) quality and safe care is provided.

(b) The commission shall, to the extent possible, work to ensure that managed care organizations:

(1) promote the development of patient-centered medical or health homes for recipients; and

(2) provide payment incentives for providers that meet the requirements of a patient-centered medical or health home.

(c) Section 533.003, Government Code, is amended to read as follows:

Sec. 533.003. CONSIDERATIONS IN AWARDING CONTRACTS. In awarding contracts to managed care organizations, the commission shall:

(1) give preference to organizations that have significant participation in the organization's provider network from each health care provider in the region who has traditionally provided care to Medicaid and charity care patients;

(2) give extra consideration to organizations that agree to assure continuity of care for at least three months beyond the period of Medicaid eligibility for recipients;

(3) consider the need to use different managed care plans to meet the needs of different populations; ~~and~~

(4) consider the ability of organizations to process Medicaid claims electronically; and

(5) in the initial implementation of managed care in the South Texas service region, give extra consideration to an organization that either:

(A) is locally owned, managed, and operated, if one exists; or

(B) is in compliance with the requirements of Section 533.004.

(6) The commission when considering approval of a subcontract between a managed care organization and pharmacy benefit manager to provide prescription drug benefits in the Medicaid program shall review and consider whether the pharmacy benefit manager in the preceding three years has been convicted of making a material misrepresentation, an act of fraud, a violation of state or federal law or has been adjudicated to have committed a breach of contract or has been assessed a penalty or fine in the amount of \$500,000 or more in a state or federal administrative proceeding.

(d) Section 533.005, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A contract between a managed care organization and the commission for the organization to provide health care services to recipients must contain:

(1) procedures to ensure accountability to the state for the provision of health care services, including procedures for financial reporting, quality assurance, utilization review, and assurance of contract and subcontract compliance;

(2) capitation rates that ensure the cost-effective provision of quality health care;

(3) a requirement that the managed care organization provide ready access to a person who assists recipients in resolving issues relating to enrollment, plan administration, education and training, access to services, and grievance procedures;

(4) a requirement that the managed care organization provide ready access to a person who assists providers in resolving issues relating to payment, plan administration, education and training, and grievance procedures;

(5) a requirement that the managed care organization provide information and referral about the availability of educational, social, and other community services that could benefit a recipient;

(6) procedures for recipient outreach and education;

(7) a requirement that the managed care organization make payment to a physician or provider for health care services rendered to a recipient under a managed care plan not later than the 45th day after the date a claim for payment is received with documentation reasonably necessary for the managed care organization to process the claim, or within a period, not to exceed 60 days, specified by a written agreement between the physician or provider and the managed care organization;

(8) a requirement that the commission, on the date of a recipient's enrollment in a managed care plan issued by the managed care organization, inform the organization of the recipient's Medicaid certification date;

(9) a requirement that the managed care organization comply with Section 533.006 as a condition of contract retention and renewal;

(10) a requirement that the managed care organization provide the information required by Section 533.012 and otherwise comply and cooperate with the commission's office of inspector general and the office of the attorney general;

(11) a requirement that the managed care organization's usages of out-of-network providers or groups of out-of-network providers may not exceed limits for those usages relating to total inpatient admissions, total outpatient services, and emergency room admissions determined by the commission;

(12) if the commission finds that a managed care organization has violated Subdivision (11), a requirement that the managed care organization reimburse an out-of-network provider for health care services at a rate that is equal to the allowable rate for those services, as determined under Sections 32.028 and 32.0281, Human Resources Code;

(13) a requirement that the organization use advanced practice nurses in addition to physicians as primary care providers to increase the availability of primary care providers in the organization's provider network;

(14) a requirement that the managed care organization reimburse a federally qualified health center or rural health clinic for health care services provided to a recipient outside of regular business hours, including on a weekend day or holiday, at

a rate that is equal to the allowable rate for those services as determined under Section 32.028, Human Resources Code, if the recipient does not have a referral from the recipient's primary care physician; ~~and~~

(15) a requirement that the managed care organization develop, implement, and maintain a system for tracking and resolving all provider appeals related to claims payment, including a process that will require:

(A) a tracking mechanism to document the status and final disposition of each provider's claims payment appeal;

(B) the contracting with physicians who are not network providers and who are of the same or related specialty as the appealing physician to resolve claims disputes related to denial on the basis of medical necessity that remain unresolved subsequent to a provider appeal; and

(C) the determination of the physician resolving the dispute to be binding on the managed care organization and provider;

(16) a requirement that a medical director who is authorized to make medical necessity determinations is available to the region where the managed care organization provides health care services;

(17) a requirement that the managed care organization ensure that medical director, patient care coordinators, and provider and recipient support services personnel are located in the South Texas service region, if the managed care organization provides a managed care plan in that region;

(18) a requirement that the managed care organization provide special programs and materials for recipients with limited English proficiency or low literacy skills;

(19) a requirement that the managed care organization develop and establish a process for responding to provider appeals in the region where the organization provides health care services;

(20) a requirement that the managed care organization develop and submit to the commission, before the organization begins to provide health care services to recipients, a comprehensive plan that describes how the organization's provider network will provide recipients sufficient access to:

(A) preventive care;

(B) primary care;

(C) specialty care;

(D) after-hours urgent care; and

(E) chronic care;

(21) a requirement that the managed care organization demonstrate to the commission, before the organization begins to provide health care services to recipients, that:

(A) the organization's provider network has the capacity to serve the number of recipients expected to enroll in a managed care plan offered by the organization;

(B) the organization's provider network includes:

(i) a sufficient number of primary care providers;

(ii) a sufficient variety of provider types; and

(iii) providers located throughout the region where the organization will provide health care services; and

(C) health care services will be accessible to recipients through the organization's provider network to a comparable extent that health care services would be available to recipients under a fee-for-service or primary care case management model of Medicaid managed care;

(22) a requirement that the managed care organization develop a monitoring program for measuring the quality of the health care services provided by the organization's provider network that:

(A) incorporates the National Committee for Quality Assurance's Healthcare Effectiveness Data and Information Set (HEDIS) measures;

(B) focuses on measuring outcomes; and

(C) includes the collection and analysis of clinical data relating to prenatal care, preventive care, mental health care, and the treatment of acute and chronic health conditions and substance abuse;

(23) subject to Subsection (a-1), a requirement that the managed care organization develop, implement, and maintain an outpatient pharmacy benefit plan for its enrolled recipients:

(A) that exclusively employs the vendor drug program formulary and preserves the state's ability to reduce waste, fraud, and abuse under the Medicaid program;

(B) that adheres to the applicable preferred drug list adopted by the commission under Section 531.072;

(C) that includes the prior authorization procedures and requirements prescribed by or implemented under Sections 531.073(b), (c), and (g) for the vendor drug program;

(D) for purposes of which the managed care organization:

(i) may not negotiate or collect rebates associated with pharmacy products on the vendor drug program formulary; and

(ii) may not receive drug rebate or pricing information that is confidential under Section 531.071;

(E) that complies with the prohibition under Section 531.089;

(F) under which the managed care organization may not prohibit, limit, or interfere with a recipient's selection of a pharmacy or pharmacist of the recipient's choice for the provision of pharmaceutical services under the plan through the imposition of different copayments;

(G) that allows the managed care organization or any subcontracted pharmacy benefit manager to contract with a pharmacist or pharmacy providers separately for specialty pharmacy services, except that:

(i) the managed care organization and pharmacy benefit manager are prohibited from allowing exclusive contracts with a specialty pharmacy owned wholly or partly by the pharmacy benefit manager responsible for the administration of the pharmacy benefit program; and

(ii) the managed care organization and pharmacy benefit manager must adopt policies and procedures for reclassifying prescription drugs from retail to specialty drugs, and those policies and procedures must be consistent with rules adopted by the executive commissioner and include notice to network pharmacy providers from the managed care organization;

(H) under which the managed care organization may not prevent a pharmacy or pharmacist from participating as a provider if the pharmacy or pharmacist agrees to comply with the financial terms and conditions of the contract as well as other reasonable administrative and professional terms and conditions of the contract;

(I) under which the managed care organization may include mail-order pharmacies in its networks, but may not require enrolled recipients to use those pharmacies, and may not charge an enrolled recipient who opts to use this service a fee, including postage and handling fees; and

(J) under which the managed care organization or pharmacy benefit manager must pay claims in accordance with Section 843.339, Insurance Code; and

(24) a requirement that the managed care organization and any entity with which the managed care organization contracts for the performance of services under a managed care plan disclose, at no cost, to the commission and, on request, the office of the attorney general all discounts, incentives, rebates, fees, free goods, bundling arrangements, and other agreements affecting the net cost of goods or services provided under the plan.

(a-1) The requirements imposed by Subsections (a)(23)(A), (B), and (C) do not apply, and may not be enforced, on and after August 31, 2013.

(e) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0066 to read as follows:

Sec. 533.0066. PROVIDER INCENTIVES. The commission shall, to the extent possible, work to ensure that managed care organizations provide payment incentives to health care providers in the organizations' networks whose performance in promoting recipients' use of preventive services exceeds minimum established standards.

(f) Section 533.0071, Government Code, is amended to read as follows:

Sec. 533.0071. ADMINISTRATION OF CONTRACTS. The commission shall make every effort to improve the administration of contracts with managed care organizations. To improve the administration of these contracts, the commission shall:

(1) ensure that the commission has appropriate expertise and qualified staff to effectively manage contracts with managed care organizations under the Medicaid managed care program;

(2) evaluate options for Medicaid payment recovery from managed care organizations if the enrollee dies or is incarcerated or if an enrollee is enrolled in more than one state program or is covered by another liable third party insurer;

(3) maximize Medicaid payment recovery options by contracting with private vendors to assist in the recovery of capitation payments, payments from other liable third parties, and other payments made to managed care organizations with respect to enrollees who leave the managed care program;

(4) decrease the administrative burdens of managed care for the state, the managed care organizations, and the providers under managed care networks to the extent that those changes are compatible with state law and existing Medicaid managed care contracts, including decreasing those burdens by:

(A) where possible, decreasing the duplication of administrative reporting requirements for the managed care organizations, such as requirements for the submission of encounter data, quality reports, historically underutilized business reports, and claims payment summary reports;

(B) allowing managed care organizations to provide updated address information directly to the commission for correction in the state system;

(C) promoting consistency and uniformity among managed care organization policies, including policies relating to the preauthorization process, lengths of hospital stays, filing deadlines, levels of care, and case management services; ~~and~~

(D) reviewing the appropriateness of primary care case management requirements in the admission and clinical criteria process, such as requirements relating to including a separate cover sheet for all communications, submitting handwritten communications instead of electronic or typed review processes, and admitting patients listed on separate notifications; and

(E) providing a single portal through which providers in any managed care organization's provider network may submit claims; and

(5) reserve the right to amend the managed care organization's process for resolving provider appeals of denials based on medical necessity to include an independent review process established by the commission for final determination of these disputes.

(g) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0073 to read as follows:

Sec. 533.0073. MEDICAL DIRECTOR QUALIFICATIONS. A person who serves as a medical director for a managed care plan must be a physician licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(h) Subsections (a) and (c), Section 533.0076, Government Code, are amended to read as follows:

(a) Except as provided by Subsections (b) and (c), and to the extent permitted by federal law, ~~[the commission may prohibit]~~ a recipient enrolled ~~[from disenrolling]~~ in a managed care plan under this chapter may not disenroll from that plan and enroll ~~[enrolling]~~ in another managed care plan during the 12-month period after the date the recipient initially enrolls in a plan.

(c) The commission shall allow a recipient who is enrolled in a managed care plan under this chapter to disenroll from ~~[in]~~ that plan and enroll in another managed care plan:

(1) at any time for cause in accordance with federal law; and

(2) once for any reason after the periods described by Subsections (a) and

(b).

(i) Subsections (a), (b), (c), and (e), Section 533.012, Government Code, are amended to read as follows:

(a) Each managed care organization contracting with the commission under this chapter shall submit the following, at no cost, to the commission and, on request, the office of the attorney general:

(1) a description of any financial or other business relationship between the organization and any subcontractor providing health care services under the contract;

(2) a copy of each type of contract between the organization and a subcontractor relating to the delivery of or payment for health care services;

(3) a description of the fraud control program used by any subcontractor that delivers health care services; and

(4) a description and breakdown of all funds paid to or by the managed care organization, including a health maintenance organization, primary care case management provider, pharmacy benefit manager, and [am] exclusive provider organization, necessary for the commission to determine the actual cost of administering the managed care plan.

(b) The information submitted under this section must be submitted in the form required by the commission or the office of the attorney general, as applicable, and be updated as required by the commission or the office of the attorney general, as applicable.

(c) The commission's office of investigations and enforcement or the office of the attorney general, as applicable, shall review the information submitted under this section as appropriate in the investigation of fraud in the Medicaid managed care program.

(e) Information submitted to the commission or the office of the attorney general, as applicable, under Subsection (a)(1) is confidential and not subject to disclosure under Chapter 552, Government Code.

(j) The heading to Section 32.046, Human Resources Code, is amended to read as follows:

Sec. 32.046. [~~VENDOR DRUG PROGRAM;~~] SANCTIONS AND PENALTIES RELATED TO THE PROVISION OF PHARMACY PRODUCTS.

(k) Subsection (a), Section 32.046, Human Resources Code, is amended to read as follows:

(a) The executive commissioner of the Health and Human Services Commission [department] shall adopt rules governing sanctions and penalties that apply to a provider who participates in the vendor drug program or is enrolled as a network pharmacy provider of a managed care organization contracting with the commission under Chapter 533, Government Code, or its subcontractor and who submits an improper claim for reimbursement under the program.

(l) Subsection (d), Section 533.012, Government Code, is repealed.

(m) Not later than December 1, 2013, the Health and Human Services Commission shall submit a report to the legislature regarding the commission's work to ensure that Medicaid managed care organizations promote the development of patient-centered medical or health homes for recipients of medical assistance as required under Section 533.0029, Government Code, as added by this section.

(n) The Health and Human Services Commission shall, in a contract between the commission and a managed care organization under Chapter 533, Government Code, that is entered into or renewed on or after the effective date of this Act, include the provisions required by Subsection (a), Section 533.005, Government Code, as amended by this section.

(o) Section 533.0073, Government Code, as added by this section, applies only to a person hired or otherwise retained as the medical director of a Medicaid managed care plan on or after the effective date of this Act. A person hired or otherwise retained before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(p) Subsections (a) and (c), Section 533.0076, Government Code, as amended by this section, apply only to a request for disenrollment from a Medicaid managed care plan under Chapter 533, Government Code, made by a recipient on or after the effective date of this Act. A request made by a recipient before that date is governed by the law in effect on the date the request was made, and the former law is continued in effect for that purpose.

SECTION 4. ABOLISHING STATE KIDS INSURANCE PROGRAM.

(a) Section 62.101, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A child who is the dependent of an employee of an agency of this state and who meets the requirements of Subsection (a) may be eligible for health benefits coverage in accordance with 42 U.S.C. Section 1397jj(b)(6) and any other applicable law or regulations.

(b) Sections 1551.159 and 1551.312, Insurance Code, are repealed.

(c) The State Kids Insurance Program operated by the Employees Retirement System of Texas is abolished on the effective date of this Act. The Health and Human Services Commission shall:

(1) establish a process in cooperation with the Employees Retirement System of Texas to facilitate the enrollment of eligible children in the child health plan program established under Chapter 62, Health and Safety Code, on or before the date those children are scheduled to stop receiving dependent child coverage under the State Kids Insurance Program; and

(2) modify any applicable administrative procedures to ensure that children described by this subsection maintain continuous health benefits coverage while transitioning from enrollment in the State Kids Insurance Program to enrollment in the child health plan program.

SECTION 5. PREVENTION OF CRIMINAL OR FRAUDULENT CONDUCT BY CERTAIN FACILITIES, PROVIDERS, AND RECIPIENTS. (a) Subchapter B, Chapter 31, Human Resources Code, is amended by adding Section 31.0326 to read as follows:

Sec. 31.0326. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION. The Health and Human Services Commission shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the financial assistance program; and

(2) prevent duplicate participation in the program by a person.

(b) Chapter 33, Human Resources Code, is amended by adding Section 33.0231 to read as follows:

Sec. 33.0231. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION IN SNAP. The department shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the supplemental nutrition assistance program; and

(2) prevent duplicate participation in the program by a person.

(c) Section 531.109, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Absent an allegation of fraud, waste, or abuse, the commission may conduct an annual review of claims under this section only after the commission has completed the prior year's annual review of claims.

(d) Section 31.0325, Human Resources Code, is repealed.

SECTION 6. PROVISIONS RELATING TO CONVALESCENT AND NURSING HOMES. (a) Section 242.033, Health and Safety Code, is amended by amending Subsection (d) and adding Subsection (g) to read as follows:

(d) Except as provided by Subsection (f), a license is renewable every three [~~two~~] years after:

(1) an inspection, unless an inspection is not required as provided by Section 242.047;

(2) payment of the license fee; and

(3) department approval of the report filed every three [~~two~~] years by the licensee.

(g) The executive commissioner by rule shall adopt a system under which an appropriate number of licenses issued by the department under this chapter expire on staggered dates occurring in each three-year period. If the expiration date of a license changes as a result of this subsection, the department shall prorate the licensing fee relating to that license as appropriate.

(b) Subsection (e-1), Section 242.159, Health and Safety Code, is amended to read as follows:

(e-1) An institution is not required to comply with Subsections (a) and (e) until September 1, 2014 [~~2012~~]. This subsection expires January 1, 2015 [~~2013~~].

(c) The executive commissioner of the Health and Human Services Commission shall adopt the rules required under Section 242.033(g), Health and Safety Code, as added by this section, as soon as practicable after the effective date of this Act, but not later than December 1, 2012.

SECTION 7. STREAMLINING OF AND UTILIZATION MANAGEMENT IN MEDICAID LONG-TERM CARE WAIVER PROGRAMS. (a) Section 161.077, Human Resources Code, as added by Chapter 759 (S.B. 705), Acts of the 81st Legislature, Regular Session, 2009, is redesignated as Section 161.081, Human Resources Code, and amended to read as follows:

Sec. 161.081 [~~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, at a minimum, reviewing program recipients' levels of care and any plans of care for those recipients that exceed service level thresholds established in the applicable waiver program guidelines.

SECTION 8. ELECTRONIC VISIT VERIFICATION SYSTEM FOR MEDICAID PROGRAM. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.086 to read as follows:

Sec. 161.086. ELECTRONIC VISIT VERIFICATION SYSTEM. If it is cost-effective, the department shall implement an electronic visit verification system under appropriate programs administered by the department under the Medicaid program that allows providers to electronically verify and document basic information relating to the delivery of services, including:

- (1) the provider's name;
- (2) the recipient's name;
- (3) the date and time the provider begins and ends the delivery of services;

and

- (4) the location of service delivery.

SECTION 9. REPORT ON MEDICAID LONG-TERM CARE SERVICES.

(a) In this section:

(1) "Long-term care services" has the meaning assigned by Section 22.0011, Human Resources Code.

(2) "Medical assistance program" means the medical assistance program administered under Chapter 32, Human Resources Code.

(3) "Nursing facility" means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code.

(b) The Health and Human Services Commission, in cooperation with the Department of Aging and Disability Services, shall prepare a written report regarding individuals who receive long-term care services in nursing facilities under the medical assistance program. The report must be based on existing data and information, and must use that data and information to identify:

(1) the reasons medical assistance recipients of long-term care services are placed in nursing facilities as opposed to being provided long-term care services in home or community-based settings;

(2) the types of medical assistance services recipients residing in nursing facilities typically receive and where and from whom those services are typically provided;

(3) the community-based services and supports available under a Medicaid state plan program, including the primary home care and community attendant services programs, or under a medical assistance waiver granted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) for which recipients residing in nursing facilities may be eligible; and

(4) ways to expedite recipients' access to community-based services and supports identified under Subdivision (3) of this subsection for which interest lists or other waiting lists exist.

(c) Not later than September 1, 2012, the Health and Human Services Commission shall submit the report described by Subsection (b) of this section, together with the commission's recommendations, to the governor, the Legislative Budget Board, the Senate Committee on Finance, the Senate Committee on Health and Human Services, the House Appropriations Committee, and the House Human

Services Committee. The recommendations must address options for expediting access to community-based services and supports by recipients described by Subsection (b)(3) of this section.

SECTION 10. PROVISIONS RELATING TO ASSISTED LIVING FACILITIES. (a) Subdivision (1), Section 247.002, Health and Safety Code, is amended to read as follows:

(1) "Assisted living facility" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) provides:

(i) personal care services; or

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication; ~~and~~

(C) may provide assistance with or supervision of the administration of medication; and

(D) may provide skilled nursing services for a limited duration or to facilitate the provision of hospice services.

(b) Section 247.004, Health and Safety Code, is amended to read as follows:

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

(1) a boarding home facility as defined by Section 254.001, as added by Chapter 1106 (H.B. 216), Acts of the 81st Legislature, Regular Session, 2009;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that:

(A) is funded in whole or in part by the department and that is monitored by the department or its designated local mental retardation authority in accordance with standards set by the department; or

(B) is funded in whole or in part by the Department of State Health Services and that is monitored by that department, or by its designated local mental health authority in accordance with standards set by the department.

(c) Subsection (b), Section 247.067, Health and Safety Code, is amended to read as follows:

(b) Unless otherwise prohibited by law, a [A] health care professional may be employed by an assisted living facility to provide at the facility to the facility's residents services that are authorized by this chapter and that are within the professional's scope of practice [to a resident of an assisted living facility at the

facility]. This subsection does not authorize a facility to provide ongoing services comparable to the services available in an institution licensed under Chapter 242. A health care professional providing services under this subsection shall maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

SECTION 11. PHYSICIAN INCENTIVE PROGRAMS. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.086 and 531.0861 to read as follows:

Sec. 531.086. STUDY REGARDING PHYSICIAN INCENTIVE PROGRAMS TO REDUCE HOSPITAL EMERGENCY ROOM USE FOR NON-EMERGENT CONDITIONS. (a) The commission shall conduct a study to evaluate physician incentive programs that attempt to reduce hospital emergency room use for non-emergent conditions by recipients under the medical assistance program. Each physician incentive program evaluated in the study must:

(1) be administered by a health maintenance organization participating in the STAR or STAR + PLUS Medicaid managed care program; and

(2) provide incentives to primary care providers who attempt to reduce emergency room use for non-emergent conditions by recipients.

(b) The study conducted under Subsection (a) must evaluate:

(1) the cost-effectiveness of each component included in a physician incentive program; and

(2) any change in statute required to implement each component within the Medicaid fee-for-service payment model.

(c) Not later than August 31, 2013, the executive commissioner shall submit to the governor and the Legislative Budget Board a report summarizing the findings of the study required by this section.

(d) This section expires September 1, 2014.

Sec. 531.0861. PHYSICIAN INCENTIVE PROGRAM TO REDUCE HOSPITAL EMERGENCY ROOM USE FOR NON-EMERGENT CONDITIONS.

(a) If cost-effective, the executive commissioner by rule shall establish a physician incentive program designed to reduce the use of hospital emergency room services for non-emergent conditions by recipients under the medical assistance program.

(b) In establishing the physician incentive program under Subsection (a), the executive commissioner may include only the program components identified as cost-effective in the study conducted under Section 531.086.

(c) If the physician incentive program includes the payment of an enhanced reimbursement rate for routine after-hours appointments, the executive commissioner shall implement controls to ensure that the after-hours services billed are actually being provided outside of normal business hours.

(b) Section 32.0641, Human Resources Code, is amended to read as follows:

Sec. 32.0641. RECIPIENT ACCOUNTABILITY PROVISIONS; COST-SHARING REQUIREMENT TO IMPROVE APPROPRIATE UTILIZATION OF [COST SHARING FOR CERTAIN HIGH COST MEDICAL] SERVICES.

(a) To [~~If the department determines that it is feasible and cost-effective, and to~~] the extent permitted under and in a manner that is consistent with Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.) and any other applicable law or

regulation or under a federal waiver or other authorization, the executive commissioner of the Health and Human Services Commission shall adopt, after consulting with the Medicaid and CHIP Quality-Based Payment Advisory Committee established under Section 536.002, Government Code, cost-sharing provisions that encourage personal accountability and appropriate utilization of health care services, including a cost-sharing provision applicable to ~~require~~ a recipient who chooses to receive a nonemergency ~~[a high-cost]~~ medical service ~~[provided]~~ through a hospital emergency room ~~[to pay a copayment, premium payment, or other cost sharing payment for the high-cost medical service if:~~

~~[(1) the hospital from which the recipient seeks service:~~

~~[(A) performs an appropriate medical screening and determines that the recipient does not have a condition requiring emergency medical services;~~

~~[(B) informs the recipient:~~

~~[(i) that the recipient does not have a condition requiring emergency medical services;~~

~~[(ii) that, if the hospital provides the nonemergency service, the hospital may require payment of a copayment, premium payment, or other cost-sharing payment by the recipient in advance; and~~

~~[(iii) of the name and address of a nonemergency Medicaid provider who can provide the appropriate medical service without imposing a cost-sharing payment; and~~

~~[(C) offers to provide the recipient with a referral to the nonemergency provider to facilitate scheduling of the service; and~~

~~[(2) after receiving the information and assistance described by Subdivision (1) from the hospital, the recipient chooses to obtain emergency medical services despite having access to medically acceptable, lower-cost medical services].~~

(b) The department may not seek a federal waiver or other authorization under this section ~~[Subsection (a)]~~ that would:

(1) prevent a Medicaid recipient who has a condition requiring emergency medical services from receiving care through a hospital emergency room; or

(2) waive any provision under Section 1867, Social Security Act (42 U.S.C. Section 1395dd).

~~[(e) If the executive commissioner of the Health and Human Services Commission adopts a copayment or other cost-sharing payment under Subsection (a), the commission may not reduce hospital payments to reflect the potential receipt of a copayment or other payment from a recipient receiving medical services provided through a hospital emergency room.]~~

SECTION 12. BILLING COORDINATION AND INFORMATION COLLECTION. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.024131 to read as follows:

Sec. 531.024131. EXPANSION OF BILLING COORDINATION AND INFORMATION COLLECTION ACTIVITIES. (a) If cost-effective, the commission may:

(1) contract to expand all or part of the billing coordination system established under Section 531.02413 to process claims for services provided through other benefits programs administered by the commission or a health and human services agency;

(2) expand any other billing coordination tools and resources used to process claims for health care services provided through the Medicaid program to process claims for services provided through other benefits programs administered by the commission or a health and human services agency; and

(3) expand the scope of persons about whom information is collected under Section 32.042, Human Resources Code, to include recipients of services provided through other benefits programs administered by the commission or a health and human services agency.

(b) Notwithstanding any other state law, each health and human services agency shall provide the commission with any information necessary to allow the commission or the commission's designee to perform the billing coordination and information collection activities authorized by this section.

SECTION 13. TEXAS HEALTH OPPORTUNITY POOL TRUST FUND. (a) Subsections (b), (c), and (d), Section 531.502, Government Code, are amended to read as follows:

(b) The executive commissioner may include the following federal money in the waiver:

(1) ~~all~~ money provided under the disproportionate share hospitals or ~~and~~ upper payment limit supplemental payment program, or both programs;

(2) money provided by the federal government in lieu of some or all of the payments under one or both of those programs;

(3) any combination of funds authorized to be pooled by Subdivisions (1) and (2); and

(4) any other money available for that purpose, including:

(A) federal money and money identified under Subsection (c);

(B) gifts, grants, or donations for that purpose;

(C) local funds received by this state through intergovernmental transfers; and

(D) if approved in the waiver, federal money obtained through the use of certified public expenditures.

(c) The commission shall seek to optimize federal funding by:

(1) identifying health care related state and local funds and program expenditures that, before September 1, 2011 ~~[2007]~~, are not being matched with federal money; and

(2) exploring the feasibility of:

(A) certifying or otherwise using those funds and expenditures as state expenditures for which this state may receive federal matching money; and

(B) depositing federal matching money received as provided by Paragraph (A) with other federal money deposited as provided by Section 531.504, or substituting that federal matching money for federal money that otherwise would be

received under the disproportionate share hospitals and upper payment limit supplemental payment programs as a match for local funds received by this state through intergovernmental transfers.

(d) The terms of a waiver approved under this section must:

(1) include safeguards to ensure that the total amount of federal money provided under the disproportionate share hospitals or ~~and~~ upper payment limit supplemental payment program ~~programs~~ that is deposited as provided by Section 531.504 is, for a particular state fiscal year, at least equal to the greater of the annualized amount provided to this state under those supplemental payment programs during state fiscal year 2011 ~~2007~~, excluding amounts provided during that state fiscal year that are retroactive payments, or the state fiscal years during which the waiver is in effect; and

(2) allow for the development by this state of a methodology for allocating money in the fund to:

(A) be used to supplement Medicaid hospital reimbursements under a waiver that includes terms that are consistent with, or that produce revenues consistent with, disproportionate share hospital and upper payment limit principles ~~[offset, in part, the uncompensated health care costs incurred by hospitals];~~

(B) reduce the number of persons in this state who do not have health benefits coverage; and

(C) maintain and enhance the community public health infrastructure provided by hospitals.

(b) Section 531.504, Government Code, is amended to read as follows:

Sec. 531.504. DEPOSITS TO FUND. (a) The comptroller shall deposit in the fund:

(1) ~~all~~ federal money provided to this state under the disproportionate share hospitals supplemental payment program or ~~and~~ the hospital upper payment limit supplemental payment program, or both, other than money provided under those programs to state-owned and operated hospitals, and all other non-supplemental payment program federal money provided to this state that is included in the waiver authorized by Section 531.502; and

(2) state money appropriated to the fund.

(b) The commission and comptroller may accept gifts, grants, and donations from any source, and receive intergovernmental transfers, for purposes consistent with this subchapter and the terms of the waiver. The comptroller shall deposit a gift, grant, or donation made for those purposes in the fund. Any intergovernmental transfer received, including associated federal matching funds, shall be used, if feasible, for the purposes intended by the transferring entity and in accordance with the terms of the waiver.

(c) Section 531.508, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Money from the fund may not be used to finance the construction, improvement, or renovation of a building or land unless the construction, improvement, or renovation is approved by the commission, according to rules adopted by the executive commissioner for that purpose.

(d) Subsection (g), Section 531.502, Government Code, is repealed.

SECTION 14. QUALITY-BASED OUTCOME AND PAYMENT INITIATIVES. (a) Subtitle I, Title 4, Government Code, is amended by adding Chapter 536, and Section 531.913, Government Code, is transferred to Subchapter D, Chapter 536, Government Code, redesignated as Section 536.151, Government Code, and amended to read as follows:

CHAPTER 536. MEDICAID AND CHILD HEALTH PLAN PROGRAMS:

QUALITY-BASED OUTCOMES AND PAYMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 536.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Medicaid and CHIP Quality-Based Payment Advisory Committee established under Section 536.002.

(2) "Alternative payment system" includes:

(A) a global payment system;

(B) an episode-based bundled payment system; and

(C) a blended payment system.

(3) "Blended payment system" means a system for compensating a physician or other health care provider that includes at least one or more features of a global payment system and an episode-based bundled payment system, but that may also include a system under which a portion of the compensation paid to a physician or other health care provider is based on a fee-for-service payment arrangement.

(4) "Child health plan program," "commission," "executive commissioner," and "health and human services agencies" have the meanings assigned by Section 531.001.

(5) "Episode-based bundled payment system" means a system for compensating a physician or other health care provider for arranging for or providing health care services to child health plan program enrollees or Medicaid recipients that is based on a flat payment for all services provided in connection with a single episode of medical care.

(6) "Exclusive provider benefit plan" means a managed care plan subject to 28 T.A.C. Part 1, Chapter 3, Subchapter KK.

(7) "Freestanding emergency medical care facility" means a facility licensed under Chapter 254, Health and Safety Code.

(8) "Global payment system" means a system for compensating a physician or other health care provider for arranging for or providing a defined set of covered health care services to child health plan program enrollees or Medicaid recipients for a specified period that is based on a predetermined payment per enrollee or recipient, as applicable, for the specified period, without regard to the quantity of services actually provided.

(9) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed, certified, registered, or chartered by this state to provide health care. The term includes an employee, independent contractor, or agent of a health care provider acting in the course and scope of the employment or contractual relationship.

(10) "Hospital" means a public or private institution licensed under Chapter 241 or 577, Health and Safety Code, including a general or special hospital as defined by Section 241.003, Health and Safety Code.

(11) "Managed care organization" means a person that is authorized or otherwise permitted by law to arrange for or provide a managed care plan. The term includes health maintenance organizations and exclusive provider organizations.

(12) "Managed care plan" means a plan, including an exclusive provider benefit plan, under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.

(13) "Medicaid program" means the medical assistance program established under Chapter 32, Human Resources Code.

(14) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(15) "Potentially preventable admission" means an admission of a person to a hospital or long-term care facility that may have reasonably been prevented with adequate access to ambulatory care or health care coordination.

(16) "Potentially preventable ancillary service" means a health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not be reasonably necessary for the provision of quality health care or treatment.

(17) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(18) "Potentially preventable event" means a potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events.

(19) "Potentially preventable emergency room visit" means treatment of a person in a hospital emergency room or freestanding emergency medical care facility for a condition that may not require emergency medical attention because the condition could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

(20) "Potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided;

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(D) another condition or procedure of a similar nature, as determined by the executive commissioner after consulting with the advisory committee.

(21) "Quality-based payment system" means a system for compensating a physician or other health care provider, including an alternative payment system, that provides incentives to the physician or other health care provider for providing high-quality, cost-effective care and bases some portion of the payment made to the physician or other health care provider on quality of care outcomes, which may include the extent to which the physician or other health care provider reduces potentially preventable events.

Sec. 536.002. MEDICAID AND CHIP QUALITY-BASED PAYMENT ADVISORY COMMITTEE. (a) The Medicaid and CHIP Quality-Based Payment Advisory Committee is established to advise the commission on establishing, for purposes of the child health plan and Medicaid programs administered by the commission or a health and human services agency:

(1) reimbursement systems used to compensate physicians or other health care providers under those programs that reward the provision of high-quality, cost-effective health care and quality performance and quality of care outcomes with respect to health care services;

(2) standards and benchmarks for quality performance, quality of care outcomes, efficiency, and accountability by managed care organizations and physicians and other health care providers;

(3) programs and reimbursement policies that encourage high-quality, cost-effective health care delivery models that increase appropriate provider collaboration, promote wellness and prevention, and improve health outcomes; and

(4) outcome and process measures under Section 536.003.

(b) The executive commissioner shall appoint the members of the advisory committee. The committee must consist of physicians and other health care providers, representatives of health care facilities, representatives of managed care organizations, and other stakeholders interested in health care services provided in this state, including:

(1) at least one member who is a physician with clinical practice experience in obstetrics and gynecology;

(2) at least one member who is a physician with clinical practice experience in pediatrics;

(3) at least one member who is a physician with clinical practice experience in internal medicine or family medicine;

(4) at least one member who is a physician with clinical practice experience in geriatric medicine;

(5) at least one member who is or who represents a health care provider that primarily provides long-term care services;

(6) at least one member who is a consumer representative; and

(7) at least one member who is a member of the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events who meets the qualifications prescribed by Section 98.052(a)(4), Health and Safety Code.

(c) The executive commissioner shall appoint the presiding officer of the advisory committee.

Sec. 536.003. DEVELOPMENT OF QUALITY-BASED OUTCOME AND PROCESS MEASURES. (a) The commission, in consultation with the advisory committee, shall develop quality-based outcome and process measures that promote the provision of efficient, quality health care and that can be used in the child health plan and Medicaid programs to implement quality-based payments for acute and long-term care services across all delivery models and payment systems, including fee-for-service and managed care payment systems. The commission, in developing outcome measures under this section, must consider measures addressing potentially preventable events.

(b) To the extent feasible, the commission shall develop outcome and process measures:

(1) consistently across all child health plan and Medicaid program delivery models and payment systems;

(2) in a manner that takes into account appropriate patient risk factors, including the burden of chronic illness on a patient and the severity of a patient's illness;

(3) that will have the greatest effect on improving quality of care and the efficient use of services; and

(4) that are similar to outcome and process measures used in the private sector, as appropriate.

(c) The commission shall, to the extent feasible, align outcome and process measures developed under this section with measures required or recommended under reporting guidelines established by the federal Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, or another federal agency.

(d) The executive commissioner by rule may require managed care organizations and physicians and other health care providers participating in the child health plan and Medicaid programs to report to the commission in a format specified by the executive commissioner information necessary to develop outcome and process measures under this section.

(e) If the commission increases physician and other health care provider reimbursement rates under the child health plan or Medicaid program as a result of an increase in the amounts appropriated for the programs for a state fiscal biennium as compared to the preceding state fiscal biennium, the commission shall, to the extent permitted under federal law and to the extent otherwise possible considering other relevant factors, correlate the increased reimbursement rates with the quality-based outcome and process measures developed under this section.

Sec. 536.004. DEVELOPMENT OF QUALITY-BASED PAYMENT SYSTEMS. (a) Using quality-based outcome and process measures developed under Section 536.003 and subject to this section, the commission, after consulting with the advisory committee, shall develop quality-based payment systems for compensating a physician or other health care provider participating in the child health plan or Medicaid program that:

- (1) align payment incentives with high-quality, cost-effective health care;
- (2) reward the use of evidence-based best practices;
- (3) promote the coordination of health care;
- (4) encourage appropriate physician and other health care provider

collaboration;

- (5) promote effective health care delivery models; and

(6) take into account the specific needs of the child health plan program enrollee and Medicaid recipient populations.

(b) The commission shall develop quality-based payment systems in the manner specified by this chapter. To the extent necessary, the commission shall coordinate the timeline for the development and implementation of a payment system with the implementation of other initiatives such as the Medicaid Information Technology Architecture (MITA) initiative of the Center for Medicaid and State Operations, the ICD-10 code sets initiative, or the ongoing Enterprise Data Warehouse (EDW) planning process in order to maximize the receipt of federal funds or reduce any administrative burden.

(c) In developing quality-based payment systems under this chapter, the commission shall examine and consider implementing:

- (1) an alternative payment system;

(2) any existing performance-based payment system used under the Medicare program that meets the requirements of this chapter, modified as necessary to account for programmatic differences, if implementing the system would:

- (A) reduce unnecessary administrative burdens; and

(B) align quality-based payment incentives for physicians and other health care providers with the Medicare program; and

(3) alternative payment methodologies within the system that are used in the Medicare program, modified as necessary to account for programmatic differences, and that will achieve cost savings and improve quality of care in the child health plan and Medicaid programs.

(d) In developing quality-based payment systems under this chapter, the commission shall ensure that a managed care organization or physician or other health care provider will not be rewarded by the system for withholding or delaying the provision of medically necessary care.

(e) The commission may modify a quality-based payment system developed under this chapter to account for programmatic differences between the child health plan and Medicaid programs and delivery systems under those programs.

Sec. 536.005. CONVERSION OF PAYMENT METHODOLOGY. (a) To the extent possible, the commission shall convert hospital reimbursement systems under the child health plan and Medicaid programs to a diagnosis-related groups (DRG) methodology that will allow the commission to more accurately classify specific patient populations and account for severity of patient illness and mortality risk.

(b) Subsection (a) does not authorize the commission to direct a managed care organization to compensate physicians and other health care providers providing services under the organization's managed care plan based on a diagnosis-related groups (DRG) methodology.

Sec. 536.006. TRANSPARENCY. The commission and the advisory committee shall:

(1) ensure transparency in the development and establishment of:

(A) quality-based payment and reimbursement systems under Section 536.004 and Subchapters B, C, and D, including the development of outcome and process measures under Section 536.003; and

(B) quality-based payment initiatives under Subchapter E, including the development of quality of care and cost-efficiency benchmarks under Section 536.204(a) and efficiency performance standards under Section 536.204(b);

(2) develop guidelines establishing procedures for providing notice and information to, and receiving input from, managed care organizations, health care providers, including physicians and experts in the various medical specialty fields, and other stakeholders, as appropriate, for purposes of developing and establishing the quality-based payment and reimbursement systems and initiatives described under Subdivision (1); and

(3) in developing and establishing the quality-based payment and reimbursement systems and initiatives described under Subdivision (1), consider that as the performance of a managed care organization or physician or other health care provider improves with respect to an outcome or process measure, quality of care and cost-efficiency benchmark, or efficiency performance standard, as applicable, there will be a diminishing rate of improved performance over time.

Sec. 536.007. PERIODIC EVALUATION. (a) At least once each two-year period, the commission shall evaluate the outcomes and cost-effectiveness of any quality-based payment system or other payment initiative implemented under this chapter.

(b) The commission shall:

(1) present the results of its evaluation under Subsection (a) to the advisory committee for the committee's input and recommendations; and

(2) provide a process by which managed care organizations and physicians and other health care providers may comment and provide input into the committee's recommendations under Subdivision (1).

Sec. 536.008. ANNUAL REPORT. (a) The commission shall submit an annual report to the legislature regarding:

(1) the quality-based outcome and process measures developed under Section 536.003; and

(2) the progress of the implementation of quality-based payment systems and other payment initiatives implemented under this chapter.

(b) The commission shall report outcome and process measures under Subsection (a)(1) by health care service region and service delivery model.

[Sections 536.009-536.050 reserved for expansion]

SUBCHAPTER B. QUALITY-BASED PAYMENTS RELATING TO MANAGED CARE ORGANIZATIONS

Sec. 536.051. DEVELOPMENT OF QUALITY-BASED PREMIUM PAYMENTS; PERFORMANCE REPORTING. (a) Subject to Section 1903(m)(2)(A), Social Security Act (42 U.S.C. Section 1396b(m)(2)(A)), and other applicable federal law, the commission shall base a percentage of the premiums paid to a managed care organization participating in the child health plan or Medicaid program on the organization's performance with respect to outcome and process measures developed under Section 536.003, including outcome measures addressing potentially preventable events.

(b) The commission shall make available information relating to the performance of a managed care organization with respect to outcome and process measures under this subchapter to child health plan program enrollees and Medicaid recipients before those enrollees and recipients choose their managed care plans.

Sec. 536.052. PAYMENT AND CONTRACT AWARD INCENTIVES FOR MANAGED CARE ORGANIZATIONS. (a) The commission may allow a managed care organization participating in the child health plan or Medicaid program increased flexibility to implement quality initiatives in a managed care plan offered by the organization, including flexibility with respect to financial arrangements, in order to:

- (1) achieve high-quality, cost-effective health care;
- (2) increase the use of high-quality, cost-effective delivery models; and
- (3) reduce potentially preventable events.

(b) The commission, after consulting with the advisory committee, shall develop quality of care and cost-efficiency benchmarks, including benchmarks based on a managed care organization's performance with respect to reducing potentially preventable events and containing the growth rate of health care costs.

(c) The commission may include in a contract between a managed care organization and the commission financial incentives that are based on the organization's successful implementation of quality initiatives under Subsection (a) or success in achieving quality of care and cost-efficiency benchmarks under Subsection (b).

(d) In awarding contracts to managed care organizations under the child health plan and Medicaid programs, the commission shall, in addition to considerations under Section 533.003 of this code and Section 62.155, Health and Safety Code, give preference to an organization that offers a managed care plan that successfully implements quality initiatives under Subsection (a) as determined by the commission based on data or other evidence provided by the organization or meets quality of care and cost-efficiency benchmarks under Subsection (b).

(e) The commission may implement financial incentives under this section only if implementing the incentives would be cost-effective.

[Sections 536.053-536.100 reserved for expansion]

SUBCHAPTER C. QUALITY-BASED HEALTH HOME PAYMENT SYSTEMS

Sec. 536.101. DEFINITIONS. In this subchapter:

(1) "Health home" means a primary care provider practice or, if appropriate, a specialty care provider practice, incorporating several features, including comprehensive care coordination, family-centered care, and data management, that are focused on improving outcome-based quality of care and increasing patient and provider satisfaction under the child health plan and Medicaid programs.

(2) "Participating enrollee" means a child health plan program enrollee or Medicaid recipient who has a health home.

Sec. 536.102. QUALITY-BASED HEALTH HOME PAYMENTS. (a) Subject to this subchapter, the commission, after consulting with the advisory committee, may develop and implement quality-based payment systems for health homes designed to improve quality of care and reduce the provision of unnecessary medical services. A quality-based payment system developed under this section must:

(1) base payments made to a participating enrollee's health home on quality and efficiency measures that may include measurable wellness and prevention criteria and use of evidence-based best practices, sharing a portion of any realized cost savings achieved by the health home, and ensuring quality of care outcomes, including a reduction in potentially preventable events; and

(2) allow for the examination of measurable wellness and prevention criteria, use of evidence-based best practices, and quality of care outcomes based on the type of primary or specialty care provider practice.

(b) The commission may develop a quality-based payment system for health homes under this subchapter only if implementing the system would be feasible and cost-effective.

Sec. 536.103. PROVIDER ELIGIBILITY. To be eligible to receive reimbursement under a quality-based payment system under this subchapter, a health home provider must:

(1) provide participating enrollees, directly or indirectly, with access to health care services outside of regular business hours;

(2) educate participating enrollees about the availability of health care services outside of regular business hours; and

(3) provide evidence satisfactory to the commission that the provider meets the requirement of Subdivision (1).

[Sections 536.104-536.150 reserved for expansion]

SUBCHAPTER D. QUALITY-BASED HOSPITAL REIMBURSEMENT SYSTEM

Sec. 536.151 [~~531-913~~]. COLLECTION AND REPORTING OF CERTAIN [~~HOSPITAL HEALTH~~] INFORMATION [~~EXCHANGE~~]. (a) [~~In this section, "potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that results from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:~~

~~(1) the same condition or procedure for which the person was previously admitted;~~

~~(2) an infection or other complication resulting from care previously provided;~~

~~[(3) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or~~

~~[(4) another condition or procedure of a similar nature, as determined by the executive commissioner.~~

~~[(b)] The executive commissioner shall adopt rules for identifying potentially preventable readmissions of child health plan program enrollees and Medicaid recipients and potentially preventable complications experienced by child health plan program enrollees and Medicaid recipients. The ~~[and the]~~ commission shall collect [exchange] data from [with] hospitals on present-on-admission indicators for purposes of this section.~~

~~(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 15. LONG-TERM CARE PAYMENT INCENTIVE INITIATIVES.

(a) The heading to Section 531.912, Government Code, is amended to read as follows:

Sec. 531.912. COMMON PERFORMANCE MEASUREMENTS AND PAY-FOR-PERFORMANCE INCENTIVES FOR ~~[QUALITY OF CARE HEALTH INFORMATION EXCHANGE WITH]~~ CERTAIN NURSING FACILITIES.

(b) Subsections (b), (c), and (f), Section 531.912, Government Code, are amended to read as follows:

(b) If feasible, the executive commissioner by rule may ~~shall~~ establish an incentive payment program for [a quality of care health information exchange with] ~~[a quality of care health information exchange with]~~ nursing facilities that choose to participate. The ~~in a~~ program must be designed to improve the quality of care and services provided to medical assistance recipients. Subject to Subsection (f), the program may provide incentive payments in accordance with this section to encourage facilities to participate in the program.

(c) In establishing an incentive payment ~~[a quality of care health information exchange]~~ program under this section, the executive commissioner shall, subject to Subsection (d), adopt common ~~[exchange information with participating nursing~~

facilities regarding] performance measures to be used in evaluating nursing facilities that are related to structure, process, and outcomes that positively correlate to nursing facility quality and improvement. The common performance measures:

(1) must be:

(A) recognized by the executive commissioner as valid indicators of the overall quality of care received by medical assistance recipients; and

(B) designed to encourage and reward evidence-based practices among nursing facilities; and

(2) may include measures of:

(A) quality of care, as determined by clinical performance ratings published by the federal Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, or another federal agency [life];

(B) direct-care staff retention and turnover;

(C) recipient satisfaction, including the satisfaction of recipients who are short-term and long-term residents of facilities, and family satisfaction, as determined by the Nursing Home Consumer Assessment of Health Providers and Systems survey relied upon by the federal Centers for Medicare and Medicaid Services;

(D) employee satisfaction and engagement;

(E) the incidence of preventable acute care emergency room services use;

(F) regulatory compliance;

(G) level of person-centered care; and

(H) direct-care staff training, including a facility's [level of occupancy or of facility] utilization of independent distance learning programs for the continuous training of direct-care staff.

(f) The commission may make incentive payments under the program only if money is ~~specifically~~ appropriated for that purpose.

(c) The Department of Aging and Disability Services shall conduct a study to evaluate the feasibility of expanding any incentive payment program established for nursing facilities under Section 531.912, Government Code, as amended by this section, by providing incentive payments for the following types of providers of long-term care services, as defined by Section 22.0011, Human Resources Code, under the medical assistance program:

(1) intermediate care facilities for persons with mental retardation licensed under Chapter 252, Health and Safety Code; and

(2) providers of home and community-based services, as described by 42 U.S.C. Section 1396n(c), who are licensed or otherwise authorized to provide those services in this state.

(d) Not later than September 1, 2012, the Department of Aging and Disability Services shall submit to the legislature a written report containing the findings of the study conducted under Subsection (c) of this section and the department's recommendations.

SECTION 16. USE OF TRAUMA AND EMERGENCY MEDICAL SERVICES ACCOUNT TO FUND MEDICAID. Section 780.004, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (j) to read as follows:

(a) The commissioner:

(1) [;] with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money appropriated from the account established under this chapter to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems in accordance with this section; and

(2) after consulting with the executive commissioner of the Health and Human Services Commission, may transfer to an account in the general revenue fund money appropriated from the account established under this chapter to maximize the receipt of federal funds under the medical assistance program established under Chapter 32, Human Resources Code, and to fund provider reimbursement payments as provided by Subsection (j).

(j) Money in the account described by Subsection (a)(2) may be appropriated only to the Health and Human Services Commission to fund provider reimbursement payments under the medical assistance program established under Chapter 32, Human Resources Code, including reimbursement enhancements to the statewide dollar amount (SDA) rate used to reimburse designated trauma hospitals under the program.

SECTION 17. COMMUNICATIONS REGARDING PRESCRIPTION DRUG BENEFITS. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0697 to read as follows:

Sec. 531.0697. PRIOR APPROVAL AND PROVIDER ACCESS TO CERTAIN COMMUNICATIONS WITH CERTAIN RECIPIENTS. (a) This section applies to:

(1) the vendor drug program for the Medicaid and child health plan programs;

(2) the kidney health care program;

(3) the children with special health care needs program; and

(4) any other state program administered by the commission that provides prescription drug benefits.

(b) A managed care organization, including a health maintenance organization, or a pharmacy benefit manager, that administers claims for prescription drug benefits under a program to which this section applies shall, at least 10 days before the date the organization or pharmacy benefit manager intends to deliver a communication to recipients collectively under a program:

(1) submit a copy of the communication to the commission for approval; and

(2) if applicable, allow the pharmacy providers of recipients who are to receive the communication access to the communication.

SECTION 18. REIMBURSEMENT FOR INDIGENT HEALTH CARE SERVICES. (a) Subchapter A, Chapter 61, Health and Safety Code, is amended by adding Section 61.012 to read as follows:

Sec. 61.012. REIMBURSEMENT FOR SERVICES. (a) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) A public hospital or hospital district that provides health care services to a sponsored alien under this chapter may recover from a person who executed an affidavit of support on behalf of the alien the costs of the health care services provided to the alien.

(c) A public hospital or hospital district described by Subsection (b) must notify a sponsored alien and a person who executed an affidavit of support on behalf of the alien, at the time the alien applies for health care services, that a person who executed an affidavit of support on behalf of a sponsored alien is liable for the cost of health care services provided to the alien.

(b) Section 61.012, Health and Safety Code, as added by this section, applies only to health care services provided by a public hospital or hospital district on or after the effective date of this Act.

SECTION 19. PROVISIONS RELATING TO CERTAIN IMMIGRANTS APPLYING FOR OR RECEIVING CERTAIN PUBLIC BENEFITS. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.024181 and 531.024182 to read as follows:

Sec. 531.024181. VERIFICATION OF IMMIGRATION STATUS OF APPLICANTS FOR CERTAIN BENEFITS WHO ARE QUALIFIED ALIENS. (a) This section applies only with respect to the following benefits programs:

- (1) the child health plan program under Chapter 62, Health and Safety Code;
- (2) the financial assistance program under Chapter 31, Human Resources Code;
- (3) the medical assistance program under Chapter 32, Human Resources Code; and
- (4) the nutritional assistance program under Chapter 33, Human Resources Code.

(b) If, at the time of application for benefits under a program to which this section applies, a person states that the person is a qualified alien, as that term is defined by 8 U.S.C. Section 1641(b), the commission shall, to the extent allowed by federal law, verify information regarding the immigration status of the person using an automated system or systems where available.

(c) The executive commissioner shall adopt rules necessary to implement this section.

(d) Nothing in this section adds to or changes the eligibility requirements for any of the benefits programs to which this section applies.

Sec. 531.024182. VERIFICATION OF SPONSORSHIP INFORMATION FOR CERTAIN BENEFITS RECIPIENTS; REIMBURSEMENT. (a) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States

for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) If, at the time of application for benefits, a person stated that the person is a sponsored alien, the commission may, to the extent allowed by federal law, verify information relating to the sponsorship, using an automated system or systems where available, after the person is determined eligible for and begins receiving benefits under any of the following benefits programs:

(1) the child health plan program under Chapter 62, Health and Safety Code;

(2) the financial assistance program under Chapter 31, Human Resources Code;

(3) the medical assistance program under Chapter 32, Human Resources Code; or

(4) the nutritional assistance program under Chapter 33, Human Resources Code.

(c) If the commission verifies that a person who receives benefits under a program listed in Subsection (b) is a sponsored alien, the commission may seek reimbursement from the person's sponsor for benefits provided to the person under those programs to the extent allowed by federal law, provided the commission determines that seeking reimbursement is cost-effective.

(d) If, at the time a person applies for benefits under a program listed in Subsection (b), the person states that the person is a sponsored alien, the commission shall make a reasonable effort to notify the person that the commission may seek reimbursement from the person's sponsor for any benefits the person receives under those programs.

(e) The executive commissioner shall adopt rules necessary to implement this section, including rules that specify the most cost-effective procedures by which the commission may seek reimbursement under Subsection (c).

(f) Nothing in this section adds to or changes the eligibility requirements for any of the benefits programs listed in Subsection (b).

SECTION 20. ELECTRONIC SUBMISSION OF CLAIMS FOR MEDICAL ASSISTANCE REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0314 to read as follows:

Sec. 32.0314. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES. The executive commissioner of the Health and Human Services Commission shall adopt rules requiring the electronic submission of any claim for reimbursement for durable medical equipment and supplies under the medical assistance program.

SECTION 21. GRANTS FOR FAMILY PLANNING SERVICE PROVIDERS. (a) Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.0025 to read as follows:

Sec. 531.0025. RESTRICTIONS ON AWARDS TO FAMILY PLANNING SERVICE PROVIDERS. (a) Notwithstanding any other law, money appropriated to the Department of State Health Services for the purpose of providing family planning services must be awarded:

(1) to eligible entities in the following order of descending priority:

(A) public entities that provide family planning services, including state, county, and local community health clinics;

(B) nonpublic entities that provide comprehensive primary and preventive care services in addition to family planning services; and

(C) nonpublic entities that provide family planning services but do not provide comprehensive primary and preventive care services; or

(2) as otherwise directed by the legislature in the General Appropriations

Act.

(b) Notwithstanding Subsection (a), the Department of State Health Services may award money to eligible entities in medically underserved areas of the state out of the order of priority required by that subsection.

(b) Section 32.024, Human Resources Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department shall ensure that money spent for purposes of the demonstration project for women's health care services under former Section 32.0248, Human Resources Code, or a similar successor program is not used to perform or promote elective abortions, or to contract with entities that perform or promote elective abortions or affiliate with entities that perform or promote elective abortions.

SECTION 22. FEDERAL AUTHORIZATION. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 23. EFFECTIVE DATE. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 23** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1010

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1010** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HUFFMAN

HEGAR

PATRICK

NELSON

WHITMIRE

On the part of the Senate

WORKMAN

CARTER

GALLEGO

LUCIO

MADDEN

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to providing a victim, guardian of a victim, or close relative of a deceased victim with notice of a plea bargain agreement in certain criminal cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a) and (e), Article 26.13, Code of Criminal Procedure, are amended to read as follows:

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of a ~~any~~ plea bargain agreement ~~bargaining agreements~~ between the state and the defendant and, ~~if [in the event that such]~~ an agreement exists, the court shall inform the defendant whether it will follow or reject ~~the~~ ~~such~~ agreement in open court and before any finding on the plea. Should the court reject ~~the~~ ~~any such~~ agreement, the defendant shall be permitted to withdraw the defendant's ~~his~~ plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and the defendant's ~~his~~ attorney, the trial court must give its permission to the defendant before the defendant ~~he~~ may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law; and

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned; and

(2) inquire as to whether the attorney representing the state has given notice of the existence and terms of any plea bargain agreement to the victim, guardian of a victim, or close relative of a deceased victim, as those terms are defined by Article 56.01.

SECTION 2. Article 56.08, Code of Criminal Procedure, is amended by amending Subsections (b) and (e) and adding Subsection (b-1) to read as follows:

(b) If requested by the victim, the attorney representing the state, as far as reasonably practical, shall give to the victim notice of any scheduled court proceedings, changes in that schedule, and the filing of a request for continuance of a trial setting[~~and any plea agreements to be presented to the court~~].

(b-1) The attorney representing the state, as far as reasonably practical, shall give to the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of any plea bargain agreement to be presented to the court.

(e) The brief general statement describing the plea bargaining stage in a criminal trial required by Subsection (a)(1) shall include a statement that:

(1) the victim impact statement provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the attorney representing the state in entering into the plea bargain agreement; and

(2) the judge before accepting the plea bargain agreement is required under Article [Section] 26.13(e) to ask:

(A) whether a victim impact statement has been returned to the attorney; ~~and~~

(B) if a victim impact statement has been returned, for a copy of the statement; and

(C) whether the attorney representing the state has given the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of the plea bargain agreement.

SECTION 3. (a) The change in law made by this Act applies only to a plea bargain agreement that is presented to a court on or after the effective date of this Act.

(b) A plea bargain agreement that is presented to a court before the effective date of this Act is covered by the law in effect when the agreement was presented, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2011.

The corrected Conference Committee Report on **SB 1010** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 694

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 694** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WEST
DUNCAN
FRASER
HARRIS
URESTI

On the part of the Senate

W. SMITH
COOK
DUTTON
FLETCHER

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of metal recycling entities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (10), Section 1956.001, Occupations Code, is amended to read as follows:

(10) "Regulated metal" means:

- (A) manhole covers;
- (B) guardrails;
- (C) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;
- (D) beer kegs made from metal other than aluminum;
- (E) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;
- (F) unused rebar;
- (G) street signs;
- (H) drain gates;
- (I) safes;
- (J) communication, transmission, and service wire or cable;
- (K) condensing or evaporator coils for central heating or air conditioning units;
- (L) utility structures, including the fixtures and hardware;
- (M) aluminum or stainless steel containers designed to hold propane for fueling forklifts; ~~and~~
- (N) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions;
- (O) catalytic converters not attached to a vehicle;
- (P) fire hydrants;

(Q) metal bleachers or other seating facilities used in recreational areas or sporting arenas;

(R) any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad;

(S) insulated utility, communications, or electrical wire that has been burned in whole or in part to remove the insulation;

(T) backflow valves; and

(U) metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals.

SECTION 2. The heading to Section 1956.003, Occupations Code, is amended to read as follows:

Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

SECTION 3. Section 1956.003, Occupations Code, is amended by adding Subsections (a-1), (a-2), (f), (f-1), (f-2), and (g) to read as follows:

(a-1) A county, municipality, or other political subdivision may require the record of purchase described under Section 1956.033 to contain a clear and legible thumbprint of a seller of regulated material.

(a-2) A county, municipality, or other political subdivision that, as authorized under Subsection (a), requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material shall:

(1) include in any contract entered into by the county, municipality, or political subdivision relating to the reporting of the information a provision that:

(A) requires any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information relating to a sale of regulated material to maintain the confidentiality of all information received, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(B) allows the county, municipality, or political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Paragraph (A); and

(2) investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

(f) A person commits an offense if the person owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Subsection (b). An offense under this subsection is a Class B misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under this subsection, in which event the offense is a Class A misdemeanor.

(f-1) It is an exception to the application of Subsection (f) that:

(1) the person held a license or permit issued by the appropriate county, municipality, or other political subdivision at one point during the 12-month period preceding the date of the alleged offense; and

(2) the person obtains or submits an application for the appropriate license or permit not later than the 15th day after the date the person receives notice from the appropriate county, municipality, or other political subdivision informing the person that the metal recycling entity is operating without the required license or permit.

(f-2) This subsection and Subsection (f-1) expire March 1, 2013.

(g) Notwithstanding any other law, a county, municipality, or other political subdivision must provide a minimum 30-day notice followed by a public hearing prior to enacting a prohibition on the sale or use of a recyclable product.

SECTION 4. Subchapter A, Chapter 1956, Occupations Code, is amended by adding Section 1956.004 to read as follows:

Sec. 1956.004. CIVIL PENALTY. (a) A person who owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b) is subject to a civil penalty of not more than \$1,000 for each violation. In determining the amount of the civil penalty, the court shall consider:

(1) any other violations by the person; and

(2) the amount necessary to deter future violations.

(b) A district attorney, county attorney, or municipal attorney may institute an action to collect the civil penalty provided by this section.

(c) Each day a violation occurs or continues to occur is a separate violation.

(d) The district attorney, county attorney, or municipal attorney may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(e) It is an exception to the application of this section that:

(1) the person held a license or permit issued by the appropriate county, municipality, or other political subdivision at one point during the 12-month period preceding the date of the alleged violation; and

(2) the person obtains or submits an application for the appropriate license or permit not later than the 15th day after the date the person receives notice from the appropriate county, municipality, or other political subdivision informing the person that the metal recycling entity is operating without the required license or permit.

(f) This subsection and Subsection (e) expire March 1, 2013.

SECTION 5. Section 1956.015, Occupations Code, is amended by amending Subsection (d) and adding Subsections (e) and (f) to read as follows:

(d) Information provided under this section is not subject to disclosure under Chapter 552, Government Code. The department may use information provided under this section for law enforcement purposes. Except as provided by this subsection, the department shall maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased [that relates to the financial condition or business affairs of a metal recycling entity or that is otherwise commercially sensitive. The confidential information is not subject to disclosure under Chapter 552, Government Code].

(e) The department may enter into contracts relating to the operation of the statewide electronic reporting system established by this section. A contract under this subsection must:

(1) require that any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information provided under this section maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(2) provide that the department may terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Subdivision (1).

(f) The department shall investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

SECTION 6. Subchapter A-1, Chapter 1956, Occupations Code, is amended by adding Sections 1956.016 and 1956.017 to read as follows:

Sec. 1956.016. REGISTRATION DATABASE. The department shall make available on its Internet website a publicly accessible list of all registered metal recycling entities. The list must contain the following for each registered metal recycling entity:

(1) the entity's name;

(2) the entity's physical address; and

(3) the name of and contact information for a representative of the entity.

Sec. 1956.017. ADVISORY COMMITTEE. (a) The department shall establish an advisory committee to advise the department on matters related to the department's regulation of metal recycling entities under this chapter.

(b) The advisory committee consists of 12 members appointed by the director as follows:

(1) one representative of the department;

(2) two representatives of local law enforcement agencies located in different municipalities, each with a population of 500,000 or more;

(3) two representatives of local law enforcement agencies located in different municipalities, each with a population of 200,000 or more but less than 500,000;

(4) one representative of a local law enforcement agency located in a municipality with a population of less than 200,000;

(5) four representatives of metal recycling entities; and

(6) two members who represent industries that are impacted by theft of regulated material.

(c) The director shall ensure that the members of the advisory committee reflect the diverse geographic regions of this state.

(d) The advisory committee shall elect a presiding officer from among its members to serve a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer or the director.

(f) An advisory committee member is not entitled to compensation or reimbursement of expenses.

(g) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

SECTION 7. The heading to Section 1956.032, Occupations Code, is amended to read as follows:

Sec. 1956.032. INFORMATION REGARDING [PROVIDED BY] SELLER.

SECTION 8. Section 1956.032, Occupations Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

(a) Except as provided by Subsection (f), a person attempting to sell regulated material to a metal recycling entity shall:

(1) display to the metal recycling entity the person's personal identification document;

(2) provide to the metal recycling entity the make, model, color, and license plate number of the motor vehicle used to transport the regulated material and the name of the state issuing the license plate; ~~and~~

(3) either:

(A) present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or

(B) sign a written statement provided by the metal recycling entity that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale;

(4) if the regulated material includes condensing or evaporator coils for central heating or air conditioning units, display to the metal recycling entity:

(A) the person's air conditioning and refrigeration contractor license issued under Subchapter F or G, Chapter 1302;

(B) the person's air conditioning and refrigeration technician registration issued under Subchapter K, Chapter 1302;

(C) a receipt, bill of sale, or other documentation showing that the seller purchased the coils the seller is attempting to sell; or

(D) a receipt, bill of sale, or other documentation showing that the seller has purchased a replacement central heating or air conditioning unit; and

(5) if the regulated material includes insulated communications wire that has been burned wholly or partly to remove the insulation, display to the metal recycling entity documentation acceptable under the rules adopted under Subsection (h) that states that the material was salvaged from a fire.

(g) Notwithstanding Section 1956.002, the metal recycling entity shall verify the registration of a person attempting to sell regulated material who represents that the person is a metal recycling entity as follows:

(1) by using the database described by Section 1956.016; or

(2) by obtaining from the person a copy of the person's certificate of registration issued under Section 1956.022 in addition to the information required under Subsection (a).

(h) The commission shall adopt rules establishing the type of documentation that a seller of insulated communications wire described by Subsection (a)(5) must provide to a metal recycling entity to establish that the wire was salvaged from a fire.

SECTION 9. Section 1956.033, Occupations Code, is amended to read as follows:

Sec. 1956.033. RECORD OF PURCHASE. (a) Each metal recycling entity in this state shall keep an accurate electronic record or an accurate and legible written record of each purchase of regulated material made in the course of the entity's business from an individual ~~of:~~

~~[(1) copper or brass material;~~

~~[(2) bronze material;~~

~~[(3) aluminum material; or~~

~~[(4) regulated metal].~~

(b) The record must be in English and include:

(1) the place and date of the purchase;

(2) the name and address of the seller in possession of [each individual from whom] the regulated material [is] purchased [or obtained];

(3) the identifying number of the seller's personal identification document;

(4) a description made in accordance with the custom of the trade of the commodity type and quantity of regulated material purchased; [and]

(5) the information required by Sections 1956.032(a)(2) and (3);

(6) as applicable:

(A) the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(4)(A);

(B) a copy of the seller's air conditioning and refrigeration technician registration displayed under Section 1956.032(a)(4)(B);

(C) a copy of the documentation described by Section 1956.032(a)(4)(C); or

(D) a copy of the documentation described by Section 1956.032(a)(4)(D);

(7) if applicable, a copy of the documentation described by Section 1956.032(a)(5); and

(8) a copy of the documentation described by Section 1956.032(g) [Section 1956.032(a)(3)].

SECTION 10. Subchapter A-3, Chapter 1956, Occupations Code, is amended by adding Section 1956.0331 to read as follows:

Sec. 1956.0331. PHOTOGRAPH OR RECORDING REQUIREMENT FOR REGULATED METAL TRANSACTION. (a) In addition to the requirements of Sections 1956.032 and 1956.033, for each purchase by a metal recycling entity of an item of regulated metal, the entity shall obtain a digital photograph or video recording that accurately depicts the seller's entire face and each type of regulated metal purchased.

(b) A metal recycling entity shall preserve a photograph or recording required under Subsection (a) as follows:

(1) for a video recording, until the 91st day after the date of the transaction;

and

(2) for a digital photograph, until the 181st day after the date of the transaction.

(c) The photograph or recording must be made available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

SECTION 11. Section 1956.034, Occupations Code, is amended to read as follows:

Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling entity shall preserve each record required by Sections 1956.032 and 1956.033 until the second [third] anniversary of the date the record was made. The records must be kept in an easily retrievable format and must be available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

SECTION 12. Section 1956.035, Occupations Code, is amended to read as follows:

Sec. 1956.035. INSPECTION OF RECORDS ~~[BY PEACE OFFICER]~~. (a) On request, a metal recycling entity shall permit a peace officer of this state, a representative of the department, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to inspect, during the entity's usual business hours:

- (1) a record required by Section 1956.033; ~~[or]~~
- (2) a digital photograph or video recording required by Section 1956.0331;

or

- (3) regulated material in the entity's possession.

(b) The person seeking to inspect a record or material [inspecting officer] shall:

- (1) inform the entity of the officer's status as a peace officer; or
- (2) if the person is a representative of the department or a representative of a county, municipality, or other political subdivision, inform the entity of the person's status and display to the entity an identification document or other appropriate documentation establishing the person's status as a representative of the department or of the appropriate county, municipality, or political subdivision.

SECTION 13. Section 1956.036, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsections (d) and (e) to read as follows:

(a) Except as provided by Subsections [Subsection] (b) and (d), not later than the close of business on a metal recycling entity's second working [seventh] day after the date of the purchase or other acquisition of material for which a record is required under Section 1956.033, the [a metal recycling] entity shall send an electronic transaction report to the department via the department's Internet website. The [by facsimile or electronic mail to or file with the department a] report must contain [containing] the information required to be recorded under Section 1956.033 [that section].

(b) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall:

(1) not later than the close of business on the entity's first working day after the purchase date, notify the department by telephone, by e-mail, or via the department's Internet website; and

(2) not later than the close of business on the entity's second working ~~five~~ day after the purchase date, submit to the department electronically via the department's Internet website ~~mail to~~ or file with the department a report containing the information required to be recorded under Section 1956.033.

(d) A metal recycling entity may submit the transaction report required under Subsection (a) by facsimile if:

(1) the entity submits to the department annually:

(A) an application requesting an exception to the electronic reporting requirement; and

(B) an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically; and

(2) the department approves the entity's application under this subsection.

(e) The department, after notice and an opportunity for a hearing, may prohibit a metal recycling entity from paying cash for a purchase of regulated material for a period determined by the department if the department finds that the entity has failed to comply with this section.

SECTION 14. Subsection (a), Section 1956.037, Occupations Code, is amended to read as follows:

(a) A metal recycling entity may not dispose of, process, sell, or remove from the premises an item of regulated metal unless:

(1) the entity acquired the item more than:

(A) eight days, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material; or

(B) 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is not an item described by Paragraph (A); or

(2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business.

SECTION 15. Section 1956.038, Occupations Code, is amended to read as follows:

Sec. 1956.038. PROHIBITED ACTS. (a) A person may not, with the intent to deceive:

(1) display to a metal recycling entity a false or invalid personal identification document in connection with the person's attempted sale of regulated material;

(2) make a false, material statement or representation to a metal recycling entity in connection with:

(A) that person's execution of a written statement required by Section 1956.032(a)(3); or

(B) the entity's efforts to obtain the information required under Section 1956.033(b); ~~or~~

(3) display or provide to a metal recycling entity any information required under Section 1956.032 that the person knows is false or invalid; or

(4) display another individual's personal identification document in connection with the sale of regulated material.

(b) A metal recycling entity may not pay for a purchase of regulated material in cash if:

(1) the entity does not hold a certificate of registration under Subchapter A-2 and, if applicable, a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b); or

(2) the entity has been prohibited by the department from paying cash under Section 1956.036(e).

(c) Notwithstanding Section 1956.003(a) or any other law, a county, municipality, or other political subdivision may not adopt or enforce a rule, charter, or ordinance or issue an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b).

(d) Subsection (c) does not apply to a rule, charter, ordinance, or order of a county, municipality, or other political subdivision in effect on January 1, 2011.

(d-1) Not later than January 1, 2012, the department shall issue a notice to each known owner or operator of a metal recycling entity in this state informing the owner or operator of the requirement to obtain a certificate of registration under Subchapter A-2 and, if applicable, to obtain a license or permit required by a county, municipality, or other political subdivision under Section 1956.003. The notice must also state:

(1) that the owner or operator shall submit an application for a certificate of registration and the appropriate license or permit required by a county, municipality, or other political subdivision on or before March 1, 2012; and

(2) the penalties under this chapter for failure to comply with Subdivision (1).

(d-2) This subsection and Subsection (d-1) expire March 1, 2012.

(e) The department or a county, municipality, or other political subdivision may bring an action in the county in which a metal recycling entity is located to enjoin the business operations of the owner or operator of the metal recycling entity for a period of not less than 30 days and not more than 90 days if the owner or operator has not submitted an application for a certificate of registration or the appropriate license or permit required by a county, municipality, or other political subdivision.

(f) An action under Subsection (e) must be brought in the name of the state. If judgment is in favor of the state, the court shall:

(1) enjoin the owner or operator from maintaining or participating in the business of a metal recycling entity for a definite period of not less than 30 days and not more than 90 days, as determined by the court; and

(2) order that the place of business of the owner or operator be closed for the same period.

SECTION 16. Section 1956.040, Occupations Code, is amended by adding Subsections (a-1), (a-2), (a-3), (a-4), and (b-1) and amending Subsection (b) to read as follows:

(a-1) A person commits an offense if the person knowingly violates Section 1956.021, 1956.023(d), 1956.036(a), or 1956.039.

(a-2) An offense under Subsection (a-1) is a misdemeanor punishable by a fine not to exceed \$10,000, unless it is shown on trial of the offense that the person has previously been convicted of a violation of Subsection (a-1), in which event the offense is a state jail felony.

(a-3) It is an affirmative defense to prosecution of a violation of Section 1956.021 or 1956.023(d) that the person made a diligent effort to obtain or renew a certificate of registration at the time of the violation.

(a-4) A municipality or county may retain 10 percent of the money collected from a fine for a conviction of an offense under Subsection (a-1) as a service fee for that collection and the clerk of the court shall remit the remainder of the fine collected for conviction of an offense under Subsection (a-1) to the comptroller in the manner provided for the remission of fees to the comptroller under Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit proceeds received under this subsection to the credit of an account in the general revenue fund, and those proceeds may be appropriated only to the department and used to:

(1) finance the department's administration of Subchapters A, A-1, A-2, and A-3; and

(2) fund grants distributed under the prevention of scrap metal theft grant program established under Subchapter N, Chapter 411, Government Code.

(b) A person commits an offense if the person knowingly buys:

(1) stolen regulated material; or

(2) insulated communications wire that has been burned wholly or partly to remove the insulation, unless the wire is accompanied by documentation acceptable under the rules adopted under Section 1956.032(h) that states that the material was salvaged from a fire.

(b-1) An offense under Subsection (b) [~~this subsection~~] is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under Subsection (b) [~~this subsection~~], in which event the offense is a state jail felony.

SECTION 17. Subsection (a), Section 1956.103, Occupations Code, is amended to read as follows:

(a) A person may not sell or otherwise transfer to a metal recycling entity:

(1) a lead-acid battery, fuel tank, or PCB-containing capacitor that is included with another type of scrap, used, or obsolete metal without first obtaining from the metal recycling entity a written and signed acknowledgment that the scrap, used, or obsolete metal includes one or more lead-acid batteries, fuel tanks, or PCB-containing capacitors;

(2) any of the following items that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:

(A) a motor vehicle;

(B) a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle;

(C) an appliance; or

(D) any other item of scrap, used, or obsolete metal; ~~or~~

(3) a motor vehicle or a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle if the motor vehicle includes, contains, or encloses a tire or scrap tire; or

(4) a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

SECTION 18. Section 1956.151, Occupations Code, is amended to read as follows:

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

- (1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;
 - (2) sells, barter, or offers to sell or barter a certificate of registration;
 - (3) violates a provision of this chapter or a rule adopted under this chapter;
- or
- (4) violates Section 1956.021.

SECTION 19. Subsection (d), Section 1956.202, Occupations Code, is amended to read as follows:

(d) A civil penalty may not be assessed under this section for conduct described by Section 1956.021, 1956.023(d), 1956.036(a), 1956.038, or 1956.039.

SECTION 20. Chapter 411, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. PREVENTION OF SCRAP METAL THEFT GRANT PROGRAM

Sec. 411.421. DEFINITION. In this subchapter, "regulated material" has the meaning assigned by Section 1956.001, Occupations Code.

Sec. 411.422. GRANTS TO FUND SCRAP METAL THEFT PREVENTION.
(a) From fines collected and distributed to the department under Sections 1956.040(a-2) and (a-4), Occupations Code, the commission by rule shall establish and implement a grant program to provide funding to assist local law enforcement agencies in preventing the theft of regulated material.

(b) To be eligible for a grant, a recipient must be a local law enforcement agency that has established a program designed to prevent the theft of regulated material.

(c) Rules adopted under this section must:

- (1) include accountability measures for grant recipients and provisions for loss of eligibility for grant recipients that fail to comply with the measures; and
- (2) require grant recipients to provide to the department information on program outcomes.

SECTION 21. Subsection (e), Section 31.03, Penal Code, is amended to read as follows:

(e) Except as provided by Subsection (f), an offense under this section is:

- (1) a Class C misdemeanor if the value of the property stolen is less than:
 - (A) \$50; or
 - (B) \$20 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;
- (2) a Class B misdemeanor if:

- (A) the value of the property stolen is:
- (i) \$50 or more but less than \$500; or
 - (ii) \$20 or more but less than \$500 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;
- (B) the value of the property stolen is less than:
- (i) \$50 and the defendant has previously been convicted of any grade of theft; or
 - (ii) \$20, the defendant has previously been convicted of any grade of theft, and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06; or
- (C) the property stolen is a driver's license, commercial driver's license, or personal identification certificate issued by this state or another state;
- (3) a Class A misdemeanor if the value of the property stolen is \$500 or more but less than \$1,500;
- (4) a state jail felony if:
- (A) the value of the property stolen is \$1,500 or more but less than \$20,000, or the property is less than 10 head of sheep, swine, or goats or any part thereof under the value of \$20,000;
 - (B) regardless of value, the property is stolen from the person of another or from a human corpse or grave, including property that is a military grave marker;
 - (C) the property stolen is a firearm, as defined by Section 46.01;
 - (D) the value of the property stolen is less than \$1,500 and the defendant has been previously convicted two or more times of any grade of theft;
 - (E) the property stolen is an official ballot or official carrier envelope for an election; or
 - (F) the value of the property stolen is less than \$20,000 and the property stolen is ~~[insulated or noninsulated tubing, rods, water gate stems, wire, or cable that consists of at least 50 percent]:~~
 - (i) aluminum;
 - (ii) bronze; ~~[or]~~
 - (iii) copper; or
 - (iv) brass;
- (5) a felony of the third degree if the value of the property stolen is \$20,000 or more but less than \$100,000, or the property is:
- (A) cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than \$100,000; or
 - (B) 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than \$100,000;
- (6) a felony of the second degree if the value of the property stolen is \$100,000 or more but less than \$200,000; or
- (7) a felony of the first degree if the value of the property stolen is \$200,000 or more.

SECTION 22. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to an offense committed on or after September 1, 2011. An offense committed before September 1, 2011, is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(b) Subdivision (2), Subsection (b), Section 1956.040, Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2012. An offense committed before January 1, 2012, is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(c) For purposes of this section, an offense was committed before the applicable date if any element of the offense occurred before that date.

(d) The enhancement of the punishment of an offense provided under Subsection (a-2), Section 1956.040, Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2012. For purposes of this subsection, an offense is committed before January 1, 2012, if any element of the offense occurs before that date. An offense committed before January 1, 2012, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(e) Not later than January 1, 2012, the public safety director of the Department of Public Safety of the State of Texas shall appoint the members of the advisory committee established under Section 1956.017, Occupations Code, as added by this Act, and designate the time and place of the committee's first meeting.

(f) Not later than December 1, 2011, the Public Safety Commission shall adopt rules to implement Subsection (h), Section 1956.032, Occupations Code, as added by this Act.

SECTION 23. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2011.

(b) Subsection (f), Section 1956.003, Section 1956.004, and Subsections (b) and (e), Section 1956.038, Occupations Code, as added by this Act, take effect March 1, 2012.

(c) Subdivision (5), Subsection (a), Section 1956.032, and Subdivision (2), Subsection (b), Section 1956.040, Occupations Code, as added by this Act, take effect January 1, 2012.

The Conference Committee Report on **SB 694** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 635

Senator Nichols submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 635** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NICHOLS
FRASER
HEGAR
GALLEGOS
PATRICK

LARSON
PRICE
COOK
T. KING
RITTER

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the authority of the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL AUTHORITY OF TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

SECTION 1.01. Subsections (h) and (i), Section 13.043, Water Code, are amended to read as follows:

(h) The utility commission or the executive director of the utility commission may, ~~on a motion by the executive director or by the appellant under Subsection (a), (b), or (f) of this section,~~ establish interim rates to be in effect until a final decision is made in an appeal filed under Subsection (a), (b), or (f).

(i) The governing body of a municipally owned utility or a political subdivision, within 60 [30] days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

SECTION 1.02. Subsections (b) and (l), Section 13.187, Water Code, are amended to read as follows:

(b) A copy of the statement of intent shall be mailed, sent by e-mail, or delivered to the appropriate offices of each affected municipality, to the executive director of the utility commission, and to any [other] affected persons as required by the regulatory authority's rules.

(l) At any time during the pendency of the rate proceeding the regulatory authority or, if the regulatory authority is the utility commission, the executive director of the utility commission may fix interim rates to remain in effect until a final determination is made on the proposed rate.

SECTION 1.03. Subsection (c), Section 13.242, Water Code, is amended to read as follows:

(c) The utility commission may by rule allow a municipality or utility or water supply corporation to render retail water or sewer service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 ~~[of this code]~~ that it intends to provide retail water or sewer service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

SECTION 1.04. Section 49.321, Water Code, is amended to read as follows:

Sec. 49.321. DISSOLUTION AUTHORITY. After notice ~~[and hearing]~~, the commission or executive director may dissolve any district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

SECTION 1.05. Section 49.324, Water Code, is amended to read as follows:

Sec. 49.324. ORDER OF DISSOLUTION. The commission or the executive director may enter an order dissolving the district ~~[at the conclusion of the hearing]~~ if the commission or executive director ~~[#]~~ finds that the district has performed none of the functions for which it was created for a period of five consecutive years ~~[before the day of the proceeding]~~ and that the district has no outstanding bonded indebtedness.

SECTION 1.06. Subsection (a), Section 49.326, Water Code, is amended to read as follows:

(a) Appeals from an ~~[a commission]~~ order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

SECTION 1.07. Subsection (b), Section 54.030, Water Code, is amended to read as follows:

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that in its judgment, conversion into a municipal utility district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district. The resolution shall also request that the commission approve ~~[to hold a hearing on the question of]~~ the conversion of the district.

SECTION 1.08. Section 54.032, Water Code, is amended to read as follows:

Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Notice of the conversion ~~[hearing]~~ shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks ~~[with the first publication to be made not less than 14 full days before the time set for the hearing]~~.

(c) The notice shall:

(1) ~~[state the time and place of the hearing;~~

~~[(2)]~~ set out the resolution adopted by the district in full; and

(2) ~~[(3)]~~ notify all interested persons how they may offer comments ~~[to appear and offer testimony]~~ for or against the proposal contained in the resolution.

SECTION 1.09. Section 54.033, Water Code, is amended to read as follows:

Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) ~~If [After a hearing, if]~~ the commission or the executive director finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, the commission or executive director ~~[#]~~ shall enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election shall be required.

(b) If the commission or the executive director finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, the commission or executive director ~~[#]~~ shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the commission or the executive director entered under this section shall be subject to appeal or review within 30 days after entry of the order ~~[of the commission]~~ granting or denying the conversion.

(d) A copy of the ~~[commission]~~ order converting a district shall be filed in the deed records of the county or counties in which the district is located.

SECTION 1.10. Sections 49.322 and 54.031, Water Code, are repealed.

ARTICLE 2. WATER AND SEWER UTILITIES

SECTION 2.01. Section 13.002, Water Code, is amended by amending Subdivisions (2) and (18) and adding Subdivision (22-a) to read as follows:

(2) "Affiliated interest" or "affiliate" means:

(A) any person or corporation owning or holding directly or indirectly five percent or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a utility;

(C) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly five percent or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of five percent of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(F) any person or corporation that the utility commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the utility commission, after notice and hearing, determines is exercising substantial influence over the policies and actions of the utility in conjunction with one or more persons or corporations with

which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(18) "Regulatory authority" means, in accordance with the context in which it is found, either the commission, the utility commission, or the governing body of a municipality.

(22-a) "Utility commission" means the Public Utility Commission of Texas.

SECTION 2.02. Section 13.004, Water Code, is amended to read as follows:

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

(b) If the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65, the utility commission's jurisdiction provided by this section ends.

SECTION 2.03. Section 13.011, Water Code, is amended to read as follows:

Sec. 13.011. EMPLOYEES. (a) The executive director of the utility commission and the executive director of the commission, subject to approval, as applicable, by the utility commission or the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out each agency's powers and duties under this chapter.

(b) The executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The executive director of the utility commission and the utility commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the utility commission under this subchapter. The duties of the respective executive directors and staffs [~~director and the staff~~] include:

(1) accumulation of evidence and other information from water and sewer utilities, [~~and~~] from the agency and governing body, [~~commission and the board~~] and from other sources for the purposes specified by this chapter;

(2) preparation and presentation of evidence before the agency [~~commission~~] or its appointed examiner in proceedings;

(3) conducting investigations of water and sewer utilities under the jurisdiction of the agency [~~commission~~];

(4) preparation of recommendations that the agency [~~commission~~] undertake an investigation of any matter within its jurisdiction;

(5) preparation of recommendations and a report for inclusion in the annual report of the agency [~~commission~~];

(6) protection and representation of the public interest [~~together with the public interest advocate,~~] before the agency [~~commission~~]; and

(7) other activities that are reasonably necessary to enable the executive director and the staff to perform their duties.

SECTION 2.04. Section 13.014, Water Code, is amended to read as follows:

Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR UTILITY COMMISSION. The attorney general shall represent the commission or the utility commission under this chapter in all matters before the state courts and any court of the United States.

SECTION 2.05. Subchapter B, Chapter 13, Water Code, is amended by adding Section 13.017 to read as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND DUTIES. (a) In this section, "counsellor" and "office" have the meanings assigned by Section 11.003, Utilities Code.

(b) The office represents the interests of residential and small commercial consumers under this chapter. The office:

(1) shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2) shall advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A) residential consumers, as a class, in any proceeding before the utility commission, including an alternative dispute resolution proceeding; and

(B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;

(4) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:

(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear; or

(B) in which the counsellor determines that residential consumers or small commercial consumers are in need of representation;

(5) is entitled to the same access as a party, other than utility commission staff, to records gathered by the utility commission under Section 13.133;

(6) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the utility commission;

(7) may represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail utility services that is unresolved before the utility commission; and

(8) may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.

(c) This section does not limit the authority of the utility commission to represent residential or small commercial consumers.

(d) The appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The counsellor may not be grouped with any other party.

SECTION 2.06. Section 13.041, Water Code, is amended to read as follows:

Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND COMMISSION [POWER]; RULES; HEARINGS. (a) The utility commission may regulate and supervise the business of each [every] water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. The commission shall regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. The utility commission and the commission [and] may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers [this power] and jurisdiction. The utility commission may consult with the commission as necessary in carrying out its duties related to the regulation of water and sewer utilities.

(b) The commission and the utility commission shall adopt and enforce rules reasonably required in the exercise of [its] powers and jurisdiction of each agency, including rules governing practice and procedure before the commission and the utility commission.

(c) The commission and the utility commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering this chapter or the rules, orders, or other actions of the commission or the utility commission.

(d) The utility commission may issue emergency orders, with or without a hearing:

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act; and

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred.

(e) The utility commission may establish reasonable compensation for the temporary service required under Subsection (d)(2) [of this section] and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(f) If an order is issued under Subsection (d) without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the utility commission.

(g) The regulatory assessment required by Section 5.701(n) [5.235(n) of this code] is not a rate and is not reviewable by the utility commission under Section 13.043 [of this code]. The commission has the authority to enforce payment and collection of the regulatory assessment.

SECTION 2.07. Section 13.042, Water Code, is amended to read as follows:

Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the limitations imposed in this chapter and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

(b) The governing body of a municipality by ordinance may elect to have the utility commission exercise exclusive original jurisdiction over the utility rates, operation, and services of utilities, within the incorporated limits of the municipality.

(c) The governing body of a municipality that surrenders its jurisdiction to the utility commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the utility commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the utility commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(d) The utility commission shall have exclusive appellate jurisdiction to review orders or ordinances of those municipalities as provided in this chapter.

(e) The utility commission shall have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

(f) This subchapter does not give the utility commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits or to affect or limit the power, jurisdiction, or duties of a municipality that regulates land and supervises water and sewer utilities within its corporate limits, except as provided by this code.

SECTION 2.08. Subsections (a), (b), (c), (e), (f), (g), and (j), Section 13.043, Water Code, are amended to read as follows:

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission. This subsection does not apply to a municipally owned utility. An appeal under this subsection must be initiated within 90 days after the date of notice of the final decision by the governing body by filing a petition for review with the utility commission and by serving copies on all parties to the original rate proceeding. The utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken and may include reasonable expenses incurred in the appeal proceedings. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the utility provider and may order refunds or allow a surcharge to recover lost revenues. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(4) a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(c) An appeal under Subsection (b) [~~of this section~~] must be initiated by filing a petition for review with the utility commission and the entity providing service within 90 days after the effective day of the rate change or, if appealing under Subdivision (b)(2) or (5) [~~of this section~~], within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b) [~~of this section~~].

(e) In an appeal under Subsection (b) [~~of this section~~], the utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the service provider, may order refunds or allow a surcharge to recover lost revenues, and may allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. The rates established by the utility commission in an appeal under Subsection (b) [~~of this section~~] remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the utility commission determines that a financial hardship exists.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service by the filing of a petition by the retail public utility.

(g) An applicant for service from an affected county or a water supply or sewer service corporation may appeal to the utility commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. In addition to the factors specified under Subsection (j), in an appeal brought under this subsection the utility commission shall determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. If the utility commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid for that applicant. An appeal under this subsection must be initiated within 90 days after the date written notice is provided to the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant's initial request for that service. A determination made by the utility commission on an appeal under this subsection is binding on all similarly situated applicants for service, and the utility commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(j) In an appeal under this section, the utility commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility. For agreements between municipalities the utility commission shall consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.

SECTION 2.09. Subsection (b), Section 13.044, Water Code, is amended to read as follows:

(b) Notwithstanding the provisions of any resolution, ordinance, or agreement, a district may appeal the rates imposed by the municipality by filing a petition with the utility commission. The utility commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable. The utility commission shall fix the rates to be charged by the municipality and the municipality may not increase such rates without the approval of the utility commission.

SECTION 2.10. Section 13.046, Water Code, is amended to read as follows:

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The utility commission by rule shall establish a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system and to bill the customers for the services at that rate immediately to recover service costs.

(b) The rules must provide a streamlined process that the retail public utility that takes over the nonfunctioning system may use to apply to the utility commission for a ruling on the reasonableness of the rates the utility is charging under Subsection (a).

The process must allow for adequate consideration of costs for interconnection or other costs incurred in making services available and of the costs that may necessarily be incurred to bring the nonfunctioning system into compliance with utility commission and commission rules.

(c) The utility commission shall provide a reasonable period for the retail public utility that takes over the nonfunctioning system to bring the nonfunctioning system into compliance with utility commission and commission rules during which the utility commission or the commission may not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. The utility commission must consult with the utility before determining the period and may grant an extension of the period for good cause.

SECTION 2.11. Section 13.081, Water Code, is amended to read as follows:

Sec. 13.081. FRANCHISES. This chapter may not be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for their use, but no provision of any franchise agreement may limit or interfere with any power conferred on the utility commission by this chapter. If a municipality performs regulatory functions under this chapter, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this chapter.

SECTION 2.12. Section 13.082, Water Code, is amended to read as follows:

Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT AREAS. (a) Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the utility commission has assumed jurisdiction over the respective utility pursuant to this chapter.

(b) If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the utility commission under this chapter to the extent that this chapter applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the utility commission or other standards and rules not inconsistent with them. The utility commission's rules relating to service and response to requests for service for utilities operating within a municipality's corporate limits apply unless the municipality adopts its own rules.

(c) Notwithstanding any election, the utility commission may consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and may also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider water and sewer utilities' revenues and return on investment in nonexempt areas.

(d) Utilities serving exempt areas are subject to the reporting requirements of this chapter. Those reports and tariffs shall be filed with the governing body of the municipality as well as with the utility commission.

(e) This section does not limit the duty and power of the utility commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

SECTION 2.13. Section 13.085, Water Code, is amended to read as follows:

Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request, the utility commission may advise and assist municipalities and affected counties in connection with questions and proceedings arising under this chapter. This assistance may include aid to municipalities or an affected county in connection with matters pending before the utility commission, the courts, the governing body of any municipality, or the commissioners court of an affected county, including making members of the staff available to them as witnesses and otherwise providing evidence.

SECTION 2.14. Subsection (c), Section 13.087, Water Code, is amended to read as follows:

(c) Notwithstanding any other provision of this chapter, the utility commission has jurisdiction to enforce this section.

SECTION 2.15. Subsections (a), (b), (c), and (e), Section 13.131, Water Code, are amended to read as follows:

(a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the utility commission uniform accounts of all business transacted. The utility commission may also prescribe forms of books, accounts, records, and memoranda to be kept by those utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda that in the judgment of the utility commission may be necessary to carry out this chapter.

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(c) The utility commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility and shall require every utility to carry a proper and adequate depreciation account in accordance with those rates and methods and with any other rules the utility commission prescribes. Rules adopted under this subsection must require the book cost less net salvage of depreciable utility plant retired to be charged in its entirety to the accumulated depreciation account in a manner consistent with accounting treatment of regulated electric and gas utilities in this state. Those rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate-setting and appeal proceedings.

(e) Every utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the utility commission and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

SECTION 2.16. Section 13.132, Water Code, is amended to read as follows:

Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The utility commission may:

(1) require that water and sewer utilities report to it any information relating to themselves and affiliated interests both inside and outside this state that it considers useful in the administration of this chapter;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any utility and any affiliated interest be filed with it and require that such a contract or arrangement that is not in writing be reduced to writing;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation, other than salary or wages subject to the withholding of federal income tax, made to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body be filed with it.

(b) On the request of the governing body of any municipality, the utility commission may provide sufficient staff members to advise and consult with the municipality on any pending matter.

SECTION 2.17. Subsection (b), Section 13.133, Water Code, is amended to read as follows:

(b) The regulatory authority may require, by order or subpoena served on any utility, the production within this state at the time and place it may designate of any books, accounts, papers, or records kept by that utility outside the state or verified copies of them if the regulatory authority [~~commission~~] so orders. A utility failing or refusing to comply with such an order or subpoena violates this chapter.

SECTION 2.18. Subsections (b) and (c), Section 13.136, Water Code, are amended to read as follows:

(b) Each utility annually shall file a service and financial report in a form and at times specified by utility commission rule.

(c) Every water supply or sewer service corporation shall file with the utility commission tariffs showing all rates that are subject to the appellate jurisdiction of the utility commission and that are in force at the time for any utility service, product, or commodity offered. Every water supply or sewer service corporation shall file with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished. The filing required under this subsection shall be for informational purposes only.

SECTION 2.19. Section 13.137, Water Code, is amended to read as follows:

Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

(1) make available and notify its customers of a business location where its customers may make payments to prevent disconnection of or to restore service:

(A) in each county in which the utility provides service; or

(B) not more than 20 miles from the residence of any residential customer if there is no location to receive payments in the county; and

(2) have an office in a county of this state or in the immediate area in which its property or some part of its property is located in which it shall keep all books, accounts, records, and memoranda required by the utility commission to be kept in this state.

(b) The utility commission by rule may provide for waiving the requirements of Subsection (a)(1) for a utility for which meeting those requirements would cause a rate increase or otherwise harm or inconvenience customers. The rules must provide for an additional 14 days to be given for a customer to pay before a utility that is granted a waiver may disconnect service for late payment.

(c) Books, accounts, records, or memoranda required by the regulatory authority to be kept in the state may not be removed from the state, except on conditions prescribed by the utility commission.

SECTION 2.20. Subsection (b), Section 13.139, Water Code, is amended to read as follows:

(b) The governing body of a municipality, as the regulatory authority for public utilities operating within its corporate limits, and the utility commission or the commission as the regulatory authority for public utilities operating outside the corporate limits of any municipality, after reasonable notice and hearing on its own motion, may:

(1) ascertain and fix just and reasonable standards, classifications, regulations, service rules, minimum service standards or practices to be observed and followed with respect to the service to be furnished;

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement of service; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any utility service.

SECTION 2.21. Section 13.1395, Water Code, is amended by adding Subsection (m) to read as follows:

(m) The commission shall coordinate with the utility commission in the administration of this section.

SECTION 2.22. Subsection (b), Section 13.142, Water Code, is amended to read as follows:

(b) The utility commission shall adopt rules concerning payment of utility bills that are consistent with Chapter 2251, Government Code.

SECTION 2.23. Section 13.144, Water Code, is amended to read as follows:

Sec. 13.144. NOTICE OF WHOLESAL WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the utility commission and the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

SECTION 2.24. Subsection (a), Section 13.147, Water Code, is amended to read as follows:

(a) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the utility commission to issue an order requiring the water service provider to provide that service.

SECTION 2.25. Subsection (b), Section 13.181, Water Code, is amended to read as follows:

(b) Subject to this chapter, the utility commission has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter. For this purpose the regulatory authority may fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body. The utility commission may adopt rules which authorize a utility which is permitted under Section 13.242(c) to provide service without a certificate of public convenience and necessity to request or implement a rate increase and operate according to rules, regulations, and standards of service other than those otherwise required under this chapter provided that rates are just and reasonable for customers and the utility and that service is safe, adequate, efficient, and reasonable.

SECTION 2.26. Subsections (c) and (d), Section 13.182, Water Code, are amended to read as follows:

(c) For ratemaking purposes, the utility commission may treat two or more municipalities served by a utility as a single class wherever the utility commission considers that treatment to be appropriate.

(d) The utility commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis.

SECTION 2.27. Subsection (d), Section 13.183, Water Code, is amended to read as follows:

(d) A regulatory authority other than the utility commission may not approve an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

SECTION 2.28. Subsection (a), Section 13.184, Water Code, is amended to read as follows:

(a) Unless the utility commission establishes alternate rate methodologies in accordance with Section 13.183(c), the utility commission may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. The governing body of a municipality exercising its original jurisdiction over rates and services may use alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c). Unless the municipal regulatory authority uses alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c), it may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

SECTION 2.29. Subsections (d), (k), and (o), Section 13.187, Water Code, are amended to read as follows:

(d) Except as provided by Subsection (d-1), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n) [of this code].

(k) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (e), the regulatory authority may, pending the hearing and a decision, suspend the date the rate change would otherwise be effective. Except as provided by Subsection (d-1), the proposed rate may not be suspended for longer than:

- (1) 90 days by a local regulatory authority; or
- (2) 150 days by the utility commission.

(o) If a regulatory authority other than the utility commission establishes interim rates or an escrow account, the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility.

SECTION 2.30. Subsection (a), Section 13.188, Water Code, is amended to read as follows:

(a) Notwithstanding any other provision in this chapter, the utility commission by rule shall adopt a procedure allowing a utility to file with the utility commission an application to timely adjust the utility's rates to reflect an increase or decrease in

documented energy costs in a pass through clause. The utility commission, by rule, shall require the pass through of documented decreases in energy costs within a reasonable time. The pass through, whether a decrease or increase, shall be implemented on no later than an annual basis, unless the utility commission determines a special circumstance applies.

SECTION 2.31. Subsections (a) and (d), Section 13.241, Water Code, are amended to read as follows:

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the utility commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(d) Before the utility commission grants a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate to the utility commission that regionalization or consolidation with another retail public utility is not economically feasible.

SECTION 2.32. Subsection (a), Section 13.242, Water Code, is amended to read as follows:

(a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

SECTION 2.33. Section 13.244, Water Code, is amended to read as follows:

Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION; EVIDENCE AND CONSENT. (a) To obtain a certificate of public convenience and necessity or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the utility commission an application for a certificate or for an amendment as provided by this section.

(b) Each public utility and water supply or sewer service corporation shall file with the utility commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the utility commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

(c) Each applicant for a certificate or for an amendment shall file with the utility commission evidence required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

(d) An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain:

- (1) a description of the proposed service area by:
 - (A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;
 - (B) the Texas State Plane Coordinate System;
 - (C) verifiable landmarks, including a road, creek, or railroad line; or
 - (D) if a recorded plat of the area exists, lot and block number;
- (2) a description of any requests for service in the proposed service area;
- (3) a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area;
- (4) a description of the sources of funding for all facilities;
- (5) to the extent known, a description of current and projected land uses, including densities;
- (6) a current financial statement of the applicant;
- (7) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:
 - (A) at least 50 acres; and
 - (B) wholly or partially located within the proposed service area; and
- (8) any other item required by the utility commission.

SECTION 2.34. Subsections (b), (c), and (e), Section 13.245, Water Code, are amended to read as follows:

(b) Except as provided by Subsection (c), the utility commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c) If a municipality has not consented under Subsection (b) before the 180th day after the date the municipality receives the retail public utility's application, the utility commission shall grant the certificate of public convenience and necessity without the consent of the municipality if the utility commission finds that the municipality:

- (1) does not have the ability to provide service; or
- (2) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(e) If the utility commission makes a decision under Subsection (d) regarding the grant of a certificate of public convenience and necessity without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court. The court shall hear the petition within 120 days after the date the petition is filed. On final disposition, the court may award reasonable fees to the prevailing party.

SECTION 2.35. Subsection (c), Section 13.2451, Water Code, is amended to read as follows:

(c) The utility commission, after notice to the municipality and an opportunity for a hearing, may decertify an area outside a municipality's extraterritorial jurisdiction if the municipality does not provide service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area. This subsection does not apply to a certificate of public convenience and necessity for an area:

(1) that was transferred to a municipality on approval of the utility commission; and

(2) in relation to which the municipality has spent public funds.

SECTION 2.36. Subsections (a), (a-1), (b), (c), (d), (f), (h), and (i), Section 13.246, Water Code, are amended to read as follows:

(a) If an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, the utility commission shall cause notice of the application to be given to affected parties and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified. If requested, the utility commission shall fix a time and place for a hearing and give notice of the hearing. Any person affected by the application may intervene at the hearing.

(a-1) Except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), the utility commission shall require notice to be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the utility commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate notice to landowners. Notice under this subsection is not required for a matter filed with the utility commission or the commission under:

(1) Section 13.248 or 13.255; or

(2) Chapter 65.

(b) The utility commission may grant applications and issue certificates and amendments to certificates only if the utility commission finds that a certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The utility commission may issue a certificate or amendment as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(c) Certificates of public convenience and necessity and amendments to certificates shall be granted by the utility commission on a nondiscriminatory basis after consideration by the utility commission of:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(d) The utility commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure that continuous and adequate utility service is provided.

(f) If two or more retail public utilities or water supply or sewer service corporations apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area and otherwise meet the requirements for obtaining a new certificate, the utility commission shall grant the certificate to the retail public utility or water supply or sewer service corporation that is more capable financially, managerially, and technically of providing continuous and adequate service.

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the utility commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the utility commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.

(i) A landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the utility commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

SECTION 2.37. Subsection (a), Section 13.247, Water Code, is amended to read as follows:

(a) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public

convenience and necessity within the area pursuant to the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under Subsection (d). Except as provided by Section 13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the utility commission a certificate of public convenience and necessity that includes the areas to be served.

SECTION 2.38. Section 13.248, Water Code, is amended to read as follows:

Sec. 13.248. **CONTRACTS VALID AND ENFORCEABLE.** Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the utility commission or the executive director of the utility commission after public notice [~~and hearing~~], are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 2.39. Subsections (b), (c), and (e), Section 13.250, Water Code, are amended to read as follows:

(b) Unless the utility commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate or a person who possesses facilities used to provide utility service shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a utility commission-ordered arrangement between the two service providers;

(3) nonuse; or

(4) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the utility commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the utility commission prescribes.

(e) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the utility commission and the commission in writing.

SECTION 2.40. Subsection (d), Section 13.2502, Water Code, is amended to read as follows:

(d) This section does not limit or extend the jurisdiction of the utility commission under Section 13.043(g).

SECTION 2.41. Section 13.251, Water Code, is amended to read as follows:

Sec. 13.251. **SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.** Except as provided by Section 13.255 [~~of this code~~], a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and

continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c) [~~of this code~~]. The sale, assignment, or lease shall be on the conditions prescribed by the utility commission.

SECTION 2.42. Section 13.252, Water Code, is amended to read as follows:

Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY. If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the utility commission may issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.

SECTION 2.43. Section 13.253, Water Code, is amended to read as follows:

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. (a) After notice and hearing, the utility commission or the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Section 16.341 to:

(A) provide specified improvements in its service in a defined area if service in that area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the utility commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the utility commission;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service;

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

(4) issue an emergency order, with or without a hearing, under Section 13.041.

(b) If the utility commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Section 341.0355, Health

and Safety Code, or under this chapter, the utility commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a ~~[commission]~~ meeting of the utility commission, may immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other financial assurance in an amount determined by the utility commission not to exceed the amount of the bond or financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard ~~[by the commissioners]~~ at a ~~[commission]~~ meeting of the utility commission. After notice and hearing, the utility commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

SECTION 2.44. Section 13.254, Water Code, is amended to read as follows:

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The utility commission at any time after notice and hearing may ~~[, on its own motion or on receipt of a petition described by Subsection (a-1),]~~ revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if the utility commission ~~[it]~~ finds that:

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the utility commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The petitioner shall deliver, via certified mail, a copy of the petition to the certificate holder, who may submit information to the utility commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought;

(B) the timeframe within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; and

(D) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the utility commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service is capable of providing continuous and adequate service within the timeframe, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area.

(a-2) A landowner is not entitled to make the election described in Subsection (a-1) or (a-5) but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by the utility commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(a-3) Within 90 calendar days from the date the utility commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the utility commission shall grant the petition unless the utility commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The utility commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the utility commission may require an award of compensation as otherwise provided by this section.

(a-4) Chapter 2001, Government Code, does not apply to any petition filed under Subsection (a-1). The decision of the utility commission on the petition is final after any reconsideration authorized by the utility commission's rules and may not be appealed.

(a-5) As an alternative to decertification under Subsection (a) and expedited release under Subsection (a-1), the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000.

(a-6) The utility commission shall grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition. The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program. The utility commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under Subsection (a-5) as otherwise provided by this section.

(b) Upon written request from the certificate holder, the utility commission [~~executive director~~] may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Section 13.242(c).

(c) If the certificate of any retail public utility is revoked or amended, the utility commission may require one or more retail public utilities with their consent to provide service in the area in question. The order of the utility commission shall not be effective to transfer property.

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the utility commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. The utility commission shall ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the utility commission of its intent to provide service to the decertified area.

(f) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the utility commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of

the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors.

(g-1) If the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies the utility commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 60 calendar days. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay half the cost of the third appraisal.

SECTION 2.45. Subsections (a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Section 13.255, Water Code, are amended to read as follows:

(a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase "franchised utility" shall mean a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the utility commission, and the utility commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the utility commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the utility commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility.

(c) The utility commission shall grant single certification to the municipality. The utility commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the utility commission shall also determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the utility commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e) [~~of this section~~]. The grant of single certification by the utility commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an amount into the registry of the court or to the retail public utility under Subsection (f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) In the event the final order of the utility commission is not appealed within 30 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the utility commission. In such event, the court shall render a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility as delineated by the utility commission's final order and property determined by the utility commission to be rendered useless or valueless by the granting of single certification; and

(2) orders payment to the retail public utility of adequate and just compensation for the property as determined by the utility commission in its final order.

(e) Any party that is aggrieved by a final order of the utility commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final. The hearing in such an appeal before the district court shall be by trial de novo on all issues. After the hearing, if the court determines that the municipally owned utility or franchised utility is entitled to single certification under the provisions of this section, the court shall enter a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property requested by the municipality to be transferred to the municipally owned utility or franchised utility and located within the singly certificated area and property determined by the court or jury to be rendered useless or valueless by the granting of single certification; and

(2) orders payment in accordance with Subsection (g) [~~of this section~~] to the retail public utility of adequate and just compensation for the property transferred and for the property damaged as determined by the court or jury.

(g-1) The utility commission shall adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g). The utility commission by rule shall adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which the utility commission determines that the municipality's application is administratively complete.

(k) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2):

(1) the utility commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or the utility commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees; and

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

(l) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the 10th business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the utility commission or a person the utility commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals.

The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the utility commission.

(m) The utility commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.

SECTION 2.46. Section 13.2551, Water Code, is amended to read as follows:

Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a condition to decertification or single certification under Section 13.254 or 13.255, and on request by an affected retail public utility, the utility commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire certificate of public convenience and necessity of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(b) The utility commission shall order service to the entire area under Subsection (a) if the utility commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(c) The utility commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(d) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the utility commission, if applicable.

(e) The utility commission shall not order compensation to the decertified retail utility if service to the entire service area is ordered under this section.

SECTION 2.47. Subsections (e), (i), (r), and (s), Section 13.257, Water Code, are amended to read as follows:

(e) The notice must be given to the prospective purchaser before the execution of a binding contract of purchase and sale. The notice may be given separately or as an addendum to or paragraph of the contract. If the seller fails to provide the notice required by this section, the purchaser may terminate the contract. If the seller provides the notice at or before the closing of the purchase and sale contract and the purchaser elects to close even though the notice was not timely provided before the execution of the contract, it is conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or pursue other remedies or

rights under this section. Notwithstanding any provision of this section to the contrary, a seller, title insurance company, real estate broker, or examining attorney, or an agent, representative, or person acting on behalf of the seller, company, broker, or attorney, is not liable for damages under Subsection (m) or (n) or liable for any other damages to any person for:

(1) failing to provide the notice required by this section to a purchaser before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract if:

(A) the utility service provider did not file the map of the certificated service area in the real property records of the county in which the service area is located and with the utility commission depicting the boundaries of the service area of the utility service provider as shown in the real property records of the county in which the service area is located; and

(B) the utility commission did not maintain an accurate map of the certificated service area of the utility service provider as required by this chapter; or

(2) unintentionally providing a notice required by this section that is incorrect under the circumstances before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract.

(i) If the notice is given at closing as provided by Subsection (g), a purchaser, or the purchaser's heirs, successors, or assigns, may not maintain an action for damages or maintain an action against a seller, title insurance company, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, broker, or lienholder, by reason of the seller's use of the information filed with the utility commission by the utility service provider or the seller's use of the map of the certificated service area of the utility service provider filed in the real property records to determine whether the property to be purchased is within the certificated service area of the utility service provider. An action may not be maintained against a title insurance company for the failure to disclose that the described real property is included within the certificated service area of a utility service provider if the utility service provider did not file in the real property records or with the utility commission the map of the certificated service area.

(r) A utility service provider shall:

(1) record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the certificate of public convenience and necessity and of any amendment to the certificate as contained in the utility commission's records, and a boundary description of the service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number; and

(2) submit to the executive director of the utility commission evidence of the recording.

(s) Each county shall accept and file in its real property records a utility service provider's map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the utility commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

SECTION 2.48. Subsections (a) through (g), Section 13.301, Water Code, are amended to read as follows:

(a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

(1) file a written application with the utility commission; and

(2) unless public notice is waived by the executive director of the utility commission for good cause shown, give public notice of the action.

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The utility commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

(e) Before the expiration of the 120-day notification period, the executive director of the utility commission shall notify all known parties to the transaction and the Office of Public Utility Counsel whether ~~of~~ the executive director of the utility commission will ~~[director's decision whether to]~~ request that the utility commission hold a public hearing to determine if the transaction will serve the public interest. The executive director of the utility commission may request a hearing if:

(1) the application filed with the utility commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the utility commission, the commission, or the [Texas] Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or

(5) there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.

(f) Unless the executive director of the utility commission requests that a public hearing be held, the sale, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period; or

(2) at any time after the executive director of the utility commission notifies the utility or water supply or sewer service corporation that a hearing will not be requested.

(g) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, or rental may not be completed unless the utility commission determines that the proposed transaction serves the public interest.

SECTION 2.49. Section 13.302, Water Code, is amended to read as follows:

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. (a) A utility may not purchase voting stock in another utility doing business in this state and a person may not acquire a controlling interest in a utility doing business in this state unless the person or utility files a written application with the utility commission not later than the 61st day before the date on which the transaction is to occur.

(b) The utility commission may require that a person acquiring a controlling interest in a utility demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The executive director of the utility commission may request that the utility commission hold a public hearing on the transaction if the executive director of the utility commission believes that a criterion prescribed by Section 13.301(e) applies.

(e) Unless the executive director of the utility commission requests that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60-day period; or

(2) at any time after the executive director of the utility commission notifies the person or utility that a hearing will not be requested.

(f) If a hearing is requested or if the person or utility fails to make the application to the utility commission as required, the purchase or acquisition may not be completed unless the utility commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

SECTION 2.50. Section 13.303, Water Code, is amended to read as follows:

Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may not loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the utility unless the utility reports the transaction to the utility commission within 60 days after the date of the transaction.

SECTION 2.51. Section 13.304, Water Code, is amended to read as follows:

Sec. 13.304. FORECLOSURE REPORT. (a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the utility commission and the commission in writing of that fact not later than the 10th day after the date on which the utility receives the notice.

(b) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by Section 13.301, but shall provide written notice to the utility commission and the commission before the 30th day preceding the date on which the foreclosure is completed.

(c) The financial institution may operate the utility for an interim period prescribed by utility commission rule before transferring or otherwise obtaining a certificate of convenience and necessity. A financial institution that operates a utility during an interim period under this subsection is subject to each utility commission rule to which the utility was subject and in the same manner.

SECTION 2.52. Section 13.341, Water Code, is amended to read as follows:

Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The utility commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the utility commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

SECTION 2.53. Section 13.342, Water Code, is amended to read as follows:

Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The utility commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

SECTION 2.54. Subsection (a), Section 13.343, Water Code, is amended to read as follows:

(a) The owner of a utility that supplies retail water service may not contract to purchase from an affiliated supplier wholesale water service for any of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days to remedy an emergency condition, as defined by utility commission or commission rule; or

(2) the executive director of the utility commission determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

SECTION 2.55. Section 13.381, Water Code, is amended to read as follows:

Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party to a proceeding before the utility commission or the commission is entitled to judicial review under the substantial evidence rule.

SECTION 2.56. Subsection (a), Section 13.382, Water Code, is amended to read as follows:

(a) Any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by the utility commission are excessive and who is a prevailing party in proceedings for review of a utility commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before the utility commission and the court. The amount of the attorney's fees shall be fixed by the court.

SECTION 2.57. Section 13.411, Water Code, is amended to read as follows:

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) If the utility commission or the commission has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the utility commission or the commission entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the utility commission or the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the utility commission or the commission against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

(b) If the executive director of the utility commission or the executive director of the commission has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the executive director of the utility commission or the executive director of the commission shall immediately:

- (1) notify the utility's representative; and
- (2) initiate enforcement action consistent with:

(A) this subchapter; and
(B) procedural rules adopted by the utility commission or the commission.

SECTION 2.58. Section 13.4115, Water Code, is amended to read as follows:

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. In regard to a customer complaint arising out of a charge made by a public utility, if the utility commission [~~the executive director~~] finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the utility commission, the utility commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 days of receiving the order is a violation for which the utility commission may impose an administrative penalty under Section 13.4151.

SECTION 2.59. Subsections (a), (f), and (g), Section 13.412, Water Code, are amended to read as follows:

(a) At the request of the utility commission or the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs the utility commission or the commission that the owner is abandoning the system;
- (3) violates a final order of the utility commission or the commission; or
- (4) allows any property owned or controlled by it to be used in violation of a final order of the utility commission or the commission.

(f) For purposes of this section and Section 13.4132, abandonment may include but is not limited to:

- (1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;
- (2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;
- (3) failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;
- (4) failure to provide customers adequate notice of a health hazard or potential health hazard;
- (5) failure to secure an alternative available water supply during an outage;
- (6) displaying a pattern of hostility toward or repeatedly failing to respond to the utility commission or the commission or the utility's customers; and
- (7) failure to provide the utility commission or the commission with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek ~~commission~~ approval from the utility commission and the commission to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

SECTION 2.60. Section 13.413, Water Code, is amended to read as follows:

Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of all or part of the real or personal property of a water or sewer utility against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

- (1) payment of fees to the receiver for his services;
- (2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and
- (3) payment of costs incurred in ensuring that any property owned or controlled by a water or sewer utility is not used in violation of a final order of the utility commission or the commission.

SECTION 2.61. Section 13.4131, Water Code, is amended to read as follows:

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The utility commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or a rule adopted under this chapter [~~commission rules~~], or noncompliance with an order issued under this chapter [~~commission orders~~].

(b) While supervising a utility, the utility commission may require the utility to abide by conditions and requirements prescribed by the utility commission, including:

- (1) management requirements;
- (2) additional reporting requirements;
- (3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and
- (4) a requirement that the utility place the utility's funds into an account in a financial institution approved by the utility commission and use of those funds shall be restricted to reasonable and necessary utility expenses.

(c) While supervising a utility, the utility commission may require that the utility obtain [~~commission~~] approval from the utility commission before taking any action that may be restricted under Subsection (b) [~~of this section~~]. Any action or transaction which occurs without [~~commission~~] approval may be voided by the utility commission.

SECTION 2.62. Subsections (a) and (c), Section 13.4133, Water Code, are amended to read as follows:

(a) Notwithstanding the requirements of Section 13.187 [~~of this code~~], the utility commission may authorize an emergency rate increase for a utility for which a person has been appointed under Section 13.4132 [~~of this code~~] or for which a receiver has been appointed under Section 13.412 [~~of this code~~] if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(c) The utility commission shall schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. The utility commission shall require the utility to provide notice of the hearing to each customer and to the Office of Public Utility Counsel. The additional revenues collected under an emergency rate increase are subject to refund if the utility commission finds that the rate increase was larger than necessary to ensure continuous and adequate service.

SECTION 2.63. Subsections (a) and (c), Section 13.414, Water Code, are amended to read as follows:

(a) Any retail public utility or affiliated interest that violates this chapter, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, direction, or requirement of the utility commission or the commission or decree or judgment of a court is subject to a civil penalty of not less than \$100 nor more than \$5,000 for each violation.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the utility commission or the commission in a court of competent jurisdiction to recover the penalty under this section.

SECTION 2.64. Subsections (a) through (k) and (m), Section 13.4151, Water Code, are amended to read as follows:

(a) If a person, affiliated interest, or entity subject to the jurisdiction of the utility commission or the commission violates this chapter or a rule or order adopted under this chapter, the utility commission or the commission, as applicable, may assess a penalty against that person, affiliated interest, or entity as provided by this section. The penalty may be in an amount not to exceed \$500 a day. Each day a violation continues may be considered a separate violation.

(b) In determining the amount of the penalty, the utility commission or the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director of the utility commission or the executive director of the commission concludes that a violation has occurred, the executive director of the utility commission or the executive director of the commission may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, affiliated interest, or retail public utility charged, and recommending the amount of that proposed penalty. The executive director of the utility commission or the executive director of the commission shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b) [~~of this section~~], and shall analyze each factor for the benefit of the agency [~~commission~~].

(d) Not later than the 10th day after the date on which the report is issued, the executive director of the utility commission or the executive director of the commission shall give written notice of the report to the person, affiliated interest, or retail public utility charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person, affiliated interest, or retail public utility charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person, affiliated interest, or retail public utility charged may give the agency [~~commission~~] written consent to the [~~executive director's~~] report described by Subsection (c), including the recommended penalty, or may make a written request for a hearing.

(f) If the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (c) [~~by the executive director~~] or fails to timely respond to the notice, the utility

commission or the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the [executive director's] report. If the utility commission or the commission assesses the penalty recommended by the report, the utility commission or the commission shall give written notice to the person, affiliated interest, or retail public utility charged of its decision.

(g) If the person, affiliated interest, or retail public utility charged requests or the utility commission or the commission orders a hearing, the agency [~~commission~~] shall call a hearing and give notice of the hearing. As a result of the hearing, the agency [~~commission~~] by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the agency [~~commission~~] shall analyze each of the factors provided by Subsection (b) [~~of this section~~].

(h) The utility commission or the commission shall give notice of its decision to the person, affiliated interest, or retail public utility charged, and if the agency [~~commission~~] finds that a violation has occurred and has assessed a penalty, the agency [~~commission~~] shall give written notice to the person, affiliated interest, or retail public utility charged of its findings, of the amount of the penalty, and of the person's, affiliated interest's, or retail public utility's right to judicial review of the agency's [~~commission's~~] order. If the agency [~~commission~~] is required to give notice of a penalty under this subsection or Subsection (f) [~~of this section~~], the agency [~~commission~~] shall file notice of the agency's [~~its~~] decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within the 30-day period immediately following the day on which the agency's [~~commission's~~] order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person, affiliated interest, or retail public utility charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person, affiliated interest, or retail public utility seeks judicial review of the fact of the violation, the amount of the penalty, or both:

(A) forward the amount of the penalty to the agency [~~commission~~] for placement in an escrow account; or

(B) post with the agency [~~commission~~] a supersedeas bond in a form approved by the agency [~~commission~~] for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) Failure to forward the money to or to post the bond with the agency [~~commission~~] within the time provided by Subsection (i) [~~of this section~~] constitutes a waiver of all legal rights to judicial review. If the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond as provided by Subsection (i) [~~of this section~~], the agency [~~commission~~] or the executive director of the agency may forward the matter to the attorney general for enforcement.

(k) Judicial review of the order or decision of the agency [~~commission~~] assessing the penalty shall be under the substantial evidence rule and may be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(m) Notwithstanding any other provision of law, the agency [~~commission~~] may compromise, modify, extend the time for payment of, or remit, with or without condition, any penalty imposed under this section.

SECTION 2.65. Section 13.417, Water Code, is amended to read as follows:

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail public utility fails to comply with any lawful order of the utility commission or the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the utility commission or the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 2.66. Section 13.418, Water Code, is amended to read as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings shall be [~~paid to the commission and~~] deposited in the general revenue fund.

(b) Fines and penalties collected from a public utility under this chapter in other than criminal proceedings shall be [~~paid to the commission and~~] deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 2.67. Subdivision (7), Section 13.501, Water Code, is amended to read as follows:

(7) "Multiple use facility" means commercial or industrial parks, office complexes, marinas, and others specifically identified in utility commission rules with five or more units.

SECTION 2.68. Subsection (e), Section 13.502, Water Code, is amended to read as follows:

(e) An owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may not change from submetered billing to allocated billing unless:

(1) the executive director of the utility commission approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

(2) the property owner meets rental agreement requirements established by the utility commission.

SECTION 2.69. Subsections (a), (b), and (e), Section 13.503, Water Code, are amended to read as follows:

(a) The utility commission shall encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources.

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for

the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may not impose on the tenant any extra charges, over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager, and that the rental unit or apartment house owner or manager shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. The rules shall allow an owner or manager to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed five percent of the bill paid late. All submetering equipment is subject to the rules and standards established by the utility commission for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140 [~~of this code~~].

(e) The utility commission may authorize a building owner to use submetering equipment that relies on integrated radio based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions.

SECTION 2.70. Section 13.5031, Water Code, is amended to read as follows:

Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any other law, the utility commission shall adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

(1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the manufactured home rental community, apartment house, or multiple use facility;

(2) the rental agreement contain a statement of the average manufactured home, apartment, or multiple use facility unit monthly bill for all units for any allocation of those utilities for the previous calendar year;

(3) except as provided by this section, an owner or condominium manager may not impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or multiple use facility;

(4) the owner or condominium manager shall maintain adequate records regarding the utility consumption of the manufactured home rental community, apartment house, or multiple use facility, the charges assessed by the retail public utility, and the allocation of the utility costs to the tenants;

(5) the owner or condominium manager shall maintain all necessary records concerning utility allocations, including the retail public utility's bills, and shall make the records available for inspection by the tenants during normal business hours; and

(6) the owner or condominium manager may charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed five percent of the bill paid late.

SECTION 2.71. Section 13.505, Water Code, is amended to read as follows:

Sec. 13.505. ENFORCEMENT. In addition to the enforcement provisions contained in Subchapter K [~~of this chapter~~], if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility commission regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. However, an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake.

SECTION 2.72. Section 13.512, Water Code, is amended to read as follows:

Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION CONTRACTS. Any eligible city is authorized to enter into privatization contracts if such action is recommended by the board of utility trustees and authorized by the governing body of the eligible city pursuant to an ordinance. Any privatization contract entered into prior to the effective date of this Act is validated, ratified, and approved. Each eligible city shall file a copy of its privatization contract with the utility commission, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

SECTION 2.73. Section 13.513, Water Code, is amended to read as follows:

Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider shall not constitute a "water and sewer utility," a "public utility," a "utility," or a "retail public utility" within the meaning of this chapter [~~Chapter 13~~] as a result of entering into or performing a privatization contract, if the governing body of the eligible city shall so elect by ordinance and provide notice thereof in writing to the utility commission; provided, however, this provision shall not affect the application of this chapter [~~Chapter 13~~] to an eligible city itself. Notwithstanding anything contained in this section, any service provider who seeks to extend or render sewer service to any person or municipality other than, or in addition to, an eligible city may be a "public utility" for the purposes of this chapter [~~Chapter 13~~] with respect to such other person or municipality.

SECTION 2.74. Subsection (a), Section 5.013, Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

- (4) the determination of the feasibility of certain federal projects;
 - (5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;
 - (6) conduct of the state's hazardous spill prevention and control program;
 - (7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;
 - (8) the administration of a portion of the state's injection well program;
 - (9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;
 - (10) the state's responsibilities relating to regional waste disposal;
 - (11) the responsibilities assigned to the commission by Chapters 361, 363, 382, and 401, Health and Safety Code; and
 - (12) ~~administration of the state's water rate program under Chapter 13 of this code; and~~
- [~~13~~] any other areas assigned to the commission by this code and other laws of this state.

SECTION 2.75. (a) On June 1, 2012, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas:

(1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the economic regulation of water and sewer utilities, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Chapter 13, Water Code, as provided by this article;

(2) any obligations and contracts of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred by this article;

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used for purposes of the commission's powers and duties directly related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article; and

(3) establishes a plan for the transfer of all pending applications, hearings, rulemaking proceedings, and orders relating to the economic regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article, from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas.

(c) The memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) The executive directors of the Texas Commission on Environmental Quality and the Public Utility Commission of Texas may agree in the memorandum of understanding under this section to transfer to the Public Utility Commission of Texas any personnel of the Texas Commission on Environmental Quality whose functions predominantly involve powers, duties, obligations, functions, and activities related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall appoint a transition team to accomplish the purposes of this section. The transition team shall establish guidelines on how the two agencies will cooperate regarding:

- (1) meeting federal drinking water standards;
- (2) maintaining adequate supplies of water;
- (3) meeting established design criteria for wastewater treatment plants;
- (4) demonstrating the economic feasibility of regionalization; and
- (5) serving the needs of economically distressed areas.

(f) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas and remains in effect until amended or replaced by that agency.

(g) The memorandum required by this section must be completed by April 1, 2012.

(h) The Public Utility Commission of Texas and the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

SECTION 2.76. (a) The Public Utility Commission of Texas shall conduct a comparative analysis of the ratemaking authority of the commission before the effective date of this Act and the ratemaking authority of the commission after the transition described in Section 2.75 of this article, to identify potential for procedural standardization. The Public Utility Commission of Texas shall issue a report of the analysis, with recommendations regarding rate standardization, for consideration by the 83rd Legislature.

(b) The Public Utility Commission of Texas shall prepare a report describing staffing changes related to the transition described in Section 2.75 of this article, including reductions in staff that the commission may realize as a result of consolidated functions. The Public Utility Commission of Texas shall submit the report to the Legislative Budget Board and the governor with the legislative appropriations request for the 2014-2015 biennium.

SECTION 2.77. (a) On June 1, 2012, the following are transferred from the office of public interest counsel of the Texas Commission on Environmental Quality to the Office of Public Utility Counsel:

(1) the powers, duties, functions, programs, and activities of the office of public interest counsel of the Texas Commission on Environmental Quality relating to the representation of the public interest in matters related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article;

(2) any obligations and contracts of the office of public interest counsel of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of the office of public interest counsel of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred by this article; and

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used for purposes of the office of public interest counsel's powers and duties directly related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(c) The memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel may agree in the memorandum of understanding under this section to transfer to the Office of Public Utility Counsel any personnel of the office of public interest counsel whose functions predominantly involve powers, duties, obligations, functions, and activities related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel shall appoint a transition team to accomplish the purposes of this section.

(f) A rule, form, policy, procedure, or decision of the office of public interest counsel of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of the Office of Public Utility Counsel and remains in effect until amended or replaced by that agency.

(g) The memorandum required by this section must be completed by April 1, 2012.

(h) The Office of Public Utility Counsel and the office of public interest counsel of the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

ARTICLE 3. OTHER WATER AND SEWER DUTIES OF PUBLIC UTILITY
COMMISSION OF TEXAS

SECTION 3.01. Section 11.002, Water Code, is amended by adding Subdivision (21) to read as follows:

(21) "Utility commission" means the Public Utility Commission of Texas.

SECTION 3.02. Section 11.041, Water Code, is amended to read as follows:

Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the utility commission a written petition showing:

(1) that the person [~~he~~] is entitled to receive or use the water;

(2) that the person [~~he~~] is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) If the petition is accompanied by a deposit of \$25, the executive director of the utility commission shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

(c) If, after preliminary investigation, the executive director of the utility commission determines that probable grounds exist for the complaint, the utility commission shall enter an order setting a time and place for a hearing on the petition.

(d) The utility commission may require the complainant to make an additional deposit or execute a bond satisfactory to the utility commission in an amount fixed by the utility commission conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the utility commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The utility commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The commission may participate in the hearing for the purpose of presenting evidence on the availability of the water requested by the petitioner. On completion of the hearing, the utility commission shall render a written decision.

(g) If, after the preliminary investigation, the executive director of the utility commission determines that no probable grounds exist for the complaint, the executive director of the utility commission shall dismiss the complaint. The utility commission may either return the deposit or pay it into the State Treasury.

SECTION 3.03. Section 12.013, Water Code, is amended to read as follows:

Sec. 12.013. RATE-FIXING POWER. (a) The utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

(b) In this section, ~~[The term]~~ "political subdivision" ~~[when used in this section]~~ means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the case being reviewed; provided, however, the utility commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) The utility commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) The utility commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) The utility commission may order a refund or assess additional charges from the date a petition for rate review is received by the utility commission of the difference between the rate actually charged and the rate fixed by the utility commission, plus interest at the statutory rate.

~~[(g) No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.~~

~~[(h) Nothing herein contained shall affect the jurisdiction of the Public Utility Commission.]~~

ARTICLE 4. REGULATION OF HAZARDOUS SUBSTANCES

SECTION 4.01. Subchapter B, Chapter 501, Health and Safety Code, is amended by adding Section 501.0234 to read as follows:

Sec. 501.0234. DENATONIUM BENZOATE ADDITIVE REQUIREMENT FOR CERTAIN PRODUCTS CONTAINING ETHYLENE GLYCOL. (a) This section applies to a product to be sold as antifreeze or engine coolant that:

(1) contains an ethylene glycol concentration greater than 10 percent by volume; and

(2) is manufactured after January 1, 2013.

(b) A manufacturer of a product described by Subsection (a) may not distribute the product for sale in this state unless the product includes denatonium benzoate in an amount of not less than 30 parts per million and not more than 50 parts per million by weight.

(c) A manufacturer of a product described by Subsection (a) shall:

(1) maintain a record of the trade name, scientific name, and active ingredients of the denatonium benzoate additive used to comply with Subsection (b); and

(2) on request, make the record available to the public.

(d) Subject to Subsection (e), a manufacturer, processor, distributor, recycler, or seller of a product described by Subsection (a) that includes denatonium benzoate in the concentrations required by Subsection (b) is not liable to any person for any

personal injury, death, property damage, damage to the environment, including natural resources, or economic loss that results from the inclusion of denatonium benzoate in the product.

(e) The limitation on liability provided by Subsection (d) does not apply to the extent that the cause of the liability is unrelated to the inclusion of denatonium benzoate in a product described by Subsection (a).

(f) This section does not exempt a manufacturer of denatonium benzoate from liability under other law.

(g) A political subdivision of this state may not adopt or enforce an ordinance, regulation, or policy that is inconsistent with or more restrictive than this section.

(h) This section does not apply to the sale of:

(1) a motor vehicle that contains a product described by Subsection (a); or

(2) a container sold at wholesale that contains 55 gallons or more of antifreeze or engine coolant.

SECTION 4.02. A manufacturer is required to comply with Section 501.0234, Health and Safety Code, as added by this article, only after January 1, 2013.

ARTICLE 5. GENERAL PROVISIONS

SECTION 5.01. Except as otherwise provided by this Act, this Act applies only to a statement of intent filed on or after the effective date of this Act. A rate change to which a statement of intent filed before the effective date of this Act applies is governed by the law in effect on the date the statement was filed, and that law is continued in effect for that purpose.

SECTION 5.02. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 635** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2900

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2900** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS
RODRIGUEZ
HUFFMAN
LUCIO
WATSON

On the part of the Senate

HARTNETT
LEWIS
MADDEN
RAYMOND
THOMPSON

On the part of the House

The Conference Committee Report on **HB 2900** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1320**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1320** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

LUCIO
CARONA
ESTES
ELTIFE
VAN DE PUTTE
On the part of the Senate

V. GONZALES
R. ANDERSON
DESHOTEL
KLEINSCHMIDT
RAYMOND
On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the execution of written instruments relating to residential real estate transactions and deeds conveying residential real estate in connection with certain transactions involving residential real estate; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Business & Commerce Code, is amended by adding Chapter 21 to read as follows:

CHAPTER 21. EXECUTION OF DEEDS IN CERTAIN TRANSACTIONS
INVOLVING RESIDENTIAL REAL ESTATE

Sec. 21.001. DEFINITION. In this chapter, "residential real estate" means real property on which a dwelling designed for occupancy for one to four families is constructed or intended to be constructed.

Sec. 21.002. PROHIBITION OF EXECUTION OF DEEDS CONVEYING RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS. (a) A seller of residential real estate or a person who makes an extension of credit and takes a security interest or mortgage against residential real estate may not, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, request or require the purchaser or borrower to execute and deliver to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit.

(b) A deed executed in violation of this section is voidable unless a subsequent purchaser of the residential real estate, for valuable consideration, obtains an interest in the property after the deed was recorded without notice of the violation, including notice provided by actual possession of the property by the grantor of the deed. The residential real estate continues to be subject to the security interest of a creditor who, without notice of the violation, granted an extension of credit to a borrower based on the deed executed in violation of this section.

(c) A purchaser or borrower must bring an action to void a deed executed in violation of this section not later than the fourth anniversary of the date the deed was recorded.

(d) A purchaser or borrower who is a prevailing party in an action to void a deed under this section may recover reasonable and necessary attorney's fees.

Sec. 21.003. ACTION BY ATTORNEY GENERAL. (a) The attorney general may bring an action on behalf of the state:

- (1) for injunctive relief to require compliance with this chapter;
- (2) to recover a civil penalty of \$500 for each violation of this chapter; or
- (3) for both injunctive relief and to recover the civil penalty.

(b) The attorney general is entitled to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, or both, under this section, including court costs and reasonable attorney's fees.

(c) The court may make such additional orders or judgments as are necessary to return to the purchaser a deed conveying residential real estate that the court finds was acquired by means of any violation of this chapter.

(d) In bringing or participating in an action under this chapter, the attorney general acts in the name of the state and does not establish an attorney-client relationship with another person, including a person to whom the attorney general requests that the court award relief.

(e) An action by the attorney general must be brought not later than the fourth anniversary of the date the deed was recorded.

SECTION 2. Section 121.005(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it. An officer may accept, as satisfactory evidence of the identity of an acknowledging person, only:

- (1) the oath of a credible witness personally known to the officer; [✗]
- (2) a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person; or
- (3) with respect to a deed or other instrument relating to a residential real estate transaction, a current passport issued by a foreign country.

SECTION 3. Section 24.004, Property Code, is amended to read as follows:

Sec. 24.004. JURISDICTION; DISMISSAL. (a) Except as provided by Subsection (b), a [A] justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits.

(b) A justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21, Business & Commerce Code.

SECTION 4. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1320** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3328**

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3328** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

FRASER
ELTIFE
HEGAR
HINOJOSA
NELSON
On the part of the Senate

KEFFER
CROWNOVER
PARKER
STRAMA
BURNAM
On the part of the House

The Conference Committee Report on **HB 3328** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3025**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3025** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI
WATSON
WENTWORTH

BRANCH
BONNEN
D. HOWARD
JOHNSON
RITTER

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 3025** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1198**

Senator Rodriguez submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1198** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

RODRIGUEZ
CARONA
HARRIS
URESTI
WENTWORTH

On the part of the Senate

HARTNETT
MUNOZ
MADDEN
BOHAC
THOMPSON

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to decedents' estates.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
ARTICLE 1. CHANGES TO TEXAS PROBATE CODE**

SECTION 1.01. Section 4D, Texas Probate Code, is amended by adding Subsection (b-1) and amending Subsections (e) and (g) to read as follows:

(b-1) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(e) A statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. A statutory probate court judge assigned to hear only the contested matter in a probate proceeding shall, on [On] resolution of the [a contested] matter [for which a statutory probate court judge is assigned under this section], including any appeal of the matter, [the statutory probate court judge shall] return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire probate proceeding as provided by Subsection (b-1) of this section shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(g) If only the contested matter in a probate proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a probate proceeding is transferred to a district court under this section, the [The] county court shall continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any [After a contested matter is transferred to a district court, any] matter related to a [the] probate proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the [probate] proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

SECTION 1.02. Section 4H, Texas Probate Code, is amended to read as follows:

Sec. 4H. CONCURRENT JURISDICTION WITH DISTRICT COURT. A statutory probate court has concurrent jurisdiction with the district court in:

(1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative;

(2) an action by or against a trustee;

(3) an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001, Property Code;

(4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;

(5) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and

(6) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

SECTION 1.03. The heading to Section 5B, Texas Probate Code, is amended to read as follows:

Sec. 5B. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING RELATED TO PROBATE PROCEEDING.

SECTION 1.04. Section 6, Texas Probate Code, is amended to read as follows:

Sec. 6. VENUE: ~~[FOR]~~ PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION ~~[OF ESTATES OF DECEDENTS]~~. Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

(1) in ~~[(a) In]~~ the county where the decedent ~~[deceased]~~ resided, if the decedent ~~[he]~~ had a domicile or fixed place of residence in this State; ~~[-]~~

(2) if ~~[(b) If]~~ the decedent ~~[deceased]~~ had no domicile or fixed place of residence in this State but died in this State, then either in the county where the decedent's ~~[his]~~ principal estate ~~[property]~~ was at the time of the decedent's ~~[his]~~ death, or in the county where the decedent ~~[he]~~ died; or ~~[-]~~

(3) if the decedent ~~[(c) If he]~~ had no domicile or fixed place of residence in this State, and died outside the limits of this State:

(A) ~~[-, then]~~ in any county in this State where the decedent's ~~[his]~~ nearest of kin reside; or ~~[-]~~

(B) ~~[(d) But]~~ if there are ~~[he had]~~ no kindred of the decedent in this State, then in the county where the decedent's ~~[his]~~ principal estate was situated at the time of the decedent's ~~[his]~~ death.

~~[(e) In the county where the applicant resides, when administration is for the purpose only of receiving funds or money due to a deceased person or his estate from any governmental source or agency; provided, that unless the mother or father or spouse or adult child of the deceased is applicant, citation shall be served personally on the living parents and spouses and adult children, if any, of the deceased person, or upon those who are alive and whose addresses are known to the applicant.]~~

SECTION 1.05. Chapter I, Texas Probate Code, is amended by adding Sections 6A, 6B, 6C, and 6D to read as follows:

Sec. 6A. VENUE: ACTION RELATED TO PROBATE PROCEEDING IN STATUTORY PROBATE COURT. Except as provided by Section 6B of this code, venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending.

Sec. 6B. VENUE: CERTAIN ACTIONS INVOLVING PERSONAL REPRESENTATIVE. Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Sec. 6C. VENUE: HEIRSHIP PROCEEDINGS. (a) Venue for a proceeding to determine a decedent's heirs is in:

(1) the court of the county in which a proceeding admitting the decedent's will to probate or administering the decedent's estate was most recently pending; or

(2) the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under Section 6 of this code if:

(A) no will of the decedent has been admitted to probate in this state and no administration of the decedent's estate has been granted in this state; or

(B) the proceeding is commenced by the trustee of a trust holding assets for the benefit of the decedent.

(b) Notwithstanding Subsection (a) of this section and Section 6 of this code, if there is no administration pending of the estate of a deceased ward who died intestate, venue for a proceeding to determine the deceased ward's heirs is in the probate court in which the guardianship proceedings with respect to the ward's estate were pending on the date of the ward's death. A proceeding described by this subsection may not be brought as part of the guardianship proceedings with respect to the ward's estate, but rather must be filed as a separate cause in which the court may determine the heirs' respective shares and interests in the estate as provided by the laws of this state.

Sec. 6D. VENUE: CERTAIN ACTIONS INVOLVING BREACH OF FIDUCIARY DUTY. Notwithstanding any other provision of this chapter, venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under Section 123.005, Property Code.

SECTION 1.06. Chapter I, Texas Probate Code, is amended by amending Section 8 and adding Sections 8A and 8B to read as follows:

Sec. 8. CONCURRENT VENUE IN PROBATE PROCEEDING ~~[AND TRANSFER OF PROCEEDINGS]~~. (a) Concurrent Venue. When two or more courts have concurrent venue of ~~[an estate or]~~ a probate proceeding ~~[to declare heirship under Section 48(a) of this code]~~, the court in which the application for the ~~[a]~~ proceeding ~~[in probate or determination of heirship]~~ is first filed shall have and retain jurisdiction of the ~~[estate or heirship]~~ proceeding~~[-, as appropriate,]~~ to the exclusion of the other court or courts. The proceeding shall be deemed commenced by the filing of an application averring facts sufficient to confer venue; and the proceeding first legally commenced shall extend to all of the property of the decedent or the decedent's estate. Provided, however, that a bona fide purchaser of real property in reliance on any such subsequent proceeding, without knowledge of its invalidity, shall be protected in such purchase unless before the purchase the decree admitting the will to probate, determining heirship, or granting administration in the prior proceeding is ~~[shall be]~~ recorded in the office of the county clerk of the county in which such property is located.

(b) Probate Proceedings in More Than One County. If probate proceedings involving the same estate are ~~[a proceeding in probate or to declare heirship under Section 48(a) of this code is]~~ commenced in more than one county, each ~~[the]~~ proceeding commenced in a county other than the county in which a proceeding was first commenced is ~~[shall be]~~ stayed ~~[except in the county where first commenced]~~ until final determination of venue by the court in the county where first commenced. If the proper venue is finally determined to be in another county, the clerk, after making and retaining a true copy of the entire file in the case, shall transmit the

original file to the proper county, and the proceeding shall thereupon be had in the proper county in the same manner as if the proceeding had originally been instituted therein.

(c) Jurisdiction to Determine Venue. Subject to Subsections (a) and (b) of this section, a court in which an application for a probate proceeding is filed has jurisdiction to determine venue for the proceeding and for any matter related to the proceeding. A court's determination under this subsection is not subject to collateral attack.

Sec. 8A. TRANSFER OF VENUE IN PROBATE PROCEEDING [~~Transfer of Proceeding~~]. (a) [(1)] Transfer for Want of Venue. If it appears to the court at any time before the final decree in a probate proceeding that the proceeding was commenced in a court which did not have priority of venue over such proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county by transmitting to the proper court in such county the original file in such case, together with certified copies of all entries in the judge's probate docket theretofore made, and the proceeding [probate of the will, determination of heirship, or administration of the estate] in such county shall be completed in the same manner as if the proceeding had originally been instituted therein; but, if the question as to priority of venue is not raised before final decree in the proceedings is announced, the finality of such decree shall not be affected by any error in venue.

(b) [(2)] Transfer for Convenience [of the Estate]. If it appears to the court at any time before a probate proceeding [the estate is closed or, if there is no administration of the estate, when the proceeding in probate or to declare heirship] is concluded that it would be in the best interest of the estate or, if there is no administration of the estate, that it would be in the best interest of the heirs or beneficiaries of the decedent's will, the court, in its discretion, may order the proceeding transferred to the proper court in any other county in this State. The clerk of the court from which the proceeding is transferred shall transmit to the court to which the proceeding is transferred the original file in the proceeding and a certified copy of the index.

Sec. 8B. VALIDATION OF PRIOR PROCEEDINGS [(d) ~~Validation of Prior Proceedings~~]. When a probate proceeding is transferred to another county under any provision of [this] Section 8 or 8A of this Code, all orders entered in connection with the proceeding shall be valid and shall be recognized in the second court, provided such orders were made and entered in conformance with the procedure prescribed by this Code.

[(e) ~~Jurisdiction to Determine Venue. Any court in which there has been filed an application for a proceeding in probate or determination of heirship shall have full jurisdiction to determine the venue of the proceeding in probate or heirship proceeding, and of any proceeding relating thereto, and its determination shall not be subject to collateral attack.~~]

SECTION 1.07. Section 15, Texas Probate Code, is amended to read as follows:

Sec. 15. CASE FILES. The county clerk shall maintain a case file for each decedent's estate in which a probate proceeding has been filed. The case file must contain all orders, judgments, and proceedings of the court and any other probate filing with the court, including all:

- (1) applications for the probate of wills and for the granting of administration;
- (2) citations and notices, whether published or posted, with the returns thereon;
- (3) wills and the testimony upon which the same are admitted to probate, provided that the substance only of depositions shall be recorded;
- (4) bonds and official oaths;
- (5) inventories, appraisements, and lists of claims;
- (5-a) affidavits in lieu of inventories, appraisements, and lists of claims;
- (6) exhibits and accounts;
- (7) reports of hiring, renting, or sale;
- (8) applications for sale or partition of real estate and reports of sale and of commissioners of partition;
- (9) applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money; and
- (10) reports of lending or investing money.

SECTION 1.08. Section 34A, Texas Probate Code, is amended to read as follows:

Sec. 34A. ATTORNEYS AD LITEM. (a) Except as provided by Section 53(c) of this code, the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of:

- (1) a person having a legal disability;
- (2) [;] a nonresident;
- (3) [;] an unborn or unascertained person;
- (4) [~~;~~] an unknown or missing heir; or
- (5) an unknown or missing person entitled to property deposited in an account in the court's registry under Section 408(b) of this code [~~in any probate proceeding].~~

(b) Subject to Subsection (c) of this section, an [~~Each~~] attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court. The court shall:

- (1) tax the compensation [~~and to be taxed~~] as costs in the probate proceeding; or
- (2) for an attorney ad litem appointed to represent the interests of an unknown or missing person described by Subsection (a)(5) of this section, order that the compensation be paid from money in the account described by that subdivision.

(c) The court order appointing an attorney ad litem to represent the interests of an unknown or missing person described by Subsection (a)(5) of this section must require the attorney ad litem to conduct a search for the person. Compensation paid under Subsection (b) of this section to the attorney ad litem may not exceed 10 percent of the amount on deposit in the account described by Subsection (a)(5) of this section on the date:

- (1) the attorney ad litem reports to the court the location of the previously unknown or missing person; or

(2) the money in the account is paid to the comptroller as provided by Section 427 of this code.

SECTION 1.09. Section 37A, Texas Probate Code, is amended by amending Subsections (h) and (i) and adding Subsections (h-1) and (p) to read as follows:

(h) Time for Filing of Disclaimer. Unless the beneficiary is a charitable organization or governmental agency of the state, a written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the beneficiary is a charitable organization or a governmental agency of the state, a written memorandum of disclaimer disclaiming a present or future interest shall be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Section 128A of this code;~~[-]~~ or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisal, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisal, and list of claims~~[-, whichever occurs later].~~

(h-1) Filing of Disclaimer. The written memorandum of disclaimer shall be filed in the probate court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, if the administration of the decedent's estate is closed, or after the expiration of one year following the date of the issuance of letters testamentary in an independent administration, or if there has been no will of the decedent probated or filed for probate, or if no administration of the decedent's estate has been commenced, or if no application for administration of the decedent's estate has been filed, the written memorandum of disclaimer shall be filed with the county clerk of the county of the decedent's residence, or, if the decedent is not a resident of this state but real property or an interest therein located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

(i) Notice of Disclaimer. Unless the beneficiary is a charitable organization or governmental agency of the state, copies of any written memorandum of disclaimer shall be delivered in person to, or shall be mailed by registered or certified mail to and received by, the legal representative of the transferor of the interest or the holder of legal title to the property to which the disclaimer relates not later than nine months after the death of the decedent or, if the interest is a future interest, not later than nine months after the date the person who will receive the property or interest is finally ascertained and the person's interest is indefeasibly vested. If the beneficiary is a charitable organization or government agency of the state, the notices required by this section shall be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Section 128A of this code;^[5] or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisalment, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisalment, and list of claims~~[-, whichever occurs later]~~.

(p) Extension of Time for Certain Disclaimers. Notwithstanding the periods prescribed by Subsections (h) and (i) of this section, a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, may be executed and filed, and notice of the disclaimer may be given, not later than nine months after December 17, 2010. A disclaimer filed and for which notice is given during this extended period is valid and shall be treated as if the disclaimer had been filed and notice had been given within the periods prescribed by Subsections (h) and (i) of this section. This subsection does not apply to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.

SECTION 1.10. The heading to Section 48, Texas Probate Code, is amended to read as follows:

Sec. 48. PROCEEDINGS TO DECLARE HEIRSHIP. ~~[WHEN AND WHERE INSTITUTED.]~~

SECTION 1.11. Section 48, Texas Probate Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) When a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon the person's [his] estate; or when it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent; or when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the court of the county in which [such proceedings were last pending, or in the event no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the court of the county in which] venue would be proper ~~[for commencement of an administration of the decedent's estate]~~ under Section 6C [6] of this code^[7] may determine and declare in the manner hereinafter provided who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent or, if applicable, in the trust, and proceedings therefor shall be known as proceedings to declare heirship.

(d) Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death.

SECTION 1.12. Subsection (a), Section 49, Texas Probate Code, is amended to read as follows:

(a) Such proceedings may be instituted and maintained under a circumstance specified in Section 48(a) of this code ~~[in any of the instances enumerated above]~~ by the qualified personal representative of the estate of such decedent, by a party seeking the appointment of an independent administrator under Section 145 of this code, by the trustee of a trust holding assets for the benefit of the decedent, by any person or persons claiming to be a secured or unsecured creditor or the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the following information:

(1) the name of the decedent and the time and place of death;

(2) the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the estate of the decedent or in the trust, as applicable;

(3) all the material facts and circumstances within the knowledge and information of the applicant that might reasonably tend to show the time or place of death or the names or residences of all heirs, if the time or place of death or the names or residences of all the heirs are not definitely known to the applicant;

(4) a statement that all children born to or adopted by the decedent have been listed;

(5) a statement that each marriage of the decedent has been listed with the date of the marriage, the name of the spouse, and if the marriage was terminated, the date and place of termination, and other facts to show whether a spouse has had an interest in the property of the decedent;

(6) whether the decedent died testate and if so, what disposition has been made of the will;

(7) a general description of all the real and personal property belonging to the estate of the decedent or held in trust for the benefit of the decedent, as applicable; and

(8) an explanation for the omission of any of the foregoing information that is omitted from the application.

SECTION 1.13. Subsections (a) and (b), Section 53C, Texas Probate Code, are amended to read as follows:

(a) This section applies in a proceeding to declare heirship of a decedent only with respect to an individual who:

~~[(1) petitions the court for a determination of right of inheritance as authorized by Section 42(b) of this code; and~~

~~[(2)] claims to be a biological child of the decedent[~~, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201, Family Code,~~] or [who] claims inheritance through a biological child of the decedent[~~, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code.~~]~~

(b) The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Subsection (a) of this section, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code. [Unless the results of genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence, the court shall find that the individual described by Subsection (a) of this section is an heir of the decedent if the results of genetic testing ordered under Section 53A of this chapter identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Subsection (a) of this section.]

SECTION 1.14. Section 59, Texas Probate Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths [~~under the laws of this State~~]. Provided that nothing shall require an affidavit or certificate of any testator or testatrix as a prerequisite to self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS
 COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said _____, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

 Testator

Witness

Witness

Subscribed and sworn to before me by the said _____, testator, and by the said _____ and _____, witnesses, this _____ day of _____ A.D. _____.

(SEAL)

(Signed) _____

(Official Capacity of Officer)

(a-1) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses under Subsection (a) of this section, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, _____, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I have willingly made and executed it in the presence of the undersigned witnesses, all of whom were present at the same time, as my free act and deed, and that I have requested each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this _____ day of _____, 20_____.

Testator

The undersigned, _____ and _____, each being above fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this _____ day of _____, 20_____.

Witness

Witness

Subscribed and sworn to before me by the said _____, testator, and by the said _____ and _____, witnesses, this _____ day of _____, 20_____.

(SEAL)

(Signed)
(Official Capacity of Officer)

(b) An affidavit in form and content substantially as provided by Subsection (a) of this section is a "self-proving affidavit." A will with a self-proving affidavit subscribed and sworn to by the testator and witnesses attached or annexed to the will, or a will simultaneously executed, attested, and made self-proved as provided by Subsection (a-1) of this section, is a "self-proved will." Substantial compliance with the form provided by Subsection (a) or (a-1) of this section ~~[form of such affidavit]~~ shall suffice to cause the will to be self-proved. For this purpose, an affidavit that is subscribed and acknowledged by the testator and subscribed and sworn to by the witnesses would suffice as being in substantial compliance. A signature on a self-proving affidavit as provided by Subsection (a) of this section is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses, or both, but in that case, the will may not be considered a self-proved will.

SECTION 1.15. Section 64, Texas Probate Code, is amended to read as follows:

Sec. 64. FORFEITURE CLAUSE. A provision in a will that would cause a forfeiture of ~~[a devise]~~ or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is unenforceable if:

- (1) just ~~[probable]~~ cause existed ~~[exists]~~ for bringing the action; and
- (2) the action was brought and maintained in good faith.

SECTION 1.16. Section 67, Texas Probate Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) Whenever a pretermitted child is not mentioned in the testator's will, provided for in the testator's will, or otherwise provided for by the testator, the pretermitted child shall succeed to a portion of the testator's estate as provided by Subsection (a)(1) or (a)(2) of this section, except as limited by Subsection (e) of this section.

(1) If the testator has one or more children living when he executes his last will, and:

(A) No provision is made therein for any such child, a pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the other parent of the pretermitted child.

(B) Provision, whether vested or contingent, is made therein for one or more of such children, a pretermitted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate to which the pretermitted child is entitled is limited to the disposition made to children under the will.

(ii) The pretermitted child shall receive such share of the testator's estate, as limited in Subparagraph (i), as he would have received had the testator included all pretermitted children with the children upon whom benefits were conferred under the will, and given an equal share of such benefits to each such child.

(iii) To the extent that it is feasible, the interest of the pretermitted child in the testator's estate shall be of the same character, whether an equitable or legal life estate or in fee, as the interest that the testator conferred upon his children under the will.

(2) If the testator has no child living when he executes his last will, the pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the other parent of the pretermitted child.

(b) The pretermitted child may recover the share of the testator's estate to which he is entitled either from the other children under Subsection (a)(1)(B) or the testamentary beneficiaries under Subsections (a)(1)(A) and (a)(2) other than the other parent of the pretermitted child, ratably, out of the portions of such estate passing to such persons under the will. In abating the interests of such beneficiaries, the character of the testamentary plan adopted by the testator shall be preserved to the maximum extent possible.

(e) If a pretermitted child's other parent is not the surviving spouse of the testator, the portion of the testator's estate to which the pretermitted child is entitled under Subsection (a)(1)(A) or (a)(2) of this section may not reduce the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

SECTION 1.17. Section 77, Texas Probate Code, is amended to read as follows:

Sec. 77. ORDER OF PERSONS QUALIFIED TO SERVE. Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

- (a) To the person named as executor in the will of the deceased.
 - (b) To the surviving husband or wife.
 - (c) To the principal devisee or legatee of the testator.
 - (d) To any devisee or legatee of the testator.
 - (e) To the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes a person and his descendants who legally adopted the deceased or who have been legally adopted by the deceased.
 - (f) To a creditor of the deceased.
 - (g) To any person of good character residing in the county who applies therefor.
 - (h) To any other person not disqualified under the following section [~~Section~~].
- When persons [~~applicants~~] are equally entitled, letters shall be granted to the person [~~applicant~~] who, in the judgment of the court, is most likely to administer the estate advantageously, or letters [~~they~~] may be granted to [~~any~~] two or more of those persons [~~such applicants~~].

SECTION 1.18. Subsection (a), Section 81, Texas Probate Code, is amended to read as follows:

(a) For Probate of a Written Will. A written will shall, if within the control of the applicant, be filed with the application for its probate, and shall remain in the custody of the county clerk unless removed therefrom by order of a proper court. An application for probate of a written will shall state:

- (1) The name and domicile of each applicant.

(2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.

(3) Facts showing that the court has venue.

(4) That the decedent owned real or personal property, or both, describing the same generally, and stating its probable value.

(5) The date of the will, the name and residence of the executor named therein, if any, and if none be named, then the name and residence of the person to whom it is desired that letters be issued, and also the names and residences of the subscribing witnesses, if any.

(6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.

(7) That such executor or applicant, or other person to whom it is desired that letters be issued, is not disqualified by law from accepting letters.

(8) Whether a marriage of the decedent was ever dissolved after the will was made~~[, whether by divorce, annulment, or a declaration that the marriage was void,]~~ and if so, when and from whom.

(9) Whether the state, a governmental agency of the state, or a charitable organization is named by the will as a devisee.

The foregoing matters shall be stated and averred in the application to the extent that they are known to the applicant, or can with reasonable diligence be ascertained by him, and if any of such matters is not stated or averred in the application, the application shall set forth the reason why such matter is not so stated and averred.

SECTION 1.19. Subsection (a), Section 83, Texas Probate Code, is amended to read as follows:

(a) Where Original Application Has Not Been Heard. If, after an application for the probate of a will or for the appointment of a general personal representative has been filed, and before such application has been heard, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall hear both applications together and determine what instrument, if any, should be admitted to probate, or whether the decedent died intestate. The court may not sever or bifurcate the proceeding on the applications.

SECTION 1.20. Subsection (a), Section 84, Texas Probate Code, is amended to read as follows:

(a) Self-Proved Will. (1) If a will is self-proved as provided in Section 59 of this Code or, if executed in another state or a foreign country, is self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will shall be necessary.

(2) For purposes of Subdivision (1) of this subsection, a will is considered self-proved if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(A) the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no

constraint or undue influence, and the testator is eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(B) the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

SECTION 1.21. Subsection (a), Section 89A, Texas Probate Code, is amended to read as follows:

(a) A written will shall, if within the control of the applicant, be filed with the application for probate as a muniment of title, and shall remain in the custody of the county clerk unless removed from the custody of the clerk by order of a proper court. An application for probate of a will as a muniment of title shall state:

- (1) The name and domicile of each applicant.
- (2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.
- (3) Facts showing that the court has venue.
- (4) That the decedent owned real or personal property, or both, describing the property generally, and stating its probable value.
- (5) The date of the will, the name and residence of the executor named in the will, if any, and the names and residences of the subscribing witnesses, if any.
- (6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.
- (7) That there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate.
- (8) Whether a marriage of the decedent was ever dissolved after the will was made~~[, whether by divorce, annulment, or a declaration that the marriage was void,]~~ and if so, when and from whom.
- (9) Whether the state, a governmental agency of the state, or a charitable organization is named by the will as a devisee.

The foregoing matters shall be stated and averred in the application to the extent that they are known to the applicant, or can with reasonable diligence be ascertained by the applicant, and if any of such matters is not stated or averred in the application, the application shall set forth the reason why such matter is not so stated and averred.

SECTION 1.22. Section 128A, Texas Probate Code, as amended by Chapters 801 (S.B. 593) and 1170 (H.B. 391), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

Sec. 128A. NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF WILL. (a) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust entitled to receive ~~[real~~

~~or personal~~ property under the terms of a decedent's will, to be determined for purposes of this section with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will. The term does not include a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust that would be entitled to receive property under the terms of a decedent's will on the occurrence of a contingency that has not occurred as of the date of the decedent's death.

(a-1) This section does not apply to the probate of a will as a muniment of title.

(b) Except as provided by Subsection (d) of this section, not later than the 60th day after the date of an order admitting a decedent's will to probate, the personal representative of the decedent's estate, including an independent executor or independent administrator, shall give notice that complies with Subsection (e) of this section to each beneficiary named in the will whose identity and address are known to the personal representative or, through reasonable diligence, can be ascertained. If, after the 60th day after the date of the order, the personal representative becomes aware of the identity and address of a beneficiary who was not given notice on or before the 60th day, the personal representative shall give the notice as soon as possible after becoming aware of that information.

(c) Notwithstanding the requirement under Subsection (b) of this section that the personal representative give the notice to the beneficiary, the personal representative shall give the notice with respect to a beneficiary described by this subsection as follows:

(1) if the beneficiary is a trustee of a trust, to the trustee, unless the personal representative is the trustee, in which case the personal representative shall, except as provided by Subsection (c-1) of this section, give the notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in existence on the date of the decedent's death;

(2) if the beneficiary has a court-appointed guardian or conservator, to that guardian or conservator;

(3) if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor; and

(4) if the beneficiary is a charity that for any reason cannot be notified, to the attorney general.

(c-1) The personal representative is not required to give the notice otherwise required by Subsection (c)(1) of this section to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

(1) the personal representative has given the notice to an ancestor of the person who has a similar interest in the trust; and

(2) no apparent conflict exists between the ancestor and the person eligible to receive trust income.

(d) A personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

(1) has made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate; [~~or~~]

(2) is entitled to receive aggregate gifts under the will with an estimated value of \$2,000 or less;

(3) has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent's will to probate; or

(4) has received a copy of the will that was admitted to probate or a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that:

(A) either acknowledges the receipt of the copy of the will or includes the written summary of the gifts to the beneficiary under the will;

(B) is signed by the beneficiary; and

(C) is filed with the court.

(e) The notice required by this section must include:

(1) ~~[state:~~

~~[(A)]~~ the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Subsection (c) of this section, the name and address of the beneficiary for whom the notice is given and of the person to whom the notice is given;

(2) [(B)] the decedent's name;

(3) a statement [(C)] that the decedent's will has been admitted to probate;

(4) a statement [(D)] that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will; ~~and]~~

(5) [(E)] the personal representative's name and contact information; and

(6) either:

(A) [(2) contain as attachments] a copy of the will that was admitted to probate and the order admitting the will to probate; or

(B) a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

(f) The notice required by this section must be sent by registered or certified mail, return receipt requested.

(g) Not later than the 90th day after the date of an order admitting a will to probate, the personal representative shall file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the personal representative, or a certificate signed by the personal representative's attorney, stating:

(1) for each beneficiary to whom notice was required to be given under this section, the name and address of the beneficiary to whom the personal representative gave the notice or, for a beneficiary described by Subsection (c) of this section, the name and address of the beneficiary and of the person to whom the notice was given;

(2) the name and address of each beneficiary to whom notice was not required to be given under Subsection (d)(2), (3), or (4) of this section ~~[who filed a waiver of the notice];~~

(3) the name of each beneficiary whose identity or address could not be ascertained despite the personal representative's exercise of reasonable diligence; and

(4) any other information necessary to explain the personal representative's inability to give the notice to or for any beneficiary as required by this section.

(h) The affidavit or certificate required by Subsection (g) of this section may be included with any pleading or other document filed with the clerk of the court, including the inventory, appraisal, and list of claims, an affidavit in lieu of the inventory, appraisal, and list of claims, or an application for an extension of the deadline to file the inventory, appraisal, and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims, provided that the pleading or other document with which the affidavit or certificate is included is filed not later than the date the affidavit or certificate is required to be filed as provided by Subsection (g) of this section.

SECTION 1.23. Section 143, Texas Probate Code, is amended to read as follows:

Sec. 143. SUMMARY PROCEEDINGS FOR SMALL ESTATES AFTER PERSONAL REPRESENTATIVE APPOINTED. Whenever, after the inventory, appraisal, and list of claims or the affidavit in lieu of the inventory, appraisal, and list of claims has been filed by a personal representative, it is established that the estate of a decedent, exclusive of the homestead and exempt property and family allowance to the surviving spouse and minor children, does not exceed the amount sufficient to pay the claims of Classes One to Four, inclusive, as claims are hereinafter classified, the personal representative shall, upon order of the court, pay the claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of such claims, and thereafter present his account with an application for the settlement and allowance thereof. Thereupon the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, may decree final distribution, discharge the personal representative, and close the administration.

SECTION 1.24. Subsections (g) through (j), Section 145, Texas Probate Code, are amended to read as follows:

(g) The court may not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter III of this code, to constitute all of the decedent's heirs ~~In no case shall any independent administrator be appointed by any court to serve in any intestate administration until those parties seeking the appointment of said independent administrator offer clear and convincing evidence to the court that they constitute all of the said decedent's heirs].~~

(h) When an independent administration has been created, and the order appointing an independent executor has been entered by the county court, and the inventory, appraisal, and list aforesaid has been filed by the executor and approved by the county court or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed by the executor, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the county court except where this Code specifically and explicitly provides for some action in the county court.

(i) If a distributee described in Subsections (c) through (e) of this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interests of the incapacitated person, then, notwithstanding anything to the contrary in Subsections (c) through (e) of this section, the county court shall not enter an order granting independent administration of the estate. If such distributee who is an incapacitated person has no guardian of the person, the county court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the county court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(j) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Subsections (c) and (d) of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust. If a trust beneficiary who is considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may file the application or give the consent, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

SECTION 1.25. Part 4, Chapter VI, Texas Probate Code, is amended by adding Sections 145A, 145B, and 145C to read as follows:

Sec. 145A. GRANTING POWER OF SALE BY AGREEMENT. In a situation in which a decedent does not have a will or a decedent's will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority, the court may include in an order appointing an independent executor under Section 145 of this code any general or specific authority regarding the power of the independent executor to sell real property that may be consented to by the beneficiaries who are to receive any interest in the real property in the application for independent administration or in their consents to the independent administration. The independent executor, in such event, may sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Sec. 145B. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL. Unless this code specifically provides otherwise, any action that a personal representative subject to court supervision may take with or without a court order may be taken by an independent executor without a court order. The other

provisions of this part are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this part.

Sec. 145C. POWER OF SALE OF ESTATE PROPERTY. (a) Definition. In this section, "independent executor" does not include an independent administrator.

(b) General. Unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. The procedural requirements applicable to a supervised administration do not apply.

(c) Protection of Person Purchasing Estate Property. (1) A person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(A) a power of sale is granted to the independent executor in the will;

(B) a power of sale is granted under Section 145A of this code in the court order appointing the independent executor or independent administrator; or

(C) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 341(1) of this code.

(2) As to acts undertaken in good faith reliance, the affidavit described by Subsection (c)(1)(C) of this section is conclusive proof, as between a purchaser of property from an estate, and the personal representative of the estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(3) This section does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale.

(d) No Limitations. This section does not limit the authority of an independent executor or independent administrator to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this code, including the authority to enter into a lease and to borrow money.

SECTION 1.26. Section 146, Texas Probate Code, is amended by adding Subsections (a-1) and (b-1) through (b-7) and amending Subsection (b) to read as follows:

(a-1) Statement in Notice of Claim. To be effective, the notice provided under Subsection (a)(2) of this section must include, in addition to the other information required by Section 294(d) of this code, a statement that a claim may be effectively presented by only one of the methods prescribed by this section.

(b) Secured Claims for Money. Within six months after the date letters are granted or within four months after the date notice is received under Section 295 of this code, whichever is later, a creditor with a claim for money secured by real or personal property of the estate must give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. In addition to giving the notice within this period, a creditor whose claim is secured by real property shall record a notice of the creditor's election under this subsection in the deed records of the county in which the real property is located. If no [the] election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period [is not made], the claim shall be [is] a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien, and the claim may not be asserted against other assets of the estate. The independent executor may pay the claim before the claim matures if paying the claim before maturity is in the best interest of the estate.

(b-1) Matured Secured Claims. (1) A claim approved as a matured secured claim under Subsection (b) of this section remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher classification under Section 322 of this code. However, the secured creditor:

(A) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(B) during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(2) Subdivision (1) of this subsection may not be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. Except with respect to real property, any third party acting in good faith may obtain good title with respect to an estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(3) If a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Section 71A of this code, the independent executor shall collect from the devisees the amount of the debt and pay that amount to the claimant or shall sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Section 306(c-1) of this code applicable to court supervised administrations.

(b-2) Preferred Debt and Lien Claims. During an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Subsection (b) of this section is free to exercise any judicial or

extrajudicial collection rights, including the right to foreclosure and execution; provided, however, that the creditor does not have the right to conduct a nonjudicial foreclosure sale within six months after letters are granted.

(b-3) Certain Unsecured Claims; Barring of Claims. An unsecured creditor who has a claim for money against an estate and who receives a notice under Section 294(d) of this code shall give to the independent executor notice of the nature and amount of the claim not later than the 120th day after the date the notice is received or the claim is barred.

(b-4) Notices Required by Creditors. Notice to the independent executor required by Subsections (b) and (b-3) of this section must be contained in:

(1) a written instrument that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument or pleading filed in the court in which the administration of the estate is pending.

(b-5) Filing Requirements Applicable. Subsection (b-4) of this section does not exempt a creditor who elects matured secured status from the filing requirements of Subsection (b) of this section, to the extent those requirements are applicable.

(b-6) Statute of Limitations. Except as otherwise provided by Section 16.062, Civil Practice and Remedies Code, the running of the statute of limitations shall be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor. In particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim.

(b-7) Other Claim Procedures of Code Generally Do Not Apply. Except as otherwise provided by this section, the procedural provisions of this code governing creditor claims in supervised administrations do not apply to independent administrations. By way of example, but not as a limitation:

(1) Section 313 of this code does not apply to independent administrations, and consequently a creditor's claim may not be barred solely because the creditor failed to file a suit not later than the 90th day after the date an independent executor rejected the claim or with respect to a claim for which the independent executor takes no action; and

(2) Sections 306(f)-(k) of this code do not apply to independent administrations.

SECTION 1.27. Subsection (a), Section 149B, Texas Probate Code, is amended to read as follows:

(a) In addition to or in lieu of the right to an accounting provided by Section 149A of this code, at any time after the expiration of two years from the date the court clerk first issues letters testamentary or of administration to any personal representative of an estate [~~that an independent administration was created and the order appointing an independent executor was entered~~], a person interested in the estate then subject to independent administration may petition the county court, as that term is defined by Section 3 of this code, for an accounting and distribution. The

court may order an accounting to be made with the court by the independent executor at such time as the court deems proper. The accounting shall include the information that the court deems necessary to determine whether any part of the estate should be distributed.

SECTION 1.28. Section 149C, Texas Probate Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) The [county] court, [~~as that term is defined by Section 3 of this code,~~] on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within ninety days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims;

(2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care;

(3) the independent executor fails to make an accounting which is required by law to be made;

(4) the independent executor fails to timely file the affidavit or certificate required by Section 128A of this code;

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties; [~~or~~]

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes incapable of [legally incapacitated from] properly performing the independent executor's fiduciary duties;
or

(7) the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(a-1) The court, on its own motion or on the motion of any interested person, and after the independent executor has been cited by certified mail, return receipt requested, to answer at a time and place stated in the citation, may remove an independent executor who is appointed under the provisions of this code if the independent executor:

(1) subject to Subsection (a-2)(1) of this section, fails to qualify in the manner and period required by law;

(2) subject to Subsection (a-2)(2) of this section, fails to return not later than the 90th day after the date the independent executor qualifies an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims, unless the period is extended by court order;

(3) cannot be served with notices or other processes because the:

(A) independent executor's location is unknown;

(B) independent executor is eluding service; or

(C) independent executor is a nonresident of this state who does not have a resident agent to accept service of process in a probate proceeding or other action relating to the estate; or

(4) subject to Subsection (a-2)(3) of this section, has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the independent executor's care.

(a-2) The court may remove an independent executor:

(1) under Subsection (a-1)(1) of this section only if the independent executor fails to qualify on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to qualify in the manner and period required by law;

(2) under Subsection (a-1)(2) of this section only if the independent executor fails to file an inventory and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims as required by law on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to file the inventory and list of claims or affidavit; and

(3) under Subsection (a-1)(4) of this section only on presentation of clear and convincing evidence given under oath of the misapplication, embezzlement, or removal from this state of property as described by that subdivision.

SECTION 1.29. Section 151, Texas Probate Code, is amended to read as follows:

Sec. 151. CLOSING INDEPENDENT ADMINISTRATION BY CLOSING REPORT OR NOTICE OF CLOSING ESTATE [~~AFFIDAVIT~~]. (a) Filing of Closing Report or Notice of Closing Estate [~~Affidavit~~]. When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, when there is no pending litigation, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a closing report or a notice of closing of the estate.

(a-1) Closing Report. An independent executor may file:-

[(+)] a closing report verified by affidavit that:

(1) shows:

(A) the [(+) The] property of the estate which came into the possession [hands] of the independent executor;

(B) the [(ii) The] debts that have been paid;

(C) the [(iii) The] debts, if any, still owing by the estate;

(D) the [(iv) The] property of the estate, if any, remaining on hand after payment of debts; and

(E) the ~~[(v) The]~~ names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

(b) Notice of Closing Estate. (1) Instead of filing a closing report under Subsection (a-1) of this section, an independent executor may file a notice of closing estate verified by affidavit that states:

(A) that all debts known to exist against the estate have been paid or have been paid to the extent permitted by the assets in the independent executor's possession;

(B) that all remaining assets of the estate, if any, have been distributed;
and

(C) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(2) Before filing the notice, the independent executor shall provide to each distributee of the estate a copy of the notice of closing estate. The notice of closing estate filed by the independent executor must include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

(c) Effect of Filing Closing Report or Notice of Closing Estate ~~[the Affidavit]~~.

(1) The independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. If an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

(2) The closing of an ~~[filing of such an affidavit and proof of delivery, if required, shall terminate the]~~ independent administration by filing of a closing report or notice of closing estate terminates ~~[and]~~ the power and authority of the independent executor, but shall not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice ~~[affidavit]~~.

(3) When a closing report or notice of closing estate ~~[such an affidavit]~~ has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of the ~~[such]~~ distributees with respect to ~~the [such]~~ properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in ~~the report or notice [such affidavit]~~.

(4) ~~[(2)]~~ If the independent executor is required to give bond, the independent executor's filing of the closing report ~~[affidavit]~~ and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. The filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(d) ~~(e)~~ Authority to Transfer Property of a Decedent After Filing the Closing Report or Notice of Closing Estate ~~[Affidavit]~~. An independent executor's closing report or notice of closing estate ~~[affidavit closing the independent administration]~~ shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees ~~[persons]~~ described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees ~~[persons]~~ described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

(e) ~~(d)~~ Delivery Subject to Receipt or Proof of Delivery. An independent executor may not be required to deliver tangible or intangible personal property to a distributee unless the independent executor receives ~~[shall receive]~~, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee. An independent executor may ~~[shall]~~ not require a waiver or release from the distributee as a condition of delivery of property to a distributee.

SECTION 1.30. Section 227, Texas Probate Code, is amended to read as follows:

Sec. 227. SUCCESSORS RETURN OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. An appointee who has been qualified to succeed to a prior personal representative shall make and return to the court an inventory, appraisal, and list of claims of the estate or, if the appointee is an independent executor, shall make and return to the court that document or file an affidavit in lieu of the inventory, appraisal, and list of claims, within ninety days after being qualified, in like manner as is provided for ~~[required of]~~ original appointees; and he shall also in like manner return additional inventories, appraisements, and lists of claims or file additional affidavits. In all orders appointing successor representatives of estates, the court shall appoint appraisers as in original appointments upon the application of any person interested in the estate.

SECTION 1.31. Section 250, Texas Probate Code, is amended to read as follows:

Sec. 250. INVENTORY AND APPRAISEMENT; AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) Within ninety days after the representative's ~~[his]~~ qualification, unless a longer time shall be granted by the court, the representative shall prepare and file with the clerk of court a verified, full, and detailed inventory, in one written instrument, of all the property of such estate which has come to the representative's ~~[his]~~ possession or knowledge, which inventory shall include:

- (1) ~~(a)~~ all real property of the estate situated in the State of Texas; and
- (2) ~~(b)~~ all personal property of the estate wherever situated.

(b) The representative shall set out in the inventory the representative's ~~[his]~~ appraisal of the fair market value of each item thereof as of the date of death in the case of grant of letters testamentary or of administration, as the case may be; provided that if the court shall appoint an appraiser or appraisers of the estate, the

representative shall determine the fair market value of each item of the inventory with the assistance of such appraiser or appraisers and shall set out in the inventory such appraisal. The inventory shall specify what portion of the property, if any, is separate property and what portion, if any, is community property. ~~[If any property is owned in common with others, the interest owned by the estate shall be shown, together with the names and relationship, if known, of co-owners.]~~ Such inventory, when approved by the court and duly filed with the clerk of court, shall constitute for all purposes the inventory and appraisal of the estate referred to in this Code. The court for good cause shown may require the filing of the inventory and appraisal at a time prior to ninety days after the qualification of the representative.

(c) Notwithstanding Subsection (a) of this section, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisal, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory. The affidavit in lieu of the inventory, appraisal, and list of claims must be filed within the 90-day period prescribed by Subsection (a) of this section, unless the court grants an extension.

(d) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trust entitled to receive real or personal property:

(1) under the terms of a decedent's will, to be determined for purposes of this subsection with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will; or

(2) as an heir of the decedent.

(e) If the independent executor files an affidavit in lieu of filing an inventory, appraisal, and list of claims as authorized under Subsection (c) of this section:

(1) any person interested in the estate, including a possible heir of the decedent or a beneficiary under a prior will of the decedent, is entitled to receive a copy of the inventory, appraisal, and list of claims from the independent executor on written request;

(2) the independent executor may provide a copy of the inventory, appraisal, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; and

(3) a person interested in the estate may apply to the court for an order compelling compliance with Subdivision (1) of this subsection and the court, in its discretion, may compel the independent executor to provide a copy of the inventory, appraisal, and list of claims to the interested person or may deny the application.

SECTION 1.32. Part 1, Chapter VIII, Texas Probate Code, is amended by adding Section 254 to read as follows:

Sec. 254. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This section applies only to a personal representative, including an independent executor or

administrator, who does not file an inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, within the period prescribed by Section 250 of this code or any extension granted by the court.

(b) Any person interested in the estate on written complaint, or the court on the court's own motion, may have a personal representative to whom this section applies cited to file the inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, and show cause for the failure to timely file.

(c) If the personal representative does not file the inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, after being cited or does not show good cause for the failure to timely file, the court on hearing may fine the representative in an amount not to exceed \$1,000.

(d) The personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

SECTION 1.33. Section 256, Texas Probate Code, is amended to read as follows:

Sec. 256. DISCOVERY OF ADDITIONAL PROPERTY. (a) If, after the filing of the inventory and appraisal, property or claims not included in the inventory shall come to the possession or knowledge of the representative, the representative [he] shall forthwith file with the clerk of court a verified, full, and detailed supplemental inventory and appraisal.

(b) If, after the filing of an affidavit in lieu of the inventory and appraisal, property or claims not included in the inventory given to the beneficiaries shall come to the possession or knowledge of the representative, the representative shall forthwith file with the clerk of court a supplemental affidavit in lieu of the inventory and appraisal stating that all beneficiaries have received a verified, full, and detailed supplemental inventory and appraisal.

SECTION 1.34. Section 260, Texas Probate Code, is amended to read as follows:

Sec. 260. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO RETURN AN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. If there be more than one representative qualified as such, any one or more of them, on the neglect of the others, may make and return an inventory and appraisal and list of claims or file an affidavit in lieu of an inventory, appraisal, and list of claims; and the representative so neglecting shall not thereafter interfere with the estate or have any power over same; but the representative so returning the inventory, appraisal, and list of claims or filing the affidavit in lieu of an inventory, appraisal, and list of claims shall have the whole administration, unless, within sixty days after the return or the filing, the delinquent or delinquents shall assign to the court in writing and under oath a reasonable excuse

which the court may deem satisfactory; and if no excuse is filed or if the excuse filed is not deemed sufficient, the court shall enter an order removing any and all such delinquents and revoking their letters.

SECTION 1.35. Subsections (a) and (b), Section 271, Texas Probate Code, are amended to read as follows:

(a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisal, and list of claims have been approved or after the affidavit in lieu of the inventory, appraisal, and list of claims has been filed, the court shall, by order, set apart:

(1) the homestead for the use and benefit of the surviving spouse and minor children; and

(2) all other property of the estate that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased.

(b) Before the approval of the inventory, appraisal, and list of claims or, if applicable, before the filing of the affidavit in lieu of the inventory, appraisal, and list of claims:

(1) a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all of the property that the applicant claims is exempt; and

(2) any unmarried children remaining with the family of the deceased may apply to the court to have all exempt property other than the homestead set aside by filing an application and a verified affidavit listing all of the other property that the applicant claims is exempt.

SECTION 1.36. Section 286, Texas Probate Code, is amended to read as follows:

Sec. 286. FAMILY ALLOWANCE TO SURVIVING SPOUSES AND MINORS. (a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisal, and list of claims have been approved or the affidavit in lieu of the inventory, appraisal, and list of claims has been filed, the court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.

(b) Before the approval of the inventory, appraisal, and list of claims or, if applicable, before the filing of the affidavit in lieu of the inventory, appraisal, and list of claims, a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing the amount necessary for the maintenance of the surviving spouse and minor children for one year after the date of the death of the decedent and describing the spouse's separate property and any property that minor children have in their own right. The applicant bears the burden of proof by a preponderance of the evidence at any hearing on the application. The court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.

SECTION 1.37. Section 293, Texas Probate Code, is amended to read as follows:

Sec. 293. SALE TO RAISE FUNDS FOR FAMILY ALLOWANCE. If there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisement, and list of claims are returned and approved or, if applicable, the affidavit in lieu of the inventory, appraisement, and list of claims is filed, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

SECTION 1.38. The heading to Section 322, Texas Probate Code, is amended to read as follows:

Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATE [~~ESTATES~~] OF DECEDENT.

SECTION 1.39. Subsection (a), Section 385, Texas Probate Code, is amended to read as follows:

(a) Application for Partition. When a husband or wife shall die leaving any community property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisement, and list of the claims of the estate have been returned or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed, make application in writing to the court which granted such letters for a partition of such community property.

SECTION 1.40. Section 407, Texas Probate Code, is amended to read as follows:

Sec. 407. CITATION AND NOTICE UPON PRESENTATION OF ACCOUNT FOR FINAL SETTLEMENT. Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. Citation [~~In case of the estates of deceased persons, notice~~] shall be given [~~by the personal representative~~] to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another method of service [~~type of notice~~] is directed by the court by written order. The citation [~~notice~~] must include a copy of the account for final settlement.

2. If the court deems further additional notice necessary, it shall require the same by written order. In its discretion, the court may allow the waiver of citation [~~notice~~] of an account for final settlement in a proceeding concerning a decedent's estate.

SECTION 1.41. Subsections (b), (c), and (d), Section 408, Texas Probate Code, are amended to read as follows:

(b) Distribution of Remaining Property. Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that a partition and distribution be made among the persons entitled

to receive such estate. The court shall order the representative to deposit in an account in the court's registry any remaining estate property that is money and to which a person who is unknown or missing is entitled. In addition, the court shall order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. The court shall order the representative to deposit the sale proceeds in an account in the court's registry. The court shall hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

(c) Discharge of Representative When No Property Remains. If, upon such settlement, there be none of the estate remaining in the hands of the representative, the representative [he] shall be discharged from the representative's [his] trust and the estate ordered closed.

(d) Discharge When Estate Fully Administered. Whenever the representative of an estate has fully administered the same in accordance with this code [Code] and the orders of the court, and the representative's [his] final account has been approved, and the representative [he] has delivered all of said estate remaining in the representative's [his] hands to the person or persons entitled to receive the same, it shall be the duty of the court to enter an order discharging such representative from the representative's [his] trust, and declaring the estate closed.

SECTION 1.42. Section 427, Texas Probate Code, is amended to read as follows:

Sec. 427. WHEN ESTATES TO BE PAID INTO STATE TREASURY. If any person entitled to a portion of an estate, except a resident minor without a guardian, does [shall] not demand the person's [his] portion, including any portion deposited in an account in the court's registry under Section 408(b) of this code, from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, the court by written order shall require the executor or administrator to pay so much of said portion as is in money to the comptroller; and such portion as is in other property the court [he] shall order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, the court shall order the same to be paid to the comptroller, in all such cases allowing the executor or administrator reasonable compensation for the executor's or administrator's [his] services. A suit to recover proceeds of the sale is governed by Section 433 of this code [Code].

SECTION 1.43. Section 436, Texas Probate Code, is amended by adding Subdivision (2-a) and amending Subdivisions (7) and (11) to read as follows:

(2-a) "Charitable organization" means any corporation, community chest, fund, or foundation that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee, including a charitable organization, or beneficiary of a trust account is a party only after the account becomes payable to the P.O.D payee or beneficiary ~~him~~ by reason of the P.O.D payee or beneficiary ~~his~~ surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

(11) "P.O.D. payee" means a person or charitable organization designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

SECTION 1.44. Subsection (a), Section 439, Texas Probate Code, is amended to read as follows:

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties. Notwithstanding any other law, an agreement is sufficient to confer an absolute right of survivorship on parties to a joint account under this subsection if the agreement states in substantially the following form: "On the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate." A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 438 of this code augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, and the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies so provides.

SECTION 1.45. Section 452, Texas Probate Code, is amended to read as follows:

Sec. 452. FORMALITIES. (a) An agreement between spouses creating a right of survivorship in community property must be in writing and signed by both spouses. If an agreement in writing is signed by both spouses, the agreement shall be sufficient to create a right of survivorship in the community property described in the agreement if it includes any of the following phrases:

- (1) "with right of survivorship";
- (2) "will become the property of the survivor";
- (3) "will vest in and belong to the surviving spouse"; or
- (4) "shall pass to the surviving spouse."

(b) An agreement that otherwise meets the requirements of this part, however, shall be effective without including any of those phrases.

(c) A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

SECTION 1.46. Section 471, Texas Probate Code, is amended by amending Subdivision (2) and adding Subdivision (2-a) to read as follows:

(2) "Divorced individual" means an individual whose marriage has been dissolved, ~~regardless of~~ whether by divorce, ~~or~~ annulment, or a declaration that the marriage is void.

(2-a) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, respectively.

SECTION 1.47. Sections 472 and 473, Texas Probate Code, are amended to read as follows:

Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS ON DISSOLUTION OF MARRIAGE. (a) Except as otherwise provided by a court order, the express terms of a trust instrument executed by a divorced individual before the individual's marriage was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between a divorced individual and the individual's former spouse before, during, or after the marriage, the dissolution of the marriage revokes the following:

(1) a revocable disposition or appointment of property made by a divorced individual to the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual in a trust instrument executed before the dissolution of the marriage;

(2) a provision in a trust instrument executed by a divorced individual before the dissolution of the marriage that confers a general or special power of appointment on the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; and

(3) a nomination in a trust instrument executed by a divorced individual before the dissolution of the marriage that nominates the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve in a fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent, or guardian.

(b) After the dissolution of a marriage, an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(1) or (2) of this section passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision, and an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(3) of this section passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND PROPERTY. (a) A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from a divorced individual's former

spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this chapter to return the payment, benefit, or property; and

(2) is not liable under this chapter for the amount of the payment or the value of the property or benefit.

(b) A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Section 472(a) of this code:

(1) shall return the payment, benefit, or property to the person who is otherwise entitled to the payment, benefit, or property as provided by this chapter; or

(2) is personally liable to the person described by Subdivision (1) of this subsection for the amount of the payment or the value of the benefit or property received.

SECTION 1.48. Subsection (i), Section 25.0022, Government Code, is amended to read as follows:

(i) A judge assigned under this section has the jurisdiction, powers, and duties given by Sections 4A, 4C, 4D, 4F, 4G, 4H, 5B, 606, 607, and 608, Texas Probate Code, to statutory probate court judges by general law.

SECTION 1.49. (a) Subsection (c), Section 48, Subsection (c), Section 53C, Section 70, and Subsection (f), Section 251, Texas Probate Code, are repealed.

(b) Notwithstanding the transfer of Section 5, Texas Probate Code, to the Estates Code and redesignation as Section 5 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Section 5, Texas Probate Code, is repealed.

SECTION 1.50. (a) The changes in law made by Sections 4D, 4H, 6, 8, 48, and 49, Texas Probate Code, as amended by this article, and Sections 6A, 6B, 6C, 6D, 8A, and 8B, Texas Probate Code, as added by this article, apply only to an action filed or other proceeding commenced on or after the effective date of this Act. An action filed or other proceeding commenced before the effective date of this Act is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.

(b) The changes in law made by Subsection (p), Section 37A, Texas Probate Code, as added by this article, apply to all disclaimers made after December 31, 2009, for decedents dying after December 31, 2009, but before December 17, 2010.

(c) The changes in law made by Sections 64, 67, 84, 128A, 143, 145, 146, 149C, 227, 250, 256, 260, 271, 286, 293, 385, 471, 472, and 473, Texas Probate Code, as amended by this article, and Sections 145A, 145B, and 145C, Texas Probate Code, as added by this article, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

(d) The changes in law made by this article to Section 59, Texas Probate Code, apply only to a will executed on or after the effective date of this Act. A will executed before the effective date of this Act is governed by the law in effect on the date the will was executed, and the former law is continued in effect for that purpose.

(e) The changes in law made by this article to Section 149B, Texas Probate Code, apply only to a petition for an accounting and distribution filed on or after the effective date of this Act. A petition for an accounting and distribution filed before the effective date of this Act is governed by the law in effect on the date the petition is filed, and the former law is continued in effect for that purpose.

(f) The changes in law made by this article to Section 151, Texas Probate Code, apply only to a closing report or notice of closing of an estate filed on or after the effective date of this Act. A closing report or notice of closing of an estate filed before the effective date of this Act is governed by the law in effect on the date the closing report or notice is filed, and the former law is continued in effect for that purpose.

(g) The changes in law made by this article to Sections 436 and 439, Texas Probate Code, apply only to multiple-party accounts created or existing on or after the effective date of this Act and are intended to clarify existing law.

(h) The changes in law made by this article to Section 452, Texas Probate Code, apply only to agreements created or existing on or after the effective date of this Act, and are intended to overturn the ruling of the Texas Supreme Court in *Holmes v. Beatty*, 290 S.W.3d 852 (Tex. 2009).

(i) Sections 34A, 407, 408, and 427, Texas Probate Code, as amended by this article, and Section 254, Texas Probate Code, as added by this article, apply to the estate of a decedent that is pending or commenced on or after September 1, 2011, regardless of the date of the decedent's death.

(j) The changes in law made by this article to Section 77, Texas Probate Code, apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after September 1, 2011. An application for the grant of letters testamentary or of administration of a decedent's estate filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(k) The changes in law made by this article to Subsection (a), Section 83, Texas Probate Code, apply only to an application for the probate of a will or administration of the estate of a decedent that is pending or filed on or after September 1, 2011.

(l) The changes in law made by this article to Subsections (a) and (b), Section 53C, Texas Probate Code, apply only to a proceeding to declare heirship commenced on or after September 1, 2011. A proceeding to declare heirship commenced before that date is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 1.51. Subsection (p), Section 37A, Texas Probate Code, as added by this article, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Subsection (p), Section 37A, Texas Probate Code, as added by this article, takes effect September 1, 2011.

ARTICLE 2. CHANGES TO ESTATES CODE

SECTION 2.01. The heading to Subtitle A, Title 2, Estates Code, as effective January 1, 2014, is amended to read as follows:

SUBTITLE A. SCOPE, JURISDICTION, VENUE, AND COURTS

SECTION 2.02. Section 32.003, Estates Code, as effective January 1, 2014, is amended by adding Subsection (b-1) and amending Subsections (e) and (g) to read as follows:

(b-1) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(e) A statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this subtitle. A statutory probate court judge assigned to hear only the contested matter in a probate proceeding shall, on [On] resolution of the [a-contested] matter [for which a statutory probate court judge is assigned under this section], including any appeal of the matter, [the statutory probate court judge shall] return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire probate proceeding as provided by Subsection (b-1) shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(g) If only the contested matter in a probate proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a probate proceeding is transferred to a district court under this section, the [The] county court shall continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any [After a contested matter is transferred to a district court, any] matter related to a [the] probate proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the [probate] proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

SECTION 2.03. Section 32.007, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 32.007. CONCURRENT JURISDICTION WITH DISTRICT COURT. A statutory probate court has concurrent jurisdiction with the district court in:

- (1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative;
- (2) an action by or against a trustee;
- (3) an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001, Property Code;

(4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;

(5) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and

(6) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

SECTION 2.04. Subtitle A, Title 2, Estates Code, as effective January 1, 2014, is amended by adding Chapter 33 to read as follows:

CHAPTER 33. VENUE

SUBCHAPTER A. VENUE FOR CERTAIN PROCEEDINGS

Sec. 33.001. PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION. Venue for a probate proceeding to admit a will to probate or for the granting of letters testamentary or of administration is:

(1) in the county in which the decedent resided, if the decedent had a domicile or fixed place of residence in this state; or

(2) with respect to a decedent who did not have a domicile or fixed place of residence in this state:

(A) if the decedent died in this state, in the county in which:

(i) the decedent's principal estate was located at the time of the decedent's death; or

(ii) the decedent died; or

(B) if the decedent died outside of this state:

(i) in any county in this state in which the decedent's nearest of kin reside; or

(ii) if there is no next of kin of the decedent in this state, in the county in which the decedent's principal estate was located at the time of the decedent's death.

Sec. 33.002. ACTION RELATED TO PROBATE PROCEEDING IN STATUTORY PROBATE COURT. Except as provided by Section 33.003, venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending.

Sec. 33.003. CERTAIN ACTIONS INVOLVING PERSONAL REPRESENTATIVE. Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Sec. 33.004. HEIRSHIP PROCEEDINGS. (a) Venue for a proceeding to determine a decedent's heirs is in:

(1) the court of the county in which a proceeding admitting the decedent's will to probate or administering the decedent's estate was most recently pending; or

(2) the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under Section 33.001 if:

(A) no will of the decedent has been admitted to probate in this state and no administration of the decedent's estate has been granted in this state; or

(B) the proceeding is commenced by the trustee of a trust holding assets for the benefit of the decedent.

(b) Notwithstanding Subsection (a) and Section 33.001, if there is no administration pending of the estate of a deceased ward who died intestate, venue for a proceeding to determine the deceased ward's heirs is in the probate court in which the guardianship proceedings with respect to the ward's estate were pending on the date of the ward's death. A proceeding described by this subsection may not be brought as part of the guardianship proceedings with respect to the ward's estate, but rather must be filed as a separate cause in which the court may determine the heirs' respective shares and interests in the estate as provided by the laws of this state.

Sec. 33.005. CERTAIN ACTIONS INVOLVING BREACH OF FIDUCIARY DUTY. Notwithstanding any other provision of this chapter, venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under Section 123.005, Property Code.

[Sections 33.006-33.050 reserved for expansion]

SUBCHAPTER B. DETERMINATION OF VENUE

Sec. 33.051. COMMENCEMENT OF PROCEEDING. For purposes of this subchapter, a probate proceeding is considered commenced on the filing of an application for the proceeding that avers facts sufficient to confer venue on the court in which the application is filed.

Sec. 33.052. CONCURRENT VENUE. (a) If applications for probate proceedings involving the same estate are filed in two or more courts having concurrent venue, the court in which a proceeding involving the estate was first commenced has and retains jurisdiction of the proceeding to the exclusion of the other court or courts in which a proceeding involving the same estate was commenced.

(b) The first commenced probate proceeding extends to all of the decedent's property, including the decedent's estate property.

Sec. 33.053. PROBATE PROCEEDINGS IN MORE THAN ONE COUNTY. If probate proceedings involving the same estate are commenced in more than one county, each proceeding commenced in a county other than the county in which a proceeding was first commenced is stayed until the court in which the proceeding was first commenced makes a final determination of venue.

Sec. 33.054. JURISDICTION TO DETERMINE VENUE. (a) Subject to Sections 33.052 and 33.053, a court in which an application for a probate proceeding is filed has jurisdiction to determine venue for the proceeding and for any matter related to the proceeding.

(b) A court's determination under this section is not subject to collateral attack.

Sec. 33.055. PROTECTION FOR CERTAIN PURCHASERS. Notwithstanding Section 33.052, a bona fide purchaser of real property who relied on a probate proceeding that was not the first commenced proceeding, without knowledge that the proceeding was not the first commenced proceeding, shall be protected with respect to the purchase unless before the purchase an order rendered in the first commenced proceeding admitting the decedent's will to probate, determining the decedent's heirs, or granting administration of the decedent's estate was recorded in the office of the county clerk of the county in which the purchased property is located.

[Sections 33.056-33.100 reserved for expansion]

SUBCHAPTER C. TRANSFER OF PROBATE PROCEEDING

Sec. 33.101. TRANSFER TO OTHER COUNTY IN WHICH VENUE IS PROPER. If probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 determines that venue is proper in another county, the court clerk shall make and retain a copy of the entire file in the case and transmit the original file to the court in the county in which venue is proper. The court to which the file is transmitted shall conduct the proceeding in the same manner as if the proceeding had originally been commenced in that county.

Sec. 33.102. TRANSFER FOR WANT OF VENUE. (a) If it appears to the court at any time before the final order in a probate proceeding is rendered that the court does not have priority of venue over the proceeding, the court shall, on the application of an interested person, transfer the proceeding to the proper county by transmitting to the proper court in that county:

(1) the original file in the case; and

(2) certified copies of all entries that have been made in the judge's probate docket in the proceeding.

(b) The court of the county to which a probate proceeding is transferred under Subsection (a) shall complete the proceeding in the same manner as if the proceeding had originally been commenced in that county.

(c) If the question as to priority of venue is not raised before a final order in a probate proceeding is announced, the finality of the order is not affected by any error in venue.

Sec. 33.103. TRANSFER FOR CONVENIENCE. (a) The court may order that a probate proceeding be transferred to the proper court in another county in this state if it appears to the court at any time before the proceeding is concluded that the transfer would be in the best interest of:

(1) the estate; or

(2) if there is no administration of the estate, the decedent's heirs or beneficiaries under the decedent's will.

(b) The clerk of the court from which the probate proceeding described by Subsection (a) is transferred shall transmit to the court to which the proceeding is transferred:

(1) the original file in the proceeding; and

(2) a certified copy of the index.

Sec. 33.104. VALIDATION OF PREVIOUS PROCEEDINGS. All orders entered in connection with a probate proceeding that is transferred to another county under a provision of this subchapter are valid and shall be recognized in the court to which the proceeding is transferred if the orders were made and entered in conformance with the procedure prescribed by this code.

SECTION 2.05. Subsection (b), Section 52.052, Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) Each case file must contain each order, judgment, and proceeding of the court and any other probate filing with the court, including each:

(1) application for the probate of a will;

- (2) application for the granting of administration;
- (3) citation and notice, whether published or posted, including the return on the citation or notice;
- (4) will and the testimony on which the will is admitted to probate;
- (5) bond and official oath;
- (6) inventory, appraisal, and list of claims;
- (6-a) affidavit in lieu of the inventory, appraisal, and list of claims;
- (7) exhibit and account;
- (8) report of renting;
- (9) application for sale or partition of real estate;
- (10) report of sale;
- (11) report of the commissioners of partition;
- (12) application for authority to execute a lease for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money; and
- (13) report of lending or investing money.

SECTION 2.06. Section 53.104, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Except as provided by Section 202.009(b), the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of:

- (1) a person who has a legal disability;
- (2) a nonresident;
- (3) an unborn or unascertained person; [ø#]
- (4) an unknown or missing heir; or
- (5) an unknown or missing person entitled to property deposited in an account in the court's registry under Section 362.011(b).

(b) Subject to Subsection (c), an [Am] attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court. The court shall:

- (1) tax the compensation [, to be taxed] as costs in the probate proceeding; or
- (2) for an attorney ad litem appointed to represent the interests of an unknown or missing person described by Subsection (a)(5), order that the compensation be paid from money in the account described by that subdivision.

(c) The court order appointing an attorney ad litem to represent the interests of an unknown or missing person described by Subsection (a)(5) must require the attorney ad litem to conduct a search for the person. Compensation paid under Subsection (b) to the attorney ad litem may not exceed 10 percent of the amount on deposit in the account described by Subsection (a)(5) on the date:

(1) the attorney ad litem reports to the court the location of the previously unknown or missing person; or

(2) the money in the account is paid to the comptroller as provided by Section 551.001.

SECTION 2.07. Section 112.052, Estates Code, as effective January 1, 2014, is amended by adding Subsection (d) to read as follows:

(d) A survivorship agreement may not be inferred from the mere fact that an account is a joint account or that an account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

SECTION 2.08. Section 113.001, Estates Code, as effective January 1, 2014, is amended by adding Subdivision (2-a) and amending Subdivision (5) to read as follows:

(2-a) "Charitable organization" means any corporation, community chest, fund, or foundation that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(5) "P.O.D. payee" means a person or charitable organization designated on a P.O.D. account as a person to whom the account is payable on request after the death of one or more persons.

SECTION 2.09. Subsection (b), Section 113.002, Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) A P.O.D. payee, including a charitable organization, or beneficiary of a trust account is a party only after the account becomes payable to the P.O.D. payee or beneficiary by reason of the P.O.D. payee or beneficiary surviving the original payee or trustee.

SECTION 2.10. Subsection (c), Section 113.151, Estates Code, as effective January 1, 2014, is amended to read as follows:

(c) A survivorship agreement may not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

SECTION 2.11. Subsection (c), Section 122.055, Estates Code, as effective January 1, 2014, is amended to read as follows:

(c) If the beneficiary is a charitable organization or a governmental agency of the state, a written memorandum of disclaimer of a present or future interest must be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Subchapter A, Chapter 308; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisal, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisal, and list of claims.

SECTION 2.12. Subsection (b), Section 122.056, Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) If the beneficiary is a charitable organization or a governmental agency of this state, notice of a disclaimer required by Subsection (a) must be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Subchapter A, Chapter 308; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisalment, and list of claims due or owing to the estate; or
(B) the affidavit in lieu of the inventory, appraisalment, and list of claims.

SECTION 2.13. Subchapter B, Chapter 122, Estates Code, as effective January 1, 2014, is amended by adding Section 122.057 to read as follows:

Sec. 122.057. EXTENSION OF TIME FOR CERTAIN DISCLAIMERS.

(a) This section does not apply to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.

(b) Notwithstanding the periods prescribed by Sections 122.055 and 122.056, a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, may be executed and filed, and notice of the disclaimer may be given, not later than nine months after December 17, 2010.

(c) A disclaimer filed and for which notice is given during the extended period described by Subsection (b) is valid and shall be treated as if the disclaimer had been filed and notice had been given within the periods prescribed by Sections 122.055 and 122.056.

SECTION 2.14. Section 123.051, Estates Code, as effective January 1, 2014, is amended by amending Subdivision (2) and adding Subdivision (2-a) to read as follows:

(2) "Divorced individual" means an individual whose marriage has been dissolved by divorce, ~~or~~ annulment, or a declaration that the marriage is void.

(2-a) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, respectively.

SECTION 2.15. Subsection (a), Section 123.052, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

SECTION 2.16. Section 123.053, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 123.053. EFFECT OF REVOCATION. (a) An interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) An interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

SECTION 2.17. Section 123.054, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 123.054. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this subchapter to return the payment, benefit, or property; and

(2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

SECTION 2.18. Section 123.055, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 123.055. LIABILITY OF FORMER SPOUSE FOR CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections 123.052(a) and (b):

(1) shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this subchapter; or

(2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

SECTION 2.19. Section 202.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.001. GENERAL AUTHORIZATION FOR AND NATURE OF PROCEEDING TO DECLARE HEIRSHIP. In the manner provided by this chapter, a court may determine through a proceeding to declare heirship:

(1) the persons who are a decedent's heirs and only heirs; and

(2) the heirs' respective shares and interests under the laws of this state in the decedent's estate or, if applicable, in the trust.

SECTION 2.20. Section 202.002, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.002. CIRCUMSTANCES UNDER WHICH PROCEEDING TO DECLARE HEIRSHIP IS AUTHORIZED. A court may conduct a proceeding to declare heirship when:

(1) a person dies intestate owning or entitled to property in this state and there has been no administration in this state of the person's estate; ~~or~~

(2) there has been a will probated in this state or elsewhere or an administration in this state of a ~~the~~ decedent's estate, but:

(A) property in this state was omitted from the will or administration; or

(B) no final disposition of property in this state has been made in the administration; or

(3) it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent.

SECTION 2.21. Subchapter A, Chapter 202, Estates Code, as effective January 1, 2014, is amended by adding Section 202.0025 to read as follows:

Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH. Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death.

SECTION 2.22. Section 202.004, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent may be commenced and maintained under a circumstance specified by Section 202.002 by:

(1) the personal representative of the decedent's estate;

(2) a person claiming to be a secured or unsecured creditor or the owner of all or part of the decedent's estate; ~~or~~

(3) if the decedent was a ward with respect to whom a guardian of the estate had been appointed, the guardian of the estate, provided that the proceeding is commenced and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the decedent's death;

(4) a party seeking the appointment of an independent administrator under Section 401.003; or

(5) the trustee of a trust holding assets for the benefit of a decedent.

SECTION 2.23. Section 202.005, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP. A person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004 ~~[202.003]~~ to commence the proceeding. The application must state:

(1) the decedent's name and time and place of death;

(2) the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the decedent's estate or in the trust, as applicable;

(3) if the time or place of the decedent's death or the name or residence of an heir is not definitely known to the applicant, all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the time or place of the decedent's death or the name or residence of the heir;

(4) that all children born to or adopted by the decedent have been listed;

(5) that each of the decedent's marriages has been listed with:

(A) the date of the marriage;

(B) the name of the spouse;

(C) the date and place of termination if the marriage was terminated;

and

(D) other facts to show whether a spouse has had an interest in the decedent's property;

(6) whether the decedent died testate and, if so, what disposition has been made of the will;

(7) a general description of all property belonging to the decedent's estate or held in trust for the benefit of the decedent, as applicable; and

(8) an explanation for the omission from the application of any of the information required by this section.

SECTION 2.24. Sections 204.151 and 204.152, Estates Code, as effective January 1, 2014, are amended to read as follows:

Sec. 204.151. **APPLICABILITY OF SUBCHAPTER.** This subchapter applies in a proceeding to declare heirship of a decedent only with respect to an individual who[~~]:~~

~~[(1) petitions the court for a determination of right of inheritance as authorized by Section 201.052(e); and~~

~~[(2)] claims[~~]:~~~~

~~[(A)] to be a biological child of the decedent or claims[~~], but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201, Family Code; or~~~~

~~[(B)] to inherit through a biological child of the decedent[~~, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code].~~~~

Sec. 204.152. **PRESUMPTION; [REQUIRED FINDINGS IN ABSENCE OF] REBUTTAL [EVIDENCE].** The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Section 204.151, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code. [Unless the results of genetic testing of another individual who is an heir of the decedent who is the subject of a proceeding to declare heirship to which this subchapter applies are admitted as rebuttal evidence, the court shall find that the individual described by Section 204.151:

~~[(1) is an heir of the decedent, if the results of genetic testing ordered under Subchapter B identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151; or~~

~~[(2) is not an heir of the decedent, if the results of genetic testing ordered under Subchapter B exclude a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151.]~~

SECTION 2.25. Section 251.101, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 251.101. SELF-PROVED WILL. A self-proved will is a will:

- (1) to which a self-proving affidavit subscribed and sworn to by the testator and witnesses is attached or annexed; or
- (2) that is simultaneously executed, attested, and made self-proved as provided by Section 251.1045 ~~[is a self-proved will].~~

SECTION 2.26. Subsection (a), Section 251.102, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) A self-proved will may be admitted to probate without the testimony of any subscribing witnesses if:

- (1) the testator and witnesses execute a self-proving affidavit; or
- (2) the will is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

SECTION 2.27. Subsection (b), Section 251.104, Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) A self-proving affidavit must be made by the testator and by the attesting witnesses before an officer authorized to administer oaths ~~[under the laws of this state]~~. The officer shall affix the officer's official seal to the self-proving affidavit.

SECTION 2.28. Subchapter C, Chapter 251, Estates Code, as effective January 1, 2014, is amended by adding Section 251.1045 to read as follows:

Sec. 251.1045. SIMULTANEOUS EXECUTION, ATTESTATION, AND SELF-PROVING. (a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, _____, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I have willingly made and executed it in the presence of the undersigned witnesses, all of whom were present at the same time, as my free act and deed, and that I have requested each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this _____ day of _____, 20_____.

Testator

The undersigned, _____ and _____, each being at least fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary of the armed forces of the United States or of the United States Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this _____ day of _____, 20_____.

Witness

Witness

Subscribed and sworn to before me by the said _____, testator, and by the said _____ and _____, witnesses, this _____ day of _____, 20_____.

(SEAL)

(Signed)

(Official Capacity of Officer)

(b) A will that is in substantial compliance with the form provided by Subsection (a) is sufficient to self-prove a will.

SECTION 2.29. Chapter 254, Estates Code, as effective January 1, 2014, is amended by adding Section 254.005 to read as follows:

Sec. 254.005. FORFEITURE CLAUSE. A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is unenforceable if:

- (1) just cause existed for bringing the action; and
- (2) the action was brought and maintained in good faith.

SECTION 2.30. Subsection (a), Section 255.053, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) If no provision is made in the testator's last will for any child of the testator who is living when the testator executes the will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

SECTION 2.31. Section 255.054, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 255.054. SUCCESSION BY PRETERMITTED CHILD IF TESTATOR HAS NO LIVING CHILD AT WILL'S EXECUTION. If a testator has no child living when the testator executes the testator's last will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion

of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

SECTION 2.32. Subchapter B, Chapter 255, Estates Code, as effective January 1, 2014, is amended by adding Section 255.056 to read as follows:

Sec. 255.056. LIMITATION ON REDUCTION OF ESTATE PASSING TO SURVIVING SPOUSE. If a pretermitted child's other parent is not the surviving spouse of the testator, the portion of the testator's estate to which the pretermitted child is entitled under Section 255.053(a) or 255.054 may not reduce the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

SECTION 2.33. (a) Subsection (a), Section 256.052, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) An application for the probate of a written will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

- (1) each applicant's name and domicile;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, time, and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name and residence of:
 - (A) any executor named in the will or, if no executor is named, of the person to whom the applicant desires that letters be issued; and
 - (B) each subscribing witness to the will, if any;
- (8) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
- (9) whether a marriage of the testator was ever dissolved after the will was made ~~divorced~~ and, if so, when and from whom;
- (10) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and
- (11) that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

(b) If the amendment to Subsection (a), Section 256.052, Estates Code, made by this section conflicts with an amendment to Subsection (a), Section 256.052, Estates Code, made by another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes, the amendment made by this section controls, and the amendment made by the other Act has no effect.

SECTION 2.34. Section 256.101, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 256.101. PROCEDURE ON FILING OF SECOND APPLICATION WHEN ORIGINAL APPLICATION HAS NOT BEEN HEARD. (a) If, after an application for the probate of a decedent's will or the appointment of a personal representative for the decedent's estate has been filed but before the application is heard, an application is filed for the probate of a will of the same decedent that has not previously been presented for probate, the court shall:

- (1) hear both applications together; and
- (2) determine:

(A) if both applications are for the probate of a will, which will should be admitted to probate, if either, or whether the decedent died intestate; or

(B) if only one application is for the probate of a will, whether the will should be admitted to probate or whether the decedent died intestate.

(b) The court may not sever or bifurcate the proceeding on the applications described in Subsection (a).

SECTION 2.35. Section 256.152, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 256.152. ADDITIONAL PROOF REQUIRED FOR PROBATE OF WILL.

(a) An applicant for the probate of a will must prove the following to the court's satisfaction, in addition to the proof required by Section 256.151, to obtain the probate:

- (1) the testator did not revoke the will; and
- (2) if the will is not self-proved [~~as provided by this title~~], the testator:

(A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and

(B) at the time of executing the will, was of sound mind and:

- (i) was 18 years of age or older;
- (ii) was or had been married; or

(iii) was a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

(b) A will that is self-proved as provided by Subchapter C, Chapter 251, or, if executed in another state or a foreign country, is self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution [~~this title~~] is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

(c) For purposes of Subsection (b), a will is considered self-proved if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(1) the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over or, if

under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(2) the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

SECTION 2.36. (a) Subsection (a), Section 257.051, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) An application for the probate of a will as a muniment of title must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

- (1) each applicant's name and domicile;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, time, and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name and residence of:
 - (A) any executor named in the will; and
 - (B) each subscribing witness to the will, if any;
- (8) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
- (9) that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate;
- (10) whether a marriage of the testator was ever dissolved after the will was made ~~divorced~~ and, if so, when and from whom; and

(11) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee.

(b) If the amendment to Subsection (a), Section 257.051, Estates Code, made by this section conflicts with an amendment to Subsection (a), Section 257.051, Estates Code, made by another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes, the amendment made by this section controls, and the amendment made by the other Act has no effect.

SECTION 2.37. Subsection (c), Section 304.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

(c) If persons [~~applicants for letters testamentary or of administration~~] are equally entitled to letters testamentary or of administration [~~the letters~~], the court:

(1) shall grant the letters to the person [~~applicant~~] who, in the judgment of the court, is most likely to administer the estate advantageously; or

(2) may grant the letters to two or more of those persons [~~applicants~~].

SECTION 2.38. Section 308.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 308.001. DEFINITION. In this subchapter, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust entitled to receive property under the terms of a decedent's will, to be determined for purposes of this subchapter with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will. The term does not include a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust that would be entitled to receive property under the terms of a decedent's will on the occurrence of a contingency that has not occurred as of the date of the decedent's death.

SECTION 2.39. Subchapter A, Chapter 308, Estates Code, as effective January 1, 2014, is amended by adding Section 308.0015 to read as follows:

Sec. 308.0015. APPLICATION. This subchapter does not apply to the probate of a will as a muniment of title.

SECTION 2.40. Section 308.002, Estates Code, as effective January 1, 2014, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b) Notwithstanding the requirement under Subsection (a) that the personal representative give the notice to the beneficiary, the representative shall give the notice with respect to a beneficiary described by this subsection as follows:

(1) if the beneficiary is a trustee of a trust, to the trustee, unless the representative is the trustee, in which case the representative shall, except as provided by Subsection (b-1), give the notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in existence on the date of the decedent's death;

(2) if the beneficiary has a court-appointed guardian or conservator, to that guardian or conservator;

(3) if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor; and

(4) if the beneficiary is a charity that for any reason cannot be notified, to the attorney general.

(b-1) The personal representative is not required to give the notice otherwise required by Subsection (b)(1) to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

(1) the representative has given the notice to an ancestor of the person who has a similar interest in the trust; and

(2) no apparent conflict exists between the ancestor and the person eligible to receive trust income.

(c) A personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

(1) has made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate; [or]

(2) is entitled to receive aggregate gifts under the will with an estimated value of \$2,000 or less;

(3) has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent's will to probate; or

(4) has received a copy of the will that was admitted to probate or a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that:

(A) either acknowledges the receipt of the copy of the will or includes the written summary of the gifts to the beneficiary under the will;

(B) is signed by the beneficiary; and

(C) is filed with the court.

SECTION 2.41. Section 308.003, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 308.003. CONTENTS OF NOTICE. The notice required by Section 308.002 must include:

(1) [state:

[(A)] the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Section 308.002(b), the name and address of the beneficiary for whom the notice is given and of the person to whom the notice is given;

(2) [(B)] the decedent's name;

(3) a statement [(C)] that the decedent's will has been admitted to probate;

(4) a statement [(D)] that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will; [and]

(5) [(E)] the personal representative's name and contact information; and

(6) either:

(A) [(2) contain as attachments] a copy of the will that was admitted to probate and of the order admitting the will to probate; or

(B) a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

SECTION 2.42. Section 308.004, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 308.004. AFFIDAVIT OR CERTIFICATE. (a) Not later than the 90th day after the date of an order admitting a will to probate, the personal representative shall file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the representative or a certificate signed by the representative's attorney stating:

(1) for each beneficiary to whom notice was required to be given under this subchapter, the name and address of the beneficiary to whom the representative gave the notice or, for a beneficiary described by Section 308.002(b), the name and address of the beneficiary and of the person to whom the notice was given;

(2) the name and address of each beneficiary to whom notice was not required to be given under Section 308.002(c)(2), (3), or (4) ~~[who filed a waiver of the notice]~~;

(3) the name of each beneficiary whose identity or address could not be ascertained despite the representative's exercise of reasonable diligence; and

(4) any other information necessary to explain the representative's inability to give the notice to or for any beneficiary as required by this subchapter.

(b) The affidavit or certificate required by Subsection (a) may be included with any pleading or other document filed with the court clerk, including the inventory, appraisal, and list of claims, an affidavit in lieu of the inventory, appraisal, and list of claims, or an application for an extension of the deadline to file the inventory, appraisal, and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims, provided that the pleading or other document is filed not later than the date the affidavit or certificate is required to be filed under Subsection (a).

SECTION 2.43. The heading to Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, is amended to read as follows:

SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT,
AND LIST OF CLAIMS; AFFIDAVIT IN LIEU OF INVENTORY,
APPRAISEMENT, AND LIST OF CLAIMS

SECTION 2.44. Subsection (a), Section 309.051, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) Except as provided by Subsection (c) or unless a longer period is granted by the court, before the 91st day after the date the personal representative qualifies, the representative shall prepare and file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all estate property that has come into the representative's possession or of which the representative has knowledge. The inventory must:

(1) include:

(A) all estate real property located in this state; and

(B) all estate personal property regardless of where the property is located; and

(2) specify[~~z~~]

~~[(A)]~~ which portion of the property, if any, is separate property and which, if any, is community property[~~z~~ and

~~[(B)]~~ if estate property is owned in common with others, the interest of the estate in that property and the names and relationship, if known, of the ~~co-owners~~].

SECTION 2.45. Section 309.052, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 309.052. LIST OF CLAIMS. A complete list of claims due or owing to the estate must be attached to the inventory and appraisal required by Section 309.051. The list of claims must state:

- (1) the name and, if known, address of each person indebted to the estate; and
- (2) regarding each claim:
 - (A) the nature of the debt, whether by note, bill, bond, or other written obligation, or by account or verbal contract;
 - (B) the date the debt was incurred;
 - (C) the date the debt was or is due;
 - (D) the amount of the claim, the rate of interest on the claim, and the period for which the claim bears interest; and
 - (E) whether the claim is separate property or community property[; ~~and~~
 - ~~(F) if any portion of the claim is held in common with others, the interest of the estate in the claim and the names and relationships, if any, of the other part owners].~~

SECTION 2.46. Section 309.055, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 309.055. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) If more than one personal representative qualifies to serve, any one or more of the representatives, on the neglect of the other representatives, may make and file an inventory, appraisal, and list of claims or an affidavit in lieu of an inventory, appraisal, and list of claims.

(b) A personal representative who neglects to make or file an inventory, appraisal, and list of claims or an affidavit in lieu of an inventory, appraisal, and list of claims may not interfere with and does not have any power over the estate after another representative makes and files an inventory, appraisal, and list of claims or an affidavit in lieu of an inventory, appraisal, and list of claims.

(c) The personal representative who files the inventory, appraisal, and list of claims or the affidavit in lieu of an inventory, appraisal, and list of claims is entitled to the whole administration unless, before the 61st day after the date the representative files the inventory, appraisal, and list of claims or the affidavit in lieu of an inventory, appraisal, and list of claims, one or more delinquent representatives file with the court a written, sworn, and reasonable excuse that the court considers satisfactory. The court shall enter an order removing one or more delinquent representatives and revoking those representatives' letters if:

- (1) an excuse is not filed; or
- (2) the court does not consider the filed excuse sufficient.

SECTION 2.47. Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, is amended by adding Sections 309.056 and 309.057 to read as follows:

Sec. 309.056. AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trust entitled to receive property:

(1) under the terms of a decedent's will, to be determined for purposes of this section with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will; or

(2) as an heir of the decedent.

(b) Notwithstanding Sections 309.051 and 309.052, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisalment, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory and appraisalment. The affidavit in lieu of the inventory, appraisalment, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

(c) If the independent executor files an affidavit in lieu of the inventory, appraisalment, and list of claims as authorized under Subsection (b):

(1) any person interested in the estate, including a possible heir of the decedent or a beneficiary under a prior will of the decedent, is entitled to receive a copy of the inventory, appraisalment, and list of claims from the independent executor on written request;

(2) the independent executor may provide a copy of the inventory, appraisalment, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; and

(3) a person interested in the estate may apply to the court for an order compelling compliance with Subdivision (1), and the court, in its discretion, may compel the independent executor to provide a copy of the inventory, appraisalment, and list of claims to the interested person or may deny the application.

Sec. 309.057. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisalment, and list of claims or affidavit in lieu of the inventory, appraisalment, and list of claims, as applicable, within the period prescribed by Section 309.051 or any extension granted by the court.

(b) Any person interested in the estate on written complaint, or the court on the court's own motion, may have a personal representative to whom this section applies cited to file the inventory, appraisalment, and list of claims or affidavit in lieu of the inventory, appraisalment, and list of claims, as applicable, and show cause for the failure to timely file.

(c) If the personal representative does not file the inventory, appraisalment, and list of claims or affidavit in lieu of the inventory, appraisalment, and list of claims, as applicable, after being cited or does not show good cause for the failure to timely file, the court on hearing may fine the representative in an amount not to exceed \$1,000.

(d) The personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

SECTION 2.48. Section 309.101, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 309.101. DISCOVERY OF ADDITIONAL PROPERTY OR CLAIMS.

(a) If after the filing of the inventory, appraisalment, and list of claims the personal representative acquires possession or knowledge of property or claims of the estate not included in the inventory, appraisalment, and list of claims the representative shall promptly file with the court clerk a verified, full, and detailed supplemental inventory, appraisalment, and list of claims.

(b) If after the filing of the affidavit in lieu of the inventory, appraisalment, and list of claims the personal representative acquires possession or knowledge of property or claims of the estate not included in the inventory and appraisalment given to the beneficiaries, the representative shall promptly file with the court clerk a supplemental affidavit in lieu of the inventory, appraisalment, and list of claims stating that all beneficiaries have received a verified, full, and detailed supplemental inventory and appraisalment.

SECTION 2.49. Section 352.004, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 352.004. DENIAL OF COMPENSATION. The court may, on application of an interested person or on the court's own motion, wholly or partly deny a commission allowed by this subchapter if:

- (1) the court finds that the executor or administrator has not taken care of and managed estate property prudently; or
- (2) the executor or administrator has been removed under Section 404.003 [~~149C~~] or Subchapter B, Chapter 361.

SECTION 2.50. Subsections (a) and (b), Section 353.051, Estates Code, as effective January 1, 2014, are amended to read as follows:

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisalment, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, the court by order shall set aside:

- (1) the homestead for the use and benefit of the decedent's surviving spouse and minor children; and
- (2) all other estate property that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the decedent's:
 - (A) surviving spouse and minor children; and
 - (B) unmarried children remaining with the decedent's family.

(b) Before the inventory, appraisalment, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisalment, and list of claims is filed:

(1) the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all property that the applicant claims is exempt; and

(2) any of the decedent's unmarried children remaining with the decedent's family may apply to the court to have all exempt property, other than the homestead, set aside by filing an application and a verified affidavit listing all property, other than the homestead, that the applicant claims is exempt.

SECTION 2.51. Subsections (a) and (b), Section 353.101, Estates Code, as effective January 1, 2014, are amended to read as follows:

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisalment, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, the court shall fix a family allowance for the support of the decedent's surviving spouse and minor children.

(b) Before the inventory, appraisalment, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing:

(1) the amount necessary for the maintenance of the surviving spouse and the decedent's minor children for one year after the date of the decedent's death; and

(2) the surviving spouse's separate property and any property that the decedent's minor children have in their own right.

SECTION 2.52. Subsection (a), Section 353.107, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) The court shall, as soon as the inventory, appraisalment, and list of claims are returned and approved or the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, order the sale of estate property for cash in an amount that will be sufficient to raise the amount of the family allowance, or a portion of that amount, as necessary, if:

(1) the decedent had no personal property that the surviving spouse or the guardian of the decedent's minor children is willing to take for the family allowance or the decedent had insufficient personal property; and

(2) there are not sufficient estate funds in the executor's or administrator's possession to pay the amount of the family allowance or a portion of that amount, as applicable.

SECTION 2.53. Subsection (a), Section 354.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) If, after a personal representative of an estate has filed the inventory, appraisalment, and list of claims or the affidavit in lieu of the inventory, appraisalment, and list of claims as provided ~~required~~ by Chapter 309, it is established that the decedent's estate, excluding any homestead, exempt property, and family allowance to

the decedent's surviving spouse and minor children, does not exceed the amount sufficient to pay the claims against the estate classified as Classes 1 through 4 under Section 355.102, the representative shall:

(1) on order of the court, pay those claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of those claims; and

(2) after paying the claims in accordance with Subdivision (1), present to the court the representative's account with an application for the settlement and allowance of the account.

SECTION 2.54. Subsection (a), Section 360.253, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) If a spouse dies leaving community property, the surviving spouse, at any time after letters testamentary or of administration have been granted and an inventory, appraisalment, and list of claims of the estate have been returned or an affidavit in lieu of the inventory, appraisalment, and list of claims has been filed, may apply in writing to the court that granted the letters for a partition of the community property.

SECTION 2.55. The heading to Section 361.155, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 361.155. SUCCESSOR REPRESENTATIVE TO RETURN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.

SECTION 2.56. Subsection (a), Section 361.155, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) An appointee who has qualified to succeed a former personal representative, before the 91st day after the date the personal representative qualifies, shall make and return to the court an inventory, appraisalment, and list of claims of the estate or, if the appointee is an independent executor, shall make and return to the court that document or file an affidavit in lieu of the inventory, appraisalment, and list of claims ~~before the 91st day after the date the personal representative qualifies~~, in the manner provided for ~~required of~~ an original appointee, and shall also return additional inventories, appraisalments, and lists of claims and additional affidavits in the manner provided for ~~required of~~ an original appointee.

SECTION 2.57. Section 362.005, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT. (a) On the presentation of an account for final settlement by a temporary or permanent personal representative, the county clerk shall issue citation to the persons and in the manner provided by Subsection (b) ~~Subsections (c) and (d)~~.

(b) Citation issued under Subsection (a) must:

(1) contain:

(A) ~~(+)~~ a statement that an account for final settlement has been presented;

(B) ~~(-)~~ the time and place the court will consider the account; ~~and~~

(C) ~~(+)~~ a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and

(D) a copy of the account for final settlement; and

(2) be given[;

~~[(e) The personal representative shall give notice]~~ to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless the court by written order directs another method of service [~~type of notice~~] to be given[~~—The notice must include a copy of the account for final settlement~~].

~~(c) [(d)]~~ The court by written order shall require additional notice if the court considers the additional notice necessary.

~~(d) [(e)]~~ The court may allow the waiver of citation [~~notice~~] of an account for final settlement in a proceeding concerning a decedent's estate.

SECTION 2.58. Section 362.011, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT IN COURT'S REGISTRY. (a) If, on final settlement of an estate, any of the estate remains in the personal representative's possession, the court shall order that a partition and distribution be made among the persons entitled to receive that part of the estate.

(b) The court shall order the personal representative to deposit in an account in the court's registry any remaining estate property that is money and to which a person who is unknown or missing is entitled. In addition, the court shall order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. The court shall order the representative to deposit the sale proceeds in an account in the court's registry. The court shall hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

SECTION 2.59. Subtitle I, Title 2, Estates Code, as effective January 1, 2014, is amended by adding Chapters 401, 402, 403, 404, and 405 to read as follows:

CHAPTER 401. CREATION

Sec. 401.001. EXPRESSION OF TESTATOR'S INTENT IN WILL. (a) Any person capable of making a will may provide in the person's will that no other action shall be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will and the return of an inventory, appraisalment, and list of claims of the person's estate.

(b) Any person capable of making a will may provide in the person's will that no independent administration of his or her estate may be allowed. In such case the person's estate, if administered, shall be administered and settled under the direction of the probate court as other estates are required to be settled and not as an independent administration.

Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT.

(a) Except as provided in Section 401.001(b), if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor named in the will to serve as independent

executor and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisalment, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Except as provided in Section 401.001(b), in situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate the executor's inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisalment, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

Sec. 401.003. CREATION IN INTESTATE ESTATE BY AGREEMENT.

(a) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisalment, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

(b) The court may not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter 202, to constitute all of the decedent's heirs.

Sec. 401.004. MEANS OF ESTABLISHING DISTRIBUTEE CONSENT.

(a) This section applies to the creation of an independent administration under Section 401.002 or 401.003.

(b) All distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(c) If a distributee is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the probate court finds that either the granting of independent administration or the appointment of the

person, firm, or corporation designated in the application as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 401.002 or 401.003, the court may not enter an order granting independent administration of the estate. If a distributee who is an incapacitated person has no guardian of the person, the probate court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(d) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Section 401.002, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust. If a trust beneficiary who is considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may file the application or give the consent, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

(e) If a life estate is created either in the decedent's will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent's death, shall, for the purposes of Section 401.002 or 401.003, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(f) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Section 401.002 and under Subsection (c), it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(g) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Section 401.002 or 401.003 and under Subsection (c), it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of the distributee's interest in the decedent's estate.

(h) If a distributee of a decedent's estate dies and if by virtue of the distributee's death the distributee's share of the decedent's estate becomes payable to the distributee's estate, the deceased distributee's personal representative may sign the application for independent administration of the decedent's estate under Section 401.002 or 401.003 and under Subsection (c).

Sec. 401.005. BOND; WAIVER OF BOND. (a) If an independent administration of a decedent's estate is created under Section 401.002 or 401.003, then, unless the probate court waives bond on application for waiver, the independent executor shall be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(b) This section does not repeal any other section of this title.

Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a situation in which a decedent does not have a will, or a decedent's will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority, the court may include in an order appointing an independent executor under Section 401.002 or 401.003 any general or specific authority regarding the power of the independent executor to sell real property that may be consented to by the beneficiaries who are to receive any interest in the real property in the application for independent administration or in their consents to the independent administration. The independent executor, in such event, may sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Sec. 401.007. NO LIABILITY OF JUDGE. Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor under Section 401.002 or 401.003. Section 351.354 does not apply to the appointment of an independent executor under Section 401.002 or 401.003.

Sec. 401.008. PERSON DECLINING TO SERVE. A person who declines to serve or resigns as independent executor of a decedent's estate may be appointed an executor or administrator of the estate if the estate will be administered and settled under the direction of the court.

CHAPTER 402. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. GENERAL SCOPE AND EXERCISE OF POWERS. When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisal, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.

Sec. 402.002. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL. Unless this title specifically provides otherwise, any action that a personal representative subject to court supervision may take with or without a court order may be taken by an independent executor without a court order. The other provisions of this subtitle are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this chapter.

[Sections 402.003-402.050 reserved for expansion]

SUBCHAPTER B. POWER OF SALE

Sec. 402.051. DEFINITION OF INDEPENDENT EXECUTOR. In this subchapter, "independent executor" does not include an independent administrator.

Sec. 402.052. POWER OF SALE OF ESTATE PROPERTY GENERALLY. Unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. The procedural requirements applicable to a supervised administration do not apply.

Sec. 402.053. PROTECTION OF PERSON PURCHASING ESTATE PROPERTY. (a) A person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(1) a power of sale is granted to the independent executor in the will;
 (2) a power of sale is granted under Section 401.006 in the court order appointing the independent executor or independent administrator; or

(3) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 356.251(1).

(b) As to acts undertaken in good faith reliance, the affidavit described by Subsection (a)(3) is conclusive proof, as between a purchaser of property from the estate, and the personal representative of an estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(c) This subchapter does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale.

Sec. 402.054. NO LIMITATION ON OTHER ACTION. This subchapter does not limit the authority of an independent executor to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this title, including the authority to enter into a lease and to borrow money.

CHAPTER 403. EXEMPTIONS AND ALLOWANCES; CLAIMS

SUBCHAPTER A. EXEMPTIONS AND ALLOWANCES

Sec. 403.001. SETTING ASIDE EXEMPT PROPERTY AND ALLOWANCES. The independent executor shall set aside and deliver to those entitled exempt property and allowances for support, and allowances in lieu of exempt property, as prescribed in this title, to the same extent and result as if the independent executor's actions had been accomplished in, and under orders of, the court.

[Sections 403.002-403.050 reserved for expansion]

SUBCHAPTER B. CLAIMS

Sec. 403.051. DUTY OF INDEPENDENT EXECUTOR. (a) An independent executor, in the administration of an estate, independently of and without application to, or any action in or by the court:

(1) shall give the notices required under Sections 308.051 and 308.053;

(2) may give the notice to an unsecured creditor with a claim for money permitted under Section 308.054 and bar a claim under Section 403.055; and

(3) may approve or reject any claim, or take no action on a claim, and shall classify and pay claims approved or established by suit against the estate in the same order of priority, classification, and proration prescribed in this title.

(b) To be effective, the notice prescribed under Subsection (a)(2) must include, in addition to the other information required by Section 308.054, a statement that a claim may be effectively presented by only one of the methods prescribed by this subchapter.

Sec. 403.052. SECURED CLAIMS FOR MONEY. Within six months after the date letters are granted or within four months after the date notice is received under Section 308.053, whichever is later, a creditor with a claim for money secured by property of the estate must give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. In addition to giving the notice within this period, a creditor whose claim is secured by real property shall record a notice of the creditor's election under this section in the deed records of the county in which the real property is located. If no election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period, the claim shall be a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien, and the claim may not be asserted against other assets of the estate. The independent executor may pay the claim before maturity if it is determined to be in the best interest of the estate to do so.

Sec. 403.053. MATURED SECURED CLAIMS. (a) A claim approved as a matured secured claim under Section 403.052 remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher classification under Section 355.102. However, the secured creditor:

(1) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(2) during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(b) Subsection (a) may not be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. Except with respect to real property, any third party acting in good faith may obtain good title with respect to an

estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(c) If a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Subchapter G, Chapter 255, the independent executor shall collect from the devisees the amount of the debt and pay that amount to the claimant or shall sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Sections 355.153(b), (c), (d), and (e) applicable to court supervised administrations.

Sec. 403.054. PREFERRED DEBT AND LIEN CLAIMS. During an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Section 403.052 is free to exercise any judicial or extrajudicial collection rights, including the right to foreclosure and execution; provided, however, that the creditor does not have the right to conduct a nonjudicial foreclosure sale within six months after letters are granted.

Sec. 403.055. CERTAIN UNSECURED CLAIMS; BARRING OF CLAIMS. An unsecured creditor who has a claim for money against an estate and who receives a notice under Section 308.054 shall give to the independent executor notice of the nature and amount of the claim not later than the 120th day after the date the notice is received or the claim is barred.

Sec. 403.056. NOTICES REQUIRED BY CREDITORS. (a) Notice to the independent executor required by Sections 403.052 and 403.055 must be contained in:

(1) a written instrument that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument or pleading filed in the court in which the administration of the estate is pending.

(b) This section does not exempt a creditor who elects matured secured status from the filing requirements of Section 403.052, to the extent those requirements are applicable.

Sec. 403.057. STATUTE OF LIMITATIONS. Except as otherwise provided by Section 16.062, Civil Practice and Remedies Code, the running of the statute of limitations shall be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor. In particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim.

Sec. 403.058. OTHER CLAIM PROCEDURES GENERALLY DO NOT APPLY. Except as otherwise provided by this subchapter, the procedural provisions of this title governing creditor claims in supervised administrations do not apply to independent administrations. By way of example, but not as a limitation:

(1) Sections 355.064 and 355.066 do not apply to independent administrations, and consequently a creditor's claim may not be barred solely because the creditor failed to file a suit not later than the 90th day after the date an independent executor rejected the claim or with respect to a claim for which the independent executor takes no action; and

(2) Sections 355.156, 355.157, 355.158, 355.159, and 355.160 do not apply to independent administrations.

Sec. 403.0585. LIABILITY OF INDEPENDENT EXECUTOR FOR PAYMENT OF A CLAIM. An independent executor, in the administration of an estate, may pay at any time and without personal liability a claim for money against the estate to the extent approved and classified by the independent executor if:

(1) the claim is not barred by limitations; and

(2) at the time of payment, the independent executor reasonably believes the estate will have sufficient assets to pay all claims against the estate.

Sec. 403.059. ENFORCEMENT OF CLAIMS BY SUIT. Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the possession of the independent executor that is subject to the debt. The independent executor shall not be required to plead to any suit brought against the executor for money until after six months after the date that an independent administration was created and the order appointing the executor was entered by the probate court.

Sec. 403.060. REQUIRING HEIRS TO GIVE BOND. When an independent administration is created and the order appointing an independent executor is entered by the probate court, any person having a debt against the estate may, by written complaint filed in the probate court in which the order was entered, cause all distributees of the estate, heirs at law, and other persons entitled to any portion of the estate under the will, if any, to be cited by personal service to appear before the court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of the estate, as shown by the inventory and list of claims, whichever is smaller. The bond must be payable to the judge, and the judge's successors, and be approved by the judge, and conditioned that all obligors shall pay all debts that shall be established against the estate in the manner provided by law. On the return of the citation served, unless a person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute the bond to the satisfaction of the probate court, the estate shall be administered and settled under the direction of the probate court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on the bond, and shall be entitled to judgment on the bond for the amount of their debt, or they may have their action against those in possession of the estate.

CHAPTER 404. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

Sec. 404.001. ACCOUNTING. (a) At any time after the expiration of 15 months after the date that an independent administration was created and the order appointing an independent executor was entered by the probate court, any person interested in the estate may demand an accounting from the independent executor.

The independent executor shall furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

(1) the property belonging to the estate that has come into the executor's possession as executor;

(2) the disposition that has been made of the property described by Subdivision (1);

(3) the debts that have been paid;

(4) the debts and expenses, if any, still owing by the estate;

(5) the property of the estate, if any, still remaining in the executor's possession;

(6) other facts as may be necessary to a full and definite understanding of the exact condition of the estate; and

(7) the facts, if any, that show why the administration should not be closed and the estate distributed.

(a-1) Any other interested person shall, on demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Should the independent executor not comply with a demand for an accounting authorized by this section within 60 days after receipt of the demand, the person making the demand may compel compliance by an action in the probate court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it considers proper under the circumstances.

(c) After an initial accounting has been given by an independent executor, any person interested in an estate may demand subsequent periodic accountings at intervals of not less than 12 months, and such subsequent demands may be enforced in the same manner as an initial demand.

(d) The right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate may have against the independent executor of the estate.

Sec. 404.002. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND. When it has been provided by will, regularly probated, that an independent executor appointed by the will shall not be required to give bond for the management of the estate devised by the will, or the independent executor is not required to give bond because bond has been waived by court order as authorized under Section 401.005, then the independent executor may be required to give bond, on proper proceedings had for that purpose as in the case of personal representatives in a supervised administration, if it be made to appear at any time that the independent executor is mismanaging the property, or has betrayed or is about to betray the independent executor's trust, or has in some other way become disqualified.

Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR. (a) The probate court, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within 90 days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims;

(2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care;

(3) the independent executor fails to make an accounting which is required by law to be made;

(4) the independent executor fails to timely file the affidavit or certificate required by Section 308.004;

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties;

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the independent executor's fiduciary duties; or

(7) the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(b) The probate court, on its own motion or on the motion of any interested person, and after the independent executor has been cited by certified mail, return receipt requested, to answer at a time and place stated in the citation, may remove an independent executor who is appointed under the provisions of this code if the independent executor:

(1) subject to Subsection (c)(1), fails to qualify in the manner and period required by law;

(2) subject to Subsection (c)(2), fails to return not later than the 90th day after the date the independent executor qualifies an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims, unless the period is extended by court order;

(3) cannot be served with notices or other processes because the:

(A) independent executor's location is unknown;

(B) independent executor is eluding service; or

(C) independent executor is a nonresident of this state who does not have a resident agent to accept service of process in a probate proceeding or other action relating to the estate; or

(4) subject to Subsection (c)(3), has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the independent executor's care.

(c) The probate court may remove an independent executor:

(1) under Subsection (b)(1) only if the independent executor fails to qualify on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the

last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to qualify in the manner and period required by law;

(2) under Subsection (b)(2) only if the independent executor fails to file an inventory and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims as required by law on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to file the inventory and list of claims or affidavit; and

(3) under Subsection (b)(4) only on presentation of clear and convincing evidence given under oath of the misapplication, embezzlement, or removal from this state of property as described by that subdivision.

(d) The order of removal shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed executor. The order of removal shall require that letters issued to the removed executor shall be surrendered and that all letters shall be canceled of record. If an independent executor is removed by the court under this section, the court may, on application, appoint a successor independent executor as provided by Section 404.005.

(e) An independent executor who defends an action for the independent executor's removal in good faith, whether successful or not, shall be allowed out of the estate the independent executor's necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

(f) Costs and expenses incurred by the party seeking removal that are incident to removal of an independent executor appointed without bond, including reasonable attorney's fees and expenses, may be paid out of the estate.

Sec. 404.004. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN INDEPENDENT EXECUTOR. (a) Whenever a person has died, or shall die, testate, owning property in this state, and the person's will has been or shall be admitted to probate by the court, and the probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of that will, and the will grants to the independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and the independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator with the will annexed is appointed by the probate court, and an administrator's bond is filed and approved by the court, then in all such cases, the court may, in addition to the powers conferred on the administrator under other provisions of the laws of this state, authorize, direct, and empower the administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent provisions of this section.

(b) The court, on application, citation, and hearing, may, by its order, authorize, direct, and empower the administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, on application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage on property or assets of the estate, real, personal, or mixed, on such terms and conditions, and for such duration of time, as the court shall consider to be in the best interests of the estate, and by its order shall prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against the administrator in the administrator's official capacity.

(c) The court may order and authorize the administrator to have and exercise the powers and privileges set forth in Subsection (a) or (b) only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of the decedent, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of the administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing the administrator orders the business of the estate to be carried on and it becomes necessary, from time to time, under orders of the court, for the administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

(d) The court, in addition, may, on application, citation, and hearing, order, authorize, and empower the administrator to assume, exercise, and discharge, under the orders and directions of the court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of the decedent, as the court finds to be in the best interests of the estate and shall, from time to time, order and direct.

(e) The granting to the administrator by the court of some, or all, of the powers and authorities set forth in this section shall be on application filed by the administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

(f) On the filing of an application under Subsection (e), the clerk shall issue citation to all persons interested in the estate, stating the nature of the application, and requiring those persons to appear on the return day named in such citation and show cause why the application should not be granted, should they choose to do so. The citation shall be served by posting.

(g) The court shall hear the application and evidence on the application, on or after the return day named in the citation, and, if satisfied a necessity exists and that it would be in the best interests of the estate to grant the application in whole or in part, the court shall so order; otherwise, the court shall refuse the application.

Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT EXECUTOR. (a) If the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent

executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration the successor executor's inability or unwillingness to serve as successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the probate court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If the probate court finds that continued administration of the estate is necessary, the court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the probate court finds that it would not be in the best interest of the estate to do so. The successor independent executor shall serve with all of the powers and privileges granted to the successor's predecessor independent executor.

(b) If a distributee described in this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the probate court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the incapacitated person, then, notwithstanding Subsection (a), the court may not enter an order continuing independent administration of the estate. If the distributee is an incapacitated person and has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the probate court considers such an appointment necessary to protect the interest of that distributee.

(c) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust.

(d) If a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, then the life tenant or life tenants, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who shall be the distributee under this section, it shall be

presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) In the case of all decedents, for the purposes of determining who shall be the distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is filed shall subsequently disclaim any portion of the distributee's interest in the decedent's estate.

(g) If a distributee of a decedent's estate should die, and if by virtue of the distributee's death the distributee's share of the decedent's estate shall become payable to the distributee's estate, then the deceased distributee's personal representative may sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) If a successor independent executor is appointed under this section, then, unless the probate court shall waive bond on application for waiver, the successor independent executor shall be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in an amount that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(i) Absent proof of fraud or collusion on the part of a judge, the judge may not be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent executor under this section. Section 351.354 does not apply to an appointment of a successor independent executor under this section.

CHAPTER 405. CLOSING AND DISTRIBUTIONS

Sec. 405.001. ACCOUNTING AND DISTRIBUTION. (a) In addition to or in lieu of the right to an accounting provided by Section 404.001, at any time after the expiration of two years after the date the court clerk first issues letters testamentary or of administration to any personal representative of an estate, a person interested in the estate then subject to independent administration may petition the court for an accounting and distribution. The court may order an accounting to be made with the court by the independent executor at such time as the court considers proper. The accounting shall include the information that the court considers necessary to determine whether any part of the estate should be distributed.

(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court shall order its distribution by the independent executor to the distributees entitled to the property. If the court finds there is a continued necessity for administration of the estate, the court shall order the distribution of any portion of the estate that the court finds should not be subject to further administration by the independent executor. If any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, the court shall order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates.

(c) If all the property in the estate is ordered distributed by the court and the estate is fully administered, the court may also order the independent executor to file a final account with the court and may enter an order closing the administration and terminating the power of the independent executor to act as executor.

Sec. 405.002. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY INDEPENDENT EXECUTOR. (a) An independent executor may not be required to deliver tangible or intangible personal property to a distributee unless the independent executor receives, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee.

(b) An independent executor may not require a waiver or release from the distributee as a condition of delivery of property to a distributee.

Sec. 405.003. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR. (a) After an estate has been administered and if there is no further need for an independent administration of the estate, the independent executor of the estate may file an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.

(b) On the filing of an action under this section, each beneficiary of the estate shall be personally served with citation, except for a beneficiary who has waived the issuance and service of citation.

(c) In a proceeding under this section, the court may require the independent executor to file a final account that includes any information the court considers necessary to adjudicate the independent executor's request for a discharge of liability. The court may audit, settle, or approve a final account filed under this subsection.

(d) On or before filing an action under this section, the independent executor must distribute to the beneficiaries of the estate any of the remaining assets or property of the estate that remains in the independent executor's possession after all of the estate's debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending court approval of the final account. The court may review the amount of assets on reserve and may order the independent executor to make further distributions under this section.

(e) Except as ordered by the court, the independent executor is entitled to pay from the estate legal fees, expenses, or other costs incurred in relation to a proceeding for judicial discharge filed under this section. The independent executor shall be personally liable to refund any amount of such fees, expenses, or other costs not approved by the court as a proper charge against the estate.

Sec. 405.004. CLOSING INDEPENDENT ADMINISTRATION BY CLOSING REPORT OR NOTICE OF CLOSING ESTATE. When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the independent executor's possession will permit, when there is no pending litigation, and when the independent executor has distributed to the distributees entitled to the estate all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a closing report or a notice of closing of the estate.

Sec. 405.005. CLOSING REPORT. An independent executor may file a closing report verified by affidavit that:

(1) shows:

(A) the property of the estate that came into the independent executor's possession;

(B) the debts that have been paid;

(C) the debts, if any, still owing by the estate;

(D) the property of the estate, if any, remaining on hand after payment of debts; and

(E) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

Sec. 405.006. NOTICE OF CLOSING ESTATE. (a) Instead of filing a closing report under Section 405.005, an independent executor may file a notice of closing estate verified by affidavit that states:

(1) that all debts known to exist against the estate have been paid or have been paid to the extent permitted by the assets in the independent executor's possession;

(2) that all remaining assets of the estate, if any, have been distributed; and

(3) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(b) Before filing the notice, the independent executor shall provide to each distributee of the estate a copy of the notice of closing estate. The notice of closing estate filed by the independent executor must include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

Sec. 405.007. EFFECT OF FILING CLOSING REPORT OR NOTICE OF CLOSING ESTATE. (a) The independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. If an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

(b) The closing of an independent administration by filing of a closing report or notice of closing estate terminates the power and authority of the independent executor, but does not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice.

(c) When a closing report or notice of closing estate has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of the distributees with respect to the properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in the report or notice.

(d) If the independent executor is required to give bond, the independent executor's filing of the closing report and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. The filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(e) An independent executor's closing report or notice of closing estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Sec. 405.008. PARTITION AND DISTRIBUTION OR SALE OF PROPERTY INCAPABLE OF DIVISION. If the will does not distribute the entire estate of the testator or provide a means for partition of the estate, or if no will was probated, the independent executor may, but may not be required to, petition the probate court for either a partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both. The estate or portion of the estate shall either be partitioned and distributed or sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in supervised estates.

Sec. 405.009. CLOSING INDEPENDENT ADMINISTRATION ON APPLICATION BY DISTRIBUTE. (a) At any time after an estate has been fully administered and there is no further need for an independent administration of the estate, any distributee may file an application to close the administration; and, after citation on the independent executor, and on hearing, the court may enter an order:

(1) requiring the independent executor to file a closing report meeting the requirements of Section 405.005;

(2) closing the administration;

(3) terminating the power of the independent executor to act as independent executor; and

(4) releasing the sureties on any bond the independent executor was required to give from all liability for the future acts of the principal.

(b) The order of the court closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Sec. 405.010. ISSUANCE OF LETTERS. At any time before the authority of an independent executor has been terminated in the manner set forth in this subtitle, the clerk shall issue such number of letters testamentary as the independent executor shall request.

Sec. 405.011. RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies conferred by this chapter are cumulative of other rights and remedies to which a person interested in the estate may be entitled under law.

Sec. 405.012. CLOSING PROCEDURES NOT REQUIRED. An independent executor is not required to close the independent administration of an estate under Section 405.003 or Sections 405.004 through 405.007.

SECTION 2.60. Subsection (a), Section 551.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) The court, by written order, shall require the executor or administrator of an estate to pay to the comptroller as provided by this subchapter the share of that estate of a person entitled to that share who does not demand the share, including any portion deposited in an account in the court's registry under Section 362.011(b), from the executor or administrator within six months after the date of, as applicable:

(1) a court order approving the report of the commissioners of partition made under Section 360.154; or

(2) the settlement of the final account of the executor or administrator.

SECTION 2.61. (a) Sections 202.003 and 255.201, Estates Code, as effective January 1, 2014, are repealed.

(b) The following sections of the Texas Probate Code are repealed:

(1) Sections 4D, 4H, 15, 34A, 37A, 48(a), 49, 53C(a) and (b), 59, 64, 67, 77, 81(a), 83(a), 84, 89A(a), 128A, 143, 227, 250, 256, 260, 271(a) and (b), 286, 293, 385(a), 407, 408(b), (c), and (d), 427, 436, 439, 452, 471, 472, and 473, as amended by Article 1 of this Act; and

(2) Sections 6A, 6B, 6C, 6D, 8A, 8B, 48(d), 145A, 145B, 145C, and 254, as added by Article 1 of this Act.

(c) Notwithstanding the transfer of Sections 6 and 8, Texas Probate Code, to the Estates Code and redesignation as Sections 6 and 8 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Sections 6 and 8, Texas Probate Code, as amended by Article 1 of this Act, are repealed.

(d) Notwithstanding the transfer of Sections 145 through 154A, Texas Probate Code, to the Estates Code and redesignation as Sections 145 through 154A of that code effective January 1, 2014, by Section 3, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, the following sections are repealed:

(1) Sections 145, 146, 149B, 149C, and 151, Texas Probate Code, as amended by Article 1 of this Act; and

(2) Sections 147, 148, 149, 149A, 149D, 149E, 149F, 149G, 150, 152, 153, 154, and 154A, Texas Probate Code.

SECTION 2.62. This article takes effect January 1, 2014.

ARTICLE 3. CONFLICTS; EFFECTIVE DATE

SECTION 3.01. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.02. Except as otherwise provided by this Act, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1198** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2439**

Senator Watson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2439** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WATSON

CARONA

ELLIS

JACKSON

WHITMIRE

On the part of the Senate

GALLEGO

HARLESS

HILDERBRAN

MARTINEZ

MENENDEZ

On the part of the House

The Conference Committee Report on **HB 2439** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1130**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1130** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HEGAR
BIRDWELL
DEUEL
ELTIFE
WENTWORTH

On the part of the Senate

KLEINSCHMIDT
SHEETS
LEWIS
QUINTANILLA

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the exception from required public disclosure of certain records of an appraisal district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (e), Section 552.149, Government Code, is amended to read as follows:

(e) This section applies to information described by Subsections (a), (c), and (d) and to an item of information or comparable sales data described by Subsection (b) only if the information, item of information, or comparable sales data relates to real property that is located in a county having a population of [~~20,000 or~~] more than 50,000.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1130** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1717**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1717** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

DUNCAN
HARRIS
HINOJOSA
HUFFMAN
URESTI

On the part of the Senate

LEWIS
HARTNETT
JACKSON
RAYMOND
THOMPSON

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the operation and administration of, and practice and procedures in courts in, the judicial branch of state government.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. APPELLATE COURT PROVISIONS

SECTION 1.01. Subsection (b), Section 22.002, Government Code, is amended to read as follows:

(b) The supreme court or, in vacation, a justice of the supreme court may issue a writ of mandamus to compel a statutory county court judge, a statutory probate court judge, or a district judge to proceed to trial and judgment in a case [~~agreeable to the principles and usages of law, returnable to the supreme court on or before the first day of the term, or during the session of the term, or before any justice of the supreme court as the nature of the case requires~~].

SECTION 1.02. (a) Section 24.007, Property Code, is amended to read as follows:

Sec. 24.007. APPEAL. (a) [~~A final judgment of a county court in an eviction suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only.~~] A judgment of a county court in an eviction suit may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

(b) Notwithstanding any other law, an appeal may be taken from a final judgment of a county court, statutory county court, statutory probate court, or district court in an eviction suit.

(b) The change in law made by this section applies to an appeal of a final judgment rendered on or after the effective date of this section. An appeal of a final judgment rendered before the effective date of this section is governed by the law in effect on the date the judgment was rendered, and the former law is continued in effect for that purpose.

ARTICLE 2. GENERAL PROVISIONS FOR DISTRICT COURTS

SECTION 2.01. Section 24.002, Government Code, is amended to read as follows:

Sec. 24.002. ASSIGNMENT OF JUDGE OR TRANSFER OF CASE ON RECUSAL [SUBSTITUTE JUDGES]. If a district judge determines on the judge's own motion that the judge should not sit in a case pending in the judge's court because the judge is disqualified or otherwise should recuse himself or herself, the judge shall enter a recusal order, request the presiding judge of that administrative judicial region to assign another judge to sit, and take no further action in the case except for good cause stated in the order in which the action is taken. A change of venue is not necessary because of the disqualification of a district judge in a case or proceeding pending in the judge's [his] court[, but the judge shall immediately certify his disqualification to the governor. The governor shall designate a district judge of another district to exchange benches with the disqualified judge to try the case. The governor shall notify both judges of his designation, and the judges shall exchange benches. If the judges are prevented from exchanging benches, the parties or their counsels may agree on an attorney of the court for the trial of the case. The district judge or special judge shall certify to the governor the fact of a failure of the parties or their counsels to agree on an attorney, and the governor shall appoint a person legally qualified to act as judge in the trial of the case].

SECTION 2.02. Sections 24.003 and 24.007, Government Code, are amended to read as follows:

Sec. 24.003. TRANSFER OF CASES; EXCHANGE OF BENCHES [SUBSTITUTE JUDGES IN CERTAIN COUNTIES]. (a) This section applies only to ~~[civil cases in]~~ counties with two [five] or more district courts.

(b) Unless provided otherwise by the local rules of administration, a district judge in the county may:

(1) transfer any civil or criminal case or proceeding on the court's docket to the docket of another district court in the county;

(2) hear and determine any case or proceeding pending in another district court in the county without having the case transferred;

(3) sit for another district court in the county and hear and determine any case or proceeding pending in that court;

(4) temporarily exchange benches with the judge of another district court in the county;

(5) try different cases in the same court at the same time; and

(6) occupy the judge's own courtroom or the courtroom of another district court in the county.

(c) If a district judge in the county is sick or otherwise absent, another district judge in the county may hold court for the judge.

(d) A district judge in the county may hear and determine any part or question of any case or proceeding pending in any of the district courts, and any other district judge may complete the hearing and render judgment in the case or proceeding. A district judge may hear and determine motions, including motions for new trial, petitions for injunction, applications for the appointment of a receiver, interventions, pleas in abatement, dilatory pleas, and all preliminary matters, questions, and

proceedings, and may enter judgment or order on them in the court in which the case or proceeding is pending without transferring the case or proceeding. The district judge in whose court the matter is pending may proceed to hear, complete, and determine the matter, or all or any part of another matter, and render a final judgment. A district judge may issue a restraining order or injunction that is returnable to any other district court.

(e) A judgment or order shall be entered in the minutes of the court in which the case is pending.

(f) This section does not limit the powers of a district judge when acting for another judge by exchange of benches or otherwise [If a district judge is disqualified in a case pending in his court and his disqualification is certified to the governor, the governor may require any other district judge in the county to exchange benches with the disqualified judge.

[(e) If a district judge is absent, sick, or disqualified, any of the district judges in the county may hold court for him or may transfer a pending case to the court of any other district judge in the county].

Sec. 24.007. JURISDICTION. (a) The district court has the jurisdiction provided by Article V, Section 8, of the Texas Constitution.

(b) A district court has original jurisdiction of a civil matter in which the amount in controversy is more than \$500, exclusive of interest.

SECTION 2.03. Subsection (a), Section 24.012, Government Code, is amended to read as follows:

(a) Notwithstanding any other law, each [Each] district [and criminal district] court holds in each county in the judicial district [at least two] terms that commence on the first Mondays in January and July of [court] each year [in each county in the district]. To the extent of a conflict between this subsection and a specific provision relating to a particular judicial district, this section controls.

SECTION 2.04. Subchapter A, Chapter 24, Government Code, is amended by adding Sections 24.023, 24.024, 24.025, 24.026, 24.027, 24.028, 24.029, 24.030, and 24.031 to read as follows:

Sec. 24.023. OBLIGATIONS; BONDS. (a) When a case is transferred from one court to another, all processes, writs, bonds, recognizances, and other obligations issued by the transferring court are returnable to the court to which the case is transferred as if originally issued by that court.

(b) The obligees in all bonds and recognizances taken in and for a court from which a case is transferred, and all witnesses summoned to appear in a district court from which a case is transferred, are required to appear before the court to which the case is transferred as if the bond, recognizance, or summons was taken in or for that court.

Sec. 24.024. FILING AND DOCKETING CASES. In a county with two or more district courts, the district judges may adopt rules governing the filing and numbering of cases, the assignment of cases for trial, and the distribution of the work of the courts as in their discretion they consider necessary or desirable for the orderly dispatch of the business of the courts.

Sec. 24.025. SUPPLEMENTAL COMPENSATION. (a) Unless otherwise provided by this subchapter, all district judges in a county are entitled to equal amounts of supplemental compensation from the county.

(b) A district judge is entitled to an amount of supplemental compensation for serving on the juvenile board of a county that is equal to the amount other judges serving on the juvenile board receive.

Sec. 24.026. APPOINTMENT OF INITIAL JUDGE. On the creation of a new judicial district, the initial vacancy in the office of district judge is filled in accordance with Section 28, Article V, Texas Constitution.

Sec. 24.027. GRAND AND PETIT JURORS. All grand and petit jurors selected in a county before a new district court is created or the composition of an existing district court is modified by an amendment to this chapter are considered to be selected for the new or modified district court, as applicable.

Sec. 24.028. CASES TRANSFERRED. If by an amendment to this chapter a county is removed from the composition of an existing judicial district and added to another existing or new judicial district, all cases and proceedings from that county that are pending in the district court of the judicial district from which the county was removed are transferred to the district court of the judicial district to which the county is added. The judge of each affected district court shall sign the proper orders in connection with the transfer.

Sec. 24.029. PROCESSES, WRITS, AND OTHER OBLIGATIONS REMAIN VALID. (a) If by an amendment to this chapter a county is removed from the composition of an existing judicial district and added to another existing or new judicial district, or if an amendment to this chapter changes the time or place at which the terms of court are held, all processes, writs, bonds, recognizances, and other obligations issued from and made returnable to that court before the effective date of the transfer or other change are returnable as provided by this subsection. An obligation issued from the affected court is returnable to another district court in the county on the date that court directs, but may not be made returnable on a date that is earlier than the date on which the obligation was originally returnable. The obligations are legal and valid as if the obligations had been made returnable to the issuing court.

(b) The obligees in all appearance bonds and recognizances taken in and for a district court of a county before the effective date of an amendment to this chapter, and all witnesses summoned to appear before that district court under laws existing before the effective date of an amendment to this chapter, are required to appear at another district court in the county on the date that court directs, but may not be required to appear on a date that is earlier than the date on which the obligees or witnesses were originally required to appear.

Sec. 24.030. LOCATION OF COURT. (a) A district court shall sit in the county seat for a jury trial in a civil case. The commissioners court of the county may authorize a district court to sit in any municipality within the county to hear and determine nonjury trials in civil cases and to hear and determine motions, arguments, and other matters not heard before a jury in a civil case that is within the court's jurisdiction.

(b) The district clerk or the clerk's deputy serves as clerk of the court when a court sits in a municipality other than the municipality that is the county seat and may transfer:

(1) all necessary books, minutes, records, and papers to that municipality while the court is in session there; and

(2) the books, minutes, records, and papers back to the clerk's office in the county seat at the end of each session.

(c) If the commissioners court authorizes a district court to sit in a municipality other than the municipality that is the county seat, the commissioners court shall provide suitable facilities for the court in that municipality.

Sec. 24.031. COURT OFFICERS. The prosecuting attorney, the sheriff, the district clerk, the bailiffs, and the other officers serving the other district courts of the county shall serve in their respective capacities for the courts listed in this chapter.

SECTION 2.05. Subsection (g), Section 25.0362, Government Code, is amended to read as follows:

(g) In matters of concurrent jurisdiction, a judge of a county court at law and a judge of a district court in Cass County may transfer cases between the courts in the same manner that judges of district courts may transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.06. Subsection (w), Section 25.0732, Government Code, is amended to read as follows:

(w) In matters of concurrent jurisdiction, a judge of a statutory county court in El Paso County and a judge of a district court or another statutory county court in El Paso County may transfer cases between the courts in the same manner judges of district courts transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.07. Subsection (c), Section 25.1672, Government Code, is amended to read as follows:

(c) In matters of concurrent jurisdiction, judges of the county courts at law and district courts in the county may exchange benches and courtrooms and may transfer cases between their dockets in the same manner that district court judges exchange benches and transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.08. Subsection (v), Section 25.1862, Government Code, is amended to read as follows:

(v) In matters of concurrent jurisdiction, a judge of a county court at law and a judge of a district court or another county court at law may transfer cases between the courts in the same manner judges of district courts transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.09. Subsection (k), Section 25.1932, Government Code, is amended to read as follows:

(k) Notwithstanding Section 74.121(b)(1), in matters of concurrent jurisdiction, the judge of a county court at law and the judges of the district courts in the county may exchange benches and courtrooms and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.10. Subdivision (2), Subsection (b), Section 74.121, Government Code, is amended to read as follows:

(2) Notwithstanding Subdivision (1), in matters of concurrent jurisdiction, a judge of a statutory county court in Midland County and a judge of a district court in Midland County may exchange benches and courtrooms with each other and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.11. Subsection (d), Section 659.012, Government Code, is amended to read as follows:

(d) Notwithstanding any other provision in this section or other law, in [H] a county with more than five district courts, a district judge who serves as a local administrative district judge under Section 74.091 is entitled to an annual salary from the state that is \$5,000 more than the salary from the state to which the judge is otherwise entitled [under Subsection (a)(1)].

SECTION 2.12. The following provisions of the Government Code are repealed:

- (1) Section 24.013;
- (2) Section 24.302;
- (3) Section 24.303;
- (4) Section 24.304;
- (5) Section 24.305;
- (6) Section 24.307;
- (7) Section 24.308;
- (8) Section 24.309;
- (9) Section 24.311;
- (10) Section 24.312;
- (11) Section 24.313;
- (12) Section 24.314;
- (13) Section 24.525(b);
- (14) Section 24.526(b);
- (15) Section 24.527(b);
- (16) Sections 24.528(b) and (c); and
- (17) Sections 24.529(b) and (c).

ARTICLE 3. STATUTORY COUNTY COURTS

SECTION 3.01. Section 25.0002, Government Code, is amended to read as follows:

Sec. 25.0002. DEFINITIONS [DEFINITION]. In this chapter:

(1) "Criminal law cases and proceedings" includes cases and proceedings for allegations of conduct punishable in part by confinement in the county jail not to exceed one year.

(2) "Family[~~,"family]~~ law cases and proceedings" includes cases and proceedings under Titles 1, 2, 4, and 5, Family Code [~~involving adoptions, birth records, or removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support, custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses].~~

(3) "Juvenile law cases and proceedings" includes all cases and proceedings brought under Title 3, Family Code.

(4) "Mental health cases and proceedings" includes all cases and proceedings brought under Chapter 462, Health and Safety Code, or Subtitle C or D, Title 7, Health and Safety Code.

SECTION 3.02. Subsection (c), Section 25.0003, Government Code, is amended to read as follows:

(c) In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 [~~\$100,000~~], excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition; and

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

SECTION 3.03. Section 25.0004, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The judge of a statutory county court does not have general supervisory control or appellate review of the commissioners court.

(g) A judge of a statutory county court has the judicial immunity of a district judge.

SECTION 3.04. Section 25.0007, Government Code, is amended to read as follows:

Sec. 25.0007. JURIES; PRACTICE AND PROCEDURE. (a) The drawing of jury panels, selection of jurors, and practice in the statutory county courts must conform to that prescribed by law for county courts.

(b) Practice in a statutory county court is that prescribed by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the statutory county courts, other than the number of jurors, that involve those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to district courts. This section does not affect local rules of administration adopted under Section 74.093.

SECTION 3.05. Section 25.0010, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) The county attorney or criminal district attorney [~~and sheriff~~] shall serve each statutory county court as required by law.

(c) A county sheriff shall in person or by deputy attend a statutory county court as required by the court.

(d) The county clerk shall serve as clerk of each statutory county court. The court officials shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for those offices.

(e) The judge of a statutory county court may appoint the personnel necessary for the operation of the court, including a court coordinator or administrative assistant, if the commissioners court has approved the creation of the position.

(f) The commissioners court may authorize the employment of as many additional assistant district attorneys, assistant county attorneys, deputy sheriffs, and clerks as are necessary for a statutory county court.

SECTION 3.06. (a) Section 25.0014, Government Code, is amended to read as follows:

Sec. 25.0014. QUALIFICATIONS OF JUDGE. The judge of a statutory county court must:

- (1) be at least 25 years of age;
- (2) be a United States citizen and have resided in the county for at least two years before election or appointment; and
- (3) be a licensed attorney in this state who has practiced law or served as a judge of a court in this state, or both combined, for the four years preceding election or appointment, unless otherwise provided for by law.

(b) The change in law made by this Act to Section 25.0014, Government Code, does not apply to a person serving as a statutory county court judge immediately before the effective date of this Act who met the qualifications of Section 25.0014, Government Code, as it existed on that date, and the former law is continued in effect for determining that person's qualifications to serve as a statutory county court judge.

SECTION 3.07. (a) Subchapter A, Chapter 25, Government Code, is amended by adding Sections 25.0016 and 25.00161 to read as follows:

Sec. 25.0016. TERMS OF COURT. The commissioners court, by order, shall set at least two terms a year for the statutory county court.

Sec. 25.00161. PRIVATE PRACTICE OF LAW. The regular judge of a statutory county court shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

(b) Section 25.00161, Government Code, as added by this Act, applies only to a regular judge serving a term to which the judge is elected on or after the effective date of this Act. A judge serving a term to which the judge was elected before the effective date of this Act is governed by the law in effect on the date the judge was elected, and that law is continued in effect for that purpose.

SECTION 3.08. Subsection (t), Section 25.0022, Government Code, is amended to read as follows:

(t) To be eligible for assignment under this section, a former or retired judge of a statutory probate court must:

- (1) not have been removed from office;
- (2) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:
 - (A) the judge has not been publicly reprimanded or censured by the State Commission on Judicial Conduct; and
 - (B) the judge:
 - (i) did not resign or retire from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge as provided in Section 33.022 and before the final disposition of that investigation; or
 - (ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation;
- (3) annually demonstrate that the judge has completed in the past state fiscal year the educational requirements for an active statutory probate court judge;
- (4) have served as an active judge for at least 72 [~~96~~] months in a district, statutory probate, statutory county, or appellate court; and
- (5) have developed substantial experience in the judge's area of specialty.

SECTION 3.09. Section 25.00231, Government Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) In lieu of the bond required by Subsection (b), a county may elect to obtain insurance or to self-insure in the amount required by Subsection (b) against losses caused by the statutory probate court judge's gross negligence in performing the duties of office.

(e) This section does not apply to an assigned or visiting judge sitting by assignment in a statutory probate court.

SECTION 3.10. (a) Subchapter B, Chapter 25, Government Code, is amended by adding Sections 25.0033, 25.0034, and 25.0035 to read as follows:

Sec. 25.0033. QUALIFICATIONS OF JUDGE. The judge of a statutory probate court must:

- (1) be at least 25 years of age;
- (2) be a United States citizen and have resided in the county for at least two years before election or appointment; and
- (3) be a licensed attorney in this state who has practiced law or served as a judge of a court in this state, or both combined, for the five years preceding election or appointment, unless otherwise provided for by law.

Sec. 25.0034. PRIVATE PRACTICE OF LAW. The regular judge of a statutory probate court shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

Sec. 25.0035. TERMS OF COURT. The commissioners court, by order, shall set at least two terms a year for the statutory probate court.

(b) Section 25.0033, Government Code, as added by this Act, does not apply to a person serving as a statutory probate court judge immediately before the effective date of this Act. The qualifications of a person serving as a statutory probate court

judge on the effective date of this Act are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 3.11. Subsections (g) and (i), Section 25.0042, Government Code, are amended to read as follows:

(g) The district clerk serves as clerk of a county court at law in all cases arising under the Family Code and Section 23.001 and shall establish a separate docket for a county court at law; the county clerk serves as clerk of the court in all other cases. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.]~~

~~(i) [Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases under the Family Code and Section 23.001 are governed by this section and the laws and rules pertaining to district courts and county courts.]~~ If a case under the Family Code or Section 23.001 is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.12. Subsection (h), Section 25.0102, Government Code, is amended to read as follows:

~~(h) [Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members; in all other cases the jury shall be composed of six members.

SECTION 3.13. Subsections (e) and (f), Section 25.0132, Government Code, are amended to read as follows:

(e) The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve a county court at law.]~~

~~(f) [Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings is that prescribed by law for district courts and county courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.14. Subsection (a), Section 25.0202, Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Bosque County has concurrent jurisdiction with the district court in:

- (1) family law cases and proceedings;

(2) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 [~~\$100,000~~], excluding interest, court costs, and attorney's fees; and

(3) contested probate matters under Section 4D [~~5(b)~~], Texas Probate Code.

SECTION 3.15. Subsection (b), Section 25.0212, Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

(1) felony criminal matters;

(2) suits on behalf of the state to recover penalties or escheated property;

(3) misdemeanors involving official misconduct;

(4) contested elections; or

(5) civil cases in which the matter in controversy exceeds \$200,000 [~~\$100,000~~], excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition.

SECTION 3.16. Subsections (a) and (k), Section 25.0222, Government Code, are amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 [~~\$100,000~~], excluding interest, statutory damages and penalties, and attorney's fees and costs, as alleged on the face of the petition;

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy; and

(3) family law cases and proceedings and juvenile jurisdiction under Section 23.001.

(k) The district clerk serves as clerk of the statutory county courts in cases instituted in the district courts in which the district courts and statutory county courts have concurrent jurisdiction, and the county clerk serves as clerk for all other cases. [~~The commissioners court may employ as many additional assistant criminal district attorneys, deputy sheriffs, and deputy clerks as are necessary to serve the statutory county courts.~~]

SECTION 3.17. Subsections (e) and (f), Section 25.0302, Government Code, are amended to read as follows:

(e) The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings. The district clerk shall establish a separate docket for a county court at law. [~~The commissioners court may employ the assistant district attorneys, deputy sheriffs, and bailiffs necessary to serve each county court at law.~~]

(f) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.~~] If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.18. Subsection (b), Section 25.0312, Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) felony cases other than writs of habeas corpus;
- (2) misdemeanors involving official misconduct;
- (3) contested elections; or
- (4) appeals from county court.

SECTION 3.19. Subsection (b), Section 25.0362, Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) misdemeanors involving official misconduct;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) contested elections;
- (4) suits in which the county is a party; or
- (5) felony cases involving capital murder.

SECTION 3.20. Subsection (f), Section 25.0482, Government Code, is amended to read as follows:

(f) The district clerk serves as clerk of a county court at law for family law cases and proceedings, and the county clerk serves as clerk for all other cases and proceedings. [~~The district clerk shall establish a separate docket for a county court at law. The commissioners court may employ as many assistant county attorneys, deputy sheriffs, and bailiffs as are necessary to serve the county courts at law.~~]

SECTION 3.21. Subsection (g), Section 25.0632, Government Code, is amended to read as follows:

(g) [~~Jurors regularly impaneled for the week by the district courts of Denton County must include sufficient numbers to serve in the statutory county courts and statutory probate courts as well as the district courts. The jurors shall be made available by the district judge as necessary.~~] The jury in a statutory county court or statutory probate court in all civil or criminal matters is composed of 12 members, except that in misdemeanor criminal cases and any other case in which the court has jurisdiction that under general law would be concurrent with the county court, the jury is composed of six members.

SECTION 3.22. Subsection (r), Section 25.0732, Government Code, is amended to read as follows:

(r) Section [~~Sections~~] 25.0006(b) does [~~and 25.0007 do~~] not apply to County Court at Law No. 2, 3, 4, 5, 6, or 7 of El Paso County, Texas.

SECTION 3.23. Subsection (a), Section 25.0733, Government Code, is amended to read as follows:

(a) Sections 25.0732(q) and [~~25.0732(d), (h), (i), (j), (m), (n), (o), (p), (q), (r), and (v)~~], relating to county courts at law in El Paso County, apply to a statutory probate court in El Paso County.

SECTION 3.24. Subsections (i) and (l), Section 25.0862, Government Code, are amended to read as follows:

(i) ~~[The clerk of the statutory county courts and statutory probate court shall keep a separate docket for each court.]~~ The clerk shall tax the official court reporter's fees as costs in civil actions in the same manner as the fee is taxed in civil cases in the district courts. ~~[The district clerk serves as clerk of the county courts in a cause of action arising under the Family Code and an appeal of a final ruling or decision of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, and the county clerk serves as clerk of the court in all other cases.]~~

(l) Each reporter may be made available when not engaged in proceedings in their court to report proceedings in all other courts. ~~[Practice, appeals, and writs of error in a statutory county court are as prescribed by law for county courts and county courts at law.]~~ Appeals and writs of error may be taken from judgments and orders of the County Courts Nos. 1, 2, and 3 of Galveston County and the judges, in civil and criminal cases, in the manner prescribed by law for appeals and writs of error. Appeals from interlocutory orders of the County Courts Nos. 1, 2, and 3 appointing a receiver or overruling a motion to vacate or appoint a receiver may be taken and are governed by the laws relating to appeals from similar orders of district courts.

SECTION 3.25. Subsection (f), Section 25.0962, Government Code, is amended to read as follows:

(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases in the court's concurrent jurisdiction with the district court shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.]~~ If a case in the court's concurrent jurisdiction with the district court is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.26. Subsection (a), Section 25.1033, Government Code, is amended to read as follows:

(a) A county criminal court at law in Harris County has the criminal jurisdiction provided by law for county courts, concurrent jurisdiction with civil statutory county courts for Harris County to hear appeals of the suspension of a driver's license and original proceedings regarding occupational driver's licenses, and appellate jurisdiction in appeals of criminal cases from justice courts and municipal courts in the county.

SECTION 3.27. Subsection (g), Section 25.1042, Government Code, is amended to read as follows:

(g) The criminal district attorney is entitled to the same fees prescribed by law for prosecutions in the county court. ~~[The commissioners court may employ as many additional deputy sheriffs and clerks as are necessary to serve a county court at law.]~~

SECTION 3.28. Subsections (e) and (f), Section 25.1072, Government Code, are amended to read as follows:

(e) The county clerk serves as clerk of a county court at law, except that the district clerk serves as clerk of the court in family law cases and proceedings. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ as many assistant district attorneys, deputy sheriffs, and bailiffs as are necessary to serve the court.]~~

(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings are governed by this section and the laws and rules pertaining to district courts, as well as county courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.29. Subsection (b), Section 25.1142, Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) civil cases in which the amount in controversy exceeds \$200,000 ~~[\$100,000]~~, excluding interest;
- (2) felony jury trials;
- (3) suits on behalf of the state to recover penalties or escheated property;
- (4) misdemeanors involving official misconduct; or
- (5) contested elections.

SECTION 3.30. Subsection (b), Section 25.1182, Government Code, is amended to read as follows:

(b) A county court at law's civil jurisdiction concurrent with the district court in civil cases is limited to cases in which the matter in controversy does not exceed \$200,000. A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) suits on behalf of this state to recover penalties or escheated property;
- (2) felony cases involving capital murder;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.31. Subsection (b), Section 25.1312, Government Code, is amended to read as follows:

(b) A statutory county court in Kaufman County does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony cases involving capital murder;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.32. Subsection (m), Section 25.1542, Government Code, is amended to read as follows:

(m) ~~[Practice and procedure and rules of evidence governing trials in and appeals from a county court apply to a county court at law, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.]~~ In family law cases, juries shall be composed of 12 members.

SECTION 3.33. Subsection (g), Section 25.1652, Government Code, is amended to read as follows:

(g) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law matters and proceedings shall be governed by this section and the laws and rules pertaining to district courts.]~~ If a family law case is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.34. Subsection (i), Section 25.1762, Government Code, is amended to read as follows:

(i) ~~[The laws governing the drawing, selection, service, and pay of jurors for county courts apply to a county court at law. Jurors regularly impaneled for a week by a district court may, at the request of the judge of a county court at law, be made available by the district judge in the numbers requested and shall serve for the week in the county court at law.]~~ In matters of concurrent jurisdiction with the district court, if a party to a suit files a written request for a 12-member jury with the clerk of the county court at law at a reasonable time that is not later than 30 days before the date the suit is set for trial, the jury shall be composed of 12 members.

SECTION 3.35. Subsection (b), Section 25.1772, Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) suits on behalf of this state to recover penalties or escheated property;
- (2) felony cases involving capital murder;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.36. Subsection (e), Section 25.1892, Government Code, is amended to read as follows:

(e) ~~[The county attorney or district attorney serves a county court at law as required by the judge.]~~ The district clerk serves as clerk of a county court at law in cases enumerated in Subsection (a)(2), and the county clerk serves as clerk in all other cases. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ as many additional assistant county attorneys, deputy sheriffs, and clerks as are necessary to serve a county court at law.]~~

SECTION 3.37. Subsection (i), Section 25.1932, Government Code, is amended to read as follows:

(i) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases in the court's concurrent jurisdiction with the district court shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.]~~ If a case in the court's concurrent jurisdiction with the district court is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.38. Subsection (b), Section 25.2012, Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony cases involving capital murder;

- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.39. Subsection (n), Section 25.2142, Government Code, is amended to read as follows:

(n) ~~[A special judge of a county court at law is entitled to receive for services actually performed the same amount of compensation as the regular judge.]~~ A former judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata annuity received from any state, district, or county retirement fund. An active judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata compensation received from state or county funds as salary, including supplements.

SECTION 3.40. (a) Subsection (b), Section 25.2222, Government Code, as amended by Chapter 22 (S.B. 124), Acts of the 72nd Legislature, Regular Session, 1991, and Chapter 265 (H.B. 7), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

- (1) civil cases in which the matter in controversy exceeds \$500 and does not exceed \$200,000 ~~[\$100,000]~~, excluding mandatory damages and penalties, attorney's fees, interest, and costs;
- (2) nonjury family law cases and proceedings;
- (3) final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy;
- (4) eminent domain proceedings, both statutory and inverse, regardless of the amount in controversy;
- (5) suits to decide the issue of title to real or personal property;
- (6) suits to recover damages for slander or defamation of character;
- (7) suits for the enforcement of a lien on real property;
- (8) suits for the forfeiture of a corporate charter;
- (9) suits for the trial of the right to property valued at \$200 or more that has been levied on under a writ of execution, sequestration, or attachment; and
- (10) suits for the recovery of real property.

(b) Subsection (b), Section 25.2222, Government Code, as amended by Chapter 746 (H.B. 66), Acts of the 72nd Legislature, Regular Session, 1991, is repealed as duplicative of Subsection (b), Section 25.2222, Government Code, as amended by Subsection (a) of this section.

SECTION 3.41. Subsection (a), Section 25.2232, Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Taylor County has:

- (1) concurrent jurisdiction with the county court in the trial of cases involving insanity and approval of applications for admission to state hospitals and special schools if admission is by application; and

(2) concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 [~~\$100,000~~], excluding interest.

SECTION 3.42. Subsection (i), Section 25.2352, Government Code, is amended to read as follows:

(i) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.~~] If a family law case is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.43. Subsection (i), Section 25.2382, Government Code, is amended to read as follows:

(i) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving matters enumerated in Subsection (a)(2)(B) or (C) shall be governed by this section and the laws and rules pertaining to district courts.~~] If a family law case [~~in Subsection (a)(2)(B) or (C)~~] is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.44. (a) Section 25.2421(a), Government Code, is amended to read as follows:

(a) Webb County has the following statutory county courts:

- (1) the County Court at Law No. 1 of Webb County; [~~and~~]
- (2) the County Court at Law No. 2 of Webb County; and
- (3) the County Court at Law No. 3 of Webb County.

(b) Notwithstanding Section 25.2421(a), Government Code, as amended by this Act, the County Court at Law No. 3 of Webb County is created January 1, 2031, or on an earlier date determined by the Commissioners Court of Webb County by an order entered in its minutes.

SECTION 3.45. Subsections (g) and (h), Section 25.2422, Government Code, are amended to read as follows:

(g) The district attorney of the 49th Judicial District serves as district attorney of a county court at law, except that the county attorney of Webb County prosecutes all juvenile, child welfare, mental health, and other civil cases in which the state is a party. The district clerk serves as clerk of a county court at law in the cases enumerated in Subsection (a)(2), and the county clerk serves as clerk of a county court at law in all other cases. [~~The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.~~]

(h) [~~Practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (a)(2)(B) or (C) are governed by this section and the laws and rules pertaining to district courts, as well as county courts.~~] If a family law case [~~enumerated in Subsection (a)(2)(B) or (C)~~] is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.46. Subsections (d) and (k), Section 25.2452, Government Code, are amended to read as follows:

(d) A county court at law does not have jurisdiction of:

(1) a case under:

- (A) the Alcoholic Beverage Code;
- (B) the Election Code; or
- (C) the Tax Code;

(2) a matter over which the district court has exclusive jurisdiction; or

(3) a civil case, other than a case under the Family Code or the Texas Probate Code, in which the amount in controversy is:

(A) less than the maximum amount in controversy allowed the justice court in Wichita County; or

(B) more than \$200,000 [~~\$100,000~~], exclusive of punitive or exemplary damages, penalties, interest, costs, and attorney's fees.

(k) Except as otherwise required by law, if a case is tried before a jury, the jury shall be composed of six members and may render verdicts by a five to one margin in civil cases and a unanimous verdict in criminal cases. [~~The laws governing the drawing, selection, service, and pay of jurors for county courts apply to the county courts at law. Jurors regularly impaneled for a week by a district court may, on request of the county judge exercising the jurisdiction provided by this section or a county court at law judge, be made available and shall serve for the week in the county court or county court at law.~~]

SECTION 3.47. Subsection (h), Section 25.2462, Government Code, is amended to read as follows:

(h) [~~The county attorney and the county sheriff shall attend a county court at law as required by the judge.~~] The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings.

SECTION 3.48. Subsection (i), Section 25.2482, Government Code, is amended to read as follows:

(i) [~~The county attorney and the county sheriff shall attend a county court at law as required by the judge.~~] The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings.

SECTION 3.49. Subsection (a), Section 25.2512, Government Code, as amended by Chapters 518 (S.B. 1491) and 746 (H.B. 66), Acts of the 72nd Legislature, Regular Session, 1991, is reenacted and amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Wise County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) eminent domain cases;

(B) civil cases in which the amount in controversy exceeds \$500, but does not exceed \$200,000 [~~\$100,000~~], excluding interest and attorney's fees; and

(C) family law cases and proceedings.

SECTION 3.50. (a) The following provisions of the Government Code are repealed:

- (1) Subsections (b), (d), (f), and (j), Section 25.0042;
- (2) Subsections (b), (f), (g), and (h), Section 25.0052;
- (3) Subsections (b), (d), (f), and (i), Section 25.0102;
- (4) Subsections (d), (g), and (h), Section 25.0132;
- (5) Subsections (c) and (e), Section 25.0152;
- (6) Subsections (b), (f), (g), (h), and (i), Section 25.0162;
- (7) Subsections (d), (k), (l), (m), (n), (o), (q), (s), and (t), Section 25.0172;
- (8) Subsections (c), (d), (h), (i), and (k), Section 25.0173;
- (9) Subsections (c), (d), and (g), Section 25.0202;
- (10) Subsections (c), (e), and (g), Section 25.0212;
- (11) Subsections (d), (e), (i), (j), and (n), Section 25.0222;
- (12) Subsections (b), (d), (f), (h), and (i), Section 25.0232;
- (13) Subsections (b), (c), and (e), Section 25.0272;
- (14) Subsections (b), (c), (g), (h), and (i), Section 25.0292;
- (15) Subsections (b), (d), and (g), Section 25.0302;
- (16) Subsections (c), (e), and (j), Section 25.0312;
- (17) Subsections (e), (g), (i), (k), (l), and (m), Section 25.0332;
- (18) Subsection (c), Section 25.0362;
- (19) Subsections (b), (d), (f), (i), (j), and (k), Section 25.0392;
- (20) Subsections (b), (c), and (d), Section 25.0452;
- (21) Subsections (a), (c), (d), and (e), Section 25.0453;
- (22) Subsections (b), (d), (e), (g), and (h), Section 25.0482;
- (23) Subsections (a), (b), (d), (g), and (h), Section 25.0512;
- (24) Subsections (b), (d), (f), and (g), Section 25.0522;
- (25) Subsections (b), (h), (i), (j), and (k), Section 25.0592;
- (26) Subsections (d), (f), (g), (h), (i), and (j), Section 25.0593;
- (27) Subsections (d), (e), (g), (h), (i), (j), and (k), Section 25.0594;
- (28) Subsections (c), (d), (f), and (g), Section 25.0595;
- (29) Section 25.0596;
- (30) Subsections (a), (b), and (d), Section 25.0632;
- (31) Subsections (b), (g), (h), (j), (k), and (l), Section 25.0702;
- (32) Subsections (b), (d), (f), (j), and (k), Section 25.0722;
- (33) Subsections (d), (g), (h), (i), (j), (m), (n), (o), (p), (s), and (v), Section 25.0732;
- (34) Subsections (c), (d), and (f), Section 25.0733;
- (35) Subsection (b), Section 25.0742;
- (36) Subsections (d), (f), (h), (j), and (l), Section 25.0812;
- (37) Subsections (f) and (j), Section 25.0862;
- (38) Subsections (e), (f), and (i), Section 25.0932;
- (39) Subsections (c), (f), (g), (j), and (k), Section 25.0942;
- (40) Subsections (d), (e), and (g), Section 25.0962;
- (41) Subsections (d), (e), (g), (h), and (k), Section 25.1032;
- (42) Subsections (d), (e), (f), (m), and (o), Section 25.1033;
- (43) Subsections (c), (h), (k), and (l), Section 25.1034;

- (44) Subsections (b), (d), (f), (h), and (i), Section 25.1042;
- (45) Subsections (b), (d), (g), and (h), Section 25.1072;
- (46) Subsections (e), (f), (l), and (o), Section 25.1092;
- (47) Subsections (d), (e), (h), (i), (j), and (l), Section 25.1102;
- (48) Section 25.1103;
- (49) Subsections (b), (c), (f), and (k), Section 25.1112;
- (50) Subsections (f), (g), (h), (j), (l), (m), and (p), Section 25.1132;
- (51) Subsections (c), (e), and (g), Section 25.1142;
- (52) Subsections (b), (e), (f), (h), and (i), Section 25.1152;
- (53) Subsections (c), (e), and (h), Section 25.1182;
- (54) Subsections (c), (g), and (i), Section 25.1252;
- (55) Subsections (b), (d), (f), (h), and (i), Section 25.1282;
- (56) Subsections (d), (e), (i), (k), (l), and (n), Section 25.1312;
- (57) Subsections (d), (e), (f), (i), and (j), Section 25.1322;
- (58) Subsections (d) and (h), Section 25.1352;
- (59) Subsections (e), (g), and (i), Section 25.1392;
- (60) Subsections (b), (c), (e), (h), (i), and (k), Section 25.1412;
- (61) Subsections (d), (g), (h), (l), and (m), Section 25.1482;
- (62) Subsections (f), (i), (k), and (n), Section 25.1542;
- (63) Subsections (e), (f), and (g), Section 25.1572;
- (64) Subsections (d), (f), and (h), Section 25.1652;
- (65) Subsections (b) and (f), Section 25.1672;
- (66) Subsections (b), (c), and (g), Section 25.1722;
- (67) Subsections (d), (e), (f), (h), and (i), Section 25.1732;
- (68) Subsections (b), (e), (f), and (h), Section 25.1762;
- (69) Subsections (c), (e), and (h), Section 25.1772;
- (70) Subsections (e), (f), (h), (i), and (j), Section 25.1792;
- (71) Subsections (c), (h), (i), (j), (k), (l), and (q), Section 25.1802;
- (72) Subsections (b), (d), and (j), Section 25.1832;
- (73) Subsections (e), (f), and (i), Section 25.1852;
- (74) Subsections (c), (f), (h), (i), (j), (m), (n), (p), (q), and (u), Section 25.1862;
- (75) Subsection (d), Section 25.1892;
- (76) Subsections (e), (g), (i), (j), and (k), Section 25.1902;
- (77) Subsections (b), (c), (f), (h), and (j), Section 25.1932;
- (78) Subsections (b), (d), (f), (h), and (j), Section 25.1972;
- (79) Subsections (d), (e), (i), (k), (l), and (n), Section 25.2012;
- (80) Subsections (c), (e), and (h), Section 25.2032;
- (81) Subsections (c), (e), (f), (h), and (i), Section 25.2072;
- (82) Subsections (c), (e), (i), (r), (t), and (u), Section 25.2142;
- (83) Subsections (d), (f), (h), (j), and (k), Section 25.2162;
- (84) Subsections (c), (g), (h), (i), (k), and (n), Section 25.2222;
- (85) Subsections (c), (e), (g), and (h), Section 25.2223;
- (86) Subsections (b), (c), (f), (g), (i), and (j), Section 25.2224;
- (87) Subsections (b), (e), (f), and (g), Section 25.2232;
- (88) Subsections (b), (d), (f), (g), (i), and (j), Section 25.2282;

- (89) Subsections (b), (e), (i), (k), and (l), Section 25.2292;
- (90) Subsections (e), (f), (g), (k), and (l), Section 25.2293;
- (91) Subsections (b), (d), (f), (g), and (j), Section 25.2352;
- (92) Subsections (c), (e), and (h), Section 25.2362;
- (93) Subsections (c), (f), (g), (h), and (i), Section 25.2372;
- (94) Subsections (b), (d), (f), and (j), Section 25.2382;
- (95) Subsections (b), (d), (f), and (j), Section 25.2392;
- (96) Subsections (b), (d), (f), (i), and (k), Section 25.2412;
- (97) Subsections (b), (d), (f), (i), and (j), Section 25.2422;
- (98) Subsections (f), (h), and (j), Section 25.2452;
- (99) Subsections (c), (d), (e), (g), (i), and (j), Section 25.2462;
- (100) Subsections (d), (e), (f), (h), (j), and (k), Section 25.2482; and
- (101) Subsections (b), (e), (h), and (i), Section 25.2512.

(b) The repeal of Subsection (d), Section 25.1042, and Subsection (d), Section 25.2162, Government Code, apply only to a regular judge serving a term for which the judge is elected on or after the effective date of this Act. A judge serving a term for which the judge was elected before the effective date of this Act is governed by the law in effect on the date the judge was elected, and that law is continued in effect for that purpose.

ARTICLE 4. PROVISIONS RELATING TO JUSTICE AND SMALL CLAIMS COURTS

SECTION 4.01. (a) Subsection (a), Section 27.005, Government Code, is amended to read as follows:

(a) For purposes of removal under Chapter 87, Local Government Code, "incompetency" in the case of a justice of the peace includes the failure of the justice to successfully complete:

(1) within one year after the date the justice is first elected, an 80-hour course in the performance of the justice's duties; and

(2) each following year, a 20-hour course in the performance of the justice's duties, including not less than 10 hours of instruction regarding substantive, procedural, and evidentiary law in civil matters.

(b) Subsection (a), Section 27.005, Government Code, as amended by this section, applies to a justice of the peace serving on or after the effective date of this article, regardless of the date the justice was elected or appointed.

SECTION 4.02. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.060 to read as follows:

Sec. 27.060. SMALL CLAIMS. (a) A justice court shall conduct proceedings in a small claims case, as that term is defined by the supreme court, in accordance with rules of civil procedure promulgated by the supreme court to ensure the fair, expeditious, and inexpensive resolution of small claims cases.

(b) Except as provided by Subsection (c), rules of the supreme court must provide that:

(1) if both parties appear, the judge shall proceed to hear the case;

(2) formal pleadings other than the statement are not required;

(3) the judge shall hear the testimony of the parties and the witnesses that the parties produce and shall consider the other evidence offered;

(4) the hearing is informal, with the sole objective being to dispense speedy justice between the parties;

(5) discovery is limited to that considered appropriate and permitted by the judge; and

(6) the judge shall develop the facts of the case, and for that purpose may question a witness or party and may summon any party to appear as a witness as the judge considers necessary to a correct judgment and speedy disposition of the case.

(c) The rules of the supreme court must provide specific procedures for an action by:

(1) an assignee of a claim or other person seeking to bring an action on an assigned claim;

(2) a person primarily engaged in the business of lending money at interest;
or

(3) a collection agency or collection agent.

SECTION 4.03. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.061 to read as follows:

Sec. 27.061. RULES OF ADMINISTRATION. The justices of the peace in each county shall, by majority vote, adopt local rules of administration.

SECTION 4.04. Subchapter E, Chapter 15, Civil Practice and Remedies Code, is amended by adding Section 15.0821 to read as follows:

Sec. 15.0821. ADMINISTRATIVE RULES FOR TRANSFER. The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending case from one precinct to a different precinct.

SECTION 4.05. (a) Article 4.12, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this article, a misdemeanor case to be tried in justice court shall be tried:

(1) in the precinct in which the offense was committed;

(2) in the precinct in which the defendant or any of the defendants reside;

[or]

(3) with the written consent of the state and each defendant or the defendant's attorney, in any other precinct within the county; or

(4) in any precinct in the county that is adjacent to the precinct in which the offense was committed if the offense was committed in a county with a population of 3.3 million or more.

(e) The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending misdemeanor case from one precinct to a different precinct.

(b) Subsection (a), Article 4.12, Code of Criminal Procedure, as amended by this article, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4.06. (a) Chapter 28, Government Code, is repealed.

(b) On the effective date of this section, each small claims court under Chapter 28, Government Code, is abolished.

SECTION 4.07. Not later than May 1, 2013, the Texas Supreme Court shall promulgate:

- (1) rules to define cases that constitute small claims cases;
- (2) rules of civil procedure applicable to small claims cases as required by Section 27.060, Government Code, as added by this article; and
- (3) rules for eviction proceedings.

SECTION 4.08. (a) Immediately before the date the small claims court in a county is abolished in accordance with this article, the justice of the peace sitting as judge of that court shall transfer all cases pending in the court to a justice court in the county.

(b) When a case is transferred as provided by Subsection (a) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the transferring court and all witnesses summoned to appear in the transferring court are required to appear before the court to which the case is transferred as if originally required to appear before that court.

SECTION 4.09. Sections 4.02 and 4.06 of this article take effect May 1, 2013.

ARTICLE 5. ASSOCIATE JUDGES

SECTION 5.01. Subtitle D, Title 2, Government Code, is amended by adding Chapter 54A to read as follows:

CHAPTER 54A. ASSOCIATE JUDGES

SUBCHAPTER A. CRIMINAL ASSOCIATE JUDGES

Sec. 54A.001. APPLICABILITY. This subchapter applies to a district court or a statutory county court that hears criminal cases.

Sec. 54A.002. APPOINTMENT. (a) A judge of a court subject to this subchapter may appoint a full-time or part-time associate judge to perform the duties authorized by this subchapter if the commissioners court of the county in which the court has jurisdiction has authorized the creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county is subject to this subchapter, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 54A.003. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

- (1) be a resident of this state and one of the counties the person will serve;
- (2) have been licensed to practice law in this state for at least four years;

(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided by Section 33.022 and before final disposition of the proceedings.

Sec. 54A.004. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54A.005. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the associate judge's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the associate judge's employment ends.

Sec. 54A.006. PROCEEDINGS THAT MAY BE REFERRED. (a) A judge may refer to an associate judge any matter arising out of a criminal case involving:

- (1) a negotiated plea of guilty or no contest before the court;
- (2) a bond forfeiture;
- (3) a pretrial motion;
- (4) a writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) an appeal of an administrative driver's license revocation hearing;
- (8) a civil commitment matter under Subtitle C, Title 7, Health and Safety

Code;

- (9) setting, adjusting, or revoking bond; and
- (10) any other matter the judge considers necessary and proper.

(b) An associate judge may accept an agreed plea of guilty or no contest from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses and may assess punishment if a plea agreement is announced on the record between the defendant and the state.

(c) An associate judge has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) An associate judge may select a jury. Except as provided in Subsection (b), an associate judge may not preside over a trial on the merits, whether or not the trial is before a jury.

Sec. 54A.007. ORDER OF REFERRAL. (a) To refer one or more cases to an associate judge, a judge must issue a written order of referral that specifies the associate judge's duties.

(b) An order of referral may:

(1) limit the powers of the associate judge and direct the associate judge to report only on specific issues, do particular acts, or receive and report on evidence only;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the associate judge's findings;

(5) designate proceedings for more than one case over which the associate judge shall preside;

(6) direct the associate judge to call the court's docket; and

(7) set forth general powers and limitations or authority of the associate judge applicable to any case referred.

Sec. 54A.008. POWERS. (a) Except as limited by an order of referral, an associate judge to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue summons for the appearance of witnesses;

(6) examine a witness;

(7) swear a witness for a hearing;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) rule on pretrial motions;

(11) recommend the rulings, orders, or judgment to be made in a case;

(12) regulate proceedings in a hearing;

(13) order the attachment of a witness or party who fails to obey a subpoena;

(14) accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses;

(15) select a jury; and

(16) take action as necessary and proper for the efficient performance of the duties required by the order of referral.

(b) An associate judge may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the associate judge may make findings, conclusions, and recommendations on those issues.

(c) Except as limited by an order of referral, an associate judge who is appointed by a district or statutory county court judge and to whom a case is referred may accept a plea of guilty or nolo contendere in a misdemeanor case for a county criminal court. The associate judge shall forward any fee or fine collected for the misdemeanor offense to the county clerk.

(d) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 54A.009. ATTENDANCE OF BAILIFF. A bailiff shall attend a hearing by an associate judge if directed by the referring court.

Sec. 54A.010. COURT REPORTER. At the request of a party, the court shall provide a court reporter to record the proceedings before the associate judge.

Sec. 54A.011. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54A.012. PAPERS TRANSMITTED TO JUDGE. At the conclusion of the proceedings, an associate judge shall transmit to the referring court any papers relating to the case, including the associate judge's findings, conclusions, orders, recommendations, or other action taken.

Sec. 54A.013. JUDICIAL ACTION. (a) Not later than the 30th day after the date an action is taken by an associate judge, a referring court may modify, correct, reject, reverse, or recommit for further information the action taken by the associate judge.

(b) If the court does not modify, correct, reject, reverse, or recommit an action to the associate judge, the action becomes the decree of the court.

Sec. 54A.014. JUDICIAL IMMUNITY. An associate judge has the same judicial immunity as a district judge.

[Sections 54A.015-54A.100 reserved for expansion]

SUBCHAPTER B. CIVIL ASSOCIATE JUDGES

Sec. 54A.101. APPLICABILITY. This subchapter applies to a district court or a statutory county court that is assigned civil cases.

Sec. 54A.102. APPOINTMENT. (a) A judge of a court subject to this subchapter may appoint a full-time or part-time associate judge to perform the duties authorized by this subchapter if the commissioners court of the county in which the court has jurisdiction has authorized the creation of an associate judge position.

(b) If a district court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county is subject to this subchapter, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 54A.103. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;
(2) have been licensed to practice law in this state for at least four years;
(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before final disposition of the proceedings.

Sec. 54A.104. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54A.105. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the associate judge's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the associate judge's employment ends.

Sec. 54A.106. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a court may refer any civil case or portion of a civil case to an associate judge for resolution.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

Sec. 54A.107. METHODS OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order.

(b) The order of referral may limit the powers or duties of an associate judge.

Sec. 54A.108. POWERS. (a) Except as limited by an order of referral, an associate judge may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on pretrial motions;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) order the attachment of a witness or party who fails to obey a

subpoena; and

(14) take action as necessary and proper for the efficient performance of the duties required by the order of referral.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 54A.109. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

- (1) failed to appear before an associate judge after being summoned; or
- (2) improperly refused to answer questions if the refusal has been certified

to the court by the associate judge.

Sec. 54A.110. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record under Subsection (c) as costs.

(e) On appeal of the associate judge's report or proposed order, the referring court may consider testimony or other evidence in the record if the record is taken by a court reporter.

Sec. 54A.111. NOTICE OF DECISION; APPEAL. (a) After hearing a matter, an associate judge shall notify each attorney participating in the hearing of the associate judge's decision. An associate judge's decision has the same force and effect as an order of the referring court unless a party appeals the decision as provided by Subsection (b).

(b) To appeal an associate judge's decision, other than the issuance of a temporary restraining order or temporary injunction, a party must file an appeal in the referring court not later than the seventh day after the date the party receives notice of the decision under Subsection (a).

(c) A temporary restraining order issued by an associate judge is effective immediately and expires on the 15th day after the date of issuance unless, after a hearing, the order is modified or extended by the associate judge or referring judge.

(d) A temporary injunction issued by an associate judge is effective immediately and continues during the pendency of a trial unless, after a hearing, the order is modified by a referring judge.

(e) A matter appealed to the referring court shall be tried de novo and is limited to only those matters specified in the appeal. Except on leave of court, a party may not submit on appeal any additional evidence or pleadings.

Sec. 54A.112. NOTICE OF RIGHT TO DE NOVO HEARING; WAIVER.

(a) Notice of the right to a de novo hearing before the referring court shall be given to all parties.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right of a de novo hearing before the referring court in writing or on the record.

Sec. 54A.113. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 54A.115, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 54A.114. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear additional evidence; or

(3) recommit the matter to the associate judge for further proceedings.

Sec. 54A.115. DE NOVO HEARING. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's decision as provided by Section 54A.111.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(d) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date the initial request was filed.

(e) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date the initial request for a de novo hearing was filed with the clerk of the referring court.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(g) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, a motion for judgment notwithstanding the verdict, or other posttrial motions.

(h) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 54A.116. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order or a default order is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 54A.117. JUDICIAL ACTION. (a) Not later than the 30th day after the date an action is taken by an associate judge, a referring court may modify, correct, reject, reverse, or recommit for further information the action taken by the associate judge.

(b) If the court does not modify, correct, reject, reverse, or recommit an action to the associate judge, the action becomes the decree of the court.

Sec. 54A.118. JUDICIAL IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a district judge.

SECTION 5.02. Subchapter G, Chapter 54, Government Code, is transferred to Chapter 54A, Government Code, as added by this Act, redesignated as Subchapter C, Chapter 54A, Government Code, and amended to read as follows:

SUBCHAPTER C [G]. STATUTORY PROBATE COURT ASSOCIATE JUDGES

Sec. 54A.201 [54.601]. DEFINITION. In this subchapter, "statutory probate court" has the meaning assigned by Section 3, Texas Probate Code.

Sec. 54A.202. APPLICABILITY. This subchapter applies to a statutory probate court.

Sec. 54A.203 [54.603]. APPOINTMENT. (a) After obtaining the approval of the commissioners court to create an associate judge position, the judge of a statutory probate court by order may appoint one or more full-time or part-time [a person to act as] associate judges to perform the duties authorized by this subchapter [judge for the statutory probate court].

(b) If a statutory probate court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) The commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts, if more than one statutory probate court exists in a county.

(d) [(e)] If an associate judge serves more than one court, the associate judge's appointment must be made with the unanimous approval of all the judges under whom the associate judge serves.

[(d) An associate judge must meet the qualifications to serve as a judge of the court to which the associate judge is appointed.]

(e) An associate judge appointed under this subchapter may serve as an associate judge appointed under Section 574.0085, Health and Safety Code.

Sec. 54A.204. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;

(2) have been licensed to practice law in this state for at least five years;

(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before final disposition of the proceedings.

Sec. 54A.205 [~~54.605~~]. COMPENSATION. (a) An associate judge is entitled to the compensation set by the appointing judge and approved by the commissioners court or commissioners courts of the counties in which the associate judge serves. [The salary of the associate judge may not exceed the salary of the appointing judge.]

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) Except as provided by Subsection (d) [~~(e)~~], the compensation of the associate judge shall be paid by the county from the county general fund. The compensation must be paid in the same manner that the appointing judge's salary is paid.

(d) [~~(e)~~] On the recommendation of the statutory probate court judges in the county and subject to the approval of the county commissioners court, the county may pay all or part of the compensation of the associate judge from the excess contributions remitted to the county under Section 25.00212 and deposited in the contributions fund created under Section 25.00213.

Sec. 54A.206 [~~54.604~~]. TERMINATION OF ASSOCIATE JUDGE. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts that the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts that the associate judge serves.

(d) The appointment of the associate judge terminates if:

(1) the associate judge becomes a candidate for election to public office; or

(2) the commissioners court does not appropriate funds in the county's budget to pay the salary of the associate judge.

(e) If an associate judge serves a single court and the appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment.

(f) If an associate judge serves two courts and one of the appointing judges vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment or the judge of the other court served by the associate judge terminates that employment as provided by Subsection (c).

(g) If an associate judge serves more than two courts and an appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless:

(1) if no successor judge has been elected or appointed, the majority of the judges of the other courts the associate judge serves vote to terminate that employment; or

(2) if a successor judge has been elected or appointed, the majority of the judges of the courts the associate judge serves, including the successor judge, vote to terminate that employment as provided by Subsection (b).

(h) Notwithstanding the powers of an associate judge provided by Section 54A.209 [54.610], an associate judge whose employment continues as provided by Subsection (e), (f), or (g) after the judge of a court served by the associate judge vacates the judge's office may perform administrative functions with respect to that court, but may not perform any judicial function, including any power prescribed by Section 54A.209 [54.610], with respect to that court until a successor judge is appointed or elected.

Sec. 54A.207 [54.608]. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a court may refer to an associate judge any aspect of a suit over which the probate court has jurisdiction, including any matter ancillary to the suit.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

Sec. 54A.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 ~~[54.611]~~. ATTENDANCE OF BAILIFF. A bailiff shall attend a hearing conducted by an associate judge if directed to attend by the referring court.

~~[Sec. 54.612. COURT REPORTER. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter unless required by other law. A court reporter is required to be provided when the associate judge presides over a jury trial.~~

~~[(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing, if one is not otherwise provided.~~

~~[(c) Except as provided by Subsection (a), in the absence of a court reporter or 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(e)], if a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the decisions and recommendations of the associate judge or the proposed order or judgment of the associate judge becomes the order or judgment of the referring court at the time the judge of the referring court signs the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 54A.216, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 54A.215 [54.617]. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. (a) Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

- (1) adopt, modify, or reject the associate judge's proposed order or judgment;
- (2) hear further evidence; or
- (3) recommit the matter to the associate judge for further proceedings.

(b) The judge of the referring court shall sign a proposed order or judgment the court adopts as provided by Subsection (a)(1) not later than the 30th day after the date the associate judge signed the order or judgment.

Sec. 54A.216 [~~54.618~~]. DE NOVO HEARING BEFORE REFERRING COURT. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 54A.212 [~~54.614~~].

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(d) Notice of a request for a de novo hearing before the referring court must be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(e) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date of filing of the initial request.

(f) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date on which the initial request for a de novo hearing was filed with the clerk of the referring court[~~, unless all of the parties agree to a later date~~].

(g) Before the start of a hearing conducted by an associate judge, the parties may waive the right of a de novo hearing before the referring court. The waiver may be in writing or on the record.

(h) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, motion for judgment notwithstanding the verdict, or other post-trial motion.

(i) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 54A.217 [~~54.619~~]. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date the judge of a referring court signs an order or judgment is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an order described by Section 54A.209(a)(16) [~~54.610(a)(15)~~] is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 54A.218 [~~54.620~~]. IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a probate judge. All existing immunity granted an associate judge by law, express or implied, continues in full force and effect.

SECTION 5.03. Chapter 201, Family Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. ASSOCIATE JUDGE FOR JUVENILE MATTERS

Sec. 201.301. APPLICABILITY. This subchapter applies only to an associate judge appointed under this subchapter and does not apply to a juvenile court master appointed under Subchapter K, Chapter 54, Government Code.

Sec. 201.302. APPOINTMENT. (a) A judge of a court that is designated as a juvenile court may appoint a full-time or part-time associate judge to perform the duties authorized by this chapter if the commissioners court of a county in which the court has jurisdiction has authorized creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county has been designated as a juvenile court, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 201.303. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;

(2) have been licensed to practice law in this state for at least four years;

(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022, Government Code, and before final disposition of the proceedings.

Sec. 201.304. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 201.305. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts which the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

(1) the associate judge's name and state bar identification number;

(2) each court ordering termination; and

(3) the date the associate judge's employment ends.

Sec. 201.306. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a juvenile court may refer to an associate judge any aspect of a juvenile matter brought:

(1) under this title or Title 3; or

(2) in connection with Rule 308a, Texas Rules of Civil Procedure.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

(d) The requirements of Subsections (b) and (c) apply when a judge has authority to refer the trial of a suit under this title, Title 1, or Title 4 to an associate judge, master, or other assistant judge regardless of whether the assistant judge is appointed under this subchapter.

Sec. 201.307. METHODS OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order.

(b) The order of referral may limit the power or duties of an associate judge.

Sec. 201.308. POWERS OF ASSOCIATE JUDGE. (a) Except as limited by an order of referral, an associate judge may:

(1) conduct a hearing;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue a summons for:

(A) the appearance of witnesses; and

(B) the appearance of a parent who has failed to appear before an agency authorized to conduct an investigation of an allegation of abuse or neglect of a child after receiving proper notice;

(6) examine a witness;

(7) swear a witness for a hearing;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) recommend an order to be rendered in a case;

(11) regulate proceedings in a hearing;

(12) order the attachment of a witness or party who fails to obey a subpoena;

(13) order the detention of a witness or party found guilty of contempt, pending approval by the referring court; and

(14) take action as necessary and proper for the efficient performance of the associate judge's duties.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 201.309. REFEREES. (a) An associate judge appointed under this subchapter may serve as a referee as provided by Sections 51.04(g) and 54.10.

(b) A referee appointed under Section 51.04(g) may be appointed to serve as an associate judge under this subchapter.

Sec. 201.310. ATTENDANCE OF BAILIFF. A bailiff may attend a hearing by an associate judge if directed by the referring court.

Sec. 201.311. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

(1) failed to appear before an associate judge after being summoned; or

(2) improperly refused to answer questions if the refusal has been certified to the court by the associate judge.

Sec. 201.312. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial or a contested final termination hearing.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record as costs.

(e) On a request for a de novo hearing, the referring court may consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented under Section 201.317.

Sec. 201.313. REPORT. (a) The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order. The associate judge's report must be in writing and in the form directed by the referring court.

(b) After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(c) Notice may be given to the parties:

(1) in open court, by an oral statement or by providing a copy of the associate judge's written report, including any proposed order;

(2) by certified mail, return receipt requested; or

(3) by facsimile.

(d) A rebuttable presumption exists that notice is received on the date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile.

(e) After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

Sec. 201.314. NOTICE OF RIGHT TO DE NOVO HEARING; WAIVER. (a) An associate judge shall give all parties notice of the right to a de novo hearing to the judge of the referring court.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right of a de novo hearing before the referring court in writing or on the record.

Sec. 201.315. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 201.317, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 201.316. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear additional evidence; or

(3) recommit the matter to the associate judge for further proceedings.

Sec. 201.317. DE NOVO HEARING. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 201.313.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(d) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date the initial request was filed.

(e) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date the initial request for a de novo hearing was filed with the clerk of the referring court.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(g) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, a motion for judgment notwithstanding the verdict, or other posttrial motions.

(h) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 201.318. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order or a default order is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 201.319. JUDICIAL IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a district judge.

Sec. 201.320. VISITING ASSOCIATE JUDGE. (a) If an associate judge appointed under this subchapter is temporarily unable to perform the judge's official duties because of absence or illness, injury, or other disability, a judge of a court having jurisdiction of a suit under this title or Title 1 or 4 may appoint a visiting associate judge to perform the duties of the associate judge during the period of the associate judge's absence or disability if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a visiting associate judge.

(b) To be eligible for appointment under this section, a person must have served as an associate judge for at least two years.

(c) Sections 201.001 through 201.017 apply to a visiting associate judge appointed under this section.

SECTION 5.04. Subsection (b), Section 22.110, Government Code, is amended to read as follows:

(b) The court of criminal appeals shall adopt the rules necessary to accomplish the purposes of this section. The rules must require each district judge, judge of a statutory county court, associate judge appointed under Chapter ~~54A~~ [54] of this code or Chapter 201, Family Code, master, referee, and magistrate to complete at least 12 hours of the training within the judge's first term of office or the judicial officer's first four years of service and provide a method for certification of completion of that training. At least four hours of the training must be dedicated to issues related to child abuse and neglect and must cover at least two of the topics described in Subsections (d)(8)-(12). At least six hours of the training must be dedicated to the training described by Subsections (d)(5), (6), and (7). The rules must require each judge and judicial officer to complete an additional five hours of training during each additional term in office or four years of service. At least two hours of the additional training must be dedicated to issues related to child abuse and neglect. The rules must exempt from the training requirement of this subsection each judge or judicial officer who files an affidavit stating that the judge or judicial officer does not hear any cases involving family violence, sexual assault, or child abuse and neglect.

SECTION 5.05. (a) Section 101.0611, Government Code, is amended to read as follows:

Sec. 101.0611. DISTRICT COURT FEES AND COSTS: GOVERNMENT CODE. The clerk of a district court shall collect fees and costs under the Government Code as follows:

(1) appellate judicial system filing fees for:

(A) First or Fourteenth Court of Appeals District (Sec. 22.2021, Government Code) . . . not more than \$5;

(B) Second Court of Appeals District (Sec. 22.2031, Government Code) . . . not more than \$5;

(C) Third Court of Appeals District (Sec. 22.2041, Government Code) . . . \$5;

(D) Fourth Court of Appeals District (Sec. 22.2051, Government Code) . . . not more than \$5;

(E) Fifth Court of Appeals District (Sec. 22.2061, Government Code) . . . not more than \$5;

(E-1) Sixth Court of Appeals District (Sec. 22.2071, Government Code) . . . \$5;

(E-2) Seventh Court of Appeals District (Sec. 22.2081, Government Code) . . . \$5;

(F) Ninth Court of Appeals District (Sec. 22.2101, Government Code) . . . \$5;

(G) Eleventh Court of Appeals District (Sec. 22.2121, Government Code) . . . \$5;

(G-1) Twelfth Court of Appeals District (Sec. 22.2131, Government Code) . . . \$5; and

(H) Thirteenth Court of Appeals District (Sec. 22.2141, Government Code) . . . not more than \$5;

(2) when administering a case for the Rockwall County Court at Law (Sec. 25.2012, Government Code) . . . civil fees and court costs as if the case had been filed in district court;

(3) additional filing fees:

(A) for each suit filed for insurance contingency fund, if authorized by the county commissioners court (Sec. 51.302, Government Code) . . . not to exceed \$5;

(B) to fund the improvement of Dallas County civil court facilities, if authorized by the county commissioners court (Sec. 51.705, Government Code) . . . not more than \$15;

(B-1) to fund the improvement of Bexar County court facilities, if authorized by the county commissioners court (Sec. 51.706, Government Code) . . . not more than \$15; ~~and~~

(C) to fund the improvement of Hays County court facilities, if authorized by the county commissioners court (Sec. 51.707, Government Code) . . . not more than \$15; and

(D) to fund the preservation of court records (Sec. 51.708, Government Code) . . . not more than \$10;

(4) for filing a suit, including an appeal from an inferior court:

(A) for a suit with 10 or fewer plaintiffs (Sec. 51.317, Government Code) . . . \$50;

(B) for a suit with at least 11 but not more than 25 plaintiffs (Sec. 51.317, Government Code) . . . \$75;

(C) for a suit with at least 26 but not more than 100 plaintiffs (Sec. 51.317, Government Code) . . . \$100;

(D) for a suit with at least 101 but not more than 500 plaintiffs (Sec. 51.317, Government Code) . . . \$125;

(E) for a suit with at least 501 but not more than 1,000 plaintiffs (Sec. 51.317, Government Code) . . . \$150; or

(F) for a suit with more than 1,000 plaintiffs (Sec. 51.317, Government Code) . . . \$200;

(5) for filing a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition (Sec. 51.317, Government Code) . . . \$15;

(6) for issuing a citation or other writ or process not otherwise provided for, including one copy, when requested at the time a suit or action is filed (Sec. 51.317, Government Code) . . . \$8;

(7) for records management and preservation (Sec. 51.317, Government Code) . . . \$10;

(7-a) for district court records archiving, if adopted by the county commissioners court (Sec. 51.317(b)(5), Government Code) . . . not more than \$5;

(8) for issuing a subpoena, including one copy (Sec. 51.318, Government Code) . . . \$8;

(9) for issuing a citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, or writ of sequestration not provided for in Section 51.317, or any other writ or process not otherwise provided for, including one copy if required by law (Sec. 51.318, Government Code) . . . \$8;

(10) for searching files or records to locate a cause when the docket number is not provided (Sec. 51.318, Government Code) . . . \$5;

(11) for searching files or records to ascertain the existence of an instrument or record in the district clerk's office (Sec. 51.318, Government Code) . . . \$5;

(12) for abstracting a judgment (Sec. 51.318, Government Code) . . . \$8;

(13) for approving a bond (Sec. 51.318, Government Code) . . . \$4;

(14) for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page (Sec. 51.318, Government Code) . . . \$1;

(15) for a noncertified copy, for each page or part of a page (Sec. 51.318, Government Code) . . . not to exceed \$1;

(16) fee for performing a service:

(A) related to the matter of the estate of a deceased person (Sec. 51.319, Government Code) . . . the same fee allowed the county clerk for those services;

(B) related to the matter of a minor (Sec. 51.319, Government Code) . . . the same fee allowed the county clerk for the service;

(C) of serving process by certified or registered mail (Sec. 51.319, Government Code) . . . the same fee a sheriff or constable is authorized to charge for the service under Section 118.131, Local Government Code; and

(D) prescribed or authorized by law but for which no fee is set (Sec. 51.319, Government Code) . . . a reasonable fee;

(17) jury fee (Sec. 51.604, Government Code) . . . \$30; and

(18) additional filing fee for family protection on filing a suit for dissolution of a marriage under Chapter 6, Family Code (Sec. 51.961, Government Code) . . . not to exceed \$15[;];

~~[(19) at a hearing held by an associate judge in Dallas County, a court cost to preserve the record, in the absence of a court reporter, by other means (Sec. 54.509, Government Code) . . . as assessed by the referring court or associate judge; and~~

~~[(20) at a hearing held by an associate judge in Duval County, a court cost to preserve the record (Sec. 54.1151, Government Code) . . . as imposed by the referring court or associate judge].~~

(b) Sections 101.06111, 101.06113, 101.06114, 101.06115, 101.06116, and 101.06117, Government Code, are repealed.

SECTION 5.06. Section 602.002, Government Code, is amended to read as follows:

Sec. 602.002. OATH MADE IN TEXAS. An oath made in this state may be administered and a certificate of the fact given by:

(1) a judge, retired judge, or clerk of a municipal court;

(2) a judge, retired judge, senior judge, clerk, or commissioner of a court of record;

(3) a justice of the peace or a clerk of a justice court;

(4) an associate judge, magistrate, master, referee, or criminal law hearing officer;

(5) a notary public;

(6) [(5)] a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;

(7) [(6)] a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;

(8) [(7)] a county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;

(9) [(8)] the secretary of state or a former secretary of state;

(10) [(9)] an employee of a personal bond office, or an employee of a county, who is employed to obtain information required to be obtained under oath if the oath is required or authorized by Article 17.04 or by Article 26.04(n) or (o), Code of Criminal Procedure;

(11) [(10)] the lieutenant governor or a former lieutenant governor;

(12) [(11)] the speaker of the house of representatives or a former speaker of the house of representatives;

(13) [(12)] the governor or a former governor;

(14) [(13)] a legislator or retired legislator;

(15) [(14)] the attorney general or a former attorney general;

(16) [(15)] the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or

(17) [(16)] a peace officer described by Article 2.12, Code of Criminal Procedure, if:

(A) the oath is administered when the officer is engaged in the performance of the officer's duties; and

(B) the administration of the oath relates to the officer's duties.

SECTION 5.07. Article 2.09, Code of Criminal Procedure, is amended to read as follows:

Art. 2.09. WHO ARE MAGISTRATES. Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates or associate judges appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the associate judges ~~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 H,~~ Chapter 54], Government Code, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

SECTION 5.08. Subsection (d), Article 102.017, Code of Criminal Procedure, is amended to read as follows:

(d) Except as provided by Subsection (d-2), the clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to the county or municipal treasurer, as appropriate, for deposit in a fund to be known as the courthouse security fund or a fund to be known as the municipal court building security fund, as appropriate. Money deposited in a courthouse security fund may be used only for security personnel, services, and items related to buildings that house the operations of district, county, or justice courts, and money deposited in a municipal court building security fund may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts. For purposes of this subsection, operations of a district, county, or justice court include the activities of associate judges, masters, magistrates, referees, hearing officers, criminal law magistrate court judges, and masters in chancery appointed under:

- (1) Section 61.311, Alcoholic Beverage Code;
- (2) Section 51.04(g) or Chapter 201, Family Code;
- (3) Section 574.0085, Health and Safety Code;
- (4) Section 33.71, Tax Code;
- (5) Chapter 54A [~~Chapter 54~~], Government Code; or
- (6) Rule 171, Texas Rules of Civil Procedure.

SECTION 5.09. Subsection (a), Section 54.10, Family Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a hearing under Section 54.03, 54.04, or 54.05, including a jury trial, a hearing under Chapter 55, including a jury trial, or a hearing under the Interstate Compact for Juveniles (Chapter 60) may be held by a referee appointed in accordance with Section 51.04(g) or an associate judge [~~a master~~] appointed under Chapter 54A [54], Government Code, provided:

(1) the parties have been informed by the referee or associate judge [~~master~~] that they are entitled to have the hearing before the juvenile court judge; and

(2) after each party is given an opportunity to object, no party objects to holding the hearing before the referee or associate judge [~~master~~].

SECTION 5.10. A magistrate, master, referee, associate judge, or hearing officer appointed as provided by Subchapters A, B, C, E, F, I, O, P, S, T, U, V, X, CC, FF, and II, Chapter 54, Government Code, before the effective date of this Act, continues to serve as an associate judge under Chapter 54A, Government Code, as added by this

article, with the powers and duties provided by that chapter, provided the court for which the magistrate, master, referee, associate judge, or hearing officer serves has authority to appoint an associate judge under Chapter 54A, Government Code.

SECTION 5.11. The changes in law made by this article apply to a matter referred to an associate judge on or after the effective date of this article. A matter referred to an associate judge before the effective date of this article is governed by the law in effect on the date the matter was referred to the associate judge, and the former law is continued in effect for that purpose.

SECTION 5.12. The following subchapters of Chapter 54, Government Code, are repealed:

- (1) Subchapter A;
- (2) Subchapter B;
- (3) Subchapter C;
- (4) Subchapter E;
- (5) Subchapter F;
- (6) Subchapter I;
- (7) Subchapter O;
- (8) Subchapter P;
- (9) Subchapter S;
- (10) Subchapter T;
- (11) Subchapter U;
- (12) Subchapter V;
- (13) Subchapter X;
- (14) Subchapter CC;
- (15) Subchapter FF; and
- (16) Subchapter II.

ARTICLE 6. COURT ADMINISTRATION

SECTION 6.01. Section 74.005, Government Code, is amended to read as follows:

Sec. 74.005. APPOINTMENT OF [REGIONAL] PRESIDING JUDGES OF ADMINISTRATIVE JUDICIAL REGIONS. (a) The governor, with the advice and consent of the senate, shall appoint one judge in each administrative judicial region as presiding judge of the region.

(b) On the death, resignation, removal, or expiration of the term of office of a presiding judge, the governor immediately shall appoint or reappoint a presiding judge.

SECTION 6.02. Section 74.050, Government Code, is amended to read as follows:

Sec. 74.050. SUPPORT STAFF [ADMINISTRATIVE ASSISTANT]. (a) The presiding judge may employ, directly or through a contract with another governmental entity, a full-time or part-time administrative assistant.

(b) An administrative assistant ~~[must have the qualifications established by rule of the supreme court.~~

~~[(c) An administrative assistant]~~ shall aid the presiding judge in carrying out the judge's duties under this chapter. The administrative assistant shall:

(1) perform the duties that are required by the presiding judge and by the rules of administration;

(2) conduct correspondence for the presiding judge;

(3) under the direction of the presiding judge, make an annual report of the activities of the administrative region and special reports as provided by the rules of administration to the supreme court, which shall be made in the manner directed by the supreme court; and

(4) attend to other matters that are prescribed by the council of judges.

(c) ~~(c)~~ An administrative assistant, with the approval of the presiding judge, may purchase the necessary office equipment, stamps, stationery, and supplies and employ additional personnel as authorized by the presiding judge.

(d) ~~(d)~~ An administrative assistant is entitled to receive the compensation from the state provided by the General Appropriations Act, from county funds, or from any public or private grant.

SECTION 6.03. Subsection (c), Section 74.093, Government Code, is amended to read as follows:

(c) The rules may provide for:

(1) the selection and authority of a presiding judge of the courts giving preference to a specified class of cases, such as civil, criminal, juvenile, or family law cases;

(2) other strategies for managing cases that require special judicial attention;

(3) ~~(2)~~ a coordinated response for the transaction of essential judicial functions in the event of a disaster; and

(4) ~~(3)~~ any other matter necessary to carry out this chapter or to improve the administration and management of the court system and its auxiliary services.

SECTION 6.04. (a) Section 74.141, Government Code, is amended to read as follows:

Sec. 74.141. DEFENSE OF JUDGES. The attorney general shall defend a state district judge, a presiding judge of an administrative region, the presiding judge of the statutory probate courts, or an active, retired, or former judge assigned under this chapter in any action or suit in any court in which the judge is a defendant because of his office as judge if the judge requests the attorney general's assistance in the defense of the suit.

(b) Section 74.141, Government Code, as amended by this Act, applies to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 6.05. Chapter 74, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ADDITIONAL RESOURCES FOR CERTAIN CASES

Sec. 74.251. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to:

(1) a criminal matter;

(2) a case in which judicial review is sought under Subchapter G, Chapter 2001; or

(3) a case that has been transferred by the judicial panel on multidistrict litigation to a district court for consolidated or coordinated pretrial proceedings under Subchapter H.

Sec. 74.252. RULES TO GUIDE DETERMINATION OF WHETHER CASE REQUIRES ADDITIONAL RESOURCES. (a) The supreme court shall adopt rules under which courts, presiding judges of the administrative judicial regions, and the judicial committee for additional resources may determine whether a case requires additional resources to ensure efficient judicial management of the case.

(b) In developing the rules, the supreme court shall include considerations regarding whether a case involves or is likely to involve:

- (1) a large number of parties who are separately represented by counsel;
- (2) coordination with related actions pending in one or more courts in other counties of this state or in one or more United States district courts;
- (3) numerous pretrial motions that present difficult or novel legal issues that will be time-consuming to resolve;
- (4) a large number of witnesses or substantial documentary evidence;
- (5) substantial postjudgment supervision;
- (6) a trial that will last more than four weeks; and
- (7) a substantial additional burden on the trial court's docket and the resources available to the trial court to hear the case.

Sec. 74.253. JUDICIAL DETERMINATION. (a) On the motion of a party in a case, or on the court's own motion, the judge of the court in which the case is pending shall review the case and determine whether, under rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management. The judge is not required to conduct an evidentiary hearing for purposes of making the determination but may, in the judge's discretion, direct the attorneys for the parties to the case and the parties to appear before the judge for a conference to provide information to assist the judge in making the determination.

(b) On determining that a case will require additional resources as provided by Subsection (a), the judge shall:

- (1) notify the presiding judge of the administrative judicial region in which the court is located about the case; and
- (2) request any specific additional resources that are needed, including the assignment of a judge under this chapter.

(c) If the presiding judge of the administrative judicial region agrees that, in accordance with the rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management, the presiding judge shall:

- (1) use resources previously allotted to the presiding judge; or
- (2) submit a request for specific additional resources to the judicial committee for additional resources.

Sec. 74.254. JUDICIAL COMMITTEE FOR ADDITIONAL RESOURCES. (a) The judicial committee for additional resources is composed of:

- (1) the chief justice of the supreme court; and
- (2) the nine presiding judges of the administrative judicial regions.

(b) The chief justice of the supreme court serves as presiding officer. The office of court administration shall provide staff support to the committee.

(c) On receipt of a request for additional resources from a presiding judge of an administrative judicial region under Section 74.253, the committee shall determine whether the case that is the subject of the request requires additional resources in accordance with the rules adopted under Section 74.252. If the committee determines that the case does require additional resources, the committee shall make available the resources requested by the trial judge to the extent funds are available for those resources under the General Appropriations Act and to the extent the committee determines the requested resources are appropriate to the circumstances of the case.

(d) Subject to Subsections (c) and (f), additional resources the committee may make available under this section include:

(1) the assignment of an active or retired judge under this chapter, subject to the consent of the judge of the court in which the case for which the resources are provided is pending;

(2) additional legal, administrative, or clerical personnel;

(3) information and communication technology, including case management software, video 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 6.06. (a) The Texas Supreme Court shall request the president of the State Bar of Texas to appoint a task force to consider and make recommendations regarding the rules for determining whether civil cases pending in trial courts require additional resources for efficient judicial management required by Section 74.252, Government Code, as added by this Act. The president of the State Bar of Texas shall ensure that the task force has diverse representation and includes judges of trial courts and attorneys licensed to practice law in this state who regularly appear in civil cases before courts in this state. The task force shall provide recommendations on the rules to the Texas Supreme Court not later than March 1, 2012.

(b) The Texas Supreme Court shall:

(1) consider the recommendations of the task force provided as required by Subsection (a) of this section; and

(2) adopt the rules required by Section 74.252, Government Code, as added by this Act, not later than May 1, 2012.

SECTION 6.07. The changes in law made by this article apply to cases pending on or after May 1, 2012.

ARTICLE 7. GRANT PROGRAMS

SECTION 7.01. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.029 to read as follows:

Sec. 72.029. GRANTS FOR COURT SYSTEM ENHANCEMENTS. (a) The office shall develop and administer, except as provided by Subsection (c), a program to provide grants from available funds to counties for initiatives that will enhance their court systems or otherwise carry out the purposes of this chapter.

(b) To be eligible for a grant under this section, a county must:

(1) use the grant money to implement initiatives that will enhance the county's court system, including grants to develop programs to more efficiently manage cases that require special judicial attention, or otherwise carry out the purposes of this chapter; and

(2) apply for the grant in accordance with procedures developed by the office and comply with any other requirements of the office.

(c) The judicial committee for additional resources shall determine whether to award a grant to a county that meets the eligibility requirements prescribed by Subsection (b).

(d) If the judicial committee for additional resources awards a grant to a county, the office shall:

(1) direct the comptroller to distribute the grant money to the county; and

(2) monitor the county's use of the grant money.

(e) The office may accept gifts, grants, and donations for purposes of this section. The office may not use state funds to provide a grant under this section or to administer the grant program.

SECTION 7.02. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.017 to read as follows:

Sec. 22.017. GRANTS FOR CHILD PROTECTION. (a) In this section, "commission" means the Permanent Judicial Commission for Children, Youth and Families established by the supreme court.

(b) The commission shall develop and administer a program to provide grants from available funds for initiatives that will improve safety and permanency outcomes, enhance due process, or increase the timeliness of resolution in child protection cases.

(c) To be eligible for a grant under this section, a prospective recipient must:

(1) use the grant money to improve safety or permanency outcomes, enhance due process, or increase timeliness of resolution in child protection cases; and

(2) apply for the grant in accordance with procedures developed by the commission and comply with any other requirements of the supreme court.

(d) If the commission awards a grant, the commission shall:

(1) direct the comptroller to distribute the grant money; and

(2) monitor the use of the grant money.

(e) The commission may accept gifts, grants, and donations for purposes of this section. The commission may not use state funds to provide a grant under this section or to administer the grant program.

ARTICLE 8. VEXATIOUS LITIGANTS

SECTION 8.01. Subdivision (3), Section 11.001, Civil Practice and Remedies Code, is amended to read as follows:

(3) "Local administrative judge" means a local administrative district judge, a local administrative statutory probate court judge, or a local administrative statutory county court judge.

SECTION 8.02. Section 11.101, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

SECTION 8.03. Section 11.102, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) A decision of a local administrative judge denying a litigant permission to file a litigation under Subsection (a), or conditioning permission to file a litigation on the furnishing of security under Subsection (b), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

SECTION 8.04. Section 11.103, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d), a [A] clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the local administrative judge permitting the filing.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102(c).

SECTION 8.05. Section 11.104, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any 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.

(c) The office of court administration may accept gifts, grants, and donations to conduct the study under this section. The office of court administration may not use state funds to conduct the study and, notwithstanding Subsection (a) of this section, is required to conduct the study only to the extent gifts, grants, and donations are available for that purpose.

ARTICLE 10. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

SECTION 10.01. Section 263.601, Family Code, is amended by amending Subdivision (1) and adding Subdivision (3-a) to read as follows:

(1) "Foster care" means a voluntary residential living arrangement with a foster parent or other residential child-care provider that is:

(A) licensed or approved by the department or verified by a licensed child-placing agency; and

(B) paid under a contract with the department.

(3-a) "Trial independence period" means a period of not less than six months, or a longer period as a court may order not to exceed 12 months, during which a young adult exits foster care with the option to return to foster care under the continuing extended jurisdiction of the court.

SECTION 10.02. Section 263.602, Family Code, is amended to read as follows:

Sec. 263.602. EXTENDED JURISDICTION. (a) A court that had continuing, exclusive jurisdiction over a young adult on the day before ~~[may, at]~~ the young adult's 18th birthday continues to have extended ~~[request, render an order that extends the court's]~~ jurisdiction over the young adult and shall retain the case on the court's docket while the young adult remains in extended foster care and during a trial independence period described ~~[as provided]~~ by this section ~~[subchapter].~~

(b) A court with extended jurisdiction over a young adult who remains in extended foster care shall conduct extended foster care review hearings every six months for the purpose of reviewing and making findings regarding:

(1) whether the young adult's living arrangement is safe and appropriate and whether the department has made reasonable efforts to place the young adult in the least restrictive environment necessary to meet the young adult's needs;

(2) whether the department is making reasonable efforts to finalize the permanency plan that is in effect for the young adult, including a permanency plan for independent living;

(3) whether, for a young adult whose permanency plan is independent living:

(A) the young adult participated in the development of the plan of service;

(B) the young adult's plan of service reflects the independent living skills and appropriate services needed to achieve independence by the projected date; and

(C) the young adult continues to make reasonable progress in developing the skills needed to achieve independence by the projected date; and

(4) whether additional services that the department is authorized to provide are needed to meet the needs of the young adult [The extended jurisdiction of the court terminates on the earlier of:

(1) the young adult's 21st birthday; or

(2) the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court].

(c) Not later than the 10th day before the date set for a hearing under this section, the department shall file with the court a copy of the young adult's plan of service and a report that addresses the issues described by Subsection (b).

(d) Notice of an extended foster care review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to the following persons, each of whom has a right to present evidence and be heard at the hearing:

- (1) the young adult who is the subject of the suit;
- (2) the department;
- (3) the foster parent with whom the young adult is placed and the administrator of a child-placing agency responsible for placing the young adult, if applicable;
- (4) the director of the residential child-care facility or other approved provider with whom the young adult is placed, if applicable;
- (5) each parent of the young adult whose parental rights have not been terminated and who is still actively involved in the life of the young adult;
- (6) a legal guardian of the young adult, if applicable; and
- (7) the young adult's attorney ad litem, guardian ad litem, and volunteer advocate, the appointment of which has not been previously dismissed by the court.

(c) If, after reviewing the young adult's plan of service and the report filed under Subsection (c), and any additional testimony and evidence presented at the review hearing, the court determines that the young adult is entitled to additional services, the court may order the department to take appropriate action to ensure that the young adult receives those services.

(f) A court with extended jurisdiction over a young adult as described in Subsection (a) shall continue to have jurisdiction over the young adult and shall retain the case on the court's docket until the earlier of:

- (1) the last day of the:
 - (A) sixth month after the date the young adult leaves foster care; or
 - (B) 12th month after the date the young adult leaves foster care if specified in a court order, for the purpose of allowing the young adult to pursue a trial independence period; or
- (2) the young adult's 21st birthday.

(g) A court with extended jurisdiction described by this section is not required to conduct periodic hearings for a young adult during a trial independence period and may not compel a young adult who has exited foster care to attend a court hearing.

SECTION 10.03. Subchapter G, Chapter 263, Family Code, is amended by adding Section 263.6021 to read as follows:

Sec. 263.6021. VOLUNTARY EXTENDED JURISDICTION FOR YOUNG ADULT RECEIVING TRANSITIONAL LIVING SERVICES. (a) Notwithstanding Section 263.602, a court that had continuing, exclusive jurisdiction over a young adult on the day before the young adult's 18th birthday may, at the young adult's request, render an order that extends the court's jurisdiction beyond the end of a trial independence period if the young adult receives transitional living services from the department.

(b) The extended jurisdiction of the court under this section terminates on the earlier of:

- (1) the young adult's 21st birthday; or
- (2) the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court.

(c) At the request of a young adult who is receiving transitional living services from the department and who consents to voluntary extension of the court's jurisdiction under this section, the court may hold a hearing to review the services the young adult is receiving.

(d) Before a review hearing scheduled under this section, the department must file with the court a report summarizing the young adult's transitional living services plan, services being provided to the young adult under that plan, and the young adult's progress in achieving independence.

(e) If, after reviewing the report and any additional testimony and evidence presented at the hearing, the court determines that the young adult is entitled to additional services, the court may order the department to take appropriate action to ensure that the young adult receives those services.

SECTION 10.04. Subsections (a) and (c), Section 263.603, Family Code, are amended to read as follows:

(a) Notwithstanding Section 263.6021 [~~263.602~~], if the court believes that a young adult may be incapacitated as defined by Section 601(14)(B), Texas Probate Code, the court may extend its jurisdiction on its own motion without the young adult's consent to allow the department to refer the young adult to the Department of Aging and Disability Services for guardianship services as required by Section 48.209, Human Resources Code.

(c) If the Department of Aging and Disability Services determines a guardianship is not appropriate, or the court with probate jurisdiction denies the application to appoint a guardian, the court under Subsection (a) may continue to extend its jurisdiction over the young adult only as provided by Section 263.602 or 263.6021.

SECTION 10.05. Section 263.609, Family Code, is repealed.

SECTION 10.06. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 11. INMATE LITIGATION

SECTION 11.01. Subsection (a), Section 14.002, Civil Practice and Remedies Code, is amended to read as follows:

(a) This chapter applies only to an action, including an appeal or original proceeding, [~~a suit~~] brought by an inmate in a district, county, justice of the peace, or small claims court or an appellate court, including the supreme court or the court of criminal appeals, in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate.

SECTION 11.02. Subsections (a) and (b), Section 14.004, Civil Practice and Remedies Code, are amended to read as follows:

(a) An inmate who files an affidavit or unsworn declaration of inability to pay costs shall file a separate affidavit or declaration:

(1) identifying each action [~~suit~~], other than an action [~~a suit~~] under the Family Code, previously brought by the person and in which the person was not represented by an attorney, without regard to whether the person was an inmate at the time the action [~~suit~~] was brought; and

(2) describing each action [suit] that was previously brought by:

- (A) stating the operative facts for which relief was sought;
- (B) listing the case name, cause number, and the court in which the action [suit] was brought;
- (C) identifying each party named in the action [suit]; and
- (D) stating the result of the action [suit], including whether the action or a claim that was a basis for the action [suit] was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

(b) If the affidavit or unsworn declaration filed under this section states that a previous action or claim [suit] was dismissed as frivolous or malicious, the affidavit or unsworn declaration must state the date of the final order affirming the dismissal.

SECTION 11.03. Subsection (a), Section 14.007, Civil Practice and Remedies Code, is amended to read as follows:

(a) An order of a court under Section 14.006(a) shall include the costs described by Subsection (b) if the court finds that:

(1) the inmate has previously filed an action to which this chapter applies [in a district, county, justice of the peace, or small claims court]; and

(2) a final order has been issued that affirms that the action was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

SECTION 11.04. The change in law made by this article applies only to an action brought on or after the effective date of this Act. An action brought before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

ARTICLE 12. PROVISIONS RELATED TO EXEMPTING CERTAIN JUDICIAL OFFICERS FROM CERTAIN CONCEALED HANDGUN LICENSING REQUIREMENTS

SECTION 12.01. Subdivision (1), Subsection (a), Section 411.201, Government Code, is amended to read as follows:

(1) "Active judicial officer" means:

(A) a person serving as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court; ~~[or]~~

(B) a federal judge who is a resident of this state; or

(C) a person appointed and serving as an associate judge under Chapter 201, Family Code.

SECTION 12.02. Subsection (a), Section 46.15, Penal Code, is amended to read as follows:

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active judicial officer as defined by Section 411.201, Government Code, ~~[a judge or justice of a federal court, the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court]~~ who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that:

(A) verifies that the officer honorably retired after not less than 15 years of service as a commissioned officer; and

(B) is issued by a state or local law enforcement agency;

(6) a district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a concealed handgun under Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer; or

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code.

SECTION 12.03. The change in law made by this article to Section 46.15, Penal Code, applies only to an offense committed on or after the effective date of this article. An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this article if any element of the offense occurred before that date.

SECTION 12.04. This article takes effect September 1, 2011.

ARTICLE 13. COURT COSTS

SECTION 13.01. Subsection (b), Section 51.005, Government Code, is amended to read as follows:

(b) The fees are:

- (1) application for petition for review [~~writ of error~~] \$ 50
- (2) additional fee if application for petition for review [~~writ of error~~] is granted \$ 75
- (3) motion for leave to file petition for writ of mandamus, prohibition, injunction, and other similar proceedings originating in the supreme court \$ 50
- (4) additional fee if a motion under Subdivision (3) is granted. \$ 75
- (5) certified question from a federal court of appeals to the supreme court \$ 75
- (6) case appealed to the supreme court from the district court by direct appeal \$100
- (7) any other proceeding filed in the supreme court \$ 75.

SECTION 13.02. Subsection (a), Section 51.207, Government Code, is amended to read as follows:

(a) The clerk of a court of appeals shall collect the fees described in Subsection (b) in a civil case before the court for the following services:

- (1) filing records, applications, motions, briefs, and other necessary and proper papers;
- (2) docketing and making docket and minute book entries;
- (3) issuing notices, citations, processes, and mandates;
- (4) preparing transcripts on application for petition for review [~~writ of error~~] to the supreme court; and
- (5) performing other necessary clerical duties.

SECTION 13.03. Section 101.021, Government Code, is amended to read as follows:

Sec. 101.021. SUPREME COURT FEES AND COSTS: GOVERNMENT CODE. The clerk of the supreme court shall collect fees and costs as follows:

- (1) application for petition for review [~~writ of error~~] (Sec. 51.005, Government Code) . . . \$50;
- (2) additional fee if application for petition for review [~~writ of error~~] is granted (Sec. 51.005, Government Code) . . . \$75;
- (3) motion for leave to file petition for writ of mandamus, prohibition, injunction, and other similar proceedings originating in the supreme court (Sec. 51.005, Government Code) . . . \$50;
- (4) additional fee if a motion under Subdivision (3) is granted (Sec. 51.005, Government Code) . . . \$75;
- (5) certified question from a federal court of appeals to the supreme court (Sec. 51.005, Government Code) . . . \$75;
- (6) case appealed to the supreme court from the district court by direct appeal (Sec. 51.005, Government Code) . . . \$100;
- (7) any other proceeding filed in the supreme court (Sec. 51.005, Government Code) . . . \$75;

(8) administering an oath and giving a sealed certificate of the oath (Sec. 51.005, Government Code) . . . \$5;

(9) making certain copies, including certificate and seal (Sec. 51.005, Government Code) . . . \$5, or \$0.50 per page if more than 10 pages;

(10) any official service performed by the clerk for which a fee is not otherwise provided (Sec. 51.005, Government Code) . . . reasonable amount set by order or rule of supreme court;

(10-a) supreme court support account filing fee (Sec. 51.0051, Government Code) . . . amount set by the supreme court, not to exceed \$50;

(11) issuance of attorney's license or certificate (Sec. 51.006, Government Code) . . . \$10; and

(12) additional filing fee to fund civil legal services for the indigent (Sec. 51.941, Government Code) . . . \$25.

ARTICLE 14. NO APPROPRIATION; EFFECTIVE DATE

SECTION 14.01. This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

SECTION 14.02. Except as otherwise provided by this Act, this Act takes effect January 1, 2012.

The Conference Committee Report on **SB 1717** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3468**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3468** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO
CARONA
NELSON
SELIGER
WEST

PATRICK
AYCOCK
BRANCH
D. HOWARD
SHELTON

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 3468** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 8**

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 8** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NELSON
CARONA
HUFFMAN
PATRICK
SHAPIRO

On the part of the Senate

KOLKHORST
SCHWERTNER
COLEMAN
GEREN
HUNTER

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to improving the quality and efficiency of health care.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

**ARTICLE 1. LEGISLATIVE FINDINGS AND INTENT; COMPLIANCE WITH
ANTITRUST LAWS**

SECTION 1.01. (a) The legislature finds that it would benefit the State of Texas to:

- (1) explore innovative health care delivery and payment models to improve the quality and efficiency of health care in this state;
- (2) improve health care transparency;
- (3) give health care providers the flexibility to collaborate and innovate to improve the quality and efficiency of health care; and
- (4) create incentives to improve the quality and efficiency of health care.

(b) The legislature finds that the use of certified health care collaboratives will increase pro-competitive effects as the ability to compete on the basis of quality of care and the furtherance of the quality of care through a health care collaborative will overcome any anticompetitive effects of joining competitors to create the health care collaboratives and the payment mechanisms that will be used to encourage the furtherance of quality of care. Consequently, the legislature finds it appropriate and necessary to authorize health care collaboratives to promote the efficiency and quality of health care.

(c) The legislature intends to exempt from antitrust laws and provide immunity from federal antitrust laws through the state action doctrine a health care collaborative that holds a certificate of authority under Chapter 848, Insurance Code, as added by Article 3 of this Act, and that collaborative's negotiations of contracts with payors. The legislature does not intend or authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of federal antitrust laws.

(d) The legislature intends to permit the use of alternative payment mechanisms, including bundled or global payments and quality-based payments, among physicians and other health care providers participating in a health care collaborative that holds a certificate of authority under Chapter 848, Insurance Code, as added by Article 3 of this Act. The legislature intends to authorize a health care collaborative to contract for and accept payments from governmental and private payors based on alternative payment mechanisms, and intends that the receipt and distribution of payments to participating physicians and health care providers is not a violation of any existing state law.

ARTICLE 2. TEXAS INSTITUTE OF HEALTH CARE QUALITY AND EFFICIENCY

SECTION 2.01. Title 12, Health and Safety Code, is amended by adding Chapter 1002 to read as follows:

CHAPTER 1002. TEXAS INSTITUTE OF HEALTH CARE QUALITY AND EFFICIENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1002.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the Texas Institute of Health Care Quality and Efficiency established under this chapter.

(2) "Commission" means the Health and Human Services Commission.

(3) "Department" means the Department of State Health Services.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Health care collaborative" has the meaning assigned by Section 848.001, Insurance Code.

(6) "Health care facility" means:

(A) a hospital licensed under Chapter 241;

(B) an institution licensed under Chapter 242;

(C) an ambulatory surgical center licensed under Chapter 243;

(D) a birthing center licensed under Chapter 244;

(E) an end stage renal disease facility licensed under Chapter 251; or

(F) a freestanding emergency medical care facility licensed under Chapter 254.

(7) "Institute" means the Texas Institute of Health Care Quality and Efficiency established under this chapter.

(8) "Potentially preventable admission" means an admission of a person to a hospital or long-term care facility that may have reasonably been prevented with adequate access to ambulatory care or health care coordination.

(9) "Potentially preventable ancillary service" means a health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not be reasonably necessary for the provision of quality health care or treatment.

(10) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(11) "Potentially preventable event" means a potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events.

(12) "Potentially preventable emergency room visit" means treatment of a person in a hospital emergency room or freestanding emergency medical care facility for a condition that may not require emergency medical attention because the condition could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

(13) "Potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided; or

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome.

Sec. 1002.002. ESTABLISHMENT; PURPOSE. The Texas Institute of Health Care Quality and Efficiency is established to improve health care quality, accountability, education, and cost containment in this state by encouraging health care provider collaboration, effective health care delivery models, and coordination of health care services.

[Sections 1002.003-1002.050 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION

Sec. 1002.051. APPLICATION OF SUNSET ACT. The institute is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the institute is abolished and this chapter expires September 1, 2017.

Sec. 1002.052. COMPOSITION OF BOARD OF DIRECTORS. (a) The institute is governed by a board of 15 directors appointed by the governor.

(b) The following ex officio, nonvoting members also serve on the board:

(1) the commissioner of the department;

(2) the executive commissioner;

(3) the commissioner of insurance;

(4) the executive director of the Employees Retirement System of Texas;

(5) the executive director of the Teacher Retirement System of Texas;

(6) the state Medicaid director of the Health and Human Services Commission;

(7) the executive director of the Texas Medical Board;

(8) the commissioner of the Department of Aging and Disability Services;

(9) the executive director of the Texas Workforce Commission;

(10) the commissioner of the Texas Higher Education Coordinating Board;

and

(11) a representative from each state agency or system of higher education that purchases or provides health care services, as determined by the governor.

(c) The governor shall appoint as board members health care providers, payors, consumers, and health care quality experts or persons who possess expertise in any other area the governor finds necessary for the successful operation of the institute.

(d) A person may not serve as a voting member of the board if the person serves on or advises another board or advisory board of a state agency.

Sec. 1002.053. TERMS OF OFFICE. (a) Appointed members of the board serve staggered terms of four years, with the terms of as close to one-half of the members as possible expiring January 31 of each odd-numbered year.

(b) Board members may serve consecutive terms.

Sec. 1002.054. ADMINISTRATIVE SUPPORT. (a) The institute is administratively attached to the commission.

(b) The commission shall coordinate administrative responsibilities with the institute to streamline and integrate the institute's administrative operations and avoid unnecessary duplication of effort and costs.

(c) The institute may collaborate with, and coordinate its administrative functions, including functions related to research and reporting activities with, other public or private entities, including academic institutions and nonprofit organizations, that perform research on health care issues or other topics consistent with the purpose of the institute.

Sec. 1002.055. EXPENSES. (a) Members of the board serve without compensation but, subject to the availability of appropriated funds, may receive reimbursement for actual and necessary expenses incurred in attending meetings of the board.

(b) Information relating to the billing and payment of expenses under this section is subject to Chapter 552, Government Code.

Sec. 1002.056. OFFICER; CONFLICT OF INTEREST. (a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) Any board member or a member of a committee formed by the board with direct interest, personally or through an employer, in a matter before the board shall abstain from deliberations and actions on the matter in which the conflict of interest arises and shall further abstain on any vote on the matter, and may not otherwise participate in a decision on the matter.

(c) Each board member shall:

(1) file a conflict of interest statement and a statement of ownership interests with the board to ensure disclosure of all existing and potential personal interests related to board business; and

(2) update the statements described by Subdivision (1) at least annually.

(d) A statement filed under Subsection (c) is subject to Chapter 552, Government Code.

Sec. 1002.057. PROHIBITION ON CERTAIN CONTRACTS AND EMPLOYMENT. (a) The board may not compensate, employ, or contract with any individual who serves as a member of the board of, or on an advisory board or advisory committee for, any other governmental body, including any agency, council, or committee, in this state.

(b) The board may not compensate, employ, or contract with any person that provides financial support to the board, including a person who provides a gift, grant, or donation to the board.

Sec. 1002.058. MEETINGS. (a) The board may meet as often as necessary, but shall meet at least once each calendar quarter.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the authority of the institute.

Sec. 1002.059. BOARD MEMBER IMMUNITY. (a) A board member may not be held civilly liable for an act performed, or omission made, in good faith in the performance of the member's powers and duties under this chapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

Sec. 1002.060. PRIVACY OF INFORMATION. (a) Protected health information and individually identifiable health information collected, assembled, or maintained by the institute is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) The institute shall comply with all state and federal laws and rules relating to the protection, confidentiality, and transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act, 42 U.S.C. Section 290dd-2, and 42 C.F.R. Part 2.

(c) The commission, department, or institute or an officer or employee of the commission, department, or institute, including a board member, may not disclose any information that is confidential under this section.

(d) Information, documents, and records that are confidential as provided by this section are not subject to subpoena or discovery and may not be introduced into evidence in any civil or criminal proceeding.

(e) An officer or employee of the commission, department, or institute, including a board member, may not be examined in a civil, criminal, special, administrative, or other proceeding as to information that is confidential under this section.

Sec. 1002.061. FUNDING. (a) The institute may be funded through the General Appropriations Act and may request, accept, and use gifts, grants, and donations as necessary to implement its functions.

(b) The institute may participate in other revenue-generating activity that is consistent with the institute's purposes.

(c) Except as otherwise provided by law, each state agency represented on the board as a nonvoting member shall provide funds to support the institute and implement this chapter. The commission shall establish a funding formula to determine the level of support each state agency is required to provide.

(d) This section does not permit the sale of information that is confidential under Section 1002.060.

[Sections 1002.062-1002.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1002.101. GENERAL POWERS AND DUTIES. The institute shall make recommendations to the legislature on:

(1) improving quality and efficiency of health care delivery by:

(A) providing a forum for regulators, payors, and providers to discuss and make recommendations for initiatives that promote the use of best practices, increase health care provider collaboration, improve health care outcomes, and contain health care costs;

(B) researching, developing, supporting, and promoting strategies to improve the quality and efficiency of health care in this state;

(C) determining the outcome measures that are the most effective measures of quality and efficiency:

(i) using nationally accredited measures; or

(ii) if no nationally accredited measures exist, using measures based on expert consensus;

(D) reducing the incidence of potentially preventable events; and

(E) creating a state plan that takes into consideration the regional differences of the state to encourage the improvement of the quality and efficiency of health care services;

(2) improving reporting, consolidation, and transparency of health care information; and

(3) implementing and supporting innovative health care collaborative payment and delivery systems under Chapter 848, Insurance Code.

Sec. 1002.102. GOALS FOR QUALITY AND EFFICIENCY OF HEALTH CARE; STATEWIDE PLAN. (a) The institute shall study and develop recommendations to improve the quality and efficiency of health care delivery in this state, including:

(1) quality-based payment systems that align payment incentives with high-quality, cost-effective health care;

(2) alternative health care delivery systems that promote health care coordination and provider collaboration;

(3) quality of care and efficiency outcome measurements that are effective measures of prevention, wellness, coordination, provider collaboration, and cost-effective health care; and

(4) meaningful use of electronic health records by providers and electronic exchange of health information among providers.

(b) The institute shall study and develop recommendations for measuring quality of care and efficiency across:

(1) all state employee and state retiree benefit plans;

(2) employee and retiree benefit plans provided through the Teacher Retirement System of Texas;

(3) the state medical assistance program under Chapter 32, Human Resources Code; and

(4) the child health plan under Chapter 62.

(c) In developing recommendations under Subsection (b), the institute shall use nationally accredited measures or, if no nationally accredited measures exist, measures based on expert consensus.

(d) The institute may study and develop recommendations for measuring the quality of care and efficiency in state or federally funded health care delivery systems other than those described by Subsection (b).

(e) In developing recommendations under Subsections (a) and (b), the institute may not base its recommendations solely on actuarial data.

(f) Using the studies described by Subsections (a) and (b), the institute shall develop recommendations for a statewide plan for quality and efficiency of the delivery of health care.

[Sections 1002.103-1002.150 reserved for expansion]

SUBCHAPTER D. HEALTH CARE COLLABORATIVE GUIDELINES AND SUPPORT

Sec. 1002.151. INSTITUTE STUDIES AND RECOMMENDATIONS REGARDING HEALTH CARE PAYMENT AND DELIVERY SYSTEMS. (a) The institute shall study and make recommendations for alternative health care payment and delivery systems.

(b) The institute shall recommend methods to evaluate a health care collaborative's effectiveness, including methods to evaluate:

(1) the efficiency and effectiveness of cost-containment methods used by the collaborative;

(2) alternative health care payment and delivery systems used by the collaborative;

(3) the quality of care;

(4) health care provider collaboration and coordination;

(5) the protection of patients;

(6) patient satisfaction; and

(7) the meaningful use of electronic health records by providers and electronic exchange of health information among providers.

[Sections 1002.152-1002.200 reserved for expansion]

SUBCHAPTER E. IMPROVED TRANSPARENCY

Sec. 1002.201. HEALTH CARE ACCOUNTABILITY; IMPROVED TRANSPARENCY. (a) With the assistance of the department, the institute shall complete an assessment of all health-related data collected by the state, what information is available to the public, and how the public and health care providers currently benefit and could potentially benefit from this information, including health care cost and quality information.

(b) The institute shall develop a plan:

(1) for consolidating reports of health-related data from various sources to reduce administrative costs to the state and reduce the administrative burden to health care providers and payors;

(2) for improving health care transparency to the public and health care providers by making information available in the most effective format; and

(3) providing recommendations to the legislature on enhancing existing health-related information available to health care providers and the public, including provider reporting of additional information not currently required to be reported under existing law, to improve quality of care.

Sec. 1002.202. ALL PAYOR CLAIMS DATABASE. (a) The institute shall study the feasibility and desirability of establishing a centralized database for health care claims information across all payors.

(b) The study described by Subsection (a) shall:

(1) use the assessment described by Section 1002.201 to develop recommendations relating to the adequacy of existing data sources for carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(2) determine whether the establishment of an all payor claims database would reduce the need for some data submissions provided by payors;

(3) identify the best available sources of data necessary for the state's purposes under this chapter and Chapter 848, Insurance Code, that are not collected by the state under existing law;

(4) describe how an all payor claims database may facilitate carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(5) identify national standards for claims data collection and use, including standardized data sets, standardized methodology, and standard outcome measures of health care quality and efficiency; and

(6) estimate the costs of implementing an all payor claims database, including:

(A) the costs to the state for collecting and processing data;

(B) the cost to the payors for supplying the data; and

(C) the available funding mechanisms that might support an all payor claims database.

(c) The institute shall consult with the department and the Texas Department of Insurance to develop recommendations to submit to the legislature on the establishment of the centralized claims database described by Subsection (a).

SECTION 2.02. Chapter 109, Health and Safety Code, is repealed.

SECTION 2.03. On the effective date of this Act:

(1) the Texas Health Care Policy Council established under Chapter 109, Health and Safety Code, is abolished; and

(2) any unexpended and unobligated balance of money appropriated by the legislature to the Texas Health Care Policy Council established under Chapter 109, Health and Safety Code, as it existed immediately before the effective date of this Act, is transferred to the Texas Institute of Health Care Quality and Efficiency created by Chapter 1002, Health and Safety Code, as added by this Act.

SECTION 2.04. (a) The governor shall appoint voting members of the board of directors of the Texas Institute of Health Care Quality and Efficiency under Section 1002.052, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

(b) In making the initial appointments under this section, the governor shall designate seven members to terms expiring January 31, 2013, and eight members to terms expiring January 31, 2015.

SECTION 2.05. (a) Not later than December 1, 2012, the Texas Institute of Health Care Quality and Efficiency shall submit a report regarding recommendations for improved health care reporting to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate standing committees of the legislature outlining:

(1) the initial assessment conducted under Subsection (a), Section 1002.201, Health and Safety Code, as added by this Act;

(2) the plans initially developed under Subsection (b), Section 1002.201, Health and Safety Code, as added by this Act;

(3) the changes in existing law that would be necessary to implement the assessment and plans described by Subdivisions (1) and (2) of this subsection; and

(4) the cost implications to state agencies, small businesses, micro businesses, payors, and health care providers to implement the assessment and plans described by Subdivisions (1) and (2) of this subsection.

(b) Not later than December 1, 2012, the Texas Institute of Health Care Quality and Efficiency shall submit a report regarding recommendations for an all payor claims database to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate standing committees of the legislature outlining:

(1) the feasibility and desirability of establishing a centralized database for health care claims;

(2) the recommendations developed under Subsection (c), Section 1002.202, Health and Safety Code, as added by this Act;

(3) the changes in existing law that would be necessary to implement the recommendations described by Subdivision (2) of this subsection; and

(4) the cost implications to state agencies, small businesses, micro businesses, payors, and health care providers to implement the recommendations described by Subdivision (2) of this subsection.

SECTION 2.06. (a) The Texas Institute of Health Care Quality and Efficiency under Chapter 1002, Health and Safety Code, as added by this Act, with the assistance of and in coordination with the Texas Department of Insurance, shall conduct a study:

(1) evaluating how the legislature may promote a consumer-driven health care system, including by increasing the adoption of high-deductible insurance products with health savings accounts by consumers and employers to lower health care costs and increase personal responsibility for health care; and

(2) examining the issue of differing amounts of payment in full accepted by a provider for the same or similar health care services or supplies, including bundled health care services and supplies, and addressing:

(A) the extent of the differences in the amounts accepted as payment in full for a service or supply;

(B) the reasons that amounts accepted as payment in full differ for the same or similar services or supplies;

(C) the availability of information to the consumer regarding the amount accepted as payment in full for a service or supply;

(D) the effects on consumers of differing amounts accepted as payment in full; and

(E) potential methods for improving consumers' access to information in relation to the amounts accepted as payment in full for health care services or supplies, including the feasibility and desirability of requiring providers to:

(i) publicly post the amount that is accepted as payment in full for a service or supply; and

(ii) adhere to the posted amount.

(b) The institute shall submit a report to the legislature outlining the results of the study conducted under this section and any recommendations for potential legislation not later than January 1, 2013.

(c) This section expires September 1, 2013.

ARTICLE 3. HEALTH CARE COLLABORATIVES

SECTION 3.01. Subtitle C, Title 6, Insurance Code, is amended by adding Chapter 848 to read as follows:

CHAPTER 848. HEALTH CARE COLLABORATIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 848.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who controls, is controlled by, or is under common control with one or more other persons.

(2) "Health care collaborative" means an entity:

(A) that undertakes to arrange for medical and health care services for insurers, health maintenance organizations, and other payors in exchange for payments in cash or in kind;

(B) that accepts and distributes payments for medical and health care services;

(C) that consists of:

(i) physicians;

(ii) physicians and other health care providers;

(iii) physicians and insurers or health maintenance organizations; or

(iv) physicians, other health care providers, and insurers or health maintenance organizations; and

(D) that is certified by the commissioner under this chapter to lawfully accept and distribute payments to physicians and other health care providers using the reimbursement methodologies authorized by this chapter.

(3) "Health care services" means services provided by a physician or health care provider to prevent, alleviate, cure, or heal human illness or injury. The term includes:

(A) pharmaceutical services;

(B) medical, chiropractic, or dental care; and

(C) hospitalization.

(4) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed, certified, registered, or chartered by this state to provide health care services. The term includes a hospital but does not include a physician.

(5) "Health maintenance organization" means an organization operating under Chapter 843.

(6) "Hospital" means a general or special hospital, including a public or private institution licensed under Chapter 241 or 577, Health and Safety Code.

(7) "Institute" means the Texas Institute of Health Care Quality and Efficiency established under Chapter 1002, Health and Safety Code.

(8) "Physician" means:

(A) an individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) or the Texas Professional Association Law by an individual or group of individuals licensed to practice medicine in this state;

(C) a partnership or limited liability partnership formed by a group of individuals licensed to practice medicine in this state;

(D) a nonprofit health corporation certified under Section 162.001, Occupations Code;

(E) a company formed by a group of individuals licensed to practice medicine in this state under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) or the Texas Professional Limited Liability Company Law; or

(F) an organization wholly owned and controlled by individuals licensed to practice medicine in this state.

(9) "Potentially preventable event" has the meaning assigned by Section 1002.001, Health and Safety Code.

Sec. 848.002. EXCEPTION: DELEGATED ENTITIES. (a) This section applies only to an entity, other than a health maintenance organization, that:

(1) by itself or through a subcontract with another entity, undertakes to arrange for or provide medical care or health care services to enrollees in exchange for predetermined payments on a prospective basis; and

(2) accepts responsibility for performing functions that are required by:

(A) Chapter 222, 251, 258, or 1272, as applicable, to a health maintenance organization; or

(B) Chapter 843, Chapter 1271, Section 1367.053, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, as applicable, solely on behalf of health maintenance organizations.

(b) An entity described by Subsection (a) is subject to Chapter 1272 and is not required to obtain a certificate of authority or determination of approval under this chapter.

Sec. 848.003. USE OF INSURANCE-RELATED TERMS BY HEALTH CARE COLLABORATIVE. A health care collaborative that is not an insurer or health maintenance organization may not use in its name, contracts, or literature:

(1) the following words or initials:

(A) "insurance";

(B) "casualty";

(C) "surety";

(D) "mutual";

(E) "health maintenance organization"; or

(F) "HMO"; or

(2) any other words or initials that are:

(A) descriptive of the insurance, casualty, surety, or health maintenance organization business; or

(B) deceptively similar to the name or description of an insurer, surety corporation, or health maintenance organization engaging in business in this state.

Sec. 848.004. APPLICABILITY OF INSURANCE LAWS. (a) An organization may not arrange for or provide health care services to enrollees on a prepaid or indemnity basis through health insurance or a health benefit plan, including a health care plan, as defined by Section 843.002, unless the organization as an insurer or health maintenance organization holds the appropriate certificate of authority issued under another chapter of this code.

(b) Except as provided by Subsection (c), the following provisions of this code apply to a health care collaborative in the same manner and to the same extent as they apply to an individual or entity otherwise subject to the provision:

(1) Section 38.001;

(2) Subchapter A, Chapter 542;

(3) Chapter 541;

(4) Chapter 543;

(5) Chapter 602;

(6) Chapter 701;

(7) Chapter 803; and

(8) Chapter 804.

(c) The remedies available under this chapter in the manner provided by Chapter 541 do not include:

(1) a private cause of action under Subchapter D, Chapter 541; or

(2) a class action under Subchapter F, Chapter 541.

Sec. 848.005. CERTAIN INFORMATION CONFIDENTIAL. (a) Except as provided by Subsection (b), an application, filing, or report required under this chapter is public information subject to disclosure under Chapter 552, Government Code.

(b) The following information is confidential and is not subject to disclosure under Chapter 552, Government Code:

(1) a contract, agreement, or document that establishes another arrangement:

(A) between a health care collaborative and a governmental or private entity for all or part of health care services provided or arranged for by the health care collaborative; or

(B) between a health care collaborative and participating physicians and health care providers;

(2) a written description of a contract, agreement, or other arrangement described by Subdivision (1);

(3) information relating to bidding, pricing, or other trade secrets submitted to:

(A) the department under Sections 848.057(a)(5) and (6); or

(B) the attorney general under Section 848.059;

(4) information relating to the diagnosis, treatment, or health of a patient who receives health care services from a health care collaborative under a contract for services; and

(5) information relating to quality improvement or peer review activities of a health care collaborative.

Sec. 848.006. COVERAGE BY HEALTH CARE COLLABORATIVE NOT REQUIRED. (a) Except as provided by Subsection (b) and subject to Chapter 843 and Section 1301.0625, an individual may not be required to obtain or maintain coverage under:

(1) an individual health insurance policy written through a health care collaborative; or

(2) any plan or program for health care services provided on an individual basis through a health care collaborative.

(b) This chapter does not require an individual to obtain or maintain health insurance coverage.

(c) Subsection (a) does not apply to an individual:

(1) who is required to obtain or maintain health benefit plan coverage:

(A) written by an institution of higher education at which the individual is or will be enrolled as a student; or

(B) under an order requiring medical support for a child; or

(2) who voluntarily applies for benefits under a state administered program under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), or Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.).

(d) Except as provided by Subsection (c), a fine or penalty may not be imposed on an individual if the individual chooses not to obtain or maintain coverage described by Subsection (a).

(e) Subsection (d) does not apply to a fine or penalty imposed on an individual described in Subsection (c) for the individual's failure to obtain or maintain health benefit plan coverage.

[Sections 848.007-848.050 reserved for expansion]

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 848.051. OPERATION OF HEALTH CARE COLLABORATIVE. A health care collaborative that is certified by the department under this chapter may provide or arrange to provide health care services under contract with a governmental or private entity.

Sec. 848.052. FORMATION AND GOVERNANCE OF HEALTH CARE COLLABORATIVE. (a) A health care collaborative is governed by a board of directors.

(b) The person who establishes a health care collaborative shall appoint an initial board of directors. Each member of the initial board serves a term of not more than 18 months. Subsequent members of the board shall be elected to serve two-year terms by physicians and health care providers who participate in the health care collaborative as provided by this section. The board shall elect a chair from among its members.

(c) If the participants in a health care collaborative are all physicians, each member of the board of directors must be an individual physician who is a participant in the health care collaborative.

(d) If the participants in a health care collaborative are both physicians and other health care providers, the board of directors must consist of:

(1) an even number of members who are individual physicians, selected by physicians who participate in the health care collaborative;

(2) a number of members equal to the number of members under Subdivision (1) who represent health care providers, one of whom is an individual physician, selected by health care providers who participate in the health care collaborative; and

(3) one individual member with business expertise, selected by unanimous vote of the members described by Subdivisions (1) and (2).

(e) The board of directors must include at least three nonvoting ex officio members who represent the community in which the health care collaborative operates.

(f) An individual may not serve on the board of directors of a health care collaborative if the individual has an ownership interest in, serves on the board of directors of, or maintains an officer position with:

(1) another health care collaborative that provides health care services in the same service area as the health care collaborative; or

(2) a physician or health care provider that:

(A) does not participate in the health care collaborative; and

(B) provides health care services in the same service area as the health care collaborative.

(g) In addition to the requirements of Subsection (f), the board of directors of a health care collaborative shall adopt a conflict of interest policy to be followed by members.

(h) The board of directors may remove a member for cause. A member may not be removed from the board without cause.

(i) The organizational documents of a health care collaborative may not conflict with any provision of this chapter, including this section.

Sec. 848.053. COMPENSATION ADVISORY COMMITTEE; SHARING OF CERTAIN DATA. (a) The board of directors of a health care collaborative shall establish a compensation advisory committee to develop and make recommendations to the board regarding charges, fees, payments, distributions, or other compensation assessed for health care services provided by physicians or health care providers who participate in the health care collaborative. The committee must include:

(1) a member of the board of directors; and

(2) if the health care collaborative consists of physicians and other health care providers:

(A) a physician who is not a participant in the health care collaborative, selected by the physicians who are participants in the collaborative; and

(B) a member selected by the other health care providers who participate in the collaborative.

(b) A health care collaborative shall establish and enforce policies to prevent the sharing of charge, fee, and payment data among nonparticipating physicians and health care providers.

Sec. 848.054. CERTIFICATE OF AUTHORITY AND DETERMINATION OF APPROVAL REQUIRED. (a) An organization may not organize or operate a health care collaborative in this state unless the organization holds a certificate of authority issued under this chapter.

(b) The commissioner shall adopt rules governing the application for a certificate of authority under this subchapter.

Sec. 848.055. EXCEPTIONS. (a) An organization is not required to obtain a certificate of authority under this chapter if the organization holds an appropriate certificate of authority issued under another chapter of this code.

(b) A person is not required to obtain a certificate of authority under this chapter to the extent that the person is:

(1) a physician engaged in the delivery of medical care; or

(2) a health care provider engaged in the delivery of health care services other than medical care as part of a health maintenance organization delivery network.

(c) A medical school, medical and dental unit, or health science center as described by Section 61.003, 61.501, or 74.601, Education Code, is not required to obtain a certificate of authority under this chapter to the extent that the medical school, medical and dental unit, or health science center contracts to deliver medical care services within a health care collaborative. This chapter is otherwise applicable to a medical school, medical and dental unit, or health science center.

(d) An entity licensed under the Health and Safety Code that employs a physician under a specific statutory authority is not required to obtain a certificate of authority under this chapter to the extent that the entity contracts to deliver medical care services and health care services within a health care collaborative. This chapter is otherwise applicable to the entity.

Sec. 848.056. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) An organization may apply to the commissioner for and obtain a certificate of authority to organize and operate a health care collaborative.

(b) An application for a certificate of authority must:

- (1) comply with all rules adopted by the commissioner;
- (2) be verified under oath by the applicant or an officer or other authorized representative of the applicant;
- (3) be reviewed by the division within the office of attorney general that is primarily responsible for enforcing the antitrust laws of this state and of the United States under Section 848.059;
- (4) demonstrate that the health care collaborative contracts with a sufficient number of primary care physicians in the health care collaborative's service area;
- (5) state that enrollees may obtain care from any physician or health care provider in the health care collaborative; and
- (6) identify a service area within which medical services are available and accessible to enrollees.

(c) Not later than the 190th day after the date an applicant submits an application to the commissioner under this section, the commissioner shall approve or deny the application.

(d) The commissioner by rule may:

- (1) extend the date by which an application is due under this section; and
- (2) require the disclosure of any additional information necessary to implement and administer this chapter, including information necessary to antitrust review and oversight.

Sec. 848.057. REQUIREMENTS FOR APPROVAL OF APPLICATION. (a) The commissioner shall issue a certificate of authority on payment of the application fee prescribed by Section 848.152 if the commissioner is satisfied that:

- (1) the applicant meets the requirements of Section 848.056;
- (2) with respect to health care services to be provided, the applicant:
 - (A) has demonstrated the willingness and potential ability to ensure that the health care services will be provided in a manner that:
 - (i) increases collaboration among health care providers and integrates health care services;
 - (ii) promotes improvement in quality-based health care outcomes, patient safety, patient engagement, and coordination of services; and
 - (iii) reduces the occurrence of potentially preventable events;
 - (B) has processes that contain health care costs without jeopardizing the quality of patient care;
 - (C) has processes to develop, compile, evaluate, and report statistics on performance measures relating to the quality and cost of health care services, the pattern of utilization of services, and the availability and accessibility of services; and
 - (D) has processes to address complaints made by patients receiving services provided through the organization;
- (3) the applicant is in compliance with all rules adopted by the commissioner under Section 848.151;
- (4) the applicant has working capital and reserves sufficient to operate and maintain the health care collaborative and to arrange for services and expenses incurred by the health care collaborative;

(5) the applicant's proposed health care collaborative is not likely to reduce competition in any market for physician, hospital, or ancillary health care services due to:

(A) the size of the health care collaborative; or

(B) the composition of the collaborative, including the distribution of physicians by specialty within the collaborative in relation to the number of competing health care providers in the health care collaborative's geographic market; and

(6) the pro-competitive benefits of the applicant's proposed health care collaborative are likely to substantially outweigh the anticompetitive effects of any increase in market power.

(b) A certificate of authority is effective for a period of one year, subject to Section 848.060(d).

Sec. 848.058. DENIAL OF CERTIFICATE OF AUTHORITY. (a) The commissioner may not issue a certificate of authority if the commissioner determines that the applicant's proposed plan of operation does not meet the requirements of Section 848.057.

(b) If the commissioner denies an application for a certificate of authority under Subsection (a), the commissioner shall notify the applicant that the plan is deficient and specify the deficiencies.

Sec. 848.059. CONCURRENCE OF ATTORNEY GENERAL. (a) If the commissioner determines that an application for a certificate of authority filed under Section 848.056 complies with the requirements of Section 848.057, the commissioner shall forward the application, and all data, documents, and analysis considered by the commissioner in making the determination, to the attorney general. The attorney general shall review the application and the data, documents, and analysis and, if the attorney general concurs with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(b) If the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(c) A determination under this section shall be made not later than the 60th day after the date the attorney general receives the application and the data, documents, and analysis from the commissioner.

(d) If the attorney general lacks sufficient information to make a determination under Sections 848.057(a)(5) and (6), within 60 days of the attorney general's receipt of the application and the data, documents, and analysis the attorney general shall inform the commissioner that the attorney general lacks sufficient information as well as what information the attorney general requires. The commissioner shall then either provide the additional information to the attorney general or request the additional information from the applicant. The commissioner shall promptly deliver any such additional information to the attorney general. The attorney general shall then have 30 days from receipt of the additional information to make a determination under Subsection (a) or (b).

(e) If the attorney general notifies the commissioner that the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), then, notwithstanding any other provision of this subchapter, the commissioner shall deny the application.

(f) In reviewing the commissioner's determination, the attorney general shall consider the findings, conclusions, or analyses contained in any other governmental entity's evaluation of the health care collaborative.

(g) The attorney general at any time may request from the commissioner additional time to consider an application under this section. The commissioner shall grant the request and notify the applicant of the request. A request by the attorney general or an order by the commissioner granting a request under this section is not subject to administrative or judicial review.

Sec. 848.060. RENEWAL OF CERTIFICATE OF AUTHORITY AND DETERMINATION OF APPROVAL. (a) Not later than the 180th day before the one-year anniversary of the date on which a health care collaborative's certificate of authority was issued or most recently renewed, the health care collaborative shall file with the commissioner an application to renew the certificate.

(b) An application for renewal must:

(1) be verified by at least two principal officers of the health care collaborative; and

(2) include:

(A) a financial statement of the health care collaborative, including a balance sheet and receipts and disbursements for the preceding calendar year, certified by an independent certified public accountant;

(B) a description of the service area of the health care collaborative;

(C) a description of the number and types of physicians and health care providers participating in the health care collaborative;

(D) an evaluation of the quality and cost of health care services provided by the health care collaborative;

(E) an evaluation of the health care collaborative's processes to promote evidence-based medicine, patient engagement, and coordination of health care services provided by the health care collaborative;

(F) the number, nature, and disposition of any complaints filed with the health care collaborative under Section 848.107; and

(G) any other information required by the commissioner.

(c) If a completed application for renewal is filed under this section:

(1) the commissioner shall conduct a review under Section 848.057 as if the application for renewal were a new application, and, on approval by the commissioner, the attorney general shall review the application under Section 848.059 as if the application for renewal were a new application; and

(2) the commissioner shall renew or deny the renewal of a certificate of authority at least 20 days before the one-year anniversary of the date on which a health care collaborative's certificate of authority was issued.

(d) If the commissioner does not act on a renewal application before the one-year anniversary of the date on which a health care collaborative's certificate of authority was issued or renewed, the health care collaborative's certificate of authority

expires on the 90th day after the date of the one-year anniversary unless the renewal of the certificate of authority or determination of approval, as applicable, is approved before that date.

(e) A health care collaborative shall report to the department a material change in the size or composition of the collaborative. On receipt of a report under this subsection, the department may require the collaborative to file an application for renewal before the date required by Subsection (a).

[Sections 848.061-848.100 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF HEALTH CARE COLLABORATIVE

Sec. 848.101. PROVIDING OR ARRANGING FOR SERVICES. (a) A health care collaborative may provide or arrange for health care services through contracts with physicians and health care providers or with entities contracting on behalf of participating physicians and health care providers.

(b) A health care collaborative may not prohibit a physician or other health care provider, as a condition of participating in the health care collaborative, from participating in another health care collaborative.

(c) A health care collaborative may not use a covenant not to compete to prohibit a physician from providing medical services or participating in another health care collaborative in the same service area after the termination of the physician's contract with the health care collaborative.

(d) Except as provided by Subsection (f), on written consent of a patient who was treated by a physician participating in a health care collaborative, the health care collaborative shall provide the physician with the medical records of the patient, regardless of whether the physician is participating in the health care collaborative at the time the request for the records is made.

(e) Records provided under Subsection (d) shall be made available to the physician in the format in which the records are maintained by the health care collaborative. The health care collaborative may charge the physician a fee for copies of the records, as established by the Texas Medical Board.

(f) If a physician requests a patient's records from a health care collaborative under Subsection (d) for the purpose of providing emergency treatment to the patient:

(1) the health care collaborative may not charge a fee to the physician under Subsection (e); and

(2) the health care collaborative shall provide the records to the physician regardless of whether the patient has provided written consent.

Sec. 848.102. INSURANCE, REINSURANCE, INDEMNITY, AND REIMBURSEMENT. A health care collaborative may contract with an insurer authorized to engage in business in this state to provide insurance, reinsurance, indemnification, or reimbursement against the cost of health care and medical care services provided by the health care collaborative. This section does not affect the requirement that the health care collaborative maintain sufficient working capital and reserves.

Sec. 848.103. PAYMENT BY GOVERNMENTAL OR PRIVATE ENTITY. (a) A health care collaborative may:

(1) contract for and accept payments from a governmental or private entity for all or part of the cost of services provided or arranged for by the health care collaborative; and

(2) distribute payments to participating physicians and health care providers.

(b) Notwithstanding any other law, a health care collaborative that is in compliance with this code, including Chapters 841, 842, and 843, as applicable, may contract for, accept, and distribute payments from governmental or private payors based on fee-for-service or alternative payment mechanisms, including:

(1) episode-based or condition-based bundled payments;

(2) capitation or global payments; or

(3) pay-for-performance or quality-based payments.

(c) Except as provided by Subsection (d), a health care collaborative may not contract for and accept from a governmental or private entity payments on a prospective basis, including bundled or global payments, unless the health care collaborative is licensed under Chapter 843.

(d) A health care collaborative may contract for and accept from an insurance company or a health maintenance organization payments on a prospective basis, including bundled or global payments.

Sec. 848.104. CONTRACTS FOR ADMINISTRATIVE OR MANAGEMENT SERVICES. A health care collaborative may contract with any person, including an affiliated entity, to perform administrative, management, or any other required business functions on behalf of the health care collaborative.

Sec. 848.105. CORPORATION, PARTNERSHIP, OR ASSOCIATION POWERS. A health care collaborative has all powers of a partnership, association, corporation, or limited liability company, including a professional association or corporation, as appropriate under the organizational documents of the health care collaborative, that are not in conflict with this chapter or other applicable law.

Sec. 848.106. QUALITY AND COST OF HEALTH CARE SERVICES. (a) A health care collaborative shall establish policies to improve the quality and control the cost of health care services provided by participating physicians and health care providers that are consistent with prevailing professionally recognized standards of medical practice. The policies must include standards and procedures relating to:

(1) the selection and credentialing of participating physicians and health care providers;

(2) the development, implementation, monitoring, and evaluation of evidence-based best practices and other processes to improve the quality and control the cost of health care services provided by participating physicians and health care providers, including practices or processes to reduce the occurrence of potentially preventable events;

(3) the development, implementation, monitoring, and evaluation of processes to improve patient engagement and coordination of health care services provided by participating physicians and health care providers; and

(4) complaints initiated by participating physicians, health care providers, and patients under Section 848.107.

(b) The governing body of a health care collaborative shall establish a procedure for the periodic review of quality improvement and cost control measures.

Sec. 848.107. COMPLAINT SYSTEMS. (a) A health care collaborative shall implement and maintain complaint systems that provide reasonable procedures to resolve an oral or written complaint initiated by:

(1) a patient who received health care services provided by a participating physician or health care provider; or

(2) a participating physician or health care provider.

(b) The complaint system for complaints initiated by patients must include a process for the notice and appeal of a complaint.

(c) A health care collaborative may not take a retaliatory or adverse action against a physician or health care provider who files a complaint with a regulatory authority regarding an action of the health care collaborative.

Sec. 848.108. DELEGATION AGREEMENTS. (a) Except as provided by Subsection (b), a health care collaborative that enters into a delegation agreement described by Section 1272.001 is subject to the requirements of Chapter 1272 in the same manner as a health maintenance organization.

(b) Section 1272.301 does not apply to a delegation agreement entered into by a health care collaborative.

(c) A health care collaborative may enter into a delegation agreement with an entity licensed under Chapter 841, 842, or 883 if the delegation agreement assigns to the entity responsibility for:

(1) a function regulated by:

(A) Chapter 222;

(B) Chapter 841;

(C) Chapter 842;

(D) Chapter 883;

(E) Chapter 1272;

(F) Chapter 1301;

(G) Chapter 4201;

(H) Section 1367.053; or

(I) Subchapter A, Chapter 1507; or

(2) another function specified by commissioner rule.

(d) A health care collaborative that enters into a delegation agreement under this section shall maintain reserves and capital in addition to the amounts required under Chapter 1272, in an amount and form determined by rule of the commissioner to be necessary for the liabilities and risks assumed by the health care collaborative.

(e) A health care collaborative that enters into a delegation agreement under this section is subject to Chapters 404, 441, and 443 and is considered to be an insurer for purposes of those chapters.

Sec. 848.109. VALIDITY OF OPERATIONS AND TRADE PRACTICES OF HEALTH CARE COLLABORATIVES. The operations and trade practices of a health care collaborative that are consistent with the provisions of this chapter, the rules adopted under this chapter, and applicable federal antitrust laws are presumed to be consistent with Chapter 15, Business & Commerce Code, or any other applicable provision of law.

Sec. 848.110. RIGHTS OF PHYSICIANS; LIMITATIONS ON PARTICIPATION. (a) Before a complaint against a physician under Section 848.107 is resolved, or before a physician's association with a health care collaborative is terminated, the physician is entitled to an opportunity to dispute the complaint or termination through a process that includes:

- (1) written notice of the complaint or basis of the termination;
- (2) an opportunity for a hearing not earlier than the 30th day after receiving notice under Subdivision (1);
- (3) the right to provide information at the hearing, including testimony and a written statement; and
- (4) a written decision that includes the specific facts and reasons for the decision.

(b) A health care collaborative may limit a physician or group of physicians from participating in the health care collaborative if the limitation is based on an established development plan approved by the board of directors. Each applicant physician or group shall be provided with a copy of the development plan.

[Sections 848.111-848.150 reserved for expansion]

SUBCHAPTER D. REGULATION OF HEALTH CARE COLLABORATIVES

Sec. 848.151. RULES. The commissioner and the attorney general may adopt reasonable rules as necessary and proper to implement the requirements of this chapter.

Sec. 848.152. FEES AND ASSESSMENTS. (a) The commissioner shall, within the limits prescribed by this section, prescribe the fees to be charged and the assessments to be imposed under this section.

(b) Amounts collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

(c) A health care collaborative shall pay to the department:

- (1) an application fee in an amount determined by commissioner rule; and
- (2) an annual assessment in an amount determined by commissioner rule.

(d) The commissioner shall set fees and assessments under this section in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering this chapter, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing health care collaboratives. Fees and assessments imposed under this section shall be allocated among health care collaboratives on a pro rata basis to the extent that the allocation is feasible.

Sec. 848.153. EXAMINATIONS. (a) The commissioner may examine the financial affairs and operations of any health care collaborative or applicant for a certificate of authority under this chapter.

(b) A health care collaborative shall make its books and records relating to its financial affairs and operations available for an examination by the commissioner or attorney general.

(c) On request of the commissioner or attorney general, a health care collaborative shall provide to the commissioner or attorney general, as applicable:

- (1) a copy of any contract, agreement, or other arrangement between the health care collaborative and a physician or health care provider; and

(2) a general description of the fee arrangements between the health care collaborative and the physician or health care provider.

(d) Documentation provided to the commissioner or attorney general under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

(e) The commissioner or attorney general may disclose the results of an examination conducted under this section or documentation provided under this section to a governmental agency that contracts with a health care collaborative for the purpose of determining financial stability, readiness, or other contractual compliance needs.

[Sections 848.154-848.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 848.201. ENFORCEMENT ACTIONS. (a) After notice and opportunity for a hearing, the commissioner may:

(1) suspend or revoke a certificate of authority issued to a health care collaborative under this chapter;

(2) impose sanctions under Chapter 82;

(3) issue a cease and desist order under Chapter 83; or

(4) impose administrative penalties under Chapter 84.

(b) The commissioner may take an enforcement action listed in Subsection (a) against a health care collaborative if the commissioner finds that the health care collaborative:

(1) is operating in a manner that is:

(A) significantly contrary to its basic organizational documents; or

(B) contrary to the manner described in and reasonably inferred from other information submitted under Section 848.057;

(2) does not meet the requirements of Section 848.057;

(3) cannot fulfill its obligation to provide health care services as required under its contracts with governmental or private entities;

(4) does not meet the requirements of Chapter 1272, if applicable;

(5) has not implemented the complaint system required by Section 848.107 in a manner to resolve reasonably valid complaints;

(6) has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner or a person on behalf of the health care collaborative has advertised or merchandised the health care collaborative's services in an untrue, misrepresentative, misleading, deceptive, or untrue manner;

(7) has not complied substantially with this chapter or a rule adopted under this chapter;

(8) has not taken corrective action the commissioner considers necessary to correct a failure to comply with this chapter, any applicable provision of this code, or any applicable rule or order of the commissioner not later than the 30th day after the date of notice of the failure or within any longer period specified in the notice and determined by the commissioner to be reasonable; or

(9) has or is utilizing market power in an anticompetitive manner, in accordance with established antitrust principles of market power analysis.

Sec. 848.202. OPERATIONS DURING SUSPENSION OR AFTER REVOCATION OF CERTIFICATE OF AUTHORITY. (a) During the period a certificate of authority of a health care collaborative is suspended, the health care collaborative may not:

- (1) enter into a new contract with a governmental or private entity; or
- (2) advertise or solicit in any way.

(b) After a certificate of authority of a health care collaborative is revoked, the health care collaborative:

(1) shall proceed, immediately following the effective date of the order of revocation, to conclude its affairs;

(2) may not conduct further business except as essential to the orderly conclusion of its affairs; and

(3) may not advertise or solicit in any way.

(c) Notwithstanding Subsection (b), the commissioner may, by written order, permit the further operation of the health care collaborative to the extent that the commissioner finds necessary to serve the best interest of governmental or private entities that have entered into contracts with the health care collaborative.

Sec. 848.203. INJUNCTIONS. If the commissioner believes that a health care collaborative or another person is violating or has violated this chapter or a rule adopted under this chapter, the attorney general at the request of the commissioner may bring an action in a Travis County district court to enjoin the violation and obtain other relief the court considers appropriate.

Sec. 848.204. NOTICE. The commissioner shall:

(1) report any action taken under this subchapter to:

(A) the relevant state licensing or certifying agency or board; and

(B) the United States Department of Health and Human Services

National Practitioner Data Bank; and

(2) post notice of the action on the department's Internet website.

Sec. 848.205. INDEPENDENT AUTHORITY OF ATTORNEY GENERAL. (a) The attorney general may:

(1) investigate a health care collaborative with respect to anticompetitive behavior that is contrary to the goals and requirements of this chapter; and

(2) request that the commissioner:

(A) impose a penalty or sanction;

(B) issue a cease and desist order; or

(C) suspend or revoke the health care collaborative's certificate of

authority.

(b) This section does not limit any other authority or power of the attorney general.

SECTION 3.02. Paragraph (A), Subdivision (12), Subsection (a), Section 74.001, Civil Practice and Remedies Code, is amended to read as follows:

(A) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the State of Texas to provide health care, including:

(i) a registered nurse;

(ii) a dentist;

- (iii) a podiatrist;
- (iv) a pharmacist;
- (v) a chiropractor;
- (vi) an optometrist; ~~or~~
- (vii) a health care institution; or
- (viii) a health care collaborative certified under Chapter 848,

Insurance Code.

SECTION 3.03. Subchapter B, Chapter 1301, Insurance Code, is amended by adding Section 1301.0625 to read as follows:

Sec. 1301.0625. HEALTH CARE COLLABORATIVES. (a) Subject to the requirements of this chapter, a health care collaborative may be designated as a preferred provider under a preferred provider benefit plan and may offer enhanced benefits for care provided by the health care collaborative.

(b) A preferred provider contract between an insurer and a health care collaborative may use a payment methodology other than a fee-for-service or discounted fee methodology. A reimbursement methodology used in a contract under this subsection is not subject to Chapter 843.

(c) A contract authorized by Subsection (b) must specify that the health care collaborative and the physicians or providers providing health care services on behalf of the collaborative will hold an insured harmless for payment of the cost of covered health care services if the insurer or the health care collaborative do not pay the physician or health care provider for the services.

(d) An insurer issuing an exclusive provider benefit plan authorized by another law of this state may limit access to only preferred providers participating in a health care collaborative if the limitation is consistent with all requirements applicable to exclusive provider benefit plans.

SECTION 3.04. Subtitle F, Title 4, Health and Safety Code, is amended by adding Chapter 315 to read as follows:

CHAPTER 315. ESTABLISHMENT OF HEALTH CARE COLLABORATIVES

Sec. 315.001. AUTHORITY TO ESTABLISH HEALTH CARE COLLABORATIVE. A public hospital created under Subtitle C or D or a hospital district created under general or special law may form and sponsor a nonprofit health care collaborative that is certified under Chapter 848, Insurance Code.

SECTION 3.05. Section 102.005, Occupations Code, is amended to read as follows:

Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section 102.001 does not apply to:

- (1) a licensed insurer;
- (2) a governmental entity, including:
 - (A) an intergovernmental risk pool established under Chapter 172, Local Government Code; and
 - (B) a system as defined by Section 1601.003, Insurance Code;
- (3) a group hospital service corporation; ~~or~~
- (4) a health maintenance organization that reimburses, provides, offers to provide, or administers hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor; or

(5) a health care collaborative certified under Chapter 848, Insurance Code.

SECTION 3.06. Subdivision (5), Subsection (a), Section 151.002, Occupations Code, is amended to read as follows:

(5) "Health care entity" means:

(A) a hospital licensed under Chapter 241 or 577, Health and Safety Code;

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, hospital district, hospital authority, or other health care facility, that:

(i) provides or pays for medical care or health care services; and

(ii) follows a formal peer review process to further quality medical care or health care;

(C) a professional society or association of physicians, or a committee of such a society or association, that follows a formal peer review process to further quality medical care or health care; ~~or~~

(D) an organization established by a professional society or association of physicians, hospitals, or both, that:

(i) collects and verifies the authenticity of documents and other information concerning the qualifications, competence, or performance of licensed health care professionals; and

(ii) acts as a health care facility's agent under the Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.); or

(E) a health care collaborative certified under Chapter 848, Insurance Code.

SECTION 3.07. Not later than September 1, 2012, the commissioner of insurance and the attorney general shall adopt rules as necessary to implement this article.

SECTION 3.08. As soon as practicable after the effective date of this Act, the commissioner of insurance shall designate or employ staff with antitrust expertise sufficient to carry out the duties required by this Act.

ARTICLE 4. PATIENT IDENTIFICATION

SECTION 4.01. Subchapter A, Chapter 311, Health and Safety Code, is amended by adding Section 311.004 to read as follows:

Sec. 311.004. STANDARDIZED PATIENT RISK IDENTIFICATION SYSTEM. (a) In this section:

(1) "Department" means the Department of State Health Services.

(2) "Hospital" means a general or special hospital as defined by Section 241.003. The term includes a hospital maintained or operated by this state.

(b) The department shall coordinate with hospitals to develop a statewide standardized patient risk identification system under which a patient with a specific medical risk may be readily identified through the use of a system that communicates to hospital personnel the existence of that risk. The executive commissioner of the Health and Human Services Commission shall appoint an ad hoc committee of hospital representatives to assist the department in developing the statewide system.

(c) The department shall require each hospital to implement and enforce the statewide standardized patient risk identification system developed under Subsection (b) unless the department authorizes an exemption for the reason stated in Subsection (d).

(d) The department may exempt from the statewide standardized patient risk identification system a hospital that seeks to adopt another patient risk identification methodology supported by evidence-based protocols for the practice of medicine.

(e) The department shall modify the statewide standardized patient risk identification system in accordance with evidence-based medicine as necessary.

(f) The executive commissioner of the Health and Human Services Commission may adopt rules to implement this section.

ARTICLE 5. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS

SECTION 5.01. Section 98.001, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Subdivisions (8-a) and (10-a) to read as follows:

(8-a) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care facility.

(10-a) "Potentially preventable complication" and "potentially preventable readmission" have the meanings assigned by Section 1002.001, Health and Safety Code.

SECTION 5.02. Subsection (c), Section 98.102, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(c) The data reported by health care facilities to the department must contain sufficient patient identifying information to:

(1) avoid duplicate submission of records;

(2) allow the department to verify the accuracy and completeness of the data reported; and

(3) for data reported under Section 98.103 [~~or 98.104~~], allow the department to risk adjust the facilities' infection rates.

SECTION 5.03. Section 98.103, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by amending Subsection (b) and adding Subsection (d-1) to read as follows:

(b) A pediatric and adolescent hospital shall report the incidence of surgical site infections, including the causative pathogen if the infection is laboratory-confirmed, occurring in the following procedures to the department:

- (1) cardiac procedures, excluding thoracic cardiac procedures;
- (2) ventricular [~~ventriculo~~peritoneal] shunt procedures; and
- (3) spinal surgery with instrumentation.

(d-1) The executive commissioner by rule may designate the federal Centers for Disease Control and Prevention's National Healthcare Safety Network, or its successor, to receive reports of health care-associated infections from health care facilities on behalf of the department. A health care facility must file a report required in accordance with a designation made under this subsection in accordance with the

National Healthcare Safety Network's definitions, methods, requirements, and procedures. A health care facility shall authorize the department to have access to facility-specific data contained in a report filed with the National Healthcare Safety Network in accordance with a designation made under this subsection.

SECTION 5.04. Section 98.1045, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Subsection (c) to read as follows:

(c) The executive commissioner by rule may designate an agency of the United States Department of Health and Human Services to receive reports of preventable adverse events by health care facilities on behalf of the department. A health care facility shall authorize the department to have access to facility-specific data contained in a report made in accordance with a designation made under this subsection.

SECTION 5.05. Subchapter C, Chapter 98, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Sections 98.1046 and 98.1047 to read as follows:

Sec. 98.1046. PUBLIC REPORTING OF CERTAIN POTENTIALLY PREVENTABLE EVENTS FOR HOSPITALS. (a) In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the department, using data submitted under Chapter 108, shall publicly report for hospitals in this state risk-adjusted outcome rates for those potentially preventable complications and potentially preventable readmissions that the department, in consultation with the institute, has determined to be the most effective measures of quality and efficiency.

(b) The department shall make the reports compiled under Subsection (a) available to the public on the department's Internet website.

(c) The department may not disclose the identity of a patient or health care professional in the reports authorized in this section.

Sec. 98.1047. STUDIES ON LONG-TERM CARE FACILITY REPORTING OF ADVERSE HEALTH CONDITIONS. (a) In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the department shall study which adverse health conditions commonly occur in long-term care facilities and, of those health conditions, which are potentially preventable.

(b) The department shall develop recommendations for reporting adverse health conditions identified under Subsection (a).

SECTION 5.06. Section 98.105, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 98.105. REPORTING SYSTEM MODIFICATIONS. Based on the recommendations of the advisory panel, the executive commissioner by rule may modify in accordance with this chapter the list of procedures that are reportable under Section 98.103 ~~or 98.104~~. The modifications must be based on changes in reporting guidelines and in definitions established by the federal Centers for Disease Control and Prevention.

SECTION 5.07. Subsections (a), (b), and (d), Section 98.106, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

(a) The department shall compile and make available to the public a summary, by health care facility, of:

(1) the infections reported by facilities under Section [~~Sections~~] 98.103 [~~and 98.104~~]; and

(2) the preventable adverse events reported by facilities under Section 98.1045.

(b) Information included in the departmental summary with respect to infections reported by facilities under Section [~~Sections~~] 98.103 [~~and 98.104~~] must be risk adjusted and include a comparison of the risk-adjusted infection rates for each health care facility in this state that is required to submit a report under Section [~~Sections~~] 98.103 [~~and 98.104~~].

(d) The department shall publish the departmental summary at least annually and may publish the summary more frequently as the department considers appropriate. Data made available to the public must include aggregate data covering a period of at least a full calendar quarter.

SECTION 5.08. Subchapter C, Chapter 98, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Section 98.1065 to read as follows:

Sec. 98.1065. STUDY OF INCENTIVES AND RECOGNITION FOR HEALTH CARE QUALITY. The department, in consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, shall conduct a study on developing a recognition program to recognize exemplary health care facilities for superior quality of health care and make recommendations based on that study.

SECTION 5.09. Section 98.108, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 98.108. FREQUENCY OF REPORTING. (a) In consultation with the advisory panel, the executive commissioner by rule shall establish the frequency of reporting by health care facilities required under Sections 98.103[~~, 98.104,~~] and 98.1045.

(b) Except as provided by Subsection (c), facilities [~~Facilities~~] may not be required to report more frequently than quarterly.

(c) The executive commissioner may adopt rules requiring reporting more frequently than quarterly if more frequent reporting is necessary to meet the requirements for participation in the federal Centers for Disease Control and Prevention's National Healthcare Safety Network.

SECTION 5.10. Subsection (a), Section 98.109, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(a) Except as provided by Sections 98.1046, 98.106₂, and 98.110, all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

SECTION 5.11. Section 98.110, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 98.110. DISCLOSURE AMONG CERTAIN AGENCIES.

(a) Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103[~~98.104~~] or 98.1045 to other programs within the department, to the Health and Human Services Commission, ~~and~~ to other health and human services agencies, as defined by Section 531.001, Government Code, and to the federal Centers for Disease Control and Prevention, or any other agency of the United States Department of Health and Human Services, for public health research or analysis purposes only, provided that the research or analysis relates to health care-associated infections or preventable adverse events. The privilege and confidentiality provisions contained in this chapter apply to such disclosures.

(b) If the executive commissioner designates an agency of the United States Department of Health and Human Services to receive reports of health care-associated infections or preventable adverse events, that agency may use the information submitted for purposes allowed by federal law.

SECTION 5.12. Section 98.104, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is repealed.

SECTION 5.13. Not later than December 1, 2012, the Department of State Health Services shall submit a report regarding recommendations for improved health care reporting to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate standing committees of the legislature outlining:

(1) the initial assessment in the study conducted under Section 98.1065, Health and Safety Code, as added by this Act;

(2) based on the study described by Subdivision (1) of this subsection, the feasibility and desirability of establishing a recognition program to recognize exemplary health care facilities for superior quality of health care;

(3) the recommendations developed under Section 98.1065, Health and Safety Code, as added by this Act; and

(4) the changes in existing law that would be necessary to implement the recommendations described by Subdivision (3) of this subsection.

ARTICLE 6. INFORMATION MAINTAINED BY DEPARTMENT OF STATE HEALTH SERVICES

SECTION 6.01. Section 108.002, Health and Safety Code, is amended by adding Subdivisions (4-a) and (8-a) and amending Subdivision (7) to read as follows:

(4-a) "Commission" means the Health and Human Services Commission.

(7) "Department" means the [Texas] Department of State Health Services.

(8-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 6.02. Chapter 108, Health and Safety Code, is amended by adding Section 108.0026 to read as follows:

Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL.

(a) The powers and duties of the Texas Health Care Information Council under this chapter were transferred to the Department of State Health Services in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

(b) In this chapter or other law, a reference to the Texas Health Care Information Council means the Department of State Health Services.

SECTION 6.03. Subsection (h), Section 108.009, Health and Safety Code, is amended to read as follows:

(h) The department [council] shall coordinate data collection with the data submission formats used by hospitals and other providers. The department [council] shall accept data in the format developed by the American National Standards Institute [National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA 1500] or its successor [their successors] or other nationally [universally] accepted standardized forms that hospitals and other providers use for other complementary purposes.

SECTION 6.04. Section 108.013, Health and Safety Code, is amended by amending Subsections (a) through (d), (g), (i), and (j) and adding Subsections (k) through (n) to read as follows:

(a) The data received by the department under this chapter [council] shall be used by the department and commission [council] for the benefit of the public. Subject to specific limitations established by this chapter and executive commissioner [council] rule, the department [council] shall make determinations on requests for information in favor of access.

(b) The executive commissioner [council] by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department [council] may not release and a person or entity may not gain access to any data obtained under this chapter:

- (1) that could reasonably be expected to reveal the identity of a patient;
- (2) that could reasonably be expected to reveal the identity of a physician;
- (3) disclosing provider discounts or differentials between payments and billed charges;
- (4) relating to actual payments to an identified provider made by a payer; or
- (5) submitted to the department [council] in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all [All] data collected and used by the department [and the council] under this chapter is subject to the confidentiality provisions and criminal penalties of:

- (1) Section 311.037;
- (2) Section 81.103; and
- (3) Section 159.002, Occupations Code.

(g) Unless specifically authorized by this chapter, the department [The council] may not release data elements in a manner that will reveal the identity of a patient. The department [council] may not release data elements in a manner that will reveal the identity of a physician.

(i) Notwithstanding any other law and except as provided by this section, the [council and the] department may not provide information made confidential by this section to any other agency of this state.

(j) The executive commissioner [council] shall by rule[~~, with the assistance of the advisory committee under Section 108.003(g)(5),~~] develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any department or commission program if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Confidential data collected under this chapter that is disclosed to a department or commission program remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department or commission program:

(1) Section 81.103;

(2) Sections 108.010(g) and (h);

(3) Sections 108.011(e) and (f);

(4) Section 311.037; and

(5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

SECTION 6.05. Section 108.0135, Health and Safety Code, is amended to read as follows:

Sec. 108.0135. INSTITUTIONAL [SCIENTIFIC] REVIEW BOARD [PANEL]. (a) The department [council] shall establish an institutional [a scientific] review board [panel] to review and approve requests for access to data not contained in [information other than] public use data. The members of the institutional review board must [panel shall] have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board [panel] in determining whether to approve a request for information, the executive commissioner [council] shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' [Health Care Financing Administration's] guidelines on releasing data.

(c) A request for information other than public use data must be made on the form prescribed [created] by the department [council].

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

SECTION 6.06. Effective September 1, 2014, Subdivisions (5) and (18), Section 108.002, Section 108.0025, and Subsection (c), Section 108.009, Health and Safety Code, are repealed.

ARTICLE 7. ADOPTION OF VACCINE PREVENTABLE DISEASES POLICY
BY HEALTH CARE FACILITIES

SECTION 7.01. The heading to Subtitle A, Title 4, Health and Safety Code, is amended to read as follows:

SUBTITLE A. FINANCING, CONSTRUCTING, REGULATING, AND
INSPECTING
HEALTH FACILITIES

SECTION 7.02. Subtitle A, Title 4, Health and Safety Code, is amended by adding Chapter 224 to read as follows:

CHAPTER 224. POLICY ON VACCINE PREVENTABLE DISEASES

Sec. 224.001. DEFINITIONS. In this chapter:

(1) "Covered individual" means:

(A) an employee of the health care facility;

(B) an individual providing direct patient care under a contract with a health care facility; or

(C) an individual to whom a health care facility has granted privileges to provide direct patient care.

(2) "Health care facility" means:

(A) a facility licensed under Subtitle B, including a hospital as defined by Section 241.003; or

(B) a hospital maintained or operated by this state.

(3) "Regulatory authority" means a state agency that regulates a health care facility under this code.

(4) "Vaccine preventable diseases" means the diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Sec. 224.002. VACCINE PREVENTABLE DISEASES POLICY REQUIRED.

(a) Each health care facility shall develop and implement a policy to protect its patients from vaccine preventable diseases.

(b) The policy must:

(1) require covered individuals to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(2) specify the vaccines a covered individual is required to receive based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(3) include procedures for verifying whether a covered individual has complied with the policy;

(4) include procedures for a covered individual to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a covered individual who is exempt from the required vaccines, include procedures the individual must follow to protect facility patients from exposure to disease, such as the use of protective medical equipment, such as gloves and masks, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(6) prohibit discrimination or retaliatory action against a covered individual who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the health care facility to maintain a written or electronic record of each covered individual's compliance with or exemption from the policy; and

(8) include disciplinary actions the health care facility is authorized to take against a covered individual who fails to comply with the policy.

(c) The policy may include procedures for a covered individual to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

Sec. 224.003. DISASTER EXEMPTION. (a) In this section, "public health disaster" has the meaning assigned by Section 81.003.

(b) During a public health disaster, a health care facility may prohibit a covered individual who is exempt from the vaccines required in the policy developed by the facility under Section 224.002 from having contact with facility patients.

Sec. 224.004. DISCIPLINARY ACTION. A health care facility that violates this chapter is subject to an administrative or civil penalty in the same manner, and subject to the same procedures, as if the facility had violated a provision of this code that specifically governs the facility.

Sec. 224.005. RULES. The appropriate rulemaking authority for each regulatory authority shall adopt rules necessary to implement this chapter.

SECTION 7.03. Not later than June 1, 2012, a state agency that regulates a health care facility subject to Chapter 224, Health and Safety Code, as added by this article, shall adopt the rules necessary to implement that chapter.

SECTION 7.04. Notwithstanding Chapter 224, Health and Safety Code, as added by this article, a health care facility subject to that chapter is not required to have a policy on vaccine preventable diseases in effect until September 1, 2012.

ARTICLE 8. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION PARTNERSHIP PROGRAM

SECTION 8.01. Chapter 61, Education Code, is amended by adding Subchapter GG to read as follows:

SUBCHAPTER GG. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION PARTNERSHIP PROGRAM

Sec. 61.9801. DEFINITIONS. In this subchapter:

(1) "Emergency and trauma care education partnership" means a partnership that:

(A) consists of one or more hospitals in this state and one or more graduate professional nursing or graduate medical education programs in this state; and

(B) serves to increase training opportunities in emergency and trauma care for doctors and registered nurses at participating graduate medical education and graduate professional nursing programs.

(2) "Participating education program" means a graduate professional nursing program as that term is defined by Section 54.221 or a graduate medical education program leading to board certification by the American Board of Medical Specialties that participates in an emergency and trauma care education partnership.

Sec. 61.9802. PROGRAM: ESTABLISHMENT; ADMINISTRATION; PURPOSE. (a) The Texas emergency and trauma care education partnership program is established.

(b) The board shall administer the program in accordance with this subchapter and rules adopted under this subchapter.

(c) Under the program, to the extent funds are available under Section 61.9805, the board shall make grants to emergency and trauma care education partnerships to assist those partnerships to meet the state's needs for doctors and registered nurses with training in emergency and trauma care by offering one-year or two-year fellowships to students enrolled in graduate professional nursing or graduate medical education programs through collaboration between hospitals and graduate professional nursing or graduate medical education programs and the use of the existing expertise and facilities of those hospitals and programs.

Sec. 61.9803. GRANTS: CONDITIONS; LIMITATIONS. (a) The board may make a grant under this subchapter to an emergency and trauma care education partnership only if the board determines that:

(1) the partnership will meet applicable standards for instruction and student competency for each program offered by each participating education program;

(2) each participating education program will, as a result of the partnership, enroll in the education program a sufficient number of additional students as established by the board;

(3) each hospital participating in an emergency and trauma care education partnership will provide to students enrolled in a participating education program clinical placements that:

(A) allow the students to take part in providing or to observe, as appropriate, emergency and trauma care services offered by the hospital; and

(B) meet the clinical education needs of the students; and

(4) the partnership will satisfy any other requirement established by board rule.

(b) A grant under this subchapter may be spent only on costs related to the development or operation of an emergency and trauma care education partnership that prepares a student to complete a graduate professional nursing program with a specialty focus on emergency and trauma care or earn board certification by the American Board of Medical Specialties.

Sec. 61.9804. PRIORITY FOR FUNDING. In awarding a grant under this subchapter, the board shall give priority to an emergency and trauma care education partnership that submits a proposal that:

(1) provides for collaborative educational models between one or more participating hospitals and one or more participating education programs that have signed a memorandum of understanding or other written agreement under which the participants agree to comply with standards established by the board, including any standards the board may establish that:

(A) provide for program management that offers a centralized decision-making process allowing for inclusion of each entity participating in the partnership;

(B) provide for access to clinical training positions for students in graduate professional nursing and graduate medical education programs that are not participating in the partnership; and

(C) specify the details of any requirement relating to a student in a participating education program being employed after graduation in a hospital participating in the partnership, including any details relating to the employment of students who do not complete the program, are not offered a position at the hospital, or choose to pursue other employment;

(2) includes a demonstrable education model to:

(A) increase the number of students enrolled in, the number of students graduating from, and the number of faculty employed by each participating education program; and

(B) improve student or resident retention in each participating education program;

(3) indicates the availability of money to match a portion of the grant money, including matching money or in-kind services approved by the board from a hospital, private or nonprofit entity, or institution of higher education;

(4) can be replicated by other emergency and trauma care education partnerships or other graduate professional nursing or graduate medical education programs; and

(5) includes plans for sustainability of the partnership.

Sec. 61.9805. GRANTS, GIFTS, AND DONATIONS. In addition to money appropriated by the legislature, the board may solicit, accept, and spend grants, gifts, and donations from any public or private source for the purposes of this subchapter.

Sec. 61.9806. RULES. The board shall adopt rules for the administration of the Texas emergency and trauma care education partnership program. The rules must include:

(1) provisions relating to applying for a grant under this subchapter; and

(2) standards of accountability consistent with other graduate professional nursing and graduate medical education programs to be met by any emergency and trauma care education partnership awarded a grant under this subchapter.

Sec. 61.9807. ADMINISTRATIVE COSTS. A reasonable amount, not to exceed three percent, of any money appropriated for purposes of this subchapter may be used to pay the costs of administering this subchapter.

SECTION 8.02. As soon as practicable after the effective date of this article, the Texas Higher Education Coordinating Board shall adopt rules for the implementation and administration of the Texas emergency and trauma care education partnership

program established under Subchapter GG, Chapter 61, Education Code, as added by this article. The board may adopt the initial rules in the manner provided by law for emergency rules.

ARTICLE 9. INTERSTATE HEALTH CARE COMPACT

SECTION 9.01. Title 15, Insurance Code, is amended by adding Chapter 5002 to read as follows:

CHAPTER 5002. INTERSTATE HEALTH CARE COMPACT

Sec. 5002.001. EXECUTION OF COMPACT. This state enacts the Interstate Health Care Compact and enters into the compact with all other states legally joining in the compact in substantially the following form:

Whereas, the separation of powers, both between the branches of the Federal government and between Federal and State authority, is essential to the preservation of individual liberty;

Whereas, the Constitution creates a Federal government of limited and enumerated powers, and reserves to the States or to the people those powers not granted to the Federal government;

Whereas, the Federal government has enacted many laws that have preempted State laws with respect to Health Care, and placed increasing strain on State budgets, impairing other responsibilities such as education, infrastructure, and public safety;

Whereas, the Member States seek to protect individual liberty and personal control over Health Care decisions, and believe the best method to achieve these ends is by vesting regulatory authority over Health Care in the States;

Whereas, by acting in concert, the Member States may express and inspire confidence in the ability of each Member State to govern Health Care effectively; and

Whereas, the Member States recognize that consent of Congress may be more easily secured if the Member States collectively seek consent through an interstate compact;

NOW THEREFORE, the Member States hereto resolve, and by the adoption into law under their respective State Constitutions of this Health Care Compact, agree, as follows:

Sec. 1. Definitions. As used in this Compact, unless the context clearly indicates otherwise:

"Commission" means the Interstate Advisory Health Care Commission.

"Effective Date" means the date upon which this Compact shall become effective for purposes of the operation of State and Federal law in a Member State, which shall be the later of:

(a) the date upon which this Compact shall be adopted under the laws of the Member State, and

(b) the date upon which this Compact receives the consent of Congress pursuant to Article I, Section 10, of the United States Constitution, after at least two Member States adopt this Compact.

"Health Care" means care, services, supplies, or plans related to the health of an individual and includes but is not limited to:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body, and

(b) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription, and

(c) an individual or group plan that provides, or pays the cost of, care, services, or supplies related to the health of an individual, except any care, services, supplies, or plans provided by the United States Department of Defense and United States Department of Veterans Affairs, or provided to Native Americans.

"Member State" means a State that is signatory to this Compact and has adopted it under the laws of that State.

"Member State Base Funding Level" means a number equal to the total Federal spending on Health Care in the Member State during Federal fiscal year 2010. On or before the Effective Date, each Member State shall determine the Member State Base Funding Level for its State, and that number shall be binding upon that Member State.

"Member State Current Year Funding Level" means the Member State Base Funding Level multiplied by the Member State Current Year Population Adjustment Factor multiplied by the Current Year Inflation Adjustment Factor.

"Member State Current Year Population Adjustment Factor" means the average population of the Member State in the current year less the average population of the Member State in Federal fiscal year 2010, divided by the average population of the Member State in Federal fiscal year 2010, plus 1. Average population in a Member State shall be determined by the United States Census Bureau.

"Current Year Inflation Adjustment Factor" means the Total Gross Domestic Product Deflator in the current year divided by the Total Gross Domestic Product Deflator in Federal fiscal year 2010. Total Gross Domestic Product Deflator shall be determined by the Bureau of Economic Analysis of the United States Department of Commerce.

Sec. 2. Pledge. The Member States shall take joint and separate action to secure the consent of the United States Congress to this Compact in order to return the authority to regulate Health Care to the Member States consistent with the goals and principles articulated in this Compact. The Member States shall improve Health Care policy within their respective jurisdictions and according to the judgment and discretion of each Member State.

Sec. 3. Legislative Power. The legislatures of the Member States have the primary responsibility to regulate Health Care in their respective States.

Sec. 4. State Control. Each Member State, within its State, may suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding Health Care that are inconsistent with the laws and regulations adopted by the Member State pursuant to this Compact. Federal and State laws, rules, regulations, and orders regarding Health Care will remain in effect unless a Member State expressly suspends them pursuant to its authority under this Compact. For any federal law, rule, regulation, or order that remains in effect in a Member State after the Effective Date, that Member State shall be responsible for the associated funding obligations in its State.

Sec. 5. Funding.

(a) Each Federal fiscal year, each Member State shall have the right to Federal monies up to an amount equal to its Member State Current Year Funding Level for that Federal fiscal year, funded by Congress as mandatory spending and not subject to

annual appropriation, to support the exercise of Member State authority under this Compact. This funding shall not be conditional on any action of or regulation, policy, law, or rule being adopted by the Member State.

(b) By the start of each Federal fiscal year, Congress shall establish an initial Member State Current Year Funding Level for each Member State, based upon reasonable estimates. The final Member State Current Year Funding Level shall be calculated, and funding shall be reconciled by the United States Congress based upon information provided by each Member State and audited by the United States Government Accountability Office.

Sec. 6. Interstate Advisory Health Care Commission.

(a) The Interstate Advisory Health Care Commission is established. The Commission consists of members appointed by each Member State through a process to be determined by each Member State. A Member State may not appoint more than two members to the Commission and may withdraw membership from the Commission at any time. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the Commission's total membership.

(b) The Commission may elect from among its membership a Chairperson. The Commission may adopt and publish bylaws and policies that are not inconsistent with this Compact. The Commission shall meet at least once a year, and may meet more frequently.

(c) The Commission may study issues of Health Care regulation that are of particular concern to the Member States. The Commission may make non-binding recommendations to the Member States. The legislatures of the Member States may consider these recommendations in determining the appropriate Health Care policies in their respective States.

(d) The Commission shall collect information and data to assist the Member States in their regulation of Health Care, including assessing the performance of various State Health Care programs and compiling information on the prices of Health Care. The Commission shall make this information and data available to the legislatures of the Member States. Notwithstanding any other provision in this Compact, no Member State shall disclose to the Commission the health information of any individual, nor shall the Commission disclose the health information of any individual.

(e) The Commission shall be funded by the Member States as agreed to by the Member States. The Commission shall have the responsibilities and duties as may be conferred upon it by subsequent action of the respective legislatures of the Member States in accordance with the terms of this Compact.

(f) The Commission shall not take any action within a Member State that contravenes any State law of that Member State.

Sec. 7. Congressional Consent. This Compact shall be effective on its adoption by at least two Member States and consent of the United States Congress. This Compact shall be effective unless the United States Congress, in consenting to this Compact, alters the fundamental purposes of this Compact, which are:

(a) To secure the right of the Member States to regulate Health Care in their respective States pursuant to this Compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their States; and

(b) To secure Federal funding for Member States that choose to invoke their authority under this Compact, as prescribed by Section 5 above.

Sec. 8. Amendments. The Member States, by unanimous agreement, may amend this Compact from time to time without the prior consent or approval of Congress and any amendment shall be effective unless, within one year, the Congress disapproves that amendment. Any State may join this Compact after the date on which Congress consents to the Compact by adoption into law under its State Constitution.

Sec. 9. Withdrawal; Dissolution. Any Member State may withdraw from this Compact by adopting a law to that effect, but no such withdrawal shall take effect until six months after the Governor of the withdrawing Member State has given notice of the withdrawal to the other Member States. A withdrawing State shall be liable for any obligations that it may have incurred prior to the date on which its withdrawal becomes effective. This Compact shall be dissolved upon the withdrawal of all but one of the Member States.

SECTION 9.02. This article takes effect immediately if the Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 10. COVERED SERVICES OF CERTAIN HEALTH CARE PRACTITIONERS

SECTION 10.01. Section 1451.109, Insurance Code, is amended to read as follows:

Sec. 1451.109. SELECTION OF CHIROPRACTOR. (a) An insured may select a chiropractor to provide the medical or surgical services or procedures scheduled in the health insurance policy that are within the scope of the chiropractor's license.

(b) If physical modalities and procedures are covered services under a health insurance policy and within the scope of the license of a chiropractor and one or more other type of practitioner, a health insurance policy issuer may not:

(1) deny payment or reimbursement for physical modalities and procedures provided by a chiropractor if:

(A) the chiropractor provides the modalities and procedures in strict compliance with laws and rules relating to a chiropractor's license; and

(B) the health insurance policy issuer allows payment or reimbursement for the same physical modalities and procedures performed by another type of practitioner;

(2) make payment or reimbursement for particular covered physical modalities and procedures within the scope of a chiropractor's practice contingent on treatment or examination by a practitioner that is not a chiropractor; or

(3) establish other limitations on the provision of covered physical modalities and procedures that would prohibit an insured from seeking the covered physical modalities and procedures from a chiropractor to the same extent that the insured may obtain covered physical modalities and procedures from another type of practitioner.

(c) Nothing in this section requires a health insurance policy issuer to cover particular services or affects the ability of a health insurance policy issuer to determine whether specific procedures for which payment or reimbursement is requested are medically necessary.

(d) This section does not apply to:

(1) workers' compensation insurance coverage as defined by Section 401.011, Labor Code;

(2) a self-insured employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(3) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(4) a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

SECTION 10.02. The changes in law made by this article to Section 1451.109, Insurance Code, apply only to a health insurance policy that is delivered, issued for delivery, or renewed on or after the effective date of this Act. A policy delivered, issued for delivery, or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

ARTICLE 11. EFFECTIVE DATE

SECTION 11.01. Except as specifically provided by this Act, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 8** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1811

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1811** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

DUNCAN
DEUELL
PATRICK

PITTS
CROWNOVER
EISSLER

WEST
WILLIAMS

On the part of the Senate

GEREN

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to certain state fiscal matters; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. FOUNDATION SCHOOL PROGRAM PAYMENTS

SECTION 1.01. Subsections (c), (d), and (f), Section 42.259, Education Code, are amended to read as follows:

(c) Payments from the foundation school fund to each category 2 school district shall be made as follows:

(1) 22 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of September of a fiscal year;

(2) 18 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of October;

(3) 9.5 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of November;

(4) 7.5 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of April;

(5) five percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of May;

(6) 10 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of June;

(7) 13 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of July; and

(8) 15 percent of the yearly entitlement of the district shall be paid in an installment to be made after the 5th day of September and not later than the 10th day of September of the calendar year following the calendar year of the payment made under Subdivision (1) [on or before the 25th day of August].

(d) Payments from the foundation school fund to each category 3 school district shall be made as follows:

(1) 45 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of September of a fiscal year;

(2) 35 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of October; and

(3) 20 percent of the yearly entitlement of the district shall be paid in an installment to be made after the 5th day of September and not later than the 10th day of September of the calendar year following the calendar year of the payment made under Subdivision (1) [on or before the 25th day of August].

(f) Except as provided by Subsection (c)(8) or (d)(3), any ~~Any~~ previously unpaid additional funds from prior fiscal years owed to a district shall be paid to the district together with the September payment of the current fiscal year entitlement.

SECTION 1.02. The changes made by this article to Section 42.259, Education Code, apply only to a payment from the foundation school fund that is made on or after the effective date of this Act. A payment to a school district from the foundation

school fund that is made before that date is governed by Section 42.259, Education Code, as it existed before amendment by this article, and the former law is continued in effect for that purpose.

ARTICLE 2. FISCAL MATTERS REGARDING REGULATION AND TAXATION OF INSURERS

SECTION 2.01. Section 221.006, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) An insurer is not entitled to a credit under Subsection (a) for an examination or evaluation fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.02. Section 222.007, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) An insurer or health maintenance organization is not entitled to a credit under Subsection (a) for an examination or evaluation fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.03. Section 223.009, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) A title insurance company is not entitled to a credit under Subsection (a) for an examination or evaluation fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.04. Section 401.151, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) An insurer is not entitled to a credit under Subsection (e) for an examination or evaluation fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.05. Section 401.154, Insurance Code, is amended to read as follows:

Sec. 401.154. TAX CREDIT AUTHORIZED. (a) An insurer is entitled to a credit on the amount of premium taxes to be paid by the insurer for all examination fees paid under Section 401.153. The insurer may take the credit for the taxable year during which the examination fees are paid and may take the credit to the same extent the insurer may take a credit for examination fees paid when a salaried department examiner conducts the examination.

(b) An insurer is not entitled to a credit under Subsection (a) for an examination fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.06. Section 463.160, Insurance Code, is amended to read as follows:

Sec. 463.160. PREMIUM TAX CREDIT FOR CLASS A ASSESSMENT. The amount of a Class A assessment paid by a member insurer in each taxable year shall be allowed as a credit on the amount of premium taxes due ~~[in the same manner as a credit is allowed under Section 401.151(e)].~~

SECTION 2.07. The changes in law made by this article apply only to a tax credit for an examination or evaluation fee paid on or after January 1, 2012. Tax credits for examination or evaluation fees paid before January 1, 2012, are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

ARTICLE 4. STATE SALES AND FRANCHISE TAX REFUNDS FOR CERTAIN
AD VALOREM TAXPAYERS

SECTION 4.01. Subchapter F, Chapter 111, Tax Code, is repealed.

SECTION 4.02. The repeal of Subchapter F, Chapter 111, Tax Code, by this article does not affect an eligible person's right to claim a refund of state sales and use and state franchise taxes that was established under Section 111.301, Tax Code, in relation to taxes paid before the effective date of this article in a calendar year for which the person paid ad valorem taxes to a school district as provided by Section 111.301, Tax Code, before the effective date of this article. An eligible person's right to claim a refund of state sales and use and state franchise taxes that was established under Section 111.301, Tax Code, in relation to taxes paid before the effective date of this article in a calendar year for which the person paid ad valorem taxes to a school district as provided by Section 111.301, Tax Code, before the effective date of this article is governed by the law in effect on the date the right to claim the refund was established, and the former law is continued in effect for that purpose.

ARTICLE 5. TAX RECORDS

SECTION 5.01. Section 2153.201, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A record required under Subsection (a) must:

(1) be available at all times for inspection by the attorney general, the comptroller, or an authorized representative of the attorney general or comptroller as provided by Subsection (c);

(2) include information relating to:

(A) the kind of each machine;

(B) the date each machine is:

(i) acquired or received in this state; and

(ii) placed in operation;

(C) the location of each machine, including the:

(i) county;

(ii) municipality, if any; and

(iii) street or rural route number;

(D) the name and complete address of each operator of each machine;

(E) if the owner is an individual, the full name and address of the owner; and

(F) if the owner is not an individual, the name and address of each principal officer or member of the owner; and

(3) be maintained[:

~~[(A)] at a permanent address in this state designated on the application for a license under Section 2153.153[; and~~

~~[(B) until the second anniversary of the date the owner ceases ownership of the machine that is the subject of the record].~~

(c) A record required under Subsection (a) must be available for inspection under Subsection (b) for at least four years and as required by Section 111.0041, Tax Code.

SECTION 5.02. Section 111.0041, Tax Code, is amended to read as follows:

Sec. 111.0041. RECORDS; BURDEN TO PRODUCE AND SUBSTANTIATE CLAIMS. (a) Except as provided by Subsection (b), a [Any] taxpayer who is required by this title to keep records shall keep those records open to inspection by the comptroller, the attorney general, or the authorized representatives of either of them for at least four years.

(b) A taxpayer is required to keep records open for inspection under Subsection (a) for more than four years throughout any period when:

(1) any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller; or

(2) an administrative hearing is pending before the comptroller, or a judicial proceeding is pending, to determine the amount of the tax, penalty, or interest that is to be assessed, collected, or refunded.

(c) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax or fee for the period in question to substantiate and enable verification of the taxpayer's claim related to the amount of tax, penalty, or interest to be assessed, collected, or refunded in an administrative or judicial proceeding. Contemporaneous records and supporting documentation appropriate to the tax or fee include invoices, vouchers, checks, shipping records, contracts, and other equivalent records, such as electronically stored images of such documents, reflecting legal relationships and taxes collected or paid.

(d) Summary records submitted by the taxpayer, including accounting journals and ledgers, without supporting contemporaneous records and documentation for the period in question are not sufficient to substantiate and enable verification of the taxpayer's claim regarding the amount of tax, penalty, or interest that may be assessed, collected, or refunded.

(e) This section prevails over any other conflicting provision of this title.

SECTION 5.03. Section 112.052, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax or fee for the period in question to substantiate and enable verification of a taxpayer's claim relating to the amount of the tax, penalty, or interest that is to be assessed, collected, or refunded, as required by Section 111.0041.

SECTION 5.04. Section 112.151, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax or fee for the period in question to substantiate and enable verification of a taxpayer's claim relating to the amount of the tax, penalty, or interest that is to be assessed, collected, or refunded, as required by Section 111.0041.

SECTION 5.05. Section 151.025(b), Tax Code, is amended to read as follows:

(b) A record required by Subsection (a) [of this section] shall be kept for not less than four years from the date [day] that it is made unless:

- (1) the comptroller authorizes in writing its destruction at an earlier date; or
- (2) Section 111.0041 requires that the record be kept for a longer period.

SECTION 5.06. Section 152.063, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) Section 111.0041 applies to a person required to keep records under this chapter.

SECTION 5.07. Section 152.0635, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) Section 111.0041 applies to a person required to keep records under this chapter.

SECTION 5.08. Section 154.209(a), Tax Code, is amended to read as follows:

(a) Except as provided by Section 111.0041, each ~~[Each]~~ permit holder shall keep records available for inspection and copying by the comptroller and the attorney general for at least four years.

SECTION 5.09. Section 155.110(a), Tax Code, is amended to read as follows:

(a) Except as provided by Section 111.0041, each ~~[Each]~~ permit holder shall keep records available for inspection and copying by the comptroller and the attorney general for at least four years.

SECTION 5.10. Section 160.046, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) A person required to keep records under this section shall also keep the records as required by Section 111.0041.

SECTION 5.11. Subchapter A, Chapter 162, Tax Code, is amended by adding Section 162.0125 to read as follows:

Sec. 162.0125. DUTY TO KEEP RECORDS. A person required to keep a record under this chapter shall also keep the record as required by Section 111.0041.

SECTION 5.12. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 6. UNCLAIMED PROPERTY

SECTION 6.01. Subsection (a), Section 72.101, Property Code, is amended to read as follows:

(a) Except as provided by this section and Sections 72.1015, 72.1016, 72.1017, and 72.102, personal property is presumed abandoned if, for longer than three years:

(1) the existence and location of the owner of the property is unknown to the holder of the property; and

(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

SECTION 6.02. Subchapter B, Chapter 72, Property Code, is amended by adding Section 72.1017 to read as follows:

Sec. 72.1017. UTILITY DEPOSITS. (a) In this section:

(1) "Utility" has the meaning assigned by Section 183.001, Utilities Code.

(2) "Utility deposit" is a refundable money deposit a utility requires a user of the utility service to pay as a condition of initiating the service.

(b) Notwithstanding Section 73.102, a utility deposit is presumed abandoned on the latest of:

(1) the first anniversary of the date a refund check for the utility deposit was payable to the owner of the deposit;

(2) the first anniversary of the date the utility last received documented communication from the owner of the utility deposit; or

(3) the first anniversary of the date the utility issued a refund check for the deposit payable to the owner of the deposit if, according to the knowledge and records of the utility or payor of the check, during that period, a claim to the check has not been asserted or an act of ownership by the payee has not been exercised.

SECTION 6.03. Subsection (c), Section 72.102, Property Code, is amended to read as follows:

(c) A money order to which Subsection (a) applies is presumed to be abandoned on the latest of:

(1) the third [~~seventh~~] anniversary of the date on which the money order was issued;

(2) the third [~~seventh~~] anniversary of the date on which the issuer of the money order last received from the owner of the money order communication concerning the money order; or

(3) the third [~~seventh~~] anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in the money order.

SECTION 6.04. Section 72.103, Property Code, is amended to read as follows:

Sec. 72.103. PRESERVATION OF PROPERTY. Notwithstanding any other provision of this title except a provision of this section or Section 72.1016 relating to a money order or a stored value card, a holder of abandoned property shall preserve the property and may not at any time, by any procedure, including a deduction for service, maintenance, or other charge, transfer or convert to the profits or assets of the holder or otherwise reduce the value of the property. For purposes of this section, value is determined as of the date of the last transaction or contact concerning the property, except that in the case of a money order, value is determined as of the date the property is presumed abandoned under Section 72.102(c). If a holder imposes service, maintenance, or other charges on a money order prior to the time of presumed abandonment, such charges may not exceed the amount of \$1 [~~50 cents~~] per month for each month the money order remains uncashed prior to the month in which the money order is presumed abandoned.

SECTION 6.05. Section 73.101, Property Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) An account or safe deposit box is presumed abandoned if:

(1) except as provided by Subsection (c), the account or safe deposit box has been inactive for at least five years as determined under Subsection (b);

(2) the location of the depositor of the account or owner of the safe deposit box is unknown to the depository; and

(3) the amount of the account or the contents of the box have not been delivered to the comptroller in accordance with Chapter 74.

(c) If the account is a checking or savings account or is a matured certificate of deposit, the account is presumed abandoned if the account has been inactive for at least three years as determined under Subsection (b)(1).

SECTION 6.06. Subsection (a), Section 74.101, Property Code, is amended to read as follows:

(a) Each holder who on March 1 [~~June 30~~] holds property that is presumed abandoned under Chapter 72, ~~73~~, or ~~75~~ of this code or under Chapter 154, Finance Code, shall file a report of that property on or before the following July [~~November~~] 1. The comptroller may require the report to be in a particular format, including a format that can be read by a computer.

SECTION 6.07. Subsection (a), Section 74.1011, Property Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a holder who on March 1 [~~June 30~~] holds property valued at more than \$250 that is presumed abandoned under Chapter 72, 73, or 75 of this code or Chapter 154, Finance Code, shall, on or before the preceding May [~~following August~~] 1, mail to the last known address of the known owner written notice stating that:

(1) the holder is holding the property; and

(2) the holder may be required to deliver the property to the comptroller on or before July [~~November~~] 1 if the property is not claimed.

SECTION 6.08. Subsections (a) and (c), Section 74.301, Property Code, are amended to read as follows:

(a) Except as provided by Subsection (c), each holder who on March 1 [~~June 30~~] holds property that is presumed abandoned under Chapter 72, 73, or 75 shall deliver the property to the comptroller on or before the following July [~~November~~] 1 accompanied by the report required to be filed under Section 74.101.

(c) If the property subject to delivery under Subsection (a) is the contents of a safe deposit box, the comptroller may instruct a holder to deliver the property on a specified date before July [~~November~~] 1 of the following year.

SECTION 6.09. Subsection (e), Section 74.601, Property Code, is amended to read as follows:

(e) The comptroller on receipt or from time to time may [~~from time to time~~] sell securities, including stocks, bonds, and mutual funds, received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller and use the proceeds to buy, exchange, invest, or reinvest in marketable securities. When making or selling the investments, the comptroller shall exercise the judgment and care of a prudent person.

SECTION 6.10. Section 74.708, Property Code, is amended to read as follows:

Sec. 74.708. PROPERTY HELD IN TRUST. A holder who on March 1 [~~June 30~~] holds property presumed abandoned under Chapters 72-75 holds the property in trust for the benefit of the state on behalf of the missing owner and is liable to the state for the full value of the property, plus any accrued interest and penalty. A holder is not required by this section to segregate or establish trust accounts for the property provided the property is timely delivered to the comptroller in accordance with Section 74.301.

SECTION 6.11. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 2011.

(b) Sections 74.101(a), 74.1011(a), 74.301(a) and (c), and 74.708, Property Code, as amended by this article, take effect January 1, 2013.

SECTION 6.12. A charge imposed on a money order under Section 72.103, Property Code, by a holder before the effective date of this article is governed by the law applicable to the charge immediately before the effective date of this article, and the holder may retain the charge.

ARTICLE 7. CLASSIFICATION OF JUDICIAL AND COURT PERSONNEL TRAINING FUND

SECTION 7.01. Section 56.001, Government Code, is amended to read as follows:

Sec. 56.001. JUDICIAL AND COURT PERSONNEL TRAINING FUND.

(a) The judicial and court personnel training fund is an account in the general revenue fund. Money in the judicial and court personnel training fund may be appropriated only to ~~created in the state treasury and shall be administered by~~ the court of criminal appeals for the uses authorized in Section 56.003.

(b) ~~(+)~~ On requisition of the court of criminal appeals, the comptroller shall draw a warrant on the fund for the amount specified in the requisition for a use authorized in Section 56.003. A warrant may not exceed the amount appropriated for any one fiscal year. ~~[At the end of each state fiscal year, any unexpended balance in the fund in excess of \$500,000 shall be transferred to the general revenue fund.]~~

ARTICLE 8. PROCESS SERVER CERTIFICATION FEES

SECTION 8.01. Subchapter A, Chapter 51, Government Code, is amended by adding Section 51.008 to read as follows:

Sec. 51.008. FEES FOR PROCESS SERVER CERTIFICATION. (a) The process server review board established by supreme court order may recommend to the supreme court the fees to be charged for process server certification and renewal of certification. The supreme court must approve the fees recommended by the process server review board before the fees may be collected.

(b) If a certification is issued or renewed for a term that is less than the certification period provided by supreme court rule, the fee for the certification shall be prorated so that the process server pays only that portion of the fee that is allocable to the period during which the certification is valid. On renewal of the certification on the new expiration date, the process server must pay the entire certification renewal fee.

(c) The Office of Court Administration of the Texas Judicial System may collect the fees recommended by the process server review board and approved by the supreme court. Fees collected under this section shall be sent to the comptroller for deposit to the credit of the general revenue fund.

(d) Fees collected under this section may be appropriated to the Office of Court Administration of the Texas Judicial System for the support of regulatory programs for process servers and guardians.

SECTION 8.02. (a) The fees recommended and approved under Section 51.008, Government Code, as added by this article, apply to:

(1) each person who holds a process server certification on the effective date of this article; and

(2) each person who applies for process server certification on or after the effective date of this article.

(b) The Office of Court Administration of the Texas Judicial System shall prorate the process server certification fee so that a person who holds a process server certification on the effective date of this article pays only that portion of the fee that is allocable to the period during which the certification is valid. On renewal of the certification on the new expiration date, the entire certification renewal fee is payable.

ARTICLE 9. FISCAL MATTERS REGARDING PETROLEUM INDUSTRY
REGULATION

SECTION 9.01. Section 26.3574, Water Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) not more than \$3.125 [~~\$3.75~~] for each delivery into a cargo tank having a capacity of less than 2,500 gallons [~~for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011~~];

(2) not more than \$6.25 [~~\$7.50~~] for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons [~~for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011~~];

(3) not more than \$9.37 [~~\$11.75~~] for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons [~~for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011~~];

(4) not more than \$12.50 [~~\$15.00~~] for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons [~~for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011~~]; and

(5) not more than \$6.25 [~~\$7.50~~] for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more [~~for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011~~].

(b-1) The commission by rule shall set the amount of the fee in Subsection (b) in an amount not to exceed the amount necessary to cover the agency's costs of administering this subchapter, as indicated by the amount appropriated by the legislature from the petroleum storage tank remediation account for that purpose.

ARTICLE 10. REMITTANCE AND ALLOCATION OF CERTAIN MOTOR
FUELS TAXES

SECTION 10.01. Section 162.113, Tax Code, is amended by adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

(a-1) On August 28, 2013, each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, a tax prepayment in an amount equal to 25 percent of the tax imposed by Section 162.101 for gasoline removed at the terminal rack during July 2013 by the licensed distributor or licensed importer, without accounting for any credit or allowance to which the licensed distributor or licensed importer is entitled. The supplier or permissive supplier shall remit the tax prepayment received under this subsection to the comptroller by

electronic funds transfer on August 30, 2013, without accounting for any credit or allowance to which the supplier or permissive supplier is entitled. Subsections (c)-(e) do not apply to the tax prepayment under this subsection.

(a-2) A licensed distributor or licensed importer may take a credit against the amount of tax imposed by Section 162.101 for gasoline removed at a terminal rack during August 2013 that is required to be remitted to the supplier or permissive supplier, as applicable, under Subsection (a) in September 2013. The amount of the credit is equal to the amount of any tax prepayment remitted by the licensed distributor or licensed importer as required by Subsection (a-1).

(a-3) Subsections (a-1) and (a-2) apply to a supplier or an affiliate of a supplier who removes gasoline at the terminal rack for distribution to the same extent and in the same manner that those subsections apply to a licensed distributor or licensed importer.

(a-4) Subsections (a-1), (a-2), and (a-3) and this subsection expire September 1, 2015.

SECTION 10.02. Section 162.214, Tax Code, is amended by adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

(a-1) On August 28, 2013, each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, a tax prepayment in an amount equal to 25 percent of the tax imposed by Section 162.201 for diesel fuel removed at the terminal rack during July 2013 by the licensed distributor or licensed importer, without accounting for any credit or allowance to which the licensed distributor or licensed importer is entitled. The supplier or permissive supplier shall remit the tax prepayment received under this subsection to the comptroller by electronic funds transfer on August 30, 2013, without accounting for any credit or allowance to which the supplier or permissive supplier is entitled. Subsections (c)-(e) do not apply to the tax prepayment under this subsection.

(a-2) A licensed distributor or licensed importer may take a credit against the amount of tax imposed by Section 162.201 for diesel fuel removed at a terminal rack during August 2013 that is required to be remitted to the supplier or permissive supplier, as applicable, under Subsection (a) in September 2013. The amount of the credit is equal to any tax prepayment remitted by the licensed distributor or licensed importer as required by Subsection (a-1).

(a-3) Subsections (a-1) and (a-2) apply to a supplier or an affiliate of a supplier who removes diesel fuel at the terminal rack for distribution to the same extent and in the same manner that those subsections apply to a licensed distributor or licensed importer.

(a-4) Subsections (a-1), (a-2), and (a-3) and this subsection expire September 1, 2015.

SECTION 10.03. Section 162.503, Tax Code, is amended to read as follows:

Sec. 162.503. ALLOCATION OF GASOLINE TAX. (a) On or before the fifth workday after the end of each month, the comptroller, after making all deductions for refund purposes and for the amounts allocated under Sections 162.502 and 162.5025, shall allocate the net remainder of the taxes collected under Subchapter B as follows:

(1) one-fourth of the tax shall be deposited to the credit of the available school fund;

(2) one-half of the tax shall be deposited to the credit of the state highway fund for the construction and maintenance of the state road system under existing law; and

(3) from the remaining one-fourth of the tax the comptroller shall:

(A) deposit to the credit of the county and road district highway fund all the remaining tax receipts until a total of \$7,300,000 has been credited to the fund each fiscal year; and

(B) after the amount required to be deposited to the county and road district highway fund has been deposited, deposit to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of allocations made each month of the fiscal year, which sum shall be used by the Texas Department of Transportation for the construction, improvement, and maintenance of farm-to-market roads.

(b) Notwithstanding Subsection (a), the comptroller may not allocate revenue otherwise required to be allocated under Subsection (a) during July and August 2013 before the first workday of September 2013. The revenue shall be allocated as otherwise provided by Subsection (a) not later than the fifth workday of September 2013. This subsection expires September 1, 2015.

SECTION 10.04. Section 162.504, Tax Code, is amended to read as follows:

Sec. 162.504. ALLOCATION OF DIESEL FUEL TAX. (a) On or before the fifth workday after the end of each month, the comptroller, after making deductions for refund purposes, for the administration and enforcement of this chapter, and for the amounts allocated under Section 162.5025, shall allocate the remainder of the taxes collected under Subchapter C as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

(b) Notwithstanding Subsection (a), the comptroller may not allocate revenue otherwise required to be allocated under Subsection (a) during July and August 2013 before the first workday of September 2013. The revenue shall be allocated as otherwise provided by Subsection (a) not later than the fifth workday of September 2013. This subsection expires September 1, 2015.

SECTION 10.05. The expiration of the amendments made to the Tax Code in accordance with this article does not affect tax liability accruing before the expiration of those amendments. That liability continues in effect as if the amendments had not expired, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

ARTICLE 11. REMITTANCE OF MIXED BEVERAGE TAXES AND TAXES AND FEES ON CERTAIN ALCOHOLIC BEVERAGES

SECTION 11.01. Section 34.04, Alcoholic Beverage Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) In August 2013, a permittee shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under the reporting system prescribed by the commission. The prepayment is in addition to the amount the permittee is

otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under the reporting system prescribed by the commission.

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.02. Section 48.04, Alcoholic Beverage Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) In August 2013, a permittee shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under the reporting system prescribed by the commission. The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under the reporting system prescribed by the commission.

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.03. Section 201.07, Alcoholic Beverage Code, is amended to read as follows:

Sec. 201.07. DUE DATE. (a) The tax on liquor is due and payable on the 15th of the month following the first sale, together with a report on the tax due.

(b) In August 2013, each permittee who is liable for the taxes imposed by this subchapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under Subsection (a). The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(c) A permittee who remits the additional payment as required by Subsection (b) may take a credit in the amount of the additional payment against the next payment due under Subsection (a).

(d) Subsections (b) and (c) and this subsection expire September 1, 2015.

SECTION 11.04. Section 201.43, Alcoholic Beverage Code, is amended by amending Subsection (b) and adding Subsections (c), (d), and (e) to read as follows:

(b) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs, together with a report on the tax due.

(c) In August 2013, each permittee who is liable for the tax imposed by this subchapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under Subsection (b). The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (b).

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.05. Section 203.03, Alcoholic Beverage Code, is amended by amending Subsection (b) and adding Subsections (c), (d), and (e) to read as follows:

(b) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs, together with a report on the tax due.

(c) Each licensee who is liable for the tax imposed by this chapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the licensee is otherwise required to remit during August 2013 under Subsection (b). The prepayment is in addition to the amount the licensee is otherwise required to remit during August. The licensee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(d) A licensee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (b).

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.06. Section 183.023, Tax Code, is amended to read as follows:

Sec. 183.023. PAYMENT. (a) The tax due for the preceding month shall accompany the return and shall be payable to the state.

(b) The comptroller shall deposit the revenue received under this section in the general revenue fund.

(c) In August 2013, each permittee who is liable for the tax imposed by this subchapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under Subsection (a). The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the return and payment otherwise required during that month.

(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (a).

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.07. The expiration of the amendments made to the Alcoholic Beverage Code and Tax Code in accordance with this article does not affect tax liability accruing before the expiration of those amendments. That liability continues in effect as if the amendments had not expired, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

ARTICLE 12. CIGARETTE TAX STAMPING ALLOWANCE

SECTION 12.01. Subsection (a), Section 154.052, Tax Code, is amended to read as follows:

(a) A distributor is, subject to the provisions of Section 154.051, entitled to 2.5 ~~three~~ percent of the face value of stamps purchased as a stamping allowance for providing the service of affixing stamps to cigarette packages, except that an out-of-state distributor is entitled to receive only the same percentage of stamping allowance as that given to Texas distributors doing business in the state of the distributor.

SECTION 12.02. This article applies only to cigarette stamps purchased on or after the effective date of this article. Cigarette stamps purchased before the effective date of this article are governed by the law in effect on the date the cigarette stamps were purchased, and that law is continued in effect for that purpose.

ARTICLE 13. SALES FOR RESALE

SECTION 13.01. Section 151.006, Tax Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) "Sale for resale" means a sale of:

(1) tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of reselling it with or as a taxable item in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business in the form or condition in which it is acquired or as an attachment to or integral part of other tangible personal property or taxable service;

(2) tangible personal property to a purchaser for the sole purpose of the purchaser's leasing or renting it in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business to another person, but not if incidental to the leasing or renting of real estate;

(3) tangible personal property to a purchaser who acquires the property for the purpose of transferring it in the United States of America or a possession or territory of the United States of America or in the United Mexican States as an integral part of a taxable service; ~~or~~

(4) a taxable service performed on tangible personal property that is held for sale by the purchaser of the taxable service; or

(5) except as provided by Subsection (c), tangible personal property to a purchaser who acquires the property for the purpose of transferring it as an integral part of performing a contract, or a subcontract of a contract, with the federal government only if the purchaser:

(A) allocates and bills to the contract the cost of the property as a direct or indirect cost; and

(B) transfers title to the property to the federal government under the contract and applicable federal acquisition regulations.

(c) A sale for resale does not include the sale of tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of performing a service that is not taxed under this chapter, regardless of whether title transfers to the service provider's customer, unless the tangible personal property or taxable service is purchased for the purpose of reselling it to the United States in a contract, or a subcontract of a contract, with any branch of the Department of Defense, Department of Homeland Security, Department of Energy, National Aeronautics and

Space Administration, Central Intelligence Agency, National Security Agency, National Oceanic and Atmospheric Administration, or National Reconnaissance Office to the extent allocated and billed to the contract with the federal government.

SECTION 13.02. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 14. REMITTANCE OF SALES AND USE TAXES

SECTION 14.01. Section 151.401, Tax Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) In August 2013, a taxpayer who is required to pay the taxes imposed by this chapter on or before the 20th day of that month under Subsection (a), who pays the taxes imposed by this chapter by electronic funds transfer, and who does not prepay as provided by Section 151.424 shall remit to the comptroller a tax prepayment that is equal to 25 percent of the amount the taxpayer is otherwise required to remit during August 2013 under Subsection (a). The prepayment is in addition to the amount the taxpayer is otherwise required to remit during August. The taxpayer shall remit the additional payment in conjunction with the payment otherwise required during that month. Section 151.424 does not apply with respect to the additional payment required by this subsection.

(d) A taxpayer who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (a).

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 14.02. Section 151.402, Tax Code, is amended to read as follows:

Sec. 151.402. TAX REPORT DATES. (a) ~~A [Except as provided by Subsection (b) of this section, a] tax report required by this chapter for a reporting period is due on the same date that the tax payment for the period is due as provided by Section 151.401.~~

(b) A taxpayer may report a credit in the amount of any tax prepayment remitted to the comptroller as required by Section 151.401(c) on the tax report required by this chapter that is otherwise due in September 2013 [for taxes required by Section 151.401(a) to be paid on or before August 20 is due on or before the 20th day of the following month]. This subsection expires September 1, 2015.

SECTION 14.03. The expiration of the amendments made to the Tax Code in accordance with this article does not affect tax liability accruing before the expiration of those amendments. That liability continues in effect as if the amendments had not expired, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

ARTICLE 15. REPORTS REGARDING CERTAIN SALES OF ALCOHOLIC BEVERAGES

SECTION 15.01. Section 111.006, Tax Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) The comptroller shall disclose information to a person regarding net sales by quantity, brand, and size that is submitted in a report required under Section 151.462 if:

(1) the person requesting the information holds a permit or license under Chapter 19, 20, 21, 37, 64, 65, or 66, Alcoholic Beverage Code; and

(2) the request relates only to information regarding the sale of a product distributed by the person making the request.

(i) A disclosure made under Subsection (h) is not considered a disclosure of competitively sensitive, proprietary, or confidential information.

SECTION 15.02. Chapter 151, Tax Code, is amended by adding Subchapter I-1, and a heading is added to that subchapter to read as follows:

REPORTS BY PERSONS INVOLVED IN THE
MANUFACTURE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES

SECTION 15.03. Subchapter I-1, Chapter 151, Tax Code, as added by this Act, is amended by adding Sections 151.462, 151.463, 151.464, 151.465, 151.466, 151.467, 151.468, 151.469, 151.470, and 151.471, and Section 151.433, Tax Code, is transferred to Subchapter I-1, Chapter 151, Tax Code, redesignated as Section 151.461, Tax Code, and amended to read as follows:

Sec. 151.461 [~~151.433~~]. DEFINITIONS. [~~REPORTS BY WHOLESALERS AND DISTRIBUTORS OF BEER, WINE, AND MALT LIQUOR. (a)~~] In this subchapter ~~[section]~~:

(1) "Brewer" means a person required to hold a brewer's permit under Chapter 12, Alcoholic Beverage Code.

(2) "Distributor" means a person required to hold:

(A) a general distributor's license under Chapter 64, Alcoholic Beverage Code;

(B) a local distributor's license under Chapter 65, Alcoholic Beverage Code; or

(C) a branch distributor's license under Chapter 66, Alcoholic Beverage Code.

(3) "Manufacturer" means a person required to hold a manufacturer's license under Chapter 62, Alcoholic Beverage Code.

(4) "Package store local distributor" means a person required to hold:

(A) a package store permit under Chapter 22, Alcoholic Beverage Code; and

(B) a local distributor's permit under Chapter 23, [~~a general, local, or branch distributor's license under the~~] Alcoholic Beverage Code.

(5) [~~2~~] "Retailer" means a person required to hold [~~the following~~]:

(A) a wine and beer retailer's permit under Chapter 25, Alcoholic Beverage Code;

(B) a wine and beer retailer's off-premise permit under Chapter 26, Alcoholic Beverage Code;

(C) a temporary wine and beer retailer's permit or special three-day wine and beer permit under Chapter 27, Alcoholic Beverage Code;

(D) a mixed beverage permit under Chapter 28, Alcoholic Beverage Code;

(E) a daily temporary mixed beverage permit under Chapter 30, Alcoholic Beverage Code;

(F) a private club registration permit under Chapter 32, Alcoholic Beverage Code;

(G) a certificate issued to a fraternal or veterans organization under Section 32.11, Alcoholic Beverage Code;

(H) a daily temporary private club permit under Subchapter B, Chapter 33, Alcoholic Beverage Code;

(I) a temporary charitable auction permit under Chapter 53, Alcoholic Beverage Code;

(J) a retail dealer's on-premise license under Chapter 69, Alcoholic Beverage Code;

(K) a temporary license under Chapter 72, Alcoholic Beverage Code; or

(L) ~~(D)~~ a retail dealer's off-premise license under Chapter 71, Alcoholic Beverage Code, except for a dealer who also holds a package store permit under Chapter 22, Alcoholic Beverage Code.

(6) ~~(3)~~ "Wholesaler" means a person required to hold ~~[the following under the Alcoholic Beverage Code]:~~

(A) a winery permit under Chapter 16, Alcoholic Beverage Code;

(B) a wholesaler's permit under Chapter 19, Alcoholic Beverage Code;

(C) ~~(B)~~ a general Class B wholesaler's permit under Chapter 20, Alcoholic Beverage Code; or

(D) ~~(C)~~ a local Class B wholesaler's permit under Chapter 21, Alcoholic Beverage Code.

Sec. 151.462. REPORTS BY BREWERS, MANUFACTURERS, WHOLESALERS, AND DISTRIBUTORS. (a) ~~(b)~~ The comptroller shall ~~[may, when considered necessary by the comptroller for the administration of a tax under this chapter,]~~ require each brewer, manufacturer, wholesaler, ~~[or]~~ distributor, or package store local distributor ~~[of beer, wine, or malt liquor]~~ to file with the comptroller a report each month of alcoholic beverage sales to retailers in this state.

(b) Each brewer, manufacturer, ~~(e) The~~ wholesaler, ~~[or]~~ distributor, or package store local distributor shall file a separate ~~[the]~~ report for each permit or license held on or before the 25th day of each month. The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(1) the brewer's, manufacturer's, wholesaler's, distributor's, or package store local distributor's name, address, taxpayer number and outlet number assigned by the comptroller, and alphanumeric permit or license number issued by the Texas Alcoholic Beverage Commission;

(2) the retailer's:

(A) name and address, including street name (and number, city, and zip code;

(B) taxpayer number assigned by the comptroller; and

(C) alphanumeric permit or license number issued by the Texas Alcoholic Beverage Commission for each separate retail location or outlet to which the brewer, manufacturer, wholesaler, distributor, or package store local distributor sold the alcoholic beverages that are listed on the report ~~[the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered beer, wine, or malt liquor, including the city and zip code;~~

~~(2) the taxpayer number assigned by the comptroller to the retailer, if the wholesaler or distributor is in possession of the number;~~

~~(3) the permit or license number assigned to the retailer by the Texas Alcoholic Beverage Commission]; and~~

~~(3) [(4)] the monthly net sales made by the brewer, manufacturer, wholesaler, distributor, or package store local distributor to the retailer for each [by] outlet or location covered by a separate retail permit or license issued by the Texas Alcoholic Beverage Commission, including separate line items for:~~

~~(A) the number of units of alcoholic beverages;~~

~~(B) the individual container size and pack of each unit;~~

~~(C) the brand name;~~

~~(D) the type of beverage, such as distilled spirits, wine, or malt beverage;~~

~~(E) the universal product code of the alcoholic beverage; and~~

~~(F) the net selling price of the alcoholic beverage [by the wholesaler or distributor, including the quantity and units of beer, wine, and malt liquor sold to the retailer].~~

~~(c) [(d)] Except as provided by this subsection, the brewer, manufacturer, wholesaler, [or] distributor, or package store local distributor shall file the report with the comptroller electronically. The comptroller may establish procedures to temporarily postpone the electronic reporting requirement [for allowing an alternative method of filing] for a brewer, manufacturer, wholesaler, [or] distributor, or package store local distributor who demonstrates to the comptroller an inability to comply because undue hardship would result if it were required to file the return electronically [with the electronic reporting requirement]. If the comptroller determines that another technological method of filing the report is more efficient than electronic filing, the comptroller may establish procedures requiring its use by brewers, manufacturers, wholesalers, [and] distributors, and package store local distributors.~~

~~Sec. 151.463. RULES. The comptroller may adopt rules to implement this subchapter.~~

~~Sec. 151.464. CONFIDENTIALITY. [(e)] Except as provided by Section 111.006, information contained in a report required to be filed by this subchapter [section] is confidential and not subject to disclosure under Chapter 552, Government Code.~~

~~Sec. 151.465. APPLICABILITY TO CERTAIN BREWERS. This subchapter applies only to a brewer whose annual production of malt liquor in this state, together with the annual production of beer at the same premises by the holder of a manufacturer's license under Section 62.12, Alcoholic Beverage Code, does not exceed 75,000 barrels.~~

~~Sec. 151.466. APPLICABILITY TO CERTAIN MANUFACTURERS. This subchapter applies only to a manufacturer whose annual production of beer in this state does not exceed 75,000 barrels.~~

~~Sec. 151.467. SUSPENSION OR CANCELLATION OF PERMIT. [(f)] If a person fails to file a report required by this subchapter [section] or fails to file a complete report, the comptroller may suspend or cancel one or more permits issued to the person under Section 151.203.~~

Sec. 151.468. CIVIL PENALTY; CRIMINAL PENALTY. (a) If a person fails to file a report required by this subchapter or fails to file a complete report, the comptroller ~~and~~ may impose a civil or criminal penalty, or both, under Section 151.7031 or 151.709.

(b) In addition to the penalties imposed under Subsection (a), a brewer, manufacturer, wholesaler, distributor, or package store local distributor shall pay the state a civil penalty of not less than \$25 or more than \$2,000 for each day a violation continues if the brewer, manufacturer, wholesaler, distributor, or package store local distributor:

(1) violates this subchapter; or

(2) violates a rule adopted to administer or enforce this subchapter.

Sec. 151.469. ACTION BY TEXAS ALCOHOLIC BEVERAGE COMMISSION. ~~(g)~~ If a person fails to file a report required by this subchapter ~~[section]~~ or fails to file a complete report, the comptroller may notify the Texas Alcoholic Beverage Commission of the failure and the commission may take administrative action against the person for the failure under the Alcoholic Beverage Code.

Sec. 151.470. AUDIT; INSPECTION. The comptroller may audit, inspect, or otherwise verify a brewer's, manufacturer's, wholesaler's, distributor's, or package store local distributor's compliance with this subchapter.

Sec. 151.471. ACTION BY ATTORNEY GENERAL; VENUE; ATTORNEY'S FEES. (a) The comptroller may bring an action to enforce this subchapter and obtain any civil remedy authorized by this subchapter or any other law for the violation of this subchapter. The attorney general shall prosecute the action on the comptroller's behalf.

(b) Venue for and jurisdiction of an action under this section is exclusively conferred on the district courts in Travis County.

(c) If the comptroller prevails in an action under this section, the comptroller and attorney general are entitled to recover court costs and reasonable attorney's fees incurred in bringing the action.

SECTION 15.04. Subchapter I-1, Chapter 151, Tax Code, as added by this article, applies only to a report due on or after the effective date of this article. A report due before the effective date of this article is governed by the law as it existed on the date the report was due, and the former law is continued in effect for that purpose.

ARTICLE 16. PENALTIES FOR FAILURE TO REPORT OR REMIT CERTAIN TAXES OR FEES

SECTION 16.01. Subsection (b), Section 111.00455, Tax Code, is amended to read as follows:

(b) The following are not contested cases under Subsection (a) and Section 2003.101, Government Code:

(1) a show cause hearing or any hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount, except for a hearing under Section 151.157(f), 151.1575(c), 151.712(g), 154.1142, or 155.0592;

(2) a property value study hearing under Subchapter M, Chapter 403, Government Code;

(3) a hearing in which the issue relates to:

(A) Chapters 72-75, Property Code;

(B) forfeiture of a right to do business;

(C) a certificate of authority;

(D) articles of incorporation;

(E) a penalty imposed under Section 151.703(d) [~~151.7031~~];

(F) the refusal or failure to settle under Section 111.101; or

(G) a request for or revocation of an exemption from taxation; and

(4) any other hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount.

SECTION 16.02. Subsection (f), Section 151.433, Tax Code, is amended to read as follows:

(f) If a person fails to file a report required by this section or fails to file a complete report, the comptroller may suspend or cancel one or more permits issued to the person under Section 151.203 and may impose a civil or criminal penalty, or both, under Section 151.703(d) [~~151.7031~~] or 151.709.

SECTION 16.03. Section 151.703, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to any other penalty authorized by this section, a person who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.04. Section 152.045, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to any other penalty provided by law, the owner of a motor vehicle subject to the tax on gross rental receipts who is required to file a report as provided by this chapter and who fails to timely file the report shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.05. Section 152.047, Tax Code, is amended by adding Subsection (j) to read as follows:

(j) In addition to any other penalty provided by law, the seller of a motor vehicle sold in a seller-financed sale who is required to file a report as provided by this chapter and who fails to timely file the report shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.06. Section 156.202, Tax Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The minimum penalty under Subsections (a) and (b) [~~this section~~] is \$1.

(d) In addition to any other penalty authorized by this section, a person who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.07. Section 162.401, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) In addition to any other penalty authorized by this section, a person who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.08. Section 171.362, Tax Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) The minimum penalty under Subsections (a) and (b) ~~[this section]~~ is \$1.

(f) In addition to any other penalty authorized by this section, a taxable entity who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxable entity subsequently files the report or whether any taxes were due from the taxable entity for the reporting period under the required report.

SECTION 16.09. Subchapter B, Chapter 183, Tax Code, is amended by adding Section 183.024 to read as follows:

Sec. 183.024. FAILURE TO PAY TAX OR FILE REPORT. (a) A permittee who fails to file a report as required by this chapter or who fails to pay a tax imposed by this chapter when due shall pay five percent of the amount due as a penalty, and if the permittee fails to file the report or pay the tax within 30 days after the day the tax or report is due, the permittee shall pay an additional five percent of the amount due as an additional penalty.

(b) The minimum penalty under Subsection (a) is \$1.

(c) A delinquent tax draws interest beginning 60 days from the due date.

(d) In addition to any other penalty authorized by this section, a permittee who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the permittee subsequently files the report or whether any taxes were due from the permittee for the reporting period under the required report.

SECTION 16.10. Section 771.0712, Health and Safety Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A seller who fails to file a report or remit a fee collected or payable as provided by this section and comptroller rules shall pay five percent of the amount due and payable as a penalty, and if the seller fails to file the report or remit the fee within 30 days after the day the fee or report is due, the seller shall pay an additional five percent of the amount due and payable as an additional penalty.

(d) In addition to any other penalty authorized by this section, a seller who fails to file a report as provided by this section shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the seller subsequently files the report or whether any taxes were due from the seller for the reporting period under the required report.

SECTION 16.11. Section 151.7031, Tax Code, is repealed.

SECTION 16.12. The change in law made by this article applies only to a report due or a tax or fee due and payable on or after the effective date of this article. A report due or a tax or fee due and payable before the effective date of this article is governed by the law in effect at that time, and that law is continued in effect for that purpose.

SECTION 16.13. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 17. FISCAL MATTERS RELATED TO VOTER REGISTRATION

SECTION 17.01. Subsections (b), (c), and (d), Section 18.065, Election Code, are amended to read as follows:

(b) On determining that a registrar is not in substantial compliance, the secretary shall deliver written notice of the noncompliance to[:

~~(1) the registrar and include[, including] in the notice a description of the violation and an explanation of the action necessary for substantial compliance and of the consequences of noncompliance[; and~~

~~(2) the comptroller of public accounts, including in the notice the identity of the noncomplying registrar].~~

(c) On determining that a noncomplying registrar has corrected the violation and is in substantial compliance, the secretary shall deliver written notice to the registrar ~~[and to the comptroller]~~ that the registrar is in substantial compliance.

(d) ~~[The comptroller shall retain a notice received under this section on file until July 1 following the voting year in which it is received.]~~ The secretary shall retain a copy of each notice the secretary delivers under this section for two years after the date the notice is delivered.

SECTION 17.02. Subsection (a), Section 19.001, Election Code, is amended to read as follows:

(a) Before May 15 of each year, the registrar shall prepare and submit to the secretary of state ~~[comptroller of public accounts]~~ a statement containing:

(1) the total number of initial registrations for the previous voting year;

(2) the total number of registrations canceled under Sections 16.031(a)(1), 16.033, and 16.0332 for the previous voting year; and

(3) the total number of registrations for which information was updated for the previous voting year.

SECTION 17.03. The heading to Section 19.002, Election Code, is amended to read as follows:

Sec. 19.002. PAYMENTS ~~[ISSUANCE OF WARRANTS BY COMPTROLLER].~~

SECTION 17.04. Subsections (b) and (d), Section 19.002, Election Code, are amended to read as follows:

(b) After June 1 of each year, the secretary of state [~~comptroller of public accounts~~] shall make payments [~~issue warrants~~] pursuant to vouchers submitted by the registrar and approved by the secretary of state in amounts that in the aggregate do not exceed the registrar's entitlement. The secretary of state shall prescribe the procedures necessary to implement this subsection.

(d) The secretary of state [~~comptroller~~] may not make a payment under Subsection (b) [~~issue a warrant~~] if on June 1 of the year in which the payment [~~warrant~~] is to be made [~~issued the most recent notice received by the comptroller from the secretary of state under Section 18.065 indicates that~~] the registrar is not in substantial compliance with Section 15.083, 16.032, 18.042, or 18.065 or with rules implementing the registration service program.

SECTION 17.05. The heading to Section 19.0025, Election Code, is amended to read as follows:

Sec. 19.0025. ELECTRONIC ADMINISTRATION OF VOUCHERS AND PAYMENTS [~~WARRANTS~~].

SECTION 17.06. Subsection (a), Section 19.0025, Election Code, is amended to read as follows:

(a) The secretary of state shall establish and maintain an online electronic system for administering vouchers submitted and payments made [~~warrants issued~~] under Section 19.002.

SECTION 17.07. Subsection (c), Section 19.002, Election Code, is repealed.

SECTION 17.08. This article takes effect September 1, 2011.

ARTICLE 18. CERTAIN POWERS AND DUTIES OF THE COMPTROLLER OF PUBLIC ACCOUNTS

SECTION 18.01. Subsection (d), Section 403.0551, Government Code, is amended to read as follows:

(d) This section does not authorize the comptroller to deduct the amount of a state employee's indebtedness to a state agency from any amount of compensation owed by the agency to the employee, the employee's successor, or the assignee of the employee or successor. In this subsection, "compensation" has the meaning assigned by Section 403.055 and [~~"compensation,"~~] "indebtedness," "state agency," "state employee," and "successor" have the meanings assigned by Section 666.001.

SECTION 18.02. Subsection (h), Section 404.022, Government Code, is amended to read as follows:

(h) The comptroller may execute a simplified version of a depository agreement with an eligible institution desiring to hold [~~\$98,000 or less in~~] state deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

SECTION 18.03. Subsection (a), Section 411.109, Government Code, is amended to read as follows:

(a) The comptroller is entitled to obtain from the department criminal history record information maintained by the department that the comptroller believes is necessary for the enforcement or administration of Chapter 151, 152, ~~[153,]~~ 154, ~~[or]~~ 155, or 162, Tax Code, including criminal history record information that relates to a person who is:

- (1) an applicant for a permit under any of those chapters;
- (2) a permit holder under any of those chapters;
- (3) an officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, owner, or managing employee of an applicant or permit holder under any of those chapters that is a corporation, association, joint venture, syndicate, partnership, or proprietorship;
- (4) believed to have violated any of those chapters; or
- (5) being considered by the comptroller for employment as a peace officer.

SECTION 18.04. Subsection (d), Section 403.0551, Government Code, as amended by this article, applies to a deduction made on or after the effective date of this Act for an indebtedness to a state agency regardless of:

- (1) the date the indebtedness accrued; or
- (2) the dates of the pay period for which the compensation from which the indebtedness is deducted is earned.

ARTICLE 19. PREPARATION AND PUBLICATION OF CERTAIN REPORTS AND OTHER MATERIALS

SECTION 19.01. Subsection (c), Section 61.539, Education Code, is amended to read as follows:

(c) As soon as practicable after each state fiscal year, the board ~~[comptroller]~~ shall prepare a report for that fiscal year of the number of students registered in a medical branch, school, or college, the total amount of tuition charges collected by each institution, the total amount transferred to the comptroller under this section, and the total amount available in the physician education loan repayment program account for the repayment of student loans of physicians under this subchapter. The board ~~[comptroller]~~ shall deliver a copy of the report to ~~[the board and to]~~ the governor, lieutenant governor, and speaker of the house of representatives not later than January 1 following the end of the fiscal year covered by the report.

SECTION 19.02. Subsection (c), Section 5.05, Tax Code, is amended to read as follows:

(c) The comptroller shall electronically publish all materials under this section ~~[provide without charge one copy of all materials to officials of local government who are responsible]~~ for administering the property tax system. ~~[If a local government official requests more than one copy, the comptroller may charge a reasonable fee to offset the costs of printing and distributing the materials.]~~ The comptroller shall make the materials available to local governmental officials and members of the public but may charge a reasonable fee to offset the costs of preparing, printing, and distributing the materials.

SECTION 19.03. Section 5.06, Tax Code, is amended to read as follows:

Sec. 5.06. EXPLANATION OF TAXPAYER REMEDIES. ~~[(a)]~~ The comptroller shall prepare and electronically publish a pamphlet explaining the remedies available to dissatisfied taxpayers and the procedures to be followed in seeking remedial action. The comptroller shall include in the pamphlet advice on preparing and presenting a protest.

~~[(b) The comptroller shall provide without charge a reasonable number of copies of the pamphlet to any person on request. The comptroller may charge a person who requests multiple copies of the pamphlet a reasonable fee to offset the costs of printing and distributing those copies. The comptroller at its discretion shall determine the number of copies that a person may receive without charge.]~~

SECTION 19.04. Section 5.09, Tax Code, is amended to read as follows:

Sec. 5.09. BIENNIAL ~~[ANNUAL]~~ REPORTS. (a) The comptroller shall prepare a biennial ~~[publish an annual]~~ report of ~~[the operations of the appraisal districts. The report shall include for each appraisal district, each county, and each school district and may include for other taxing units]~~ the total appraised values~~;~~ assessed values~~;~~ and taxable values of taxable property by category ~~[class of property, the assessment ratio,]~~ and the tax rates of each county, municipality, and school district in effect for the two years preceding the year in which the report is prepared ~~[rate]~~.

(b) Not later than December 31 of each even-numbered year, the [The] comptroller shall:

(1) electronically publish on the comptroller's Internet website the [deliver a copy of each annual] report required by [published under] Subsection (a); and

(2) notify [of this section to] the governor, the lieutenant governor, and each member of the legislature that the report is available on the website.

SECTION 19.05. The following are repealed:

(1) Sections 403.030 and 552.143(e), Government Code; and

(2) Subchapter F, Chapter 379A, Local Government Code.

ARTICLE 20. SURPLUS LINES AND INDEPENDENTLY PROCURED INSURANCE

SECTION 20.01. Subsection (b), Section 101.053, Insurance Code, is amended to read as follows:

(b) Sections 101.051 and 101.052 do not apply to:

(1) the lawful transaction of surplus lines insurance under Chapter 981;

(2) the lawful transaction of reinsurance by insurers;

(3) a transaction in this state that:

(A) involves a policy that:

(i) is lawfully solicited, written, and delivered outside this state; and

(ii) covers, at the time the policy is issued, only subjects of insurance that are not resident, located, or expressly to be performed in this state; and

(B) takes place after the policy is issued;

(4) a transaction:

(A) that involves an insurance contract independently procured by the insured from an insurance company not authorized to do insurance business in this state through negotiations occurring entirely outside this state;

(B) that is reported; and

(C) on which premium tax, if applicable, is paid in accordance with Chapter 226;

(5) a transaction in this state that:

(A) involves group life, health, or accident insurance, other than credit insurance, and group annuities in which the master policy for the group was lawfully issued and delivered in a state in which the insurer or person was authorized to do insurance business; and

(B) is authorized by a statute of this state;

(6) an activity in this state by or on the sole behalf of a nonadmitted captive insurance company that insures solely:

(A) directors' and officers' liability insurance for the directors and officers of the company's parent and affiliated companies;

(B) the risks of the company's parent and affiliated companies; or

(C) both the individuals and entities described by Paragraphs (A) and (B);

(7) the issuance of a qualified charitable gift annuity under Chapter 102; or

(8) a lawful transaction by a servicing company of the Texas workers' compensation employers' rejected risk fund under Section 4.08, Article 5.76-2, as that article existed before its repeal.

SECTION 20.02. Section 225.001, Insurance Code, is amended to read as follows:

Sec. 225.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Affiliate" means, with respect to an insured, a person or entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means a group of entities whose members are all affiliated.

(3) "Control" means, with respect to determining the home state of an affiliated entity:

(A) to directly or indirectly, acting through one or more persons, own, control, or hold the power to vote at least 25 percent of any class of voting security of the affiliated entity; or

(B) to control in any manner the election of the majority of directors or trustees of the affiliated entity.

(4) "Home state" means:

(A) for an insured that is not an affiliated group described by Paragraph (B):

(i) the state in which the insured maintains the insured's principal residence, if the insured is an individual;

(ii) the state in which an insured that is not an individual maintains its principal place of business; or

(iii) if 100 percent of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or maintains the insured's principal place of business, as applicable, the state to which the largest percentage of the insured's taxable premium for the insurance contract that covers the risk is allocated; or

(B) for an affiliated group with respect to which more than one member is a named insured on a single insurance contract subject to this chapter, the home state of the member, as determined under Paragraph (A), that has the largest percentage of premium attributed to it under the insurance contract.

(5) "Premium" means any payment made in consideration for insurance and [~~,"premium"~~] includes:

(A) [~~(1)~~] a premium;

(B) premium deposits;

(C) [~~(2)~~] a membership fee;

(D) a registration fee;

(E) [~~(3)~~] an assessment;

(F) [~~(4)~~] dues; and

(G) [~~(5)~~] any other compensation given in consideration for surplus lines insurance.

SECTION 20.03. Section 225.002, Insurance Code, is amended to read as follows:

Sec. 225.002. APPLICABILITY OF CHAPTER. This chapter applies to a surplus lines agent who collects gross premiums for surplus lines insurance for any risk in which this state is the home state of the insured.

SECTION 20.04. Section 225.004, Insurance Code, is amended by adding Subsections (a-1) and (f) and amending Subsections (b), (c), and (e) to read as follows:

(a-1) Consistent with 15 U.S.C. Section 8201 et seq., this state may not impose a premium tax on nonadmitted insurance premiums other than premiums paid for insurance in which this state is the home state of the insured.

(b) Taxable gross premiums under this section are based on gross premiums written or received for surplus lines insurance placed through an eligible surplus lines insurer during a calendar year. Notwithstanding the tax basis described by this subsection, the comptroller by rule may establish an alternate basis for taxation for multistate and single-state policies for the purpose of achieving uniformity.

(c) If a surplus lines insurance policy covers risks or exposures only partially located in this state, and this state has not entered into a cooperative agreement, reciprocal agreement, or compact with another state for the collection of surplus lines tax as authorized by Chapter 229, the tax is computed on the entire policy [~~portion of the~~] premium for any policy in which this state is the home state of the insured [~~that is properly allocated to a risk or exposure located in this state~~].

(e) Premiums [~~The following premiums are not taxable in this state:~~

[~~(1) premiums properly allocated to another state that are specifically exempt from taxation in that state; and~~

[~~(2) premiums~~] on risks or exposures that are properly allocated to federal or international waters or are under the jurisdiction of a foreign government are not taxable in this state.

(f) If this state enters a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of surplus lines tax as authorized by Chapter 229, taxes due on multistate policies shall be allocated and reported in accordance with the agreement or compact.

SECTION 20.05. Section 225.005, Insurance Code, is amended to read as follows:

Sec. 225.005. TAX EXCLUSIVE. The tax imposed by this chapter is a transaction tax collected by the surplus lines agent of record and is in lieu of any ~~any~~ other transaction ~~[insurance]~~ taxes on these premiums.

SECTION 20.06. Section 225.009, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding Subsections (a), (b), and (c), if this state enters a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of surplus lines tax as authorized by Chapter 229, the tax shall be allocated and reported in accordance with the terms of the agreement or compact.

SECTION 20.07. Section 226.051, Insurance Code, is amended to read as follows:

Sec. 226.051. DEFINITIONS ~~[DEFINITION]~~. In this subchapter:

(1) "Affiliate" means, with respect to an insured, a person or entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means a group of entities whose members are all affiliated.

(3) "Control" means, with respect to determining the home state of an affiliated entity:

(A) to directly or indirectly, acting through one or more persons, own, control, or hold the power to vote at least 25 percent of any class of voting security of the affiliated entity; or

(B) to control in any manner the election of the majority of directors or trustees of the affiliated entity.

(4) "Home state" means:

(A) for an insured that is not an affiliated group described by Paragraph (B):

(i) the state in which the insured maintains the insured's principal residence, if the insured is an individual;

(ii) the state in which an insured that is not an individual maintains its principal place of business; or

(iii) if 100 percent of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or maintains the insured's principal place of business, as applicable, the state to which the largest percentage of the insured's taxable premium for the insurance contract that covers the risk is allocated; or

(B) for an affiliated group with respect to which more than one member is a named insured on a single insurance contract subject to this chapter, the home state of the member, as determined under Paragraph (A), that has the largest percentage of premium attributed to it under the insurance contract.

(5) "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

(6) "Premium" means any payment made in consideration for insurance and ~~["premium"]~~ includes ~~[any consideration for insurance, including]~~:

(A) ~~[+]~~ a premium;

- (B) premium deposits;
- (C) [~~(2)~~] a membership fee; [~~or~~]
- (D) a registration fee;
- (E) an assessment;
- (F) [~~(3)~~] dues; and
- (G) any other compensation given in consideration for insurance.

SECTION 20.08. Section 226.052, Insurance Code, is amended to read as follows:

Sec. 226.052. **APPLICABILITY OF SUBCHAPTER.** This subchapter applies to an insured who procures an independently procured insurance contract for any risk in which this state is the home state of the insured [in accordance with Section 101.053(b)(4)].

SECTION 20.09. Section 226.053, Insurance Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) A tax is imposed on each insured at the rate of 4.85 percent of the premium paid for the insurance contract procured in accordance with Section 226.052 [101.053(b)(4)].

(b) If an independently procured insurance policy [contract] covers risks or exposures only partially located in this state and this state has not joined a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of nonadmitted insurance taxes as authorized by Chapter 229, the tax is computed on the entire policy [portion of the] premium for any policy in which this state is the home state of the insured [that is properly allocated to a risk or exposure located in this state].

(d) If this state enters into a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of nonadmitted insurance taxes as authorized by Chapter 229, the tax due on multistate policies shall be allocated and reported in accordance with the agreement or compact.

SECTION 20.10. Section 981.008, Insurance Code, is amended to read as follows:

Sec. 981.008. **SURPLUS LINES INSURANCE PREMIUM TAX.** The premiums charged for surplus lines insurance are subject to the premium tax, if applicable, imposed under Chapter 225.

SECTION 20.11. The following provisions are repealed:

- (1) Sections 225.004(d) and (d-1), Insurance Code; and
- (2) Section 226.053(b-1), Insurance Code.

SECTION 20.12. The changes in law made by this article to Chapters 225 and 226, Insurance Code, apply only to an insurance policy that is delivered, issued for delivery, or renewed on or after July 21, 2011. A policy that is delivered, issued for delivery, or renewed before July 21, 2011, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 20.13. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 21. FISCAL MATTERS CONCERNING EARLY HIGH SCHOOL GRADUATION

SECTION 21.01. Subchapter K, Chapter 56, Education Code, is amended by adding Section 56.2012 to read as follows:

Sec. 56.2012. EXPIRATION OF SUBCHAPTER; ELIGIBILITY CLOSED. (a) This subchapter expires September 1, 2017.

(b) Notwithstanding Section 56.203, a person may not receive an award under this subchapter if the person graduates from high school on or after September 1, 2011.

SECTION 21.02. Subsection (b), Section 54.213, Education Code, is amended to read as follows:

~~(b) [Savings to the foundation school fund that occur as a result of the Early High School Graduation Scholarship program created in Subchapter K, Chapter 56, and that are not required for the funding of state credits for tuition and mandatory fees under Section 56.204 or school district credits under Section 56.2075 shall be used first to provide tuition exemptions under Section 54.212. Any of those savings remaining after providing tuition exemptions under Section 54.212 shall be used to provide tuition exemptions under Section 54.214.]~~ The Texas Education Agency shall ~~[also]~~ accept and make available to provide tuition exemptions under Section 54.214 gifts, grants, and donations made to the agency for that purpose. The commissioner of education shall transfer those funds to the Texas Higher Education Coordinating Board to distribute to institutions of higher education that provide exemptions under that section [Payment of funds under this subsection shall be made in the manner provided by Section 56.207 for state credits under Subchapter K, Chapter 56].

SECTION 21.03. Section 56.210, Education Code, is repealed.

ARTICLE 22. FISCAL MATTERS CONCERNING RETIRED TEACHERS

SECTION 22.01. Notwithstanding Section 825.404(a), Government Code, for the state fiscal year ending August 31, 2012, only, the amount of the state contribution to the Teacher Retirement System of Texas under that section may be less than the amount contributed by members during that fiscal year.

SECTION 22.02. Notwithstanding Section 1575.202(a), Insurance Code, for the state fiscal year ending August 31, 2013, only, the state may contribute an amount to the retired school employees group insurance fund that is less than one percent of the salary of each active employee.

ARTICLE 23. COASTAL EROSION

SECTION 23.01. Section 33.608, Natural Resources Code, is amended to read as follows:

Sec. 33.608. REPORT TO LEGISLATURE. (a) Each biennium, the commissioner shall submit to the legislature a report listing:

- (1) each critical erosion area;
- (2) each proposed erosion response study or project;
- (3) an estimate of the cost of each proposed study or project described by Subdivision (2);
- (4) each coastal erosion response study or project funded under this subchapter during the preceding biennium;

- (5) the economic and natural resource benefits from each coastal erosion response study or project described by Subdivision (4);
- (6) the financial status of the account; and
- (7) an estimate of the cost of implementing this subchapter during the succeeding biennium.

(b) The report must include a plan for coastal erosion response studies and projects that may be funded, wholly or partly, from money in the account and may be undertaken during the next 10 or more years.

ARTICLE 24. FISCAL MATTERS CONCERNING PARKS AND WILDLIFE CONTRIBUTIONS

SECTION 24.01. Subchapter D, Chapter 502, Transportation Code, is amended by adding Sections 502.1747 and 502.1748 to read as follows:

Sec. 502.1747. VOLUNTARY CONTRIBUTION TO PARKS AND WILDLIFE DEPARTMENT. (a) When a person registers or renews the registration of a motor vehicle under this chapter, the person may contribute \$5 or more to the Parks and Wildlife Department.

(b) The department shall:

(1) include space on each motor vehicle registration renewal notice, on the page that states the total fee for registration renewal, that allows a person renewing a registration to indicate the amount that the person is voluntarily contributing to the state parks account;

(2) provide an opportunity to contribute to the state parks account similar to the opportunity described by Subsection (a) and in the manner described by Subdivision (1) in any registration renewal system that succeeds the system in place on September 1, 2011; and

(3) provide an opportunity for a person to contribute to the state parks account during the registration renewal process on the department's Internet website.

(c) If a person makes a contribution under this section and does not pay the full amount of a registration fee, the county assessor-collector may credit all or a portion of the contribution to the person's registration fee.

(d) The county assessor-collector shall send any contribution made under this section to the comptroller for deposit to the credit of the state parks account under Section 11.035, Parks and Wildlife Code. Money received by the Parks and Wildlife Department under this section may be used only for the operation and maintenance of state parks, historic sites, or natural areas under the jurisdiction of the Parks and Wildlife Department.

(e) The department shall consult with the Parks and Wildlife Department in performing the department's duties under this section.

Sec. 502.1748. DISPOSITION OF CERTAIN VOLUNTARY CONTRIBUTIONS. If a person makes a voluntary contribution under Section 502.1746 or 502.1747 at the time the person registers or renews the registration of a motor vehicle under this chapter but the person does not clearly specify the entity to which the person intends to contribute, the county assessor-collector shall divide the contribution between the entities authorized to receive contributions under those sections.

SECTION 24.02. Sections 502.1747 and 502.1748, Transportation Code, as added by this article, apply only to a motor vehicle registration renewal notice issued for a registration that expires on or after January 1, 2012.

ARTICLE 25. FISCAL MATTERS CONCERNING OIL AND GAS REGULATION

SECTION 25.01. Subsection (c), Section 81.0521, Natural Resources Code, is amended to read as follows:

(c) Two-thirds of the proceeds from this fee, excluding [including] any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and [oil field] cleanup fund as provided by Section 81.067 [91.111].

SECTION 25.02. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.067 through 81.070 to read as follows:

Sec. 81.067. OIL AND GAS REGULATION AND CLEANUP FUND. (a) The oil and gas regulation and cleanup fund is created as an account in the general revenue fund of the state treasury.

(b) The commission shall certify to the comptroller the date on which the balance in the fund equals or exceeds \$20 million. The oil-field cleanup regulatory fees on oil and gas shall not be collected or required to be paid on or after the first day of the second month following the certification, except that the comptroller shall resume collecting the fees on receipt of a commission certification that the fund has fallen below \$10 million. The comptroller shall continue collecting the fees until collections are again suspended in the manner provided by this subsection.

(c) The fund consists of:

(1) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies, subject to the refund provisions of Section 91.1091, if applicable;

(2) private contributions, including contributions made under Section 89.084;

(3) expenses collected under Section 89.083;

(4) fees imposed under Section 85.2021;

(5) costs recovered under Section 91.457 or 91.459;

(6) proceeds collected under Sections 89.085 and 91.115;

(7) interest earned on the funds deposited in the fund;

(8) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;

(9) costs recovered under Section 91.113(f);

(10) hazardous oil and gas waste generation fees collected under Section 91.605;

(11) oil-field cleanup regulatory fees on oil collected under Section 81.116;

(12) oil-field cleanup regulatory fees on gas collected under Section 81.117;

(13) fees for a reissued certificate collected under Section 91.707;

(14) fees collected under Section 91.1013;

(15) fees collected under Section 89.088;

(16) fees collected under Section 91.142;

(17) fees collected under Section 91.654;

(18) costs recovered under Sections 91.656 and 91.657;

- (19) two-thirds of the fees collected under Section 81.0521;
- (20) fees collected under Sections 89.024 and 89.026;
- (21) legislative appropriations; and
- (22) any surcharges collected under Section 81.070.

Sec. 81.068. PURPOSE OF OIL AND GAS REGULATION AND CLEANUP FUND. Money in the oil and gas regulation and cleanup fund may be used by the commission or its employees or agents for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, oil and gas well plugging, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities.

Sec. 81.069. REPORTING ON PROGRESS IN MEETING PERFORMANCE GOALS FOR THE OIL AND GAS REGULATION AND CLEANUP FUND.

(a) The commission, through the legislative appropriations request process, shall establish specific performance goals for the oil and gas regulation and cleanup fund for the next biennium, including goals for each quarter of each state fiscal year of the biennium for the number of:

- (1) orphaned wells to be plugged with state-managed funds;
- (2) abandoned sites to be investigated, assessed, or cleaned up with state funds; and
- (3) surface locations to be remediated.

(b) The commission shall provide quarterly reports to the Legislative Budget Board that include:

(1) the following information with respect to the period since the last report was provided as well as cumulatively:

- (A) the amount of money deposited in the oil and gas regulation and cleanup fund;
- (B) the amount of money spent from the fund for the purposes described by Subsection (a);
- (C) the balance of the fund; and
- (D) the commission's progress in meeting the quarterly performance goals established under Subsection (a) and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance; and

(2) any additional information or data requested in writing by the Legislative Budget Board.

(c) The commission shall submit to the legislature and make available to the public, annually, a report that reviews the extent to which money provided under Section 81.067 has enabled the commission to better protect the environment through oil-field cleanup activities. The report must include:

(1) the performance goals established under Subsection (a) for that state fiscal year, the commission's progress in meeting those performance goals, and, if the number of orphaned wells plugged with state-managed funds, abandoned sites

investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance; and

investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(2) the number of orphaned wells plugged with state-managed funds, by region;

(3) the number of wells orphaned, by region;

(4) the number of inactive wells not currently in compliance with commission rules, by region;

(5) the status of enforcement proceedings for all wells in violation of commission rules and the period during which the wells have been in violation, by region in which the wells are located;

(6) the number of surface locations remediated, by region;

(7) a detailed accounting of expenditures of money in the fund for oil-field cleanup activities, including expenditures for plugging of orphaned wells, investigation, assessment, and cleaning up of abandoned sites, and remediation of surface locations;

(8) the method by which the commission sets priorities by which it determines the order in which orphaned wells are plugged;

(9) a projection of the amount of money needed for the next biennium for plugging orphaned wells, investigating, assessing, and cleaning up abandoned sites, and remediating surface locations; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O, Chapter 91, by region.

Sec. 81.070. ESTABLISHMENT OF SURCHARGES ON FEES. (a) Except as provided by Subsection (b), the commission by rule shall provide for the imposition of reasonable surcharges as necessary on fees imposed by the commission that are required to be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067 in amounts sufficient to enable the commission to recover the costs of performing the functions specified by Section 81.068 from those fees and surcharges.

(b) The commission may not impose a surcharge on an oil-field cleanup regulatory fee on oil collected under Section 81.116 or an oil-field cleanup regulatory fee on gas collected under Section 81.117.

(c) The commission by rule shall establish a methodology for determining the amount of a surcharge that takes into account:

(1) the time required for regulatory work associated with the activity in connection with which the surcharge is imposed;

(2) the number of individuals or entities from which the commission's costs may be recovered;

(3) the effect of the surcharge on operators of all sizes, as measured by the number of oil or gas wells operated;

(4) the balance in the oil and gas regulation and cleanup fund; and

(5) any other factors the commission determines to be important to the fair and equitable imposition of the surcharge.

(d) The commission shall collect a surcharge on a fee at the time the fee is collected.

(e) A surcharge collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067.

(f) A surcharge collected under this section shall not exceed an amount equal to 185 percent of the fee on which it is imposed.

SECTION 25.03. Section 81.115, Natural Resources Code, is amended to read as follows:

Sec. 81.115. APPROPRIATIONS [~~PAYMENTS~~] TO COMMISSION FOR OIL AND GAS REGULATION AND CLEANUP PURPOSES [~~DIVISION~~]. Money appropriated to the [~~oil and gas division of the~~] commission under the General Appropriations Act for the purposes described by Section 81.068 shall be paid from the oil and gas regulation and cleanup fund [~~General Revenue Fund~~].

SECTION 25.04. Subsections (d) and (e), Section 81.116, Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [~~91.111~~]. The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding [~~including~~] any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and [~~oil field~~] cleanup fund as provided by Section 81.067 [~~91.111 of this code~~].

SECTION 25.05. Subsections (d) and (e), Section 81.117, Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [~~91.111~~]. The exemptions and reductions set out in Sections 201.053, 201.057, 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding [~~including~~] any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and [~~oil field~~] cleanup fund as provided by Section 81.067 [~~91.111 of this code~~].

SECTION 25.06. Subsection (d), Section 85.2021, Natural Resources Code, is amended to read as follows:

(d) All fees collected under this section shall be deposited in the oil and gas regulation and [~~state oil field~~] cleanup fund.

SECTION 25.07. Subsection (d), Section 89.024, Natural Resources Code, is amended to read as follows:

(d) An operator who files an abeyance of plugging report must pay an annual fee of \$100 for each well covered by the report. A fee collected under this section shall be deposited in the oil and gas regulation and [~~oil field~~] cleanup fund.

SECTION 25.08. Subsection (d), Section 89.026, Natural Resources Code, is amended to read as follows:

(d) An operator who files documentation described by Subsection (a) must pay an annual fee of \$50 for each well covered by the documentation. A fee collected under this section shall be deposited in the oil and gas regulation and [~~oil field~~] cleanup fund.

SECTION 25.09. Subsection (d), Section 89.048, Natural Resources Code, is amended to read as follows:

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil and gas regulation and [oil-field] cleanup fund in an amount not to exceed 50 percent of the lesser of:

- (1) the documented well-plugging costs; or
- (2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

SECTION 25.10. Subsection (j), Section 89.083, Natural Resources Code, is amended to read as follows:

(j) Money collected in a suit under this section shall be deposited in the oil and gas regulation and [state oil-field] cleanup fund.

SECTION 25.11. Subsection (d), Section 89.085, Natural Resources Code, is amended to read as follows:

(d) The commission shall deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the oil and gas regulation and [oil-field] cleanup fund. The commission shall separately account for money and credit received for each well.

SECTION 25.12. The heading to Section 89.086, Natural Resources Code, is amended to read as follows:

Sec. 89.086. CLAIMS AGAINST OIL AND GAS REGULATION AND [THE OIL FIELD] CLEANUP FUND.

SECTION 25.13. Subsections (a) and (h) through (k), Section 89.086, Natural Resources Code, are amended to read as follows:

(a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 [~~of this code~~] may make a claim against the oil and gas regulation and [oil-field] cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission forecloses its statutory lien under Section 89.083.

(h) The commission shall suspend an amount of money in the oil and gas regulation and [oil-field] cleanup fund equal to the amount of the claim until the claim is finally resolved. If the provisions of Subsection (k) [~~of this section~~] prevent suspension of the full amount of the claim, the commission shall treat the claim as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount of the claim.

(i) A claim made by or on behalf of the operator or a nonoperator of a well or a successor to the rights of the operator or nonoperator is subject to a ratable deduction from the proceeds or credit received for the well-site equipment to cover the costs incurred by the commission in removing the equipment or hydrocarbons from the well or in transporting, storing, or disposing of the equipment or hydrocarbons. A claim made by a person who is not an operator or nonoperator is subject to a ratable deduction for the costs incurred by the commission in removing the equipment from the well. If a claimant is a person who is responsible under law or commission rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by the commission or a court for a violation of a commission rule or order, the commission may recoup from or offset against a valid

claim an expense incurred by the oil and gas regulation and [oil field] cleanup fund that is not otherwise reimbursed or any penalties owed. An amount recouped from, deducted from, or offset against a claim under this subsection shall be treated as an invalid portion of the claim and shall remain suspended in the oil and gas regulation and [oil field] cleanup fund in the manner provided by Subsection (j) ~~[of this section]~~.

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil field] cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil and gas regulation and [oil field] cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil field] cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil and gas regulation and [oil field] cleanup fund the amount of the claim held to be invalid.

(k) If the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil and gas regulation and [oil field] cleanup fund is not liable for any subsequently filed claims that relate to the same equipment or hydrocarbons unless and until the commission releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. If the commission releases money, then the commission shall suspend money in the amount of subsequently filed claims in the order of filing.

SECTION 25.14. Subsection (b), Section 89.121, Natural Resources Code, is amended to read as follows:

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the general revenue [state oil field cleanup] fund.

SECTION 25.15. Subsection (c), Section 91.1013, Natural Resources Code, is amended to read as follows:

(c) Fees collected under this section shall be deposited in the oil and gas regulation and [state oil field] cleanup fund.

SECTION 25.16. Section 91.108, Natural Resources Code, is amended to read as follows:

Sec. 91.108. DEPOSIT AND USE OF FUNDS. Subject to the refund provisions of Section 91.1091, if applicable, proceeds from bonds and other financial security required pursuant to this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent

beneficiary of the policies shall be deposited in the oil and gas regulation and [oil field] cleanup fund and, notwithstanding Sections 81.068 [91.112] and 91.113, may be used only for actual well plugging and surface remediation.

SECTION 25.17. Subsection (a), Section 91.109, Natural Resources Code, is amended to read as follows:

(a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091 [~~of this code~~], proceeds from any bond or other form of financial security required by this section shall be placed in the oil and gas regulation and [oil field] cleanup fund. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

SECTION 25.18. Subsections (a) and (f), Section 91.113, Natural Resources Code, are amended to read as follows:

(a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil and gas regulation and [oil field] cleanup fund to conduct a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or materials if:

(1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(f) If the commission conducts a site investigation or environmental assessment or controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission by order may require the person to reimburse the commission for those costs or may request the attorney general to file suit against the person to recover those costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A

suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the oil and gas regulation and ~~[oil field]~~ cleanup fund.

SECTION 25.19. Subsection (c), Section 91.264, Natural Resources Code, is amended to read as follows:

(c) A penalty collected under this section shall be deposited to the credit of the general revenue ~~[oil field cleanup]~~ fund ~~[account]~~.

SECTION 25.20. Subsection (b), Section 91.457, Natural Resources Code, is amended to read as follows:

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) ~~[of this section]~~ fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and ~~[oil field]~~ cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.

SECTION 25.21. Subsection (c), Section 91.459, Natural Resources Code, is amended to read as follows:

(c) Any ~~[penalties or]~~ costs recovered by the attorney general under this subchapter shall be deposited in the oil and gas regulation and ~~[oil field]~~ cleanup fund.

SECTION 25.22. Subsection (e), Section 91.605, Natural Resources Code, is amended to read as follows:

(e) The fees collected under this section shall be deposited in the oil and gas regulation and ~~[oil field]~~ cleanup fund.

SECTION 25.23. Subsection (e), Section 91.654, Natural Resources Code, is amended to read as follows:

(e) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and ~~[oil field]~~ cleanup fund under Section 81.067 ~~[91.114]~~.

SECTION 25.24. Subsection (b), Section 91.707, Natural Resources Code, is amended to read as follows:

(b) Fees collected under this section shall be deposited to the oil and gas regulation and ~~[oil field]~~ cleanup fund.

SECTION 25.25. The heading to Section 121.211, Utilities Code, is amended to read as follows:

Sec. 121.211. PIPELINE SAFETY AND REGULATORY FEES.

SECTION 25.26. Subsections (a) through (e) and (h), Section 121.211, Utilities Code, are amended to read as follows:

(a) The railroad commission by rule may adopt a ~~[an inspection]~~ fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to this title ~~[chapter]~~.

(b) The railroad commission by rule shall establish the method by which the fee will be calculated and assessed. In adopting a fee structure, the railroad commission may consider any factors necessary to provide for the equitable allocation among operators of the costs of administering the railroad commission's pipeline safety and regulatory program under this title ~~[chapter]~~.

(c) The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the amount estimated by the railroad commission to be necessary to recover the costs of administering the railroad commission's pipeline safety and regulatory program under this title ~~[chapter]~~, excluding costs that are fully funded by federal sources.

(d) The commission may assess each operator of a natural gas distribution system subject to this title ~~[chapter]~~ an annual ~~[inspection]~~ fee not to exceed one dollar for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(e) The railroad commission may assess each operator of a natural gas master metered system subject to this title ~~[chapter]~~ an annual ~~[inspection]~~ fee not to exceed \$100 for each master metered system. The fee is due June 30 of each year.

(h) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the pipeline safety and regulatory program.

SECTION 25.27. Section 29.015, Water Code, is amended to read as follows:

Sec. 29.015. APPLICATION FEE. With each application for issuance, renewal, or material amendment of a permit, the applicant shall submit to the railroad commission a nonrefundable fee of \$100. Fees collected under this section shall be deposited in the oil and gas regulation and ~~[oil-field]~~ cleanup fund.

SECTION 25.28. The following provisions of the Natural Resources Code are repealed:

- (1) Section 91.111; and
- (2) Section 91.112.

SECTION 25.29. On the effective date of this article:

- (1) the oil-field cleanup fund is abolished;
- (2) any money remaining in the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;
- (3) any claim against the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund; and
- (4) any amount required to be deposited to the credit of the oil-field cleanup fund shall be deposited to the credit of the oil and gas regulation and cleanup fund.

ARTICLE 26. FISCAL MATTERS REGARDING LEASING CERTAIN STATE FACILITIES

SECTION 26.01. The heading to Section 2165.2035, Government Code, is amended to read as follows:

Sec. 2165.2035. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; USE AFTER HOURS.

SECTION 26.02. Subchapter E, Chapter 2165, Government Code, is amended by adding Sections 2165.204, 2165.2045, and 2165.2046 to read as follows:

Sec. 2165.204. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; EXCESS INDIVIDUAL PARKING SPACES. (a) The commission may lease to a private individual an individual parking space in a state-owned parking lot or garage located in the city of Austin that the commission determines is not needed to accommodate the regular parking requirements of state employees who work near the lot or garage and visitors to nearby state government offices.

(b) Money received from a lease under this section shall be deposited to the credit of the general revenue fund.

(c) In leasing a parking space under Subsection (a), the commission must ensure that the lease does not restrict uses for parking lots and garages developed under Section 2165.2035, including special event parking related to institutions of higher education.

(d) In leasing or renewing a lease for a parking space under Subsection (a), the commission shall give preference to an individual who is currently leasing or previously leased the parking space.

Sec. 2165.2045. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; EXCESS BLOCKS OF PARKING SPACE. (a) The commission may lease to an institution of higher education or a local government all or a significant block of a state-owned parking lot or garage located in the city of Austin that the commission determines is not needed to accommodate the regular parking requirements of state employees who work near the lot or garage and visitors to nearby state government offices.

(b) Money received from a lease under this section shall be deposited to the credit of the general revenue fund.

(c) In leasing all or a block of a state-owned parking lot or garage under Subsection (a), the commission must ensure that the lease does not restrict uses for parking lots and garages developed under Section 2165.2035, including special event parking related to institutions of higher education.

(d) In leasing or renewing a lease for all or a block of a state-owned parking lot or garage under Subsection (a), the commission shall give preference to an entity that is currently leasing or previously leased the lot or garage or a block of the lot or garage.

Sec. 2165.2046. REPORTS ON PARKING PROGRAMS. On or before October 1 of each even-numbered year, the commission shall submit a report to the Legislative Budget Board describing the effectiveness of parking programs developed by the commission under this subchapter. The report must, at a minimum, include:

- (1) the yearly revenue generated by the programs;
- (2) the yearly administrative and enforcement costs of each program;
- (3) yearly usage statistics for each program; and
- (4) initiatives and suggestions by the commission to:
 - (A) modify administration of the programs; and
 - (B) increase revenue generated by the programs.

SECTION 26.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 27. FISCAL MATTERS RELATING TO SECRETARY OF STATE

SECTION 27.01. Section 405.014, Government Code, is amended to read as follows:

Sec. 405.014. ACTS OF THE LEGISLATURE. (a) At each session of the legislature the secretary of state shall obtain the bills that have become law. Immediately after the closing of each session of the legislature, the secretary of state shall bind all enrolled bills and resolutions in volumes on which the date of the session is placed.

(b) As soon as practicable after the closing of each session of the legislature, the secretary of state shall publish and maintain electronically the bills enacted at that session. The electronic publication must be:

(1) indexed by bill number and assigned chapter number for each bill; and

(2) made available by an electronic link on the secretary of state's generally accessible Internet website.

SECTION 27.02. Subchapter B, Chapter 2158, Government Code, is repealed.

SECTION 27.03. The change in law made by this article does not apply to a contract for the publication of the laws of this state entered into before the effective date of this article.

SECTION 27.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 28. FISCAL MATTERS REGARDING ATTORNEY GENERAL

SECTION 28.01. Section 402.006, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The attorney general may charge a reasonable fee for the electronic filing of a document.

SECTION 28.02. The heading to Section 402.0212, Government Code, is amended to read as follows:

Sec. 402.0212. PROVISION OF LEGAL SERVICES—OUTSIDE COUNSEL; FEES.

SECTION 28.03. Section 402.0212, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f) to read as follows:

(b) An invoice submitted to a state agency under a contract for legal services as described by Subsection (a) must be reviewed by the attorney general to determine whether the invoice is eligible for payment.

(c) An attorney or law firm must pay an administrative fee to the attorney general for the review described in Subsection (b) when entering into a contract to provide legal services to a state agency.

(d) For purposes of this section, the functions of a hearing examiner, administrative law judge, or other quasi-judicial officer are not considered legal services.

(e) [(e)] This section shall not apply to the Texas Turnpike Authority division of the Texas Department of Transportation.

(f) The attorney general may adopt rules as necessary to implement and administer this section.

SECTION 28.04. Section 371.051, Transportation Code, is amended to read as follows:

Sec. 371.051. ATTORNEY GENERAL REVIEW AND EXAMINATION FEE.

(a) A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

(b) A toll project entity shall pay a nonrefundable examination fee to the attorney general on submitting a proposed comprehensive development agreement for review. At the time the examination fee is paid, the toll project entity shall also submit for review a complete transcript of proceedings related to the comprehensive development agreement.

(c) If the toll project entity submits multiple proposed comprehensive development agreements relating to the same toll project for review, the entity shall pay the examination fee under Subsection (b) for each proposed comprehensive development agreement.

(d) The attorney general shall provide a legal sufficiency determination not later than the 60th business day after the date the examination fee and transcript of the proceedings required under Subsection (b) are received. If the attorney general cannot provide a legal sufficiency determination within the 60-business-day period, the attorney general shall notify the toll project entity in writing of the reason for the delay and may extend the review period for not more than 30 business days.

(e) After the attorney general issues a legal sufficiency determination, a toll project entity may supplement the transcript of proceedings or amend the comprehensive development agreement to facilitate a redetermination by the attorney general of the prior legal sufficiency determination issued under this section.

(f) The toll project entity may collect or seek reimbursement of the examination fee under Subsection (b) from the private participant.

(g) The attorney general by rule shall set the examination fee required under Subsection (b) in a reasonable amount and may adopt other rules as necessary to implement this section. The fee may not be set in an amount that is determined by a percentage of the cost of the toll project. The amount of the fee may not exceed reasonable attorney's fees charged for similar legal services in the private sector.

SECTION 28.05. The fee prescribed by Section 402.006, Government Code, as amended by this article, applies only to a document electronically submitted to the office of the attorney general on or after the effective date of this article.

SECTION 28.06. The fee prescribed by Section 402.0212, Government Code, as amended by this article, applies only to invoices for legal services submitted to the office of the attorney general for review on or after the effective date of this article.

SECTION 28.07. The fee prescribed by Section 371.051, Transportation Code, as amended by this article, applies only to a comprehensive development agreement submitted to the office of the attorney general on or after the effective date of this article.

SECTION 28.08. The changes in law made by this article apply only to a contract for legal services between a state agency and a private attorney or law firm entered into on or after the effective date of this article. A contract for legal services between a state agency and a private attorney or law firm entered into before the effective date of this article is governed by the law in effect at the time the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 28.09. Except as otherwise provided by this article, this article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 29. TEXAS PRESERVATION TRUST FUND ACCOUNT

SECTION 29.01. Subsections (a), (b), and (f), Section 442.015, Government Code, are amended to read as follows:

(a) Notwithstanding Section [~~Sections 403.094 and~~] 403.095, the Texas preservation trust fund account is a separate account in the general revenue fund. The account consists of transfers made to the account, loan repayments, grants and donations made for the purposes of this program, proceeds of sales, income earned [~~earnings~~] on money in the account, and any other money received under this section. Money in [~~Distributions from~~] the account may be used only for the purposes of this section and [~~may not be used~~] to pay operating expenses of the commission. Money allocated to the commission's historic preservation grant program shall be deposited to the credit of the account. Income earned [~~Earnings~~] on money in the account shall be deposited to the credit of the account.

(b) The commission may use money in [~~distributions from~~] the Texas preservation trust fund account to provide financial assistance to public or private entities for the acquisition, survey, restoration, or preservation, or for planning and educational activities leading to the preservation, of historic property in the state that is listed in the National Register of Historic Places or designated as a State Archeological Landmark or Recorded Texas Historic Landmark, or that the commission determines is eligible for such listing or designation. The financial assistance may be in the amount and form and according to the terms that the commission by rule determines. The commission shall give priority to property the commission determines to be endangered by demolition, neglect, underuse, looting, vandalism, or other threat to the property. Gifts and grants deposited to the credit of the account specifically for any eligible projects may be used only for the type of projects specified. If such a specification is not made, the gift or grant shall be unencumbered and accrue to the benefit of the Texas preservation trust fund account. If such a specification is made, the entire amount of the gift or grant may be used during any period for the project or type of project specified.

(f) The advisory board shall recommend to the commission rules for administering this section [~~Subsections (a) (c)~~].

SECTION 29.02. Subsections (h), (i), (j), (k), and (l), Section 442.015, Government Code, are repealed.

SECTION 29.03. The comptroller of public accounts and the Texas Historical Commission shall enter into a memorandum of understanding to facilitate the conversion of assets of the Texas preservation trust fund account into cash for deposit into the state treasury using a method that provides for the lowest amount of revenue loss to the state.

SECTION 29.04. This article takes effect November 1, 2011.

ARTICLE 30. FISCAL MATTERS CONCERNING INFORMATION TECHNOLOGY

SECTION 30.01. Section 2054.380, Government Code, is amended to read as follows:

Sec. 2054.380. FEES. (a) The department shall set and charge a fee to each state agency that receives a service from a statewide technology center in an amount sufficient to cover the direct and indirect cost of providing the service.

(b) Revenue derived from the collection of fees imposed under Subsection (a) may be appropriated to the department for:

(1) developing statewide information resources technology policies and planning under this chapter and Chapter 2059; and

(2) providing shared information resources technology services under this chapter.

SECTION 30.02. Subsection (d), Section 2157.068, Government Code, is amended to read as follows:

(d) The department may charge a reasonable administrative fee to a state agency, political subdivision of this state, or governmental entity of another state that purchases commodity items through the department in an amount that is sufficient to recover costs associated with the administration of this section. Revenue derived from the collection of fees imposed under this subsection may be appropriated to the department for:

(1) developing statewide information resources technology policies and planning under Chapters 2054 and 2059; and

(2) providing shared information resources technology services under Chapter 2054.

SECTION 30.03. Subsections (a) and (d), Section 2170.057, Government Code, are amended to read as follows:

(a) The department shall develop a system of billings and charges for services provided in operating and administering the consolidated telecommunications system that allocates the total state cost to each entity served by the system based on proportionate usage. The department shall set and charge a fee to each entity that receives services provided under this chapter in an amount sufficient to cover the direct and indirect costs of providing the service. Revenue derived from the collection of fees imposed under this subsection may be appropriated to the department for:

(1) developing statewide information resources technology policies and planning under Chapters 2054 and 2059; and

(2) providing:

(A) shared information resources technology services under Chapter 2054; and

(B) network security services under Chapter 2059.

(d) The department shall maintain in the revolving fund account sufficient amounts to pay the bills of the consolidated telecommunications system and the centralized capitol complex telephone system. ~~[The department shall certify amounts that exceed this amount to the comptroller, and the comptroller shall transfer the excess amounts to the credit of the statewide network applications account established by Section 2054.011.]~~

SECTION 30.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 31. STATE DEBT

SECTION 31.01. Chapter 1231, Government Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. LIMIT ON STATE DEBT PAYABLE FROM GENERAL REVENUE FUND

Sec. 1231.151. DEFINITIONS. In this subchapter:

(1) "Maximum annual debt service" means the limitation on annual debt service imposed by Section 49-j(a), Article III, Texas Constitution.

(2) "State debt payable from the general revenue fund" has the meaning assigned by Section 49-j(b), Article III, Texas Constitution.

(3) "Unissued debt" means state debt payable from the general revenue fund that has been authorized but not issued.

Sec. 1231.152. COMPUTATION OF DEBT LIMIT. In computing the annual debt service in a state fiscal year on state debt payable from the general revenue fund for purposes of determining whether additional state debt may be authorized without exceeding the maximum annual debt service, the board may employ any assumptions related to unissued debt that the board determines are necessary to reflect common or standard debt issuance practices authorized by law, including assumptions regarding:

(1) interest rates;

(2) debt maturity; and

(3) debt service payment structures.

Sec. 1231.153. REPORT ON COMPUTATION. (a) The board shall publish during each state fiscal year a report providing a detailed description of the method used to compute the annual debt service in that fiscal year on state debt payable from the general revenue fund for purposes of determining whether additional state debt may be authorized. The report must describe:

(1) the debt service included in the computation, including debt service on issued and unissued debt;

(2) the assumptions on which the debt service on unissued debt was based;
and

(3) any other factors required by law that affect the computation.

(b) The board may publish the report required by this section as a component of any other report required by law, including the annual report required by Section 1231.102, or as an independent report. The board shall make the report available to the public.

SECTION 31.02. The Bond Review Board shall publish the initial report required by Section 1231.153, Government Code, as added by this article, during the state fiscal year beginning September 1, 2011.

SECTION 31.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 32. CONTINUING LEGAL EDUCATION REQUIREMENTS FOR
ATTORNEY EMPLOYED BY ATTORNEY GENERAL

SECTION 32.01. Section 81.113, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The state bar shall credit an attorney licensed in this state with meeting the minimum continuing legal education requirements of the state bar for a reporting year if during the reporting year the attorney is employed full-time as an attorney by the office of the attorney general. An attorney credited for continuing legal education under this subsection must meet the continuing legal education requirements of the state bar in legal ethics or professional responsibility. This subsection expires January 1, 2014.

SECTION 32.02. Subchapter A, Chapter 402, Government Code, is amended by adding Section 402.010 to read as follows:

Sec. 402.010. CONTINUING LEGAL EDUCATION PROGRAMS. The office of the attorney general shall recognize, prepare, or administer continuing legal education programs that meet continuing legal education requirements imposed under Section 81.113(c) for the attorneys employed by the office. This section expires January 1, 2014.

SECTION 32.03. Section 81.113, Government Code, as amended by this article, applies only to the requirements for a continuing legal education compliance year that ends on or after September 1, 2011. The requirements for continuing legal education for a compliance year that ends before September 1, 2011, are covered by the law and rules in effect when the compliance year ended, and that law and those rules are continued in effect for that purpose.

ARTICLE 33. REGISTRATION FEE AND REGISTRATION RENEWAL FEE FOR
LOBBYISTS

SECTION 33.01. Subsection (c), Section 305.005, Government Code, is amended to read as follows:

(c) The registration fee and registration renewal fee are:

(1) \$150 [~~\$100~~] for a registrant employed by an organization exempt from federal income tax under Section 501(c)(3)₂ [~~or~~] 501(c)(4), or 501(c)(6), Internal Revenue Code of 1986;

(2) \$75 [~~\$50~~] for any person required to register solely because the person is required to register under Section 305.0041 [~~of this chapter~~]; or

(3) \$750 [~~\$500~~] for any other registrant.

ARTICLE 34. ASSESSMENT OF PREMIUM DIFFERENTIAL ON CERTAIN
PUBLIC EMPLOYEES WHO USE TOBACCO

SECTION 34.01. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3075 to read as follows:

Sec. 1551.3075. TOBACCO USER PREMIUM DIFFERENTIAL. (a) The board of trustees shall assess each participant in a health benefit plan provided under the group benefits program who uses one or more tobacco products a tobacco user premium differential, to be paid in monthly installments. Except as provided by Subsection (b), the board of trustees shall determine the amount of the monthly installments of the premium differential.

(b) If the General Appropriations Act for a state fiscal biennium sets the amount of the monthly installments of the tobacco user premium differential for that biennium, the board of trustees shall assess the premium differential during that biennium in the amount prescribed by the General Appropriations Act.

SECTION 34.02. Section 1551.314, Insurance Code, is amended to read as follows:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be:

(1) made for coverages under this chapter selected by an individual who receives a state contribution, other than as a spouse, dependent, or beneficiary, for coverages under a group benefits program provided by an institution of higher education, as defined by Section 61.003, Education Code; or

(2) made for or used to pay a tobacco user premium differential assessed under Section 1551.3075.

SECTION 34.03. The board of trustees of the Employees Retirement System of Texas shall implement the tobacco user premium differential required under Section 1551.3075, Insurance Code, as added by this article, not later than January 1, 2012.

ARTICLE 35. PUBLIC ASSISTANCE REPORTING INFORMATION SYSTEM

SECTION 35.01. Subsection (c), Section 434.017, Government Code, is amended to read as follows:

(c) Money in the fund may be appropriated to the Texas Veterans Commission to:

(1) enhance or improve veterans' assistance programs, including veterans' representation and counseling;

(2) make grants to address veterans' needs; ~~and~~

(3) administer the fund; and

(4) analyze and investigate data received from the federal Public Assistance Reporting Information System (PARIS) that is administered by the Administration for Children and Families of the United States Department of Health and Human Services.

SECTION 35.02. The comptroller shall credit to the fund for veterans' assistance established under Section 434.017, Government Code, as amended by this article, the savings generated from the use of the federal Public Assistance Reporting Information System (PARIS) under that section.

ARTICLE 36. REGIONAL POISON CONTROL CENTER MANAGEMENT
CONTROLS AND EFFICIENCY

SECTION 36.01. Section 777.001, Health and Safety Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The Commission on State Emergency Communications may standardize the operations of and implement management controls to improve the efficiency of regional poison control centers ~~[vote to designate a seventh regional or satellite poison control center in Harris County. That poison control center is subject to all provisions of this chapter and other law relating to regional poison control centers].~~

(d) If the Commission on State Emergency Communications implements management controls under Subsection (c), the commission shall submit to the governor and the Legislative Budget Board a plan for implementing the controls not later than October 31, 2011. This subsection expires January 1, 2013.

ARTICLE 37. AUTHORIZED USES FOR CERTAIN DEDICATED PERMANENT
FUNDS

SECTION 37.01. Section 403.105, Government Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsections (b-1), (c), (e), (f), and (h), money in the fund may not be appropriated for any purpose.

(b-1) Notwithstanding the limitations and requirements of Section 403.1068, the legislature may appropriate money in the fund, including the corpus and available earnings of the fund determined under Section 403.1068, to pay the principal of or interest on a bond issued for the purposes of Section 67, Article III, Texas Constitution. This subsection does not authorize the appropriation under this subsection of money subject to a limitation or requirement as described by Subsection (e) that is not consistent with the use of the money in accordance with this subsection.

SECTION 37.02. Section 403.1055, Government Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsections (b-1), (c), (e), (f), and (h), money in the fund may not be appropriated for any purpose.

(b-1) Notwithstanding the limitations and requirements of Section 403.1068, the legislature may appropriate money in the fund, including the corpus and available earnings of the fund determined under Section 403.1068, to pay the principal of or interest on a bond issued for the purposes of Section 67, Article III, Texas Constitution. This subsection does not authorize the appropriation under this subsection of money subject to a limitation or requirement as described by Subsection (e) that is not consistent with the use of the money in accordance with this subsection.

SECTION 37.03. Section 403.106, Government Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsections (b-1), (c), (e), (f), and (h), money in the fund may not be appropriated for any purpose.

(b-1) Notwithstanding the limitations and requirements of Section 403.1068, the legislature may appropriate money in the fund, including the corpus and available earnings of the fund determined under Section 403.1068, to pay the principal of or interest on a bond issued for the purposes of Section 67, Article III, Texas

Constitution. This subsection does not authorize the appropriation under this subsection of money subject to a limitation or requirement as described by Subsection (e) that is not consistent with the use of the money in accordance with this subsection.

SECTION 37.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 38. EMPLOYER ENROLLMENT FEE FOR PARTICIPATION IN
CERTAIN HEALTH BENEFIT PLANS

SECTION 38.01. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3076 to read as follows:

Sec. 1551.3076. EMPLOYER ENROLLMENT FEE. (a) The board of trustees shall assess each employer whose employees participate in the group benefits program an employer enrollment fee in an amount not to exceed a percentage of the employer's total payroll, as determined by the General Appropriations Act.

(b) The board of trustees shall deposit the enrollment fees to the credit of the employees life, accident, and health insurance and benefits fund to be used for the purposes specified by Section 1551.401.

ARTICLE 39. FISCAL MATTERS CONCERNING SURPLUS AND SALVAGE
PROPERTY

SECTION 39.01. Subchapter C, Chapter 2175, Government Code, is repealed.

SECTION 39.02. Subsection (a), Section 32.102, Education Code, is amended to read as follows:

(a) As provided by this subchapter, a school district or open-enrollment charter school may transfer to a student enrolled in the district or school:

(1) any data processing equipment donated to the district or school, including equipment donated by:

(A) a private donor; or

(B) a state eleemosynary institution or a state agency under Section 2175.905 [2175.128], Government Code;

(2) any equipment purchased by the district or school, to the extent consistent with Section 32.105; and

(3) any surplus or salvage equipment owned by the district or school.

SECTION 39.03. Section 2175.002, Government Code, is amended to read as follows:

Sec. 2175.002. ADMINISTRATION OF CHAPTER. The commission is responsible for the disposal of surplus and salvage property of the state. The commission's surplus and salvage property division shall administer this chapter.

SECTION 39.04. Section 2175.065, Government Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The commission may authorize a state agency to dispose of surplus or salvage property if the agency demonstrates to the commission its ability to dispose of the property under this chapter [Subchapters C and E] in a manner that results in cost savings to the state, under commission rules adopted under this chapter.

(c) If property is disposed of under this section, the disposing state agency shall report the transaction to the commission. The report must include a description of the property disposed of, the reasons for disposal, the price paid for the property disposed of, and the recipient of the property disposed of.

(d) If the commission determines that a violation of a state law or rule has occurred based on the report under Subsection (c), the commission shall report the violation to the Legislative Budget Board.

SECTION 39.05. The heading to Subchapter D, Chapter 2175, Government Code, is amended to read as follows:

SUBCHAPTER D. DISPOSITION OF SURPLUS OR SALVAGE PROPERTY [~~BY COMMISSION~~]

SECTION 39.06. Section 2175.181, Government Code, is amended to read as follows:

Sec. 2175.181. APPLICABILITY. [~~(a) This subchapter applies only to surplus and salvage property located in:~~

~~[(1) Travis County;~~

~~[(2) a county in which federal surplus property is warehoused by the commission under Subchapter G; or~~

~~[(3) a county for which the commission determines that it is cost effective to follow the procedures created under this subchapter and informs affected state agencies of that determination.~~

~~[(b)] This subchapter applies [does not apply] to a state agency delegated the authority to dispose of surplus or salvage property under Section 2175.065.~~

SECTION 39.07. Section 2175.182, Government Code, is amended to read as follows:

Sec. 2175.182. STATE AGENCY TRANSFER OF PROPERTY [~~TO COMMISSION~~]. (a) A state agency that determines it has surplus or salvage property shall inform the commission of that fact for the purpose of determining the method of disposal of the property. [The commission is responsible for the disposal of surplus or salvage property under this subchapter.] The commission may take physical possession of the property.

(b) Based on the condition of the property, the commission, in conjunction with the state agency, shall determine whether the property is:

(1) surplus property that should be offered for transfer under Section 2175.184 or sold to the public; or

(2) salvage property.

(c) Following the determination in Subsection (b), the [The] commission shall direct the state agency to inform the comptroller's office of the property's kind, number, location, condition, original cost or value, and date of acquisition.

SECTION 39.08. Section 2175.1825, Government Code, is amended to read as follows:

Sec. 2175.1825. ADVERTISING ON COMPTROLLER WEBSITE. (a) Not later than the second day after the date the comptroller receives notice from a state agency [the commission] under Section 2175.182(c), the comptroller shall advertise the property's kind, number, location, and condition on the comptroller's website.

(b) The comptroller shall provide the commission access to all records in the state property accounting system related to surplus and salvage property.

SECTION 39.09. Section 2175.183, Government Code, is amended to read as follows:

Sec. 2175.183. COMMISSION NOTICE TO OTHER ENTITIES. ~~The [On taking responsibility for surplus property under this subchapter, the]~~ commission shall inform other state agencies, political subdivisions, and assistance organizations of the comptroller's website that lists surplus property that is available for sale.

SECTION 39.10. Section 2175.184, Government Code, is amended to read as follows:

Sec. 2175.184. DIRECT TRANSFER. During the 10 business days after the date the property is posted on the comptroller's website, a state agency, political subdivision, or assistance organization shall ~~[may]~~ coordinate with the commission for a transfer of the property at a price established by the commission ~~[in cooperation with the transferring agency]~~. A transfer to a state agency has priority over any other transfer during this period.

SECTION 39.11. Subsection (a), Section 2175.186, Government Code, is amended to read as follows:

(a) If a disposition of a state agency's surplus property is not made under Section 2175.184, the commission shall sell the property by competitive bid, auction, or direct sale to the public, including a sale using an Internet auction site. The commission may contract with a private vendor to assist with the sale of the property.

SECTION 39.12. Section 2175.189, Government Code, is amended to read as follows:

Sec. 2175.189. ADVERTISEMENT OF SALE. If the value of an item or a lot of property to be sold is estimated to be more than \$25,000 ~~[\$5,000]~~, the commission shall advertise the sale at least once in at least one newspaper of general circulation in the vicinity in which the property is located.

SECTION 39.13. Subsection (a), Section 2175.191, Government Code, is amended to read as follows:

(a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of selling the surplus or salvage property, including the cost of auctioneer services or assistance from a private vendor, and the amount of the fee collected under Section 2175.188, shall be deposited to the credit of the general revenue fund of the state treasury.

SECTION 39.14. Section 2175.302, Government Code, is amended to read as follows:

Sec. 2175.302. EXCEPTION FOR ELEEMOSYNARY INSTITUTIONS. Except as provided by Section 2175.905(b) ~~[2175.128(b)]~~, this chapter does not apply to the disposition of surplus or salvage property by a state eleemosynary institution.

SECTION 39.15. Section 2175.904, Government Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) The commission shall establish a program for the sale of gambling equipment received from a municipality, from a commissioners court under Section 263.152(a)(5), Local Government Code, or from a state agency under this chapter.

(c) Proceeds from the sale of gambling equipment from a municipality or commissioners court, less the costs of the sale, including costs of advertising, storage, shipping, and auctioneer or broker services, and the amount of the fee collected under Section 2175.188 [2175.131], shall be divided according to an agreement between the commission and the municipality or commissioners court that provided the equipment for sale. The agreement must provide that:

(1) not less than 50 percent of the net proceeds be remitted to the commissioners court; and

(2) the remainder of the net proceeds retained by the commission be deposited to the credit of the general revenue fund.

(d) Proceeds from the sale of gambling equipment from a state agency, less the costs of the sale, including costs of advertising, storage, shipping, and auctioneer or broker services, and the amount of the fee collected under Section 2175.188, shall be deposited to the credit of the general revenue fund of the state treasury.

SECTION 39.16. Subchapter Z, Chapter 2175, Government Code, is amended by adding Sections 2175.905 and 2175.906 to read as follows:

Sec. 2175.905. DISPOSITION OF DATA PROCESSING EQUIPMENT. (a) If a disposition of a state agency's surplus or salvage data processing equipment is not made under Section 2175.184, the state agency shall transfer the equipment to:

(1) a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code;

(2) an assistance organization specified by the school district; or

(3) the Texas Department of Criminal Justice.

(b) If a disposition of the surplus or salvage data processing equipment of a state eleemosynary institution or an institution or agency of higher education is not made under other law, the institution or agency shall transfer the equipment to:

(1) a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code;

(2) an assistance organization specified by the school district; or

(3) the Texas Department of Criminal Justice.

(c) The state eleemosynary institution or institution or agency of higher education or other state agency may not collect a fee or other reimbursement from the district, the school, the assistance organization, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment transferred under this section.

Sec. 2175.906. ABOLISHED AGENCIES. On abolition of a state agency, in accordance with Chapter 325, the commission shall take custody of all of the agency's property or other assets as surplus property unless other law or the legislature designates another appropriate governmental entity to take custody of the property or assets.

ARTICLE 40. LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND

SECTION 40.01. Section 815.317, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The comptroller shall deposit fees collected under Section 133.102(e)(7), Local Government Code, to the credit of the law enforcement and custodial officer supplemental retirement fund.

SECTION 40.02. Subsection (e), Section 133.102, Local Government Code, is amended to read as follows:

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

- (1) abused children's counseling 0.0088 percent;
- (2) crime stoppers assistance 0.2581 percent;
- (3) breath alcohol testing 0.5507 percent;
- (4) Bill Blackwood Law Enforcement Management Institute 2.1683 percent;
- (5) law enforcement officers standards and education 5.0034 percent;
- (6) comprehensive rehabilitation 5.3218 percent;
- (7) law enforcement and custodial officer supplemental retirement fund ~~operator's and chauffeur's license~~ 11.1426 percent;
- (8) criminal justice planning 12.5537 percent;
- (9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University 1.2090 percent;
- (10) compensation to victims of crime fund 37.6338 percent;
- (11) fugitive apprehension account 12.0904 percent;
- (12) judicial and court personnel training fund 4.8362 percent;
- (13) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center Account 1.2090 percent; and
- (14) fair defense account 6.0143 percent.

SECTION 40.03. This article takes effect September 1, 2013.

ARTICLE 41. SALES AND USE TAX COLLECTION AND ALLOCATION

SECTION 41.01. Subsection (b), Section 151.008, Tax Code, is amended to read as follows:

- (b) "Seller" and "retailer" include:
- (1) a person in the business of making sales at auction of tangible personal property owned by the person or by another;
 - (2) a person who makes more than two sales of taxable items during a 12-month period, including sales made in the capacity of an assignee for the benefit of creditors or receiver or trustee in bankruptcy;
 - (3) a person regarded by the comptroller as a seller or retailer under Section 151.024 ~~[of this code]~~;
 - (4) a hotel, motel, or owner or lessor of an office or residential building or development that contracts and pays for telecommunications services for resale to guests or tenants; ~~[and]~~

(5) a person who engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; and

(6) a person who, under an agreement with another person, is:

(A) entrusted with possession of tangible personal property with respect to which the other person has title or another ownership interest; and

(B) authorized to sell, lease, or rent the property without additional action by the person having title to or another ownership interest in the property.

SECTION 41.02. Section 151.107, Tax Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) For the purpose of this subchapter and in relation to the use tax, a retailer is engaged in business in this state if the retailer:

(1) maintains, occupies, or uses in this state permanently, temporarily, directly, or indirectly or through a subsidiary or agent by whatever name, an office, ~~[place of]~~ distribution center, sales or sample room or place, warehouse, storage place, or any other physical location where ~~[place of]~~ business is conducted;

(2) has a representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling or delivering or the taking of orders for a taxable item;

(3) derives receipts ~~[rentals]~~ from the sale, [a] lease, or rental of tangible personal property situated in this state;

(4) engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items;

(5) solicits orders for taxable items by mail or through other media and under federal law is subject to or permitted to be made subject to the jurisdiction of this state for purposes of collecting the taxes imposed by this chapter;

(6) has a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this section; ~~[or]~~

(7) holds a substantial ownership interest in, or is owned in whole or substantial part by, a person who maintains a location in this state from which business is conducted and if:

(A) the retailer sells the same or a substantially similar line of products as the person with the location in this state and sells those products under a business name that is the same as or substantially similar to the business name of the person with the location in this state; or

(B) the facilities or employees of the person with the location in this state are used to:

(i) advertise, promote, or facilitate sales by the retailer to consumers; or

(ii) perform any other activity on behalf of the retailer that is intended to establish or maintain a marketplace for the retailer in this state, including receiving or exchanging returned merchandise;

(8) holds a substantial ownership interest in, or is owned in whole or substantial part by, a person that:

(A) maintains a distribution center, warehouse, or similar location in this state; and

(B) delivers property sold by the retailer to consumers; or

(9) otherwise does business in this state.

(d) In this section:

(1) "Ownership" includes:

(A) direct ownership;

(B) common ownership; and

(C) indirect ownership through a parent entity, subsidiary, or affiliate.

(2) "Substantial" means, with respect to an ownership interest, an interest in an entity that is:

(A) if the entity is a corporation, at least 50 percent, directly or indirectly, of:

(i) the total combined voting power of all classes of stock of the corporation; or

(ii) the beneficial ownership interest in the voting stock of the corporation;

(B) if the entity is a trust, at least 50 percent, directly or indirectly, of the current beneficial interest in the trust corpus or income;

(C) if the entity is a limited liability company, at least 50 percent, directly or indirectly, of:

(i) the total membership interest of the limited liability company; or

(ii) the beneficial ownership interest in the membership interest of the limited liability company; or

(D) for any entity, including a partnership or association, at least 50 percent, directly or indirectly, of the capital or profits interest in the entity.

SECTION 41.03. Subchapter M, Chapter 151, Tax Code, is amended by adding Section 151.802 to read as follows:

Sec. 151.802. ALLOCATION OF CERTAIN REVENUE TO PROPERTY TAX RELIEF FUND. (a) This section applies only:

(1) during the state fiscal years beginning September 1 of 2012, 2013, 2014, 2015, and 2016; and

(2) with respect to unused franchise tax credits described by Sections 18(e) and (f), Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called Session, 2006.

(b) Notwithstanding Section 151.801, the comptroller shall deposit to the credit of the property tax relief fund under Section 403.109, Government Code, an amount of the proceeds from the collection of the taxes imposed by this chapter equal to the amount of revenue the state does not receive from the tax imposed under Chapter 171 because taxable entities, as defined by that chapter, that are corporations are entitled to claim unused franchise tax credits after December 31, 2012, and during that state fiscal year.

(c) This section expires September 1, 2017.

SECTION 41.04. The change in law made by this article does not affect tax liability accruing before the effective date of this article. That liability continues in effect as if this article had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 41.05. This article takes effect January 1, 2012.

ARTICLE 42. CARRYFORWARD OF CERTAIN FRANCHISE TAX CREDITS

SECTION 42.01. Subsections (e) and (f), Section 18, Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called Session, 2006, are amended to read as follows:

(e) A corporation that has any unused credits established before the effective date of this Act under Subchapter P, Chapter 171, Tax Code, may claim those unused credits on or with the tax report for the period in which the credit was established. However, if the corporation was allowed to carry forward unused credits under that subchapter, the corporation may continue to apply those credits on or with each consecutive report until the earlier of the date the credit would have expired under the terms of Subchapter P, Chapter 171, Tax Code, had it continued in existence, or December 31, 2016 [2012], and the former law under which the corporation established the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

(f) A corporation that has any unused credits established before the effective date of this Act under Subchapter Q, Chapter 171, Tax Code, may claim those unused credits on or with the tax report for the period in which the credit was established. However, if the corporation was allowed to carry forward unused credits under that subchapter, the corporation may continue to apply those credits on or with each consecutive report until the earlier of the date the credit would have expired under the terms of Subchapter Q, Chapter 171, Tax Code, had it continued in existence, or December 31, 2016 [2012], and the former law under which the corporation established the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

ARTICLE 43. STATE PURCHASING

SECTION 43.01. Section 2155.082, Government Code, is amended to read as follows:

Sec. 2155.082. PROVIDING CERTAIN PURCHASING SERVICES ON FEE-FOR-SERVICE BASIS OR THROUGH BENEFIT FUNDING. (a) The comptroller [commission] may provide open market purchasing services on a fee-for-service basis for state agency purchases that are delegated to an agency under Section 2155.131, 2155.132, [2155.133,] or 2157.121 or that are exempted from the purchasing authority of the comptroller [commission]. The comptroller [commission] shall set the fees in an amount that recovers the comptroller's [commission's] costs in providing the services.

(b) The comptroller [commission] shall publish a schedule of [its] fees for services that are subject to this section. The schedule must include the comptroller's [commission's] fees for:

- (1) reviewing bid and contract documents for clarity, completeness, and compliance with laws and rules;
- (2) developing and transmitting invitations to bid;
- (3) receiving and tabulating bids;
- (4) evaluating and determining which bidder offers the best value to the state;
- (5) creating and transmitting purchase orders; and
- (6) participating in agencies' request for proposal processes.

(c) If the state agency on behalf of which the procurement is to be made agrees, the comptroller may engage a consultant to assist with a particular procurement on behalf of a state agency and pay the consultant from the cost savings realized by the state agency.

ARTICLE 44. PERIOD FOR SALES AND USE TAX HOLIDAY

SECTION 44.01. Subsection (a), Section 151.326, Tax Code, is amended to read as follows:

(a) The sale of an article of clothing or footwear designed to be worn on or about the human body is exempted from the taxes imposed by this chapter if:

- (1) the sales price of the article is less than \$100; and
- (2) the sale takes place during a period beginning at 12:01 a.m. on the [third] Friday before the eighth day preceding the earliest date on which any school district, other than a district operating a year-round system, may begin instruction for the school year as prescribed by Section 25.0811(a), Education Code, [in August] and ending at 12 midnight on the following Sunday.

SECTION 44.02. Subsection (a), Section 151.326, Tax Code, as amended by this article, does not affect tax liability accruing before the effective date of this article. That liability continues in effect as if this article had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 44.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 45. LEGISLATIVE BUDGET BOARD MEETINGS

SECTION 45.01. Section 322.003, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The board shall hold a public hearing each state fiscal year to receive a report from the comptroller and receive invited testimony regarding the financial condition of this state. The report from the comptroller shall include, to the extent practicable:

- (1) information on each revenue source included in determining the estimate of anticipated revenue for purposes of the most recent statement required by Section 49a, Article III, Texas Constitution, and the total net revenue actually collected from that source for the state fiscal year as of the end of the most recent state fiscal quarter;

(2) a comparison for the period described by Subdivision (1) of the total net revenue collected from each revenue source required to be specified under that subdivision with the anticipated revenue from that source that was included for purposes of determining the estimate of anticipated revenue in the statement required by Section 49a, Article III, Texas Constitution;

(3) information on state revenue sources resulting from a law taking effect after the comptroller submitted the most recent statement required by Section 49a, Article III, Texas Constitution, and the estimated total net revenue collected from that source for the state fiscal year as of the end of the most recent state fiscal quarter;

(4) a summary of the indicators of state economic trends experienced since the most recent statement required by Section 49a, Article III, Texas Constitution; and

(5) a summary of anticipated state economic trends and the anticipated effect of the trends on state revenue collections.

SECTION 45.02. Chapter 322, Government Code, is amended by adding Section 322.0081 to read as follows:

Sec. 322.0081. BUDGET DOCUMENTS ONLINE. (a) The board shall post on the board's Internet website documents prepared by the board that are provided to a committee, subcommittee, or conference committee of either house of the legislature in connection with an appropriations bill.

(b) The board shall post a document to which this section applies as soon as practicable after the document is provided to a committee, subcommittee, or conference committee.

(c) The document must be downloadable and provide data in a format that allows the public to search, extract, organize, and analyze the information in the document.

(d) The requirement under Subsection (a) does not supersede any exceptions provided under Chapter 552.

(e) The board shall promulgate rules to implement the provisions of this section.

SECTION 45.03. Chapter 322, Government Code, is amended by adding Section 322.022 to read as follows:

Sec. 322.022. PUBLIC HEARING ON INTERIM BUDGET REDUCTION REQUEST. (a) In this section:

(1) "Interim budget reduction request" means a request communicated in any manner for a state agency to make adjustments to the strategies, methods of finance, performance measures, or riders applicable to the agency through the state budget in effect on the date the request is communicated that, if implemented, would reduce the agency's total expenditures for the current state fiscal biennium to an amount less than the total amount that otherwise would be permissible based on the appropriations made to the agency in the budget.

(2) "State agency" means an office, department, board, commission, institution, or other entity to which a legislative appropriation is made.

(b) A state agency shall provide to the board a detailed report of any expenditure reduction plan that:

(1) the agency develops in response to an interim budget reduction request made by the governor, the lieutenant governor, or a member of the legislature, or any combination of those persons; and

(2) if implemented, would reduce the agency's total expenditures for the current state fiscal biennium to an amount less than the total amount that otherwise would be permissible based on the appropriations made to the agency in the state budget for the biennium.

(c) The board shall hold a public hearing to solicit testimony on an expenditure reduction plan a state agency reports to the board as required by Subsection (b) as soon as practicable after receiving the report. The agency may not implement any element of the plan until the conclusion of the hearing.

(d) This section does not apply to an expenditure reduction a state agency desires to make that does not directly or indirectly result from an interim budget reduction request made by the governor, the lieutenant governor, or a member of the legislature, or any combination of those persons.

SECTION 45.04. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0145 to read as follows:

Sec. 403.0145. PUBLICATION OF FEES SCHEDULE. As soon as practicable after the end of each state fiscal year, the comptroller shall publish online a schedule of all revenue to the state from fees authorized by statute. For each fee, the schedule must specify:

- (1) the statutory authority for the fee;
- (2) if the fee has been increased during the most recent legislative session, the amount of the increase;
- (3) into which fund the fee revenue will be deposited; and
- (4) the amount of the fee revenue that will be considered available for general governmental purposes and accordingly considered available for the purpose of certification under Section 403.121.

SECTION 45.05. Section 404.124, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) Before issuing notes the comptroller shall submit to the committee a general revenue cash flow shortfall forecast, based on the comptroller's most recent anticipated revenue estimate. The forecast must contain a detailed report of estimated revenues and expenditures for each month and each major revenue and expenditure category and must demonstrate the maximum general revenue cash flow shortfall that may be predicted. The committee shall hold a public hearing to receive invited testimony on the forecast, including testimony on this state's overall economic condition, as soon as practicable after receiving the forecast.

(b) Based on the forecast and testimony provided at the hearing required by Subsection (a), the committee may approve the issuance of notes, subject to Subsections (b-1) and (c), and the maximum outstanding balance of notes in any fiscal year. The outstanding balance may not exceed the maximum temporary cash shortfall forecast by the comptroller for any period in the fiscal year. The comptroller may not issue notes in excess of the amount approved.

(b-1) The committee's approval of the issuance of notes granted under Subsection (b) expires on the 91st day after the date the hearing conducted under Subsection (a) concludes. The comptroller may not issue notes on or after the 91st day unless the comptroller submits another general revenue cash flow shortfall forecast to the committee and the committee subsequently grants approval for the issuance of the

notes in accordance with the procedure required by Subsections (a) and (b). Each subsequent approval expires on the 61st day after the date the hearing on which the approval was based concludes.

ARTICLE 46. ECONOMIC AND WORKFORCE DEVELOPMENT PROGRAMS

SECTION 46.01. Section 481.078, Government Code, is amended by adding Subsection (m) to read as follows:

(m) Notwithstanding Subsections (e) and (e-1), during the state fiscal biennium that begins on September 1, 2011, the governor shall transfer \$10 million from the fund to the Texas Workforce Commission to fund the Texas Back to Work Program established under Chapter 313, Labor Code. The governor shall begin transferring money as required by this subsection as soon as possible after September 1, 2011, and may make more than one transfer if necessary to satisfy the requirements of this subsection. This subsection expires September 1, 2013.

SECTION 46.02. Subtitle B, Title 4, Labor Code, is amended by adding Chapter 313 to read as follows:

CHAPTER 313. TEXAS BACK TO WORK PROGRAM

Sec. 313.001. DEFINITION. In this chapter, "qualified applicant" means a person who made less than \$40 per hour at the person's last employment before becoming unemployed.

Sec. 313.002. INITIATIVE ESTABLISHED. (a) The Texas Back to Work Program is established within the commission.

(b) The purpose of the program is to establish public-private partnerships with employers to transition residents of this state from receiving unemployment compensation to becoming employed as members of the workforce.

(c) An employer that participates in the initiative may receive a wage subsidy for hiring one or more qualified applicants who are unemployed at the time of hire.

Sec. 313.003. RULES. The commission may adopt rules as necessary to implement this chapter.

ARTICLE 47. ELIGIBILITY OF SURVIVING SPOUSE OF DISABLED VETERAN TO PAY AD VALOREM TAXES ON RESIDENCE HOMESTEAD IN INSTALLMENTS

SECTION 47.01. Section 31.031, Tax Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) This section applies only to:

- (1) [~~If before the delinquency date~~] an individual who is:
 - (A) disabled or at least 65 years of age; and
 - (B) [~~is~~] qualified for an exemption under Section 11.13(c); or
- (2) an individual who is:
 - (A) the unmarried surviving spouse of a disabled veteran; and
 - (B) qualified for an exemption under Section 11.22.

(a-1) If before the delinquency date an individual to whom this section applies pays at least one-fourth of a taxing unit's taxes imposed on property that the person owns and occupies as a residence homestead, accompanied by notice to the taxing unit that the person will pay the remaining taxes in installments, the person may pay

the remaining taxes without penalty or interest in three equal installments. The first installment must be paid before April 1, the second installment before June 1, and the third installment before August 1.

SECTION 47.02. This article applies only to an ad valorem tax year that begins on or after the effective date of this article.

SECTION 47.03. This article takes effect January 1, 2012.

ARTICLE 48. EXTENSION OF FRANCHISE TAX EXEMPTION

SECTION 48.01. Subsection (c), Section 1, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(c) This [~~If this section takes effect, this~~] section expires December 31, 2013 [~~2011~~].

SECTION 48.02. Subsection (b), Section 2, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(b) This section takes effect January 1, 2014 [~~2012, if H.B. No. 2154, Acts of the 81st Legislature, Regular Session, 2009, amends Section 155.0211, Tax Code, in a manner that results in an increase in the revenue from the tax under that section during the state fiscal biennium beginning September 1, 2009, that is attributable to that change, and that Act is enacted and becomes law. If H.B. No. 2154, Acts of the 81st Legislature, Regular Session, 2009, does not amend Section 155.0211, Tax Code, in that manner or is not enacted or does not become law, this section takes effect January 1, 2010~~].

SECTION 48.03. Subsection (b), Section 3, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(b) This section takes effect January 1, 2014 [~~2012, if H.B. No. 2154, Acts of the 81st Legislature, Regular Session, 2009, amends Section 155.0211, Tax Code, in a manner that results in an increase in the revenue from the tax under that section during the state fiscal biennium beginning September 1, 2009, that is attributable to that change, and that Act is enacted and becomes law. If H.B. No. 2154, Acts of the 81st Legislature, Regular Session, 2009, does not amend Section 155.0211, Tax Code, in that manner or is not enacted or does not become law, this section takes effect January 1, 2010~~].

SECTION 48.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this article to have immediate effect, this article takes effect September 1, 2011.

ARTICLE 49. FISCAL MATTERS REGARDING ASSISTANT PROSECUTORS

SECTION 49.01. Subsection (f), Section 41.255, Government Code, is amended to read as follows:

(f) A county is not required to pay longevity supplements if the county does not receive funds from the comptroller as provided by Subsection (d). If sufficient funds are not available to meet the requests made by counties for funds for payment of assistant prosecutors qualified for longevity supplements:

- (1) [5] the comptroller shall apportion the available funds to the eligible counties by reducing the amount payable to each county on an equal percentage basis;
- (2) a county is not entitled to receive the balance of the funds at a later date;

and

(3) the longevity pay program under this chapter is suspended to the extent of the insufficiency. ~~[A county that receives from the comptroller an amount less than the amount certified by the county to the comptroller under Subsection (d) shall apportion the funds received by reducing the amount payable to eligible assistant prosecutors on an equal percentage basis, but is not required to use county funds to make up any difference between the amount certified and the amount received.]~~

SECTION 49.02. Subsection (g), Section 41.255, Government Code, is repealed.

ARTICLE 50. FISCAL MATTERS REGARDING PROCESS SERVERS

SECTION 50.01. Subchapter B, Chapter 72, Government Code, is amended by adding Sections 72.013 and 72.014 to read as follows:

Sec. 72.013. PROCESS SERVER REVIEW BOARD. A person appointed to the process server review board established by supreme court order serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in traveling and performing official board duties.

Sec. 72.014. CERTIFICATION DIVISION. The office shall establish a certification division to oversee the regulatory programs assigned to the office by law or by the supreme court.

ARTICLE 51. FISCAL MATTERS REGARDING REIMBURSEMENT OF JURORS

SECTION 51.01. Section 61.001, Government Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) Notwithstanding Subsection (a), and except as provided by Subsection (c), during the state fiscal biennium beginning September 1, 2011, a person who reports for jury service in response to the process of a court is entitled to receive as reimbursement for travel and other expenses an amount:

(1) not less than \$6 for the first day or fraction of the first day the person is in attendance in court in response to the process and discharges the person's duty for that day; and

(2) not less than the amount provided in the General Appropriations Act for each day or fraction of each day the person is in attendance in court in response to the process after the first day and discharges the person's duty for that day.

(a-2) This subsection and Subsection (a-1) expire September 1, 2013.

SECTION 51.02. Section 61.0015, Government Code, is amended by adding Subsections (a-1), (a-2), and (e-1) to read as follows:

(a-1) Notwithstanding Subsection (a), during the state fiscal biennium beginning September 1, 2011, the state shall reimburse a county the appropriate amount as provided in the General Appropriations Act for the reimbursement paid under Section 61.001 to a person who reports for jury service in response to the process of a court for each day or fraction of each day after the first day in attendance in court in response to the process.

(a-2) This subsection and Subsections (a-1) and (e-1) expire September 1, 2013.

(e-1) Notwithstanding Subsection (e), during the state fiscal biennium beginning September 1, 2011, if a payment on a county's claim for reimbursement is reduced under Subsection (d), or if a county fails to file the claim for reimbursement in a

timely manner, the comptroller may, as provided by rule, apportion the payment of the balance owed the county. The comptroller's rules may permit a different rate of reimbursement for each quarterly payment under Subsection (c).

ARTICLE 52. COLLECTION IMPROVEMENT PROGRAM

SECTION 52.01. Subsections (f), (h), (i), and (j), Article 103.0033, Code of Criminal Procedure, are amended to read as follows:

(f) The ~~[comptroller, in cooperation with the]~~ office~~[-]~~ shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The office [comptroller] shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(h) The office~~[-, in consultation with the comptroller,]~~ may:

(1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) determine whether it is not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

(i) Each county and municipality shall at least annually submit to the office ~~[and the comptroller]~~ a written report that includes updated information regarding the program, as determined by the office ~~[in cooperation with the comptroller]~~. The report must be in a form approved by the office ~~[in cooperation with the comptroller]~~.

(j) The office [comptroller] shall periodically audit counties and municipalities to verify information reported under Subsection (i) and confirm that the county or municipality is conforming with requirements relating to the program. ~~[The comptroller shall consult with the office in determining how frequently to conduct audits under this section.]~~

SECTION 52.02. Subsection (e), Section 133.058, Local Government Code, is amended to read as follows:

(e) A municipality or county may not retain a service fee if, during an audit under ~~[Section 133.059 of this code or]~~ Article 103.0033(j), Code of Criminal Procedure, the Office of Court Administration of the Texas Judicial System [comptroller] determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county may continue to retain a service fee under this section on receipt of a written confirmation from the Office of Court Administration of the Texas Judicial System [comptroller] that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 52.03. Subsection (c-1), Section 133.103, Local Government Code, is amended to read as follows:

(c-1) The treasurer shall send 100 percent of the fees collected under this section to the comptroller if, during an audit under ~~[Section 133.059 of this code or]~~ Article 103.0033(j), Code of Criminal Procedure, the Office of Court Administration of the Texas Judicial System [comptroller] determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county shall continue to dispose of fees as otherwise provided by this section on

receipt of a written confirmation from the Office of Court Administration of the Texas Judicial System ~~comptroller~~ that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

ARTICLE 53. CORRECTIONAL MANAGED HEALTH CARE

SECTION 53.01. Subsection (a), Section 501.133, Government Code, is amended to read as follows:

(a) The committee consists of five voting ~~[nine]~~ members and one nonvoting member ~~[appointed]~~ as follows:

(1) one member ~~[two members]~~ employed full-time by the department, ~~[at least one of whom is a physician,]~~ appointed by the executive director;

(2) one member who is a physician and ~~[two members]~~ employed full-time by The University of Texas Medical Branch at Galveston, ~~[at least one of whom is a physician,]~~ appointed by the president of the medical branch;

(3) one member who is a physician and ~~[two members]~~ employed full-time by the Texas Tech University Health Sciences Center, ~~[at least one of whom is a physician,]~~ appointed by the president of the university; ~~[and]~~

(4) two ~~[three]~~ public members appointed by the governor who are not affiliated with the department or with any entity with which the committee has contracted to provide health care services under this chapter, at least one ~~[two]~~ of whom is [are] licensed to practice medicine in this state; and

(5) the state Medicaid director, to serve ex officio as a nonvoting member.

SECTION 53.02. Subsection (b), Section 501.135, Government Code, is amended to read as follows:

(b) A person may not be an appointed ~~[a]~~ member of the committee and may not be a committee employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care or health care services; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care or health care services.

SECTION 53.03. Section 501.136, Government Code, is amended to read as follows:

Sec. 501.136. TERMS OF OFFICE FOR PUBLIC MEMBERS. Committee members appointed by the governor serve staggered four-year ~~[six-year]~~ terms, with the term of one of those members expiring on February 1 of each odd-numbered year. Other committee members serve at the will of the appointing official or until termination of the member's employment with the entity the member represents.

SECTION 53.04. Section 501.147, Government Code, is amended to read as follows:

Sec. 501.147. DEPARTMENT ~~[COMMITTEE]~~ AUTHORITY TO CONTRACT. (a) The department ~~[committee]~~ may enter into a contract ~~[on behalf of the department]~~ to fully implement the managed health care plan under this subchapter. A contract entered into under this subsection must include provisions

necessary to ensure that The University of Texas Medical Branch at Galveston is eligible for and makes reasonable efforts to participate in the purchase of prescription drugs under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).

(b) The department [committee] may~~[-, in addition to providing services to the department,]~~ contract with other governmental entities for similar health care services and integrate those services into the managed health care provider network.

(c) In contracting for implementation of the managed health care plan, the department [committee], to the extent possible, shall integrate the managed health care provider network with the public medical schools of this state and the component and affiliated hospitals of those medical schools. The contract must authorize The University of Texas Medical Branch at Galveston to contract directly with the Texas Tech University Health Sciences Center for the provision of health care services. The Texas Tech University Health Sciences Center shall cooperate with The University of Texas Medical Branch at Galveston in its efforts to participate in the purchase of prescription drugs under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).

(d) For services that the public medical schools and their components and affiliates cannot provide, the department [committee] shall initiate a competitive bidding process for contracts with other providers for medical care to persons confined by the department.

(e) The department, in cooperation with the committee, may contract with an individual or firm for a biennial review of, and report concerning, expenditures under the managed health care plan. The review must be conducted by an individual or firm experienced in auditing the state's Medicaid expenditures and other medical expenditures. Not later than September 1 of each even-numbered year, the department shall submit a copy of a report under this section to the health care providers that are part of the managed health care provider network established under this subchapter, the Legislative Budget Board, the governor, the lieutenant governor, and the speaker of the house of representatives.

SECTION 53.05. Subsection (a), Section 501.148, Government Code, is amended to read as follows:

(a) The committee may ~~shall~~:

(1) develop statewide policies for the delivery of correctional health care;

~~(2) [maintain contracts for health care services in consultation with the department and the health care providers;~~

~~[(3)]~~ communicate with the department and the legislature regarding the financial needs of the correctional health care system;

~~(3) in conjunction with the department, [(4) allocate funding made available through legislative appropriations for correctional health care;~~

~~[(5)]~~ monitor the expenditures of The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center to ensure that those expenditures comply with applicable statutory and contractual requirements;

(4) ~~[(6)]~~ serve as a dispute resolution forum in the event of a disagreement relating to inmate health care services between:

(A) the department and the health care providers; or

(B) The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center;

(5) [~~(7)~~] address problems found through monitoring activities by the department and health care providers, including requiring corrective action if care does not meet expectations as determined by those monitoring activities;

(6) [~~(8)~~] identify and address long-term needs of the correctional health care system; and

(7) [~~(9)~~] report to the Texas Board of Criminal Justice at the board's regularly scheduled meeting each quarter on the committee's policy recommendations [~~decisions~~], the financial status of the correctional health care system, and corrective actions taken by or required of the department or the health care providers.

SECTION 53.06. (a) The Correctional Managed Health Care Committee established under Section 501.133, Government Code, as that section existed before amendment by this article, is abolished effective November 30, 2011.

(b) An appointing official under Section 501.133, Government Code, shall appoint the members of the Correctional Managed Health Care Committee under Section 501.133, Government Code, as amended by this Act, not later than November 30, 2011. The governor shall appoint one public member to serve a term that expires February 1, 2013, and one public member to serve a term that expires February 1, 2015.

(c) The term of a person who is serving as a member of the Correctional Managed Health Care Committee immediately before the abolition of that committee under Subsection (a) of this section expires on November 30, 2011. Such a person is eligible for appointment by an appointing official to the new committee under Section 501.133, Government Code, as amended by this article.

ARTICLE 54. GENERAL HOUSING MATTERS

SECTION 54.01. Section 481.078, Government Code, is amended by amending Subsection (c) and adding Subsections (d-1) and (d-2) to read as follows:

(c) Except as provided by Subsections [~~Subsection~~] (d) and (d-1), the fund may be used only for economic development, infrastructure development, community development, job training programs, and business incentives.

(d-1) The fund may be used for the Texas homeless housing and services program administered by the Texas Department of Housing and Community Affairs. Subsections (e-1), (f), (g), (h), (i), and (j) and Section 481.080 do not apply to a grant awarded for a purpose specified by this subsection.

(d-2) Notwithstanding Subsection (e), during the state fiscal biennium that begins on September 1, 2011, the governor shall use not less than \$10 million from the fund for grants described by Subsection (d-1). This subsection expires September 1, 2013.

SECTION 54.02. Section 481.079, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) For grants awarded for a purpose specified by Section 481.078(d-1), the report must include only the amount and purpose of each grant.

SECTION 54.03. Subchapter K, Chapter 2306, Government Code, is amended by adding Section 2306.2585 to read as follows:

Sec. 2306.2585. HOMELESS HOUSING AND SERVICES PROGRAM. (a) The department may administer a homeless housing and services program in each municipality in this state with a population of 285,500 or more to:

(1) provide for the construction, development, or procurement of housing for homeless persons; and

(2) provide local programs to prevent and eliminate homelessness.

(b) The department may adopt rules to govern the administration of the program, including rules that:

(1) provide for the allocation of any available funding; and

(2) provide detailed guidelines as to the scope of the local programs in the municipalities described by Subsection (a).

(c) The department may use any available revenue, including legislative appropriations, and shall solicit and accept gifts and grants for the purposes of this section. The department shall use gifts and grants received for the purposes of this section before using any other revenue.

SECTION 54.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 55. UNIFORM GRANT AND CONTRACT MANAGEMENT

SECTION 55.01. Section 783.004, Government Code, is amended to read as follows:

Sec. 783.004. OFFICE OF THE COMPTROLLER [~~GOVERNOR'S OFFICE~~]. The office of the comptroller [~~governor's office~~] is the state agency for uniform grant and contract management.

SECTION 55.02. Subsections (a) and (b), Section 783.005, Government Code, are amended to read as follows:

(a) The comptroller [~~governor's office~~] shall develop uniform and concise language for any assurances that a local government is required to make to a state agency.

(b) The comptroller [~~governor's office~~] may:

(1) categorize assurances according to the type of grant or contract;

(2) designate programs to which the assurances are applicable; and

(3) revise the assurances.

SECTION 55.03. Section 783.006, Government Code, is amended to read as follows:

Sec. 783.006. STANDARD FINANCIAL MANAGEMENT CONDITIONS. (a) The comptroller [~~governor's office~~] shall compile and distribute to each state agency an official compilation of standard financial management conditions.

(b) The comptroller [~~governor's office~~] shall develop the compilation from Federal Management Circular A-102 or from a revision of that circular and from other applicable statutes and regulations.

(c) The comptroller [~~governor's office~~] shall include in the compilation official commentary regarding administrative or judicial interpretations that affect the application of financial management standards.

(d) The comptroller [~~governor's office~~] may:

- (1) categorize the financial management conditions according to the type of grant or contract;
- (2) designate programs to which the conditions are applicable; and
- (3) revise the conditions.

SECTION 55.04. Subsection (d), Section 783.007, Government Code, is amended to read as follows:

(d) The agency shall file a notice of each proposed rule that establishes a variation from uniform assurances or standard conditions with the comptroller [governor's office].

SECTION 55.05. Subsection (b), Section 783.008, Government Code, is amended to read as follows:

(b) On receipt of a request for a single audit or audit coordination, the comptroller [governor's office] in consultation with the state auditor shall not later than the 30th day after the date of the request designate a single state agency to coordinate state audits of the local government.

ARTICLE 56. FRANCHISE TAX APPLICABILITY AND EXCLUSIONS

SECTION 56.01. Section 171.0001, Tax Code, is amended by adding Subdivisions (1-a), (10-a), (10-b), and (11-b) to read as follows:

(1-a) "Artist" means a natural person or an entity that contracts to perform or entertain at a live entertainment event.

(10-a) "Live entertainment event" means an event that occurs on a specific date to which tickets are sold in advance by a third-party vendor and at which:

(A) a natural person or a group of natural persons, physically present at the venue, performs for the purpose of entertaining a ticket holder who is present at the event;

(B) a traveling circus or animal show performs for the purpose of entertaining a ticket holder who is present at the event; or

(C) a historical, museum-quality artifact is on display in an exhibition.

(10-b) "Live event promotion services" means services related to the promotion, coordination, operation, or management of a live entertainment event. The term includes services related to:

(A) the provision of staff for the live entertainment event; or

(B) the scheduling and promotion of an artist performing or entertaining at the live entertainment event.

(11-b) "Qualified live event promotion company" means a taxable entity that:

(A) receives at least 60 percent of the entity's annual total revenue from the provision or arrangement for the provision of three or more live event promotion services;

(B) maintains a permanent nonresidential office from which the live event promotion services are provided or arranged;

(C) employs 10 or more full-time employees during all or part of the period for which taxable margin is calculated;

(D) does not provide services for a wedding or carnival; and

(E) is not a movie theater.

SECTION 56.02. Subsection (c), Section 171.0002, Tax Code, is amended to read as follows:

(c) "Taxable entity" does not include an entity that is:

(1) a grantor trust as defined by Sections 671 and 7701(a)(30)(E), Internal Revenue Code, all of the grantors and beneficiaries of which are natural persons or charitable entities as described in Section 501(c)(3), Internal Revenue Code, excluding a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(2) an estate of a natural person as defined by Section 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(3) an escrow;

(4) a real estate investment trust (REIT) as defined by Section 856, Internal Revenue Code, and its "qualified REIT subsidiary" entities as defined by Section 856(i)(2), Internal Revenue Code, provided that:

(A) a REIT with any amount of its assets in direct holdings of real estate, other than real estate it occupies for business purposes, as opposed to holding interests in limited partnerships or other entities that directly hold the real estate, is a taxable entity; and

(B) a limited partnership or other entity that directly holds the real estate as described in Paragraph (A) is not exempt under this subdivision, without regard to whether a REIT holds an interest in it;

(5) a real estate mortgage investment conduit (REMIC), as defined by Section 860D, Internal Revenue Code;

(6) a nonprofit self-insurance trust created under Chapter 2212, Insurance Code, or a predecessor statute;

(7) a trust qualified under Section 401(a), Internal Revenue Code; ~~or~~

(8) a trust or other entity that is exempt under Section 501(c)(9), Internal Revenue Code; or

(9) an unincorporated entity organized as a political committee under the Election Code or the provisions of the Federal Election Campaign Act of 1971 (2 U.S.C. Section 431 et seq.).

SECTION 56.03. Section 171.1011, Tax Code, is amended by adding Subsections (g-5) and (g-7) to read as follows:

(g-5) A taxable entity that is a qualified live event promotion company shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), a payment made to an artist in connection with the provision of a live entertainment event or live event promotion services.

(g-7) A taxable entity that is a qualified courier and logistics company shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on behalf of the taxable entity. For purposes of this subsection, "qualified courier and logistics company" means a taxable entity that:

(1) receives at least 80 percent of the taxable entity's annual total revenue from its entire business from a combination of at least two of the following courier and logistics services:

(A) expedited same-day delivery of an envelope, package, parcel, roll of architectural drawings, box, or pallet;

(B) temporary storage and delivery of the property of another entity, including an envelope, package, parcel, roll of architectural drawings, box, or pallet; and

(C) brokerage of same-day or expedited courier and logistics services to be completed by a person or entity under a contract that includes a contractual obligation by the taxable entity to make payments to the person or entity for those services;

(2) during the period on which margin is based, is registered as a motor carrier under Chapter 643, Transportation Code, and if the taxable entity operates on an interstate basis, is registered as a motor carrier or broker under the unified carrier registration system, as defined by Section 643.001, Transportation Code, during that period;

(3) maintains an automobile liability insurance policy covering individuals operating vehicles owned, hired, or otherwise used in the taxable entity's business, with a combined single limit for each occurrence of at least \$1 million;

(4) maintains at least \$25,000 of cargo insurance;

(5) maintains a permanent nonresidential office from which the courier and logistics services are provided or arranged;

(6) has at least five full-time employees during the period on which margin is based;

(7) is not doing business as a livery service, floral delivery service, motor coach service, taxicab service, building supply delivery service, water supply service, fuel or energy supply service, restaurant supply service, commercial moving and storage company, or overnight delivery service; and

(8) is not delivering items that the taxable entity or an affiliated entity sold.

SECTION 56.04. This article applies only to a report originally due on or after January 1, 2012.

SECTION 56.05. This article takes effect January 1, 2012.

ARTICLE 57. ENTERPRISE AND EMERGING TECHNOLOGY FUNDS

SECTION 57.01. Section 481.078, Government Code, is amended by amending Subsections (e) and (j) and adding Subsections (f-1), (f-2), and (h-1) to read as follows:

(e) The administration of the fund is considered to be a trustee program within the office of the governor. The governor may negotiate on behalf of the state regarding awarding, by grant, money appropriated from the fund. The governor may award money appropriated from the fund only with the ~~[express written]~~ prior approval of the lieutenant governor and speaker of the house of representatives. For purposes of this subsection, an award of money appropriated from the fund is considered disapproved by the lieutenant governor or speaker of the house of representatives if that officer does not approve the proposal to award the grant before the 91st day after the date of receipt of the proposal from the governor. The lieutenant

governor or the speaker of the house of representatives may extend the review deadline applicable to that officer for an additional 14 days by submitting a written notice to that effect to the governor before the expiration of the initial review period.

(f-1) A grant agreement must contain a provision:

- (1) requiring the creation of a minimum number of jobs in this state; and
- (2) specifying the date by which the recipient intends to create those jobs.

(f-2) A grant agreement must contain a provision providing that if the recipient does not meet job creation performance targets as of the dates specified in the agreement, the recipient shall repay the grant in accordance with Subsection (j).

(h-1) At least 14 days before the date the governor intends to amend a grant agreement, the governor shall notify and provide a copy of the proposed amendment to the speaker of the house of representatives and the lieutenant governor.

(j) Repayment of a grant under Subsection (f)(1)(A) shall ~~may~~ be prorated to reflect a partial attainment of job creation performance targets, and may be prorated for a partial attainment of other performance targets.

SECTION 57.02. Subsections (a) and (b), Section 490.005, Government Code, are amended to read as follows:

(a) Not later than January 31 [+] of each year, the governor shall submit to the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over economic development matters and post on the office of the governor's Internet website a report that includes the following information regarding awards made under the fund during each ~~[for the]~~ preceding ~~[three]~~ state fiscal year ~~[years]~~:

- (1) the total number and amount of awards made;
- (2) the number and amount of awards made under Subchapters D, E, and F;
- (3) the aggregate total of private sector investment, federal government funding, and contributions from other sources obtained in connection with awards made under each of the subchapters listed in Subdivision (2);
- (4) the name of each award recipient and the amount of the award made to the recipient; and
- (5) a brief description of the equity position that the governor, on behalf of the state, may take in companies receiving awards and the names of the companies in which the state has taken an equity position.

(b) The annual report must also contain:

- (1) the total number of jobs actually created by each project receiving funding under this chapter;
- (2) an analysis of the number of jobs actually created by each project receiving funding under this chapter; and
- (3) a brief description regarding:
 - (A) the methodology used to determine the information provided under Subdivisions (1) and (2), which may be developed in consultation with the comptroller's office;

(B) ~~[(4)]~~ the intended outcomes of projects funded under Subchapter D during each ~~[the]~~ preceding ~~[two]~~ state fiscal year ~~[years]~~; and

(C) [(2)] the actual outcomes of all projects funded under Subchapter D during each preceding state fiscal year [the fund's existence], including any financial impact on the state resulting from a liquidity event involving a company whose project was funded under that subchapter.

SECTION 57.03. Subchapter A, Chapter 490, Government Code, is amended by adding Section 490.006 to read as follows:

Sec. 490.006. VALUATION OF INVESTMENTS; INCLUSION IN ANNUAL REPORT. To the maximum extent practicable, the office of the governor shall annually perform a valuation of the equity positions taken by the governor, on behalf of the state, in companies receiving awards under the fund and of other investments made by the governor, on behalf of the state, in connection with an award under the fund. The valuation must:

(1) be based on a methodology that:

(A) may be developed in consultation with the comptroller's office; and

(B) is consistent with generally accepted accounting principles; and

(2) be included with the annual report required under Section 490.005.

SECTION 57.04. The heading to Section 490.052, Government Code, is amended to read as follows:

Sec. 490.052. APPOINTMENT TO COMMITTEE [BY GOVERNOR]; NOMINATIONS.

SECTION 57.05. Section 490.052, Government Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) The governor shall appoint to the committee 13 individuals nominated as provided by Subsection (b).

(a-1) The lieutenant governor shall appoint two individuals to the committee.

(a-2) The speaker of the house of representatives shall appoint two individuals to the committee.

SECTION 57.06. Subchapter B, Chapter 490, Government Code, is amended by adding Section 490.0521 to read as follows:

Sec. 490.0521. FINANCIAL STATEMENT REQUIRED. (a) Each member of the committee shall file with the office of the governor a verified financial statement complying with Sections 572.022 through 572.0252 as is required of a state officer by Section 572.021.

(b) All information obtained and maintained pursuant to Subsection (a), including information derived from the financial statements, is confidential and is not subject to disclosure under Chapter 552.

(c) The governor, on request or in the normal course of official business, shall provide information that is confidential under Subsection (b) to the state auditor's office.

(d) This section does not affect release of information for legislative purposes pursuant to Section 552.008.

SECTION 57.07. Section 490.054, Government Code, is amended to read as follows:

Sec. 490.054. TERMS. (a) Members of the committee appointed by the governor serve staggered two-year terms, subject to the pleasure of the governor.

(b) Members of the committee appointed by the lieutenant governor or the speaker of the house of representatives serve two-year terms.

SECTION 57.08. Section 490.056, Government Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) Each entity recommended by the committee for an award of money from the fund as provided by this chapter shall obtain and provide the following information to the office of the governor:

(1) a federal criminal history background check for each principal of the entity;

(2) a state criminal history background check for each principal of the entity;

(3) a credit check for each principal of the entity;

(4) a copy of a government-issued form of photo identification for each principal of the entity; and

(5) information regarding whether the entity or a principal of the entity has ever been subject to a sanction imposed by the Securities and Exchange Commission for a violation of applicable federal law.

(d) For purposes of Subsection (c), "principal" means:

(1) an officer of an entity; or

(2) a person who has at least a 10 percent ownership interest in an entity.

(e) With each proposal to award funding submitted by the governor to the lieutenant governor and speaker of the house of representatives for purposes of obtaining prior approval, the governor shall provide each officer with a copy of the information provided by the appropriate entity under Subsection (c).

SECTION 57.09. Section 490.057, Government Code, is amended to read as follows:

Sec. 490.057. CONFIDENTIALITY. (a) Except as provided by Subsection (b), information [Information] collected by the governor's office, the committee, or the committee's advisory panels concerning the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity being considered for, receiving, or having received an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

(b) The following information collected by the governor's office, the committee, or the committee's advisory panels under this chapter is public information and may be disclosed under Chapter 552:

(1) the name and address of an individual or entity receiving or having received an award from the fund;

(2) the amount of funding received by an award recipient;

(3) a brief description of the project that is funded under this chapter;

(4) if applicable, a brief description of the equity position that the governor, on behalf of the state, has taken in an entity that has received an award from the fund; and

(5) any other information designated by the committee with the consent of:

(A) the individual or entity receiving or having received an award from the fund, as applicable;

- (B) the governor;
- (C) the lieutenant governor; and
- (D) the speaker of the house of representatives.

SECTION 57.10. Section 490.101, Government Code, is amended by amending Subsection (f) and adding Subsection (f-1) to read as follows:

(f) The administration of the fund is considered to be a trusted program within the office of the governor. The governor may negotiate on behalf of the state regarding awards from the fund. The governor may award money appropriated from the fund only with the ~~[express written]~~ prior approval of the lieutenant governor and speaker of the house of representatives.

(f-1) For purposes of Subsection (f), an award of money appropriated from the fund is considered disapproved by the lieutenant governor or speaker of the house of representatives if that officer does not approve the proposal to award funding before the 91st day after the date of receipt of the proposal from the governor. The lieutenant governor or the speaker of the house of representatives may extend the review deadline applicable to that officer for an additional 14 days by submitting a written notice to that effect to the governor before the expiration of the initial review period.

SECTION 57.12. Subchapter D, Chapter 490, Government Code, is amended by adding Section 490.1521 to read as follows:

Sec. 490.1521. MINUTES OF CERTAIN MEETINGS. (a) Each regional center of innovation and commercialization established under Section 490.152, including the Texas Life Science Center for Innovation and Commercialization, shall keep minutes of each meeting at which applications for funding under this subchapter are evaluated. The minutes must:

(1) include the name of each applicant recommended by the regional center of innovation and commercialization to the committee for funding; and

(2) indicate the vote of each member of the governing body of the regional center of innovation and commercialization, including any recusal by a member and the member's reason for recusal, with regard to each application reviewed.

(b) Each regional center of innovation and commercialization shall retain a copy of the minutes of each meeting to which this section applies for at least three years.

SECTION 57.13. Section 203.021, Labor Code, is amended by adding Subsection (e) to read as follows:

(e) Money in the compensation fund may not be transferred to the:

(1) Texas Enterprise Fund created under Section 481.078, Government Code; or

(2) Texas emerging technology fund established under Section 490.101, Government Code.

SECTION 57.14. Section 204.123, Labor Code, is amended to read as follows:

Sec. 204.123. TRANSFER TO ~~[TEXAS ENTERPRISE FUND,]~~ SKILLS DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION FUND. (a) If, on September 1 of a year, the commission determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer from the holding fund created under Section 204.122:

(1) ~~[from the first \$160 million deposited in the holding fund in any state fiscal biennium;~~

~~[(A) during the state fiscal biennium ending August 31, 2007;~~

~~[(i) 67 percent to the Texas Enterprise Fund created under Section 481.078, Government Code, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the Texas Enterprise Fund in that biennium; and~~

~~[(ii) 33 percent to the skills development fund created under Section 303.003, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and~~

~~[(B) during any state fiscal biennium beginning on or after September 1, 2007, 100]:~~

~~[(i) 75 percent to the Texas Enterprise Fund created under Section 481.078, Government Code, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the Texas Enterprise Fund in that biennium; and~~

~~[(ii) 25] percent to the skills development fund created under Section 303.003, except that the amount transferred under this subdivision [paragraph] may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and~~

(2) any remaining amount in the holding fund after the distribution under Subdivision (1) to the training stabilization fund created under Section 302.101.

(b) If, on September 1 of a year, the commission determines that the amount in the compensation fund will be at or below 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer to the compensation fund as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund. The commission shall transfer any remaining balance in the holding fund to the ~~[Texas Enterprise Fund, the]~~ skills development fund~~],~~ and the training stabilization fund in the manner ~~[in the percentages]~~ prescribed by Subsection (a).

SECTION 57.15. Subsections (b) and (c), Section 302.101, Labor Code, are amended to read as follows:

(b) Money in the training stabilization fund may be used in a year in which the amounts in the employment and training investment holding fund are insufficient to meet the legislative appropriation for that fiscal year for ~~[either the Texas Enterprise Fund or]~~ the skills development program strategies and activities.

(c) Money in the training stabilization fund shall be transferred to the ~~[Texas Enterprise Fund and the]~~ skills development fund under Subsection (b) not later than September 30. ~~[The transfer under Subsection (b) shall consist of transferring 67 percent of the money in the training stabilization fund to the Texas Enterprise Fund and 33 percent of the money in the training stabilization fund to the skills development fund.]~~ The amount transferred from the training stabilization fund may

not exceed the amounts appropriated to the [~~Texas Enterprise Fund and~~] skills development program strategies and activities in the fiscal year in which the transfer is made.

SECTION 57.16. Sections 481.078(e) and 490.101(f), Government Code, as amended by this article, and Section 490.101(f-1), Government Code, as added by this article, apply only to a proposal for an award from the Texas Enterprise Fund or Texas emerging technology fund submitted by the governor to the lieutenant governor or speaker of the house of representatives for prior approval on or after the effective date of this article. A proposal submitted by the governor for prior approval before the effective date of this article is governed by the law in effect on the date the proposal was submitted for that approval, and the former law is continued in effect for that purpose.

SECTION 57.17. Section 481.078(j), Government Code, as amended by this article, and Sections 481.078(f-1) and (f-2), Government Code, as added by this article, apply only to a grant agreement that is entered into on or after the effective date of this article. A grant agreement that is entered into before the effective date of this article is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 57.18. (a) The terms of the members of the Texas Emerging Technology Advisory Committee serving immediately before the effective date of this article expire September 1, 2011.

(b) As soon as practicable after this article takes effect, the governor, lieutenant governor, and speaker of the house of representatives shall appoint members to the Texas Emerging Technology Advisory Committee established under Subchapter B, Chapter 490, Government Code, in a manner that complies with that subchapter, as amended by this article.

(c) At the first meeting of members of the Texas Emerging Technology Advisory Committee established under Subchapter B, Chapter 490, Government Code, as amended by this article, occurring on or after September 1, 2011, the members appointed by the governor shall draw lots to determine which six members will serve a term expiring September 1, 2012, and which seven members will serve a term expiring September 1, 2013.

ARTICLE 58. AD VALOREM TAXATION OF LAND USED TO RAISE OR KEEP BEEES

SECTION 58.01. Subdivision (2), Section 23.51, Tax Code, is amended to read as follows:

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in

constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, provided that the land used is not less than 5 or more than 20 acres.

SECTION 58.02. This article applies only to the appraisal of land for ad valorem tax purposes for a tax year that begins on or after the effective date of this Act.

ARTICLE 59. PLACE OF BUSINESS OF A RETAILER FOR SALES TAX PURPOSES

SECTION 59.01. Subdivision (3), Subsection (a), Section 321.002, Tax Code, is amended to read as follows:

(3) "Place of business of the retailer" means an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year. A warehouse, storage yard, or manufacturing plant is not a "place of business of the retailer" unless at least three orders are received by the retailer during the calendar year at the warehouse, storage yard, or manufacturing plant. An outlet, office, facility, or any location that contracts with a retail or commercial business [engaged in activities to which this chapter applies] to process for that business invoices, purchase orders, [or] bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business, is not a "place of business of the retailer" if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax imposed by this chapter or to rebate a portion of the tax imposed by this chapter to the contracting business. Notwithstanding any other provision of this subdivision, a kiosk is not a "place of business of the retailer." In this subdivision, "kiosk" means a small stand-alone area or structure that:

- (A) is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;
- (B) is located entirely within a location that is a place of business of another retailer, such as a department store or shopping mall; and
- (C) at which taxable items are not available for immediate delivery to a customer.

SECTION 59.02. This article takes effect September 1, 2011.

ARTICLE 60. TEXAS FARM AND RANCH LANDS CONSERVATION PROGRAM

SECTION 60.01. Subsection (b), Section 183.059, Natural Resources Code, is amended to read as follows:

(b) To receive a grant from the fund under this subchapter, an applicant who is qualified to be an easement holder under this subchapter must submit an application to the council. The application must:

- (1) set out the parties' clear conservation goals consistent with the program;

(2) include a site-specific estimate-of-value appraisal by a licensed appraiser qualified to determine the market value of the easement; and

(3) ~~[demonstrate that the applicant is able to match 50 percent of the amount of the grant being sought, considering that the council may choose to allow a donation of part of the appraised value of the easement to be considered as in-kind matching funds; and~~

~~[(4)]~~ include a memorandum of understanding signed by the landowner and the applicant indicating intent to sell an agricultural conservation easement and containing the terms of the contract for the sale of the easement.

ARTICLE 61. CERTAIN CONTRIBUTION RATE COMPUTATIONS

SECTION 61.01. Section 815.402, Government Code, is amended by adding Subsections (a-1) and (h-1) to read as follows:

(a-1) Notwithstanding Subsection (a)(1), if the state contribution to the retirement system is computed using a percentage less than 6.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

(h-1) Notwithstanding Subsection (h), if the state contribution to the law enforcement and custodial officer supplemental retirement fund is computed using a percentage less than 0.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

ARTICLE 62. QUINQUENNIAL REPORTING OF CERTAIN INFORMATION FOR UNCLAIMED PROPERTY

SECTION 62.01. Subsection (a), Section 411.0111, Government Code, is amended to read as follows:

(a) Not later than June 1 of every fifth ~~[each]~~ year, the department shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, date of birth, and driver's license or state identification number of each person about whom the department has such information in its records.

SECTION 62.02. Subsection (a), Section 811.010, Government Code, as added by Chapter 232 (S.B. 1589), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(a) Not later than June 1 of every fifth ~~[each]~~ year, the retirement system shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each member, retiree, and beneficiary from the retirement system's records.

SECTION 62.03. Subsection (a), Section 821.010, Government Code, is amended to read as follows:

(a) Not later than June 1 of every fifth ~~[each]~~ year, the retirement system shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each member, retiree, and beneficiary from the retirement system's records.

SECTION 62.04. Subsection (a), Section 301.086, Labor Code, is amended to read as follows:

(a) Not later than June 1 of every fifth ~~[each]~~ year, the commission shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each person about whom the commission has such information in its records.

SECTION 62.05. The Department of Public Safety, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, and the Texas Workforce Commission shall provide information to the comptroller as required by Sections 411.0111(a), 811.010(a), and 821.010(a), Government Code, and Section 301.086(a), Labor Code, as amended by this article, beginning in 2016.

ARTICLE 63. AD VALOREM TAXATION OF CERTAIN STORED PROPERTY

SECTION 63.01. Subsection (a), Section 11.253, Tax Code, is amended by amending Subdivision (2) and adding Subdivisions (5) and (6) to read as follows:

(2) "Goods-in-transit" means tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is stored under a contract of bailment by a public warehouse operator ~~[detained]~~ at one or more public warehouse facilities ~~[a location]~~ in this state that are not in any way owned or controlled by ~~[in which]~~ the owner of the personal property ~~[does not have a direct or indirect ownership interest]~~ for the account of ~~[assembling, storing, manufacturing, processing, or fabricating purposes by]~~ the person who acquired or imported the property;

(C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and

(D) does not include oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory.

(5) "Bailee" and "warehouse" have the meanings assigned by Section 7.102, Business & Commerce Code.

(6) "Public warehouse operator" means a person that:

(A) is both a bailee and a warehouse; and

(B) stores under a contract of bailment, at one or more public warehouse facilities, tangible personal property that is owned by other persons solely for the account of those persons and not for the operator's account.

SECTION 63.02. Section 11.253, Tax Code, is amended by amending Subsections (e) and (h) and adding Subsections (j-1) and (j-2) to read as follows:

(e) In determining the market value of goods-in-transit that in the preceding year were ~~[assembled,] stored[, manufactured, processed, or fabricated]~~ in this state, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held by the owner of the component parts during the preceding year at a location in this state that was not owned by or under the control of the owner of the component parts in determining whether the component parts were transported to another location in this state or outside this state before the expiration of 175 days.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of property records so the chief appraiser can determine the amount and value of goods-in-transit and that the location in this state where the goods-in-transit were detained for storage ~~[assembling, storing, manufacturing, processing, or fabricating purposes]~~ was not owned by or under the control of the owner of the goods-in-transit. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(j-1) Notwithstanding Subsection (j) or official action that was taken under that subsection before September 1, 2011, to tax goods-in-transit exempt under Subsection (b) and not exempt under other law, a taxing unit may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after September 1, 2011, in the manner required for official action by the governing body, to provide for the taxation of the goods-in-transit. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit or otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit.

(j-2) Notwithstanding Subsection (j-1), if under Subsection (j) the governing body of a taxing unit, before September 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, the tax officials of the taxing unit may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created.

SECTION 63.03. Subdivision (2), Subsection (a), Section 11.253, Tax Code, as amended by this article, applies only to an ad valorem tax year that begins on or after January 1, 2012.

SECTION 63.04. (a) Except as provided by Subsection (b) of this section, this article takes effect January 1, 2012.

(b) Section 63.02 of this article takes effect September 1, 2011.

ARTICLE 64. FISCAL MATTERS CONCERNING ADVANCED PLACEMENT

SECTION 64.01. Subsection (h), Section 28.053, Education Code, is amended to read as follows:

(h) The commissioner may enter into agreements with the college board and the International Baccalaureate Organization to pay for all examinations taken by eligible public school students. An eligible student is a student ~~[one]~~ who:

(1) takes a college advanced placement or international baccalaureate course at a public school or who is recommended by the student's principal or teacher to take the test; and

(2) demonstrates financial need as determined in accordance with guidelines adopted by the board that are consistent with the definition of financial need adopted by the college board or the International Baccalaureate Organization.

ARTICLE 65. FISCAL MATTERS CONCERNING TUITION EXEMPTIONS

SECTION 65.01. Subsection (c), Section 54.214, Education Code, is amended to read as follows:

(c) To be eligible for an exemption under this section, a person must:

(1) be a resident of this state;

(2) be a school employee serving in any capacity;

(3) for the initial term or semester for which the person receives an exemption under this section, have worked as an educational aide for at least one school year during the five years preceding that term or semester;

(4) establish financial need as determined by coordinating board rule;

(5) be enrolled at the institution of higher education granting the exemption in courses required for teacher certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers at the public schools in this state ~~[at the institution of higher education granting the exemption]~~;

(6) maintain an acceptable grade point average as determined by coordinating board rule; and

(7) comply with any other requirements adopted by the coordinating board under this section.

SECTION 65.02. The change in law made by this article applies beginning with tuition and fees charged for the 2011 fall semester. Tuition and fees charged for a term or semester before the 2011 fall semester are covered by the law in effect during the term or semester for which the tuition and fees are charged, and the former law is continued in effect for that purpose.

ARTICLE 66. FISCAL MATTERS CONCERNING DUAL HIGH SCHOOL AND JUNIOR COLLEGE CREDIT

SECTION 66.01. Subsection (c), Section 130.008, Education Code, is amended to read as follows:

(c) The contact hours attributable to the enrollment of a high school student in a course offered for joint high school and junior college credit under this section, excluding a course for which the student attending high school may receive course credit toward the physical education curriculum requirement under Section 28.002(a)(2)(C), shall be included in the contact hours used to determine the junior college's proportionate share of the state money appropriated and distributed to public junior colleges under Sections 130.003 and 130.0031, even if the junior college waives all or part of the tuition or fees for the student under Subsection (b).

SECTION 66.02. This article applies beginning with funding for the 2011 fall semester.

ARTICLE 67. CLASSIFICATION OF ENTITIES AS ENGAGED IN RETAIL
TRADE FOR PURPOSES OF THE FRANCHISE TAX

SECTION 67.01. Subdivision (12), Section 171.0001, Tax Code, is amended to read as follows:

(12) "Retail trade" means:

(A) the activities described in Division G of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; and

(B) apparel rental activities classified as Industry 5999 or 7299 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

SECTION 67.02. This article applies only to a report originally due on or after the effective date of this Act.

SECTION 67.03. This article takes effect January 1, 2012.

ARTICLE 68. RETENTION OF CERTAIN FOUNDATION SCHOOL FUND
PAYMENTS

SECTION 68.01. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2511 to read as follows:

Sec. 42.2511. AUTHORIZATION FOR CERTAIN DISTRICTS TO RETAIN ADDITIONAL STATE AID. (a) This section applies only to a school district that was provided with state aid under former Section 42.2516 for the 2009-2010 or 2010-2011 school year based on the amount of aid to which the district would have been entitled under that section if Section 42.2516(g), as it existed on January 1, 2009, applied to determination of the amount to which the district was entitled for that school year.

(b) Notwithstanding any other law, a district to which this section applies may retain the state aid provided to the district as described by Subsection (a).

(c) This section expires September 1, 2013.

SECTION 68.02. It is the intent of the legislature that the authorization provided by Section 42.2511, Education Code, as added by this article, to retain state aid described by that section is not affected by the expiration of that provision on September 1, 2013.

ARTICLE 69. THE STATE COMPRESSION PERCENTAGE

SECTION 69.01. Section 42.2516, Education Code, is amended by adding Subsection (b-2) to read as follows:

(b-2) If a school district adopts a maintenance and operations tax rate that is below the rate equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, the commissioner shall reduce the district's entitlement under this section in proportion to the amount by which the adopted rate is less than the rate equal to the product of the state compression percentage multiplied by the rate adopted by the district for the 2005 tax year. The reduction required by this subsection applies beginning with the maintenance and operations tax rate adopted for the 2009 tax year.

ARTICLE 70. TEXAS GUARANTEED STUDENT LOAN CORPORATION;
BOARD OF DIRECTORS

SECTION 70.01. Subsections (a) and (b), Section 57.13, Education Code, are amended to read as follows:

(a) The corporation is governed by a board of nine [~~++~~] directors in accordance with this section.

(b) The governor, with the advice and consent of the senate, shall appoint the [~~10~~] members of the [~~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 70.02. Section 57.17, Education Code, is amended to read as follows:

Sec. 57.17. OFFICERS. The governor shall designate the chairman from among the board's membership. The board shall elect from among its members a [~~chairman,~~] vice-chairman[~~;~~] and other officers that the board considers necessary. The chairman and vice-chairman serve for a term of one year and may be redesignated or reelected, as applicable.

SECTION 70.03. Subsection (d), Section 57.13, Education Code, is repealed.

ARTICLE 71. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION
CERTIFICATES

SECTION 71.01. Subchapter A, Chapter 521, Transportation Code, is amended by adding Section 521.007 to read as follows:

Sec. 521.007. SECURITY, VALIDITY, AND EFFICIENCY STUDY. (a) Notwithstanding any other law, the commission shall study procedures and requirements necessary or advisable to ensure the security, validity, and efficiency of driver's licenses and personal identification certificates issued under this chapter. The study must include an analysis of potential cost savings, revenue issues, and other fiscal matters related to the issuance of the license and certificates. The commission shall adopt rules to implement any procedures or requirements the commission finds are necessary or advisable.

(b) Notwithstanding any other law, the commission by rule may specify the term of a driver's license or personal identification certificate issued under this chapter.

SECTION 71.02. The legislature declares that the Department of Public Safety had the statutory authority to adopt the rules regarding driver's licenses and personal identification certificates that are in effect on the effective date of this article and that the rules are valid.

SECTION 71.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this article to have immediate effect, this article takes effect September 1, 2011.

ARTICLE 72. FISCAL MATTERS CONCERNING LEASES OF PUBLIC LAND FOR MINERAL DEVELOPMENT

SECTION 72.01. Subsections (a) and (c), Section 85.66, Education Code, are amended to read as follows:

(a) If oil or other minerals are developed on any of the lands leased by the board, the royalty or money as stipulated in the sale shall be paid to the general land office at Austin on or before the last day of each month for the preceding month during the life of the rights purchased, and shall be set aside [~~in the state treasury~~] as specified in Section 85.70 [~~of this code~~]. The royalty or money paid to the general land office shall be accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur, mineral ore, and other minerals produced and saved since the last report, the amount of oil, gas, sulphur, mineral ore, and other minerals produced and sold off the premises, and the market value of the oil, gas, sulphur, mineral ore, and other minerals, together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipeline receipts, gas line receipts and other checks and memoranda of the amounts produced and put into pipelines, tanks, vats, or pool and gas lines, gas storage, other places of storage, and other means of transportation.

(c) The commissioner of the general land office shall tender to the board on or before the 10th day of each month a report of all receipts that are collected from the lease or sale of oil, gas, sulphur, mineral ore, and other minerals and that are deposited [~~turned into the state treasury,~~] as provided by Section 85.70 during [~~of this code, of~~] the preceding month.

SECTION 72.02. Section 85.69, Education Code, is amended to read as follows:

Sec. 85.69. PAYMENTS; DISPOSITION. Payments under this subchapter shall be made to the commissioner of the general land office at Austin, who shall transmit to the board [~~comptroller~~] all royalties, lease fees, rentals for delay in drilling or mining, and all other payments, including all filing assignments and relinquishment fees, to be deposited [~~in the state treasury~~] as provided by Section 85.70 [~~of this code~~].

SECTION 72.03. Section 85.70, Education Code, is amended to read as follows:

Sec. 85.70. CERTAIN MINERAL LEASES; DISPOSITION OF MONEY; SPECIAL FUNDS; INVESTMENT. (a) Except as provided by Subsection (c) [~~of this section~~], all money received under and by virtue of this subchapter shall be deposited in [~~the state treasury to the credit of~~] a special fund managed by the board to be

known as The Texas A&M University System Special Mineral Investment Fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the system and its component institutions. The ~~[With the approval of the comptroller, the board of regents of The Texas A&M University System may appoint one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the Special Mineral Investment Fund's securities with authority to hold the money realized from those securities pending completion of an investment transaction if the money held is reinvested within one business day of receipt in investments determined by the board of regents. Money not reinvested within one business day of receipt shall be deposited in the state treasury not later than the fifth day after the date of receipt. In the judgment of the board, this]~~ special fund may be invested so as to produce ~~[an]~~ income which may be expended under the direction of the board for the general use of any component of The Texas A&M University System, including erecting permanent improvements and in payment of expenses incurred in connection with the administration of this subchapter. The unexpended income likewise may be invested as ~~[herein]~~ provided by this section.

(b) The income from the investment of the special mineral investment fund created by ~~[under]~~ Subsection (a) ~~[of this section]~~ shall be deposited in ~~[to the credit of]~~ a fund managed by the board to be known as The Texas A&M University System Special Mineral Income Fund, and is considered to be institutional funds, as defined by Section 51.009, of the system and its component institutions ~~[shall be appropriated by the legislature exclusively for the university system for the purposes herein provided].~~

(c) The board shall lease for oil, gas, sulphur, or other mineral development, as prescribed by this subchapter, all or part of the land under the exclusive control of the board owned by the State of Texas and acquired for the use of Texas A&M University-Kingsville and its divisions. Any money received by the board concerning such land under this subchapter shall be deposited in ~~[the state treasury to the credit of]~~ a special fund managed by the board to be known as the Texas A&M University-Kingsville special mineral fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the university and is[;] to be used exclusively for the university [Texas A&M University-Kingsville] and its branches and divisions. [Money may not be expended from this fund except as authorized by the general appropriations act.]

(d) All deposits in and investments of the fund under this section shall be made in accordance with Section 51.0031.

(e) Section 34.017, Natural Resources Code, does not apply to funds created by this section.

SECTION 72.04. Subsection (b), Section 95.36, Education Code, is amended to read as follows:

(b) Except as provided in Subsection (c) of this section, any money received by virtue of this section and the income from the investment of such money shall be deposited in ~~[the State Treasury to the credit of]~~ a special fund managed by the board to be known as the Texas State University System special mineral fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the system and its component institutions and is[;] to be used exclusively for those

entities. All deposits in and investments of the fund shall be made in accordance with Section 51.0031. Section 34.017, Natural Resources Code, does not apply to the fund ~~[the university system and the universities in the system. However, no money shall ever be expended from this fund except as authorized by the General Appropriations Act].~~

SECTION 72.05. Subsection (b), Section 109.61, Education Code, is amended to read as follows:

(b) Any money received by virtue of this section shall be deposited in ~~[the state treasury to the credit of]~~ a special fund managed by the board to be known as the Texas Tech University special mineral fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the university and is[;] to be used exclusively for the university and its branches and divisions. All deposits in and investments of the fund shall be made in accordance with Section 51.0031. Section 34.017, Natural Resources Code, does not apply to the fund. ~~[However, no money shall ever be expended from this fund except as authorized by the general appropriations act.]~~

SECTION 72.06. Subsections (a) and (c), Section 109.75, Education Code, are amended to read as follows:

(a) If oil or other minerals are developed on any of the lands leased by the board, the royalty as stipulated in the sale shall be paid to the general land office in Austin on or before the last day of each month for the preceding month during the life of the rights purchased. The royalty payments shall be set aside ~~[in the state treasury]~~ as specified in Section 109.61 ~~[of this code]~~ and used as provided in that section.

(c) The commissioner of the general land office shall tender to the board on or before the 10th day of each month a report of all receipts that are collected from the lease or sale of oil, gas, sulphur, or other minerals and that are deposited in ~~[turned into]~~ the special fund as provided by Section 109.61 ~~[in the state treasury]~~ during the preceding month.

SECTION 72.07. Subsection (b), Section 109.78, Education Code, is amended to read as follows:

(b) Payment of all royalties, lease fees, rentals for delay in drilling or mining, filing fees for assignments and relinquishments, and all other payments shall be made to the commissioner of the general land office at Austin. The commissioner shall transmit all payments received to the board ~~[comptroller]~~ for deposit to the credit of the Texas Tech University special mineral fund as provided by Section 109.61.

SECTION 72.08. Section 85.72, Education Code, is repealed.

SECTION 72.09. This article takes effect September 1, 2011.

ARTICLE 73. FOUNDATION SCHOOL PROGRAM FINANCING; CERTAIN TAX INCREMENT FUND REPORTING MATTERS

SECTION 73.01. (a) This section applies only to a school district that, before May 1, 2011, received from the commissioner of education a notice of a reduction in state funding for the 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years based on the district's reporting related to deposits of taxes into a tax increment fund under Chapter 311, Tax Code.

(b) Notwithstanding any other law, including Section 42.302(b)(2), Education Code, the commissioner of education shall reduce by one-half the amounts of the reduction of entitlement amounts computed for purposes of adjusting entitlement amounts to account for taxes deposited into a tax increment fund for any of the school years described by Subsection (a) of this section.

(c) This section expires September 1, 2013.

ARTICLE 74. CRIMINAL BACKGROUND CHECKS FOR CERTAIN
INTERSCHOLASTIC SPORTS OFFICIALS

SECTION 74.01. Subchapter D, Chapter 33, Education Code, is amended by adding Section 33.085 to read as follows:

Sec. 33.085. CRIMINAL BACKGROUND CHECKS FOR SPORTS OFFICIALS; COST RECOVERY. (a) In this section, "sports official" means a person who officiates, judges, or otherwise enforces contest rules in an official capacity for athletic competition. The term includes a referee, umpire, linesman, side judge, and back judge.

(b) The University Interscholastic League by rule may require a person to have a criminal background check conducted by the league as a precondition of acting as a sports official for interscholastic athletic competition.

(c) The University Interscholastic League may refuse to allow a person to act as a sports official for interscholastic athletic competition if a criminal background check conducted under league rules reveals a conviction of:

(1) an offense involving moral turpitude;

(2) an offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student;

(3) a felony offense involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(4) an offense involving the illegal transfer, appropriation, or use of school district funds or other district property; or

(5) an offense involving an attempt by fraudulent or unauthorized means to obtain or alter registration to serve as a sports official for interscholastic athletic competition.

(d) An interscholastic athletic league by rule may establish a cost recovery program to offset any costs the league incurs as a result of the implementation of this section.

ARTICLE 75. FISCAL MATTERS RELATING TO PUBLIC SCHOOL FINANCE

SECTION 75.01. Effective September 1, 2011, Section 12.106, Education Code, is amended by amending Subsection (a) and adding Subsection (a-3) to read as follows:

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 equal to the greater of:

(1) the percentage specified by Section 42.2516(i) multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Sections 42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under

Chapter 42 as it existed on January 1, 2009, and an additional amount of the percentage specified by Section 42.2516(i) multiplied by \$120 for each student in weighted average daily attendance; or

(2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Section 42.302(a), to which the charter holder would be entitled for the school under Chapter 42 if the school were a school district without a tier one local share for purposes of Section 42.253 and without any local revenue for purposes of Section 42.2516.

(a-3) In determining funding for an open-enrollment charter school under Subsection (a), the commissioner shall apply the regular program adjustment factor provided under Section 42.101 to calculate the regular program allotment to which a charter school is entitled.

SECTION 75.02. Effective September 1, 2017, Subsection (a), Section 12.106, Education Code, is amended to read as follows:

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 equal to ~~the greater of:~~

~~[(1) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Sections 42.302(a 1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under Chapter 42 as it existed on January 1, 2009, and an additional amount of \$120 for each student in weighted average daily attendance; or~~

~~[(2)] the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Section 42.302(a), to which the charter holder would be entitled for the school under Chapter 42 if the school were a school district without a tier one local share for purposes of Section 42.253 [and without any local revenue for purposes of Section 42.2516].~~

SECTION 75.03. Effective September 1, 2011, Section 21.402, Education Code, is amended by amending Subsections (a), (b), (c), and (c-1) and adding Subsection (i) to read as follows:

(a) Except as provided by Subsection (d)~~[-(e),]~~ or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors, as determined by commissioner rule, determined by the following formula:

$$MS = SF \times FS$$

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of the basic allotment as provided by Section 42.101 (a) or (b) for a school district with a maintenance and operations tax rate at least equal to the state maximum compressed tax rate, as defined by Section 42.101 (a) [state and local funds per weighted student, including funds provided under Section 42.2516, available to a district eligible to receive state assistance under Section 42.302 with a maintenance and operations tax rate per \$100 of taxable value equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50, except that the

amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001].

(b) Not later than June 1 of each year, the commissioner shall determine the basic allotment and resulting monthly salaries to be paid by school districts as provided by Subsection (a) [~~amount of state and local funds per weighted student available, for purposes of Subsection (a), to a district described by that subsection for the following school year.~~].

(c) The salary factors per step are as follows:

Years Experience	0	1	2	3	4
Salary Factor	<u>.5464</u> [.6226]	<u>.5582</u> [.6360]	<u>.5698</u> [.6492]	<u>.5816</u> [.6627]	<u>.6064</u> [.6909]
Years Experience	5	6	7	8	9
Salary Factor	<u>.6312</u> [.7192]	<u>.6560</u> [.7474]	<u>.6790</u> [.7737]	<u>.7008</u> [.7985]	<u>.7214</u> [.8220]
Years Experience	10	11	12	13	14
Salary Factor	<u>.7408</u> [.8444]	<u>.7592</u> [.8650]	<u>.7768</u> [.8851]	<u>.7930</u> [.9025]	<u>.8086</u> [.9213]
Years Experience	15	16	17	18	19
Salary Factor	<u>.8232</u> [.9380]	<u>.8372</u> [.9539]	<u>.8502</u> [.9687]	<u>.8626</u> [.9828]	<u>.8744</u> [.9963]
Years Experience	20	and	over		
Salary Factor	<u>.8854</u> [1.009]				

(c-1) Notwithstanding ~~Subsections~~ Subsections ~~[Subsection]~~ (a) and (b) [~~for the 2009-2010 and 2010-2011 school years~~], each school district shall pay a monthly salary to [~~increase the monthly salary of~~] each classroom teacher, full-time speech pathologist, full-time librarian, full-time counselor certified under Subchapter B, and full-time school nurse that is at least equal to the following monthly salary or the monthly salary determined by the commissioner under Subsections (a) and (b), whichever is [~~by the~~] greater [~~of~~]:

<u>Years of Experience</u>	<u>Monthly Salary</u>
0	<u>2,732</u>
1	<u>2,791</u>
2	<u>2,849</u>
3	<u>2,908</u>
4	<u>3,032</u>
5	<u>3,156</u>
6	<u>3,280</u>
7	<u>3,395</u>
8	<u>3,504</u>
9	<u>3,607</u>

10	3,704
11	3,796
12	3,884
13	3,965
14	4,043
15	4,116
16	4,186
17	4,251
18	4,313
19	4,372
<u>20 & Over</u>	<u>4,427</u>

(1) \$80; or

(2) the maximum uniform amount that, when combined with any resulting increases in the amount of contributions made by the district for social security coverage for the specified employees or by the district on behalf of the specified employees under Section 825.405, Government Code, may be provided using an amount equal to the product of \$60 multiplied by the number of students in weighted average daily attendance in the school during the 2009-2010 school year.]

(i) Not later than January 1, 2013, the commissioner shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with primary jurisdiction over primary and secondary education a written report that evaluates and provides recommendations regarding the salary schedule. This subsection expires September 1, 2013.

SECTION 75.04. Effective September 1, 2017, Section 21.402, Education Code, is amended by amending Subsection (a) and adding Subsection (e-1) to read as follows:

(a) Except as provided by Subsection (d), (e-1) [(e)], or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors, as determined by commissioner rule, determined by the following formula:

$$MS = SF \times FS$$

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of the basic allotment as provided by Section 42.101(a) or (b) for a school district with a maintenance and operation tax rate at least equal to the state maximum compressed tax rate, as defined by Section 42.101(a) [state and local funds per weighted student, including funds provided under Section 42.2516, available to a district eligible to receive state assistance under Section 42.302 with a maintenance and operations tax rate per \$100 of taxable value equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50, except that the

~~amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, Acts of the 77th Legislature, Regular Session 2001].~~

(e-1) If the minimum monthly salary determined under Subsection (a) for a particular level of experience is less than the minimum monthly salary for that level of experience in the preceding year, the minimum monthly salary is the minimum monthly salary for the preceding year.

SECTION 75.05. Subsection (a), Section 41.002, Education Code, is amended to read as follows:

(a) A school district may not have a wealth per student that exceeds:

(1) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student available to a district with maintenance and operations tax revenue per cent of tax effort equal to the maximum amount provided per cent under Section 42.101(a) or (b) ~~[42.101]~~, for the district's maintenance and operations tax effort equal to or less than the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student available to the Austin Independent School District, as determined by the commissioner in cooperation with the Legislative Budget Board, for the first six cents by which the district's maintenance and operations tax rate exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, subject to Section 41.093(b-1); or

(3) \$319,500, for the district's maintenance and operations tax effort that exceeds the first six cents by which the district's maintenance and operations tax effort exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year.

SECTION 75.06. The heading to Section 42.101, Education Code, is amended to read as follows:

Sec. 42.101. BASIC AND REGULAR PROGRAM ALLOTMENTS
~~[ALLOTMENT].~~

SECTION 75.07. Section 42.101, Education Code, is amended by amending Subsections (a) and (b) and adding Subsections (c) and (c-1) to read as follows:

(a) ~~The basic [For each student in average daily attendance, not including the time students spend each day in special education programs in an instructional arrangement other than mainstream or career and technology education programs, for which an additional allotment is made under Subchapter C, a district is entitled to an] allotment is an amount~~ equal to the lesser of \$4,765 or the amount that results from the following formula:

$$A = \$4,765 \times (DCR/MCR)$$

where:

"A" is the resulting amount for [allotment to which] a district ~~[is entitled];~~

"DCR" is the district's compressed tax rate, which is the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year; and

"MCR" is the state maximum compressed tax rate, which is the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50.

(b) A greater amount for any school year for the basic allotment under Subsection (a) may be provided by appropriation.

(c) A school district is entitled to a regular program allotment equal to the amount that results from the following formula:

$$RPA = ADA \times AA \times RPAF$$

where:

"RPA" is the regular program allotment to which the district is entitled;

"ADA" is the number of students in average daily attendance in a district, not including the time students spend each day in special education programs in an instructional arrangement other than mainstream or career and technology education programs, for which an additional allotment is made under Subchapter C;

"AA" is the district's adjusted basic allotment, as determined under Section 42.102 and, if applicable, as further adjusted under Section 42.103; and

"RPAF" is the regular program adjustment factor, which is an amount established by appropriation.

(c-1) Notwithstanding Subsection (c), the regular program adjustment factor ("RPAF") is 0.9239 for the 2011-2012 school year and 0.98 for the 2012-2013 school year. This subsection expires September 1, 2013.

SECTION 75.08. Section 42.105, Education Code, is amended to read as follows:

Sec. 42.105. SPARSITY ADJUSTMENT. Notwithstanding Sections 42.101, 42.102, and 42.103, a school district that has fewer than 130 students in average daily attendance shall be provided a regular program ~~[an adjusted basic]~~ allotment on the basis of 130 students in average daily attendance if it offers a kindergarten through grade 12 program and has preceding or current year's average daily attendance of at least 90 students or is 30 miles or more by bus route from the nearest high school district. A district offering a kindergarten through grade 8 program whose preceding or current year's average daily attendance was at least 50 students or which is 30 miles or more by bus route from the nearest high school district shall be provided a regular program ~~[an adjusted basic]~~ allotment on the basis of 75 students in average daily attendance. An average daily attendance of 60 students shall be the basis of providing the regular program ~~[adjusted basic]~~ allotment if a district offers a kindergarten through grade 6 program and has preceding or current year's average daily attendance of at least 40 students or is 30 miles or more by bus route from the nearest high school district.

SECTION 75.09. Subsection (a), Section 42.251, Education Code, is amended to read as follows:

(a) The sum of the regular program [~~basic~~] allotment under Subchapter B and the special allotments under Subchapter C, computed in accordance with this chapter, constitute the tier one allotments. The sum of the tier one allotments and the guaranteed yield allotments under Subchapter F, computed in accordance with this chapter, constitute the total cost of the Foundation School Program.

SECTION 75.10. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2514 to read as follows:

Sec. 42.2514. ADDITIONAL STATE AID FOR TAX INCREMENT FINANCING PAYMENTS. For each school year, a school district, including a school district that is otherwise ineligible for state aid under this chapter, is entitled to state aid in an amount equal to the amount the district is required to pay into the tax increment fund for a reinvestment zone under Section 311.013(n), Tax Code.

SECTION 75.11. Effective September 1, 2011, Section 42.2516, Education Code, is amended by amending Subsections (a), (b), (d), and (f-2) and adding Subsection (i) to read as follows:

(a) In this title [~~section~~], "state compression percentage" means the percentage [~~as determined by the commissioner,~~] of a school district's adopted maintenance and operations tax rate for the 2005 tax year that serves as the basis for state funding [~~for tax rate reduction under this section~~]. If the state compression percentage is not established by appropriation for a school year, the [~~The~~] commissioner shall determine the state compression percentage for each school year based on the percentage by which a district is able to reduce the district's maintenance and operations tax rate for that year, as compared to the district's adopted maintenance and operations tax rate for the 2005 tax year, as a result of state funds appropriated for distribution under this section for that year from the property tax relief fund established under Section 403.109, Government Code, or from another funding source available for school district property tax relief.

(b) Notwithstanding any other provision of this title, a school district that imposes a maintenance and operations tax at a rate at least equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year is entitled to at least the amount of state revenue necessary to provide the district with the sum of:

(1) the percentage specified by Subsection (i) of the amount, as calculated under Subsection (e), [~~the amount~~] of state and local revenue per student in weighted average daily attendance for maintenance and operations that the district would have received during the 2009-2010 school year under Chapter 41 and this chapter, as those chapters existed on January 1, 2009, at a maintenance and operations tax rate equal to the product of the state compression percentage for that year multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the percentage specified by Subsection (i) of an amount equal to the product of \$120 multiplied by the number of students in weighted average daily attendance in the district; and

(3) [~~an amount equal to the amount the district is required to pay into the tax increment fund for a reinvestment zone under Section 311.013(n), Tax Code, in the current tax year; and~~

[~~(4)~~] any amount to which the district is entitled [~~under Section 42.106.~~

(d) In determining the amount to which a district is entitled under Subsection (b)(1), the commissioner shall:

(1) include the percentage specified by Subsection (i) of any amounts received by the district during the 2008-2009 school year under Rider 86, page III-23, Chapter 1428 (H.B. 1), Acts of the 80th Legislature, Regular Session, 2007 (the General Appropriations Act); and

(2) for a school district that paid tuition under Section 25.039 during the 2008-2009 school year, reduce the amount to which the district is entitled by the amount of tuition paid during that school year.

(f-2) The rules adopted by the commissioner under Subsection (f-1) must:

(1) require the commissioner to determine, as if this section did not exist, the effect under Chapter 41 and this chapter of a school district's action described by Subsection (f-1)(1), (2), (3), or (4) on the total state revenue to which the district would be entitled or the cost to the district of purchasing sufficient attendance credits to reduce the district's wealth per student to the equalized wealth level; and

(2) require an increase or reduction in the amount of state revenue to which a school district is entitled under Subsection (b)(1) ~~(b)~~ that is substantially equivalent to any change in total state revenue or the cost of purchasing attendance credits that would apply to the district if this section did not exist.

(i) The percentage to be applied for purposes of Subsections (b)(1) and (2) and Subsection (d)(1) is 100.00 percent for the 2011-2012 school year and 92.35 percent for the 2012-2013 school year. For the 2013-2014 school year and each subsequent school year, the legislature by appropriation shall establish the percentage reduction to be applied.

SECTION 75.12. Effective September 1, 2017, the heading to Section 42.2516, Education Code, is amended to read as follows:

Sec. 42.2516. STATE COMPRESSION PERCENTAGE ~~[ADDITIONAL STATE AID FOR TAX REDUCTION]~~.

SECTION 75.13. Effective September 1, 2017, Subsection (a), Section 42.2516, Education Code, is amended to read as follows:

(a) In this title [section], "state compression percentage" means the percentage ~~as determined by the commissioner,~~ of a school district's adopted maintenance and operations tax rate for the 2005 tax year that serves as the basis for state funding ~~[for tax rate reduction under this section]~~. If the state compression percentage is not established by appropriation for a school year, the [The] commissioner shall determine the state compression percentage for each school year based on the percentage by which a district is able to reduce the district's maintenance and operations tax rate for that year, as compared to the district's adopted maintenance and operations tax rate for the 2005 tax year, as a result of state funds appropriated for [distribution under this section for] that year from the property tax relief fund established under Section 403.109, Government Code, or from another funding source available for school district property tax relief.

SECTION 75.14. Effective September 1, 2011, Subsection (a), Section 42.25161, Education Code, is amended to read as follows:

(a) The commissioner shall provide South Texas Independent School District with the amount of state aid necessary to ensure that the district receives an amount of state and local revenue per student in weighted average daily attendance that is at least the percentage specified by Section 42.2516(i) of \$120 greater than the amount the district would have received per student in weighted average daily attendance during the 2009-2010 school year under this chapter, as it existed on January 1, 2009, at a maintenance and operations tax rate equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, provided that the district imposes a maintenance and operations tax at that rate.

SECTION 75.15. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2525 to read as follows:

Sec. 42.2525. ADJUSTMENTS FOR CERTAIN DEPARTMENT OF DEFENSE DISTRICTS. The commissioner is granted the authority to ensure that Department of Defense school districts do not receive more than an eight percent reduction should the federal government reduce appropriations to those schools.

SECTION 75.16. Effective September 1, 2011, Subsections (h) and (i), Section 42.253, Education Code, are amended to read as follows:

(h) If the amount appropriated for the Foundation School Program for the second year of a state fiscal biennium is less than the amount to which school districts are entitled for that year, the commissioner shall certify the amount of the difference to the Legislative Budget Board not later than January 1 of the second year of the state fiscal biennium. The Legislative Budget Board shall propose to the legislature that the certified amount be transferred to the foundation school fund from the economic stabilization fund and appropriated for the purpose of increases in allocations under this subsection. If the legislature fails during the regular session to enact the proposed transfer and appropriation and there are not funds available under Subsection (j), the commissioner shall adjust [reduce] the total amounts due to each school district under this chapter and the total amounts necessary for each school district to comply with the requirements of Chapter 41 [amount of state funds allocated to each district] by an amount determined by applying to each district, including a district receiving funds under Section 42.2516, the same percentage adjustment so that the total amount of the adjustment to all districts [a method under which the application of the same number of cents of increase in tax rate in all districts applied to the taxable value of property of each district, as determined under Subchapter M, Chapter 403, Government Code,] results in an amount [a total levy] equal to the total adjustment necessary. A school district is not entitled to reimbursement in a subsequent fiscal year of the amount resulting from the adjustment authorized by this subsection [reduction. The following fiscal year, a district's entitlement under this section is increased by an amount equal to the reduction made under this subsection].

(i) Not later than March 1 each year, the commissioner shall determine the actual amount of state funds to which each school district is entitled under the allocation formulas in this chapter for the current school year, as adjusted in accordance with Subsection (h), if applicable, and shall compare that amount with the amount of the warrants issued to each district for that year. If the amount of the warrants differs from

the amount to which a district is entitled because of variations in the district's tax rate, student enrollment, or taxable value of property, the commissioner shall adjust the district's entitlement for the next fiscal year accordingly.

SECTION 75.17. Effective September 1, 2017, Subsection (h), Section 42.253, Education Code, is amended to read as follows:

(h) If the amount appropriated for the Foundation School Program for the second year of a state fiscal biennium is less than the amount to which school districts are entitled for that year, the commissioner shall certify the amount of the difference to the Legislative Budget Board not later than January 1 of the second year of the state fiscal biennium. The Legislative Budget Board shall propose to the legislature that the certified amount be transferred to the foundation school fund from the economic stabilization fund and appropriated for the purpose of increases in allocations under this subsection. If the legislature fails during the regular session to enact the proposed transfer and appropriation and there are not funds available under Subsection (j), the commissioner shall adjust ~~reduce~~ the total amounts due to each school district under this chapter and the total amounts necessary for each school district to comply with the requirements of Chapter 41 ~~[amount of state funds allocated to each district]~~ by an amount determined by applying to each district the same percentage adjustment so that the total amount of the adjustment to all districts [a method under which the application of the same number of cents of increase in tax rate in all districts applied to the taxable value of property of each district, as determined under Subchapter M, Chapter 403, Government Code,] results in an amount [a total levy] equal to the total adjustment necessary. A school district is not entitled to reimbursement in a subsequent fiscal year of the amount resulting from the adjustment authorized by this subsection [reduction. The following fiscal year, a district's entitlement under this section is increased by an amount equal to the reduction made under this subsection].

SECTION 75.18. Section 42.258, Education Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) If a school district has received an overallocation of state funds, the agency shall, by withholding from subsequent allocations of state funds for the current or subsequent school year or by requesting and obtaining a refund, recover from the district an amount equal to the overallocation.

(a-1) Notwithstanding Subsection (a), the agency may recover an overallocation of state funds over a period not to exceed the subsequent five school years if the commissioner determines that the overallocation was the result of exceptional circumstances reasonably caused by statutory changes to Chapter 41 or 46 or this chapter and related reporting requirements.

SECTION 75.19. Subsection (b), Section 42.260, Education Code, is amended to read as follows:

(b) For each year, the commissioner shall certify to each school district or participating charter school the amount of[-

~~(+)] additional funds to which the district or school is entitled due to the increase made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, to:~~

(1) [~~(A)~~] the equalized wealth level under Section 41.002; or

(2) ~~(B)~~ the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302~~[-or~~

~~[(2) additional state aid to which the district or school is entitled under Section 42.2513].~~

SECTION 75.20. Section 44.004, Education Code, is amended by adding Subsection (g-1) to read as follows:

(g-1) If the rate calculated under Subsection (c)(5)(A)(ii)(b) decreases after the publication of the notice required by this section, the president is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate.

SECTION 75.21. Subsection (a), Section 26.05, Tax Code, is amended to read as follows:

(a) The governing body of each taxing unit, before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted. The tax rate consists of two components, each of which must be approved separately. The components are:

(1) for a taxing unit other than a school district, the rate that, if applied to the total taxable value, will impose the total amount published under Section 26.04(e)(3)(C), less any amount of additional sales and use tax revenue that will be used to pay debt service, or, for a school district, the rate calculated ~~[published]~~ under Section 44.004(c)(5)(A)(ii)(b), Education Code; and

(2) the rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the next year.

SECTION 75.22. Effective September 1, 2017, Subsection (i), Section 26.08, Tax Code, is amended to read as follows:

(i) For purposes of this section, the effective maintenance and operations tax rate of a school district is the tax rate that, applied to the current total value for the district, would impose taxes in an amount that, when added to state funds that would be distributed to the district under Chapter 42, Education Code, for the school year beginning in the current tax year using that tax rate, ~~[including state funds that will be distributed to the district in that school year under Section 42.2516, Education Code,]~~ would provide the same amount of state funds distributed under Chapter 42, Education Code, ~~[including state funds distributed under Section 42.2516, Education Code,]~~ and maintenance and operations taxes of the district per student in weighted average daily attendance for that school year that would have been available to the district in the preceding year if the funding elements for Chapters 41 and 42, Education Code, for the current year had been in effect for the preceding year.

SECTION 75.23. Subsection (n), Section 311.013, Tax Code, is amended to read as follows:

(n) This subsection applies only to a school district whose taxable value computed under Section 403.302(d), Government Code, is reduced in accordance with Subdivision (4) of that subsection. In addition to the amount otherwise required to be paid into the tax increment fund, the district shall pay into the fund an amount equal to the amount by which the amount of taxes the district would have been

required to pay into the fund in the current year if the district levied taxes at the rate the district levied in 2005 exceeds the amount the district is otherwise required to pay into the fund in the year of the reduction. This additional amount may not exceed the amount the school district receives in state aid for the current tax year under Section 42.2514, Education Code. The school district shall pay the additional amount after the district receives the state aid to which the district is entitled for the current tax year under Section 42.2514, Education Code.

SECTION 75.24. Effective September 1, 2011, the following provisions of the Education Code are repealed:

- (1) Subsections (c-2), (c-3), and (e), Section 21.402;
- (2) Section 42.008; and
- (3) Subsections (a-1) and (a-2), Section 42.101.

SECTION 75.25. (a) Effective September 1, 2017, the following provisions of the Education Code are repealed:

- (1) Section 41.0041;
- (2) Subsections (b), (b-1), (b-2), (c), (d), (e), (f), (f-1), (f-2), (f-3), and (i), Section 42.2516;
- (3) Section 42.25161;
- (4) Subsection (c), Section 42.2523;
- (5) Subsection (g), Section 42.2524;
- (6) Subsection (c-1), Section 42.253; and
- (7) Section 42.261.

(b) Effective September 1, 2017, Subsections (i-1) and (j), Section 26.08, Tax Code, are repealed.

SECTION 75.26. (a) The speaker of the house of representatives and the lieutenant governor shall establish a joint legislative interim committee to conduct a comprehensive study of the public school finance system in this state.

(b) Not later than January 15, 2013, the committee shall make recommendations to the 83rd Legislature regarding changes to the public school finance system.

(c) The committee is dissolved September 1, 2013.

SECTION 75.27. It is the intent of the legislature, between fiscal year 2014 and fiscal year 2018, to continue to reduce the amount of Additional State Aid For Tax Reduction (ASATR) to which a school district is entitled under Section 42.2516, Education Code, and to increase the basic allotment to which a school district is entitled under Section 42.101, Education Code.

SECTION 75.28. Except as otherwise provided by this Act, the changes in law made by this Act to Chapter 42, Education Code, apply beginning with the 2011-2012 school year.

SECTION 75.29. The change in law made by Subsection (g-1), Section 44.004, Education Code, as added by this Act, applies beginning with adoption of a tax rate for the 2011 tax year.

ARTICLE 76. MIXED BEVERAGE TAX REIMBURSEMENTS

Section 76.01. Effective September 1, 2013, Section 183.051 (b), Tax Code, is amended to read as follows:

(b) The comptroller shall issue to each county described in Subsection (a) a warrant drawn on the general revenue fund in an amount appropriated by the legislature that may not be less [~~greater~~] than 10.7143 percent of receipts from permittees within the county during the quarter and shall issue to each incorporated municipality described in Subsection (a) a warrant drawn on that fund in an amount appropriated by the legislature that may not be less [~~greater~~] than 10.7143 percent of receipts from permittees within the incorporated municipality during the quarter.

ARTICLE 77. EFFECTIVE DATE

SECTION 77.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1811** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3459

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3459** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WHITMIRE
HINOJOSA
OGDEN
On the part of the Senate

EILAND
MADDEN
PERRY
On the part of the House

The Conference Committee Report on **HB 3459** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2365

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2365** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO
BIRDWELL
CARONA
HUFFMAN
NELSON

On the part of the Senate

EISSLER
HUBERTY
HANCOCK
HOCHBERG
STRAMA

On the part of the House

The Conference Committee Report on **HB 2365** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 6**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 6** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO
CARONA
DUNCAN
NELSON

On the part of the Senate

EISSLER
BRANCH
HUBERTY

On the part of the House

The Conference Committee Report on **HB 6** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 40**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 27, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 40** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ZAFFIRINI

CARONA

DUNCAN

ELTIFE

WATSON

On the part of the Senate

CALLEGARI

FRULLO

MENENDEZ

S. MILLER

ORR

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the composition and functions of the Texas Guaranteed Student Loan Corporation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 57.01 and 57.11, Education Code, are amended to read as follows:

Sec. 57.01. DECLARATION OF POLICY. The legislature, giving due consideration to the historical and continuing interest of the people of the State of Texas in encouraging deserving and qualified persons to realize their aspirations for education beyond high school, finds and declares that postsecondary education for qualified Texans ~~[those]~~ who desire to pursue such ~~[an]~~ education ~~[and are properly qualified therefor]~~ is important to the welfare and security of this state and the nation and, consequently, is an important public purpose. The legislature finds and declares that the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of the individual's ~~[his or her]~~ capabilities and only when financial barriers to the individual's ~~[his or her]~~ economic, social, and educational goals are removed. It is, therefore, the purpose of this chapter to establish the Texas Guaranteed Student Loan Corporation to:

(1) administer a guaranteed student loan program, student financial aid programs, and other student loan programs to assist qualified ~~[Texas]~~ students in this state and across the nation in receiving a postsecondary education in this state or elsewhere in the nation; ~~[and]~~

(2) assist institutions of higher education by providing ~~[provide]~~ necessary and desirable services related to financial aid and student ~~[the]~~ loan programs; and

(3) participate in revenue-generating activities related to higher education student financial aid and student loan programs to the extent the activities support the corporation's primary purposes under Subdivisions (1) and (2) ~~[program, including cooperative awareness efforts with appropriate educational and civic associations]~~

~~designed to disseminate postsecondary education awareness information, including information regarding student financial aid and the Federal Family Education Loan Program, and other relevant topics including the prevention of student loan default].~~

Sec. 57.11. TEXAS GUARANTEED STUDENT LOAN CORPORATION.

(a) The Texas Guaranteed Student Loan Corporation is created to administer the programs authorized by this chapter.

(b) The corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under Chapter 22, Business Organizations Code ~~[the Texas Non Profit Corporation Act (Article 1396 1.01 et seq., Vernon's Texas Civil Statutes)].~~

(c) ~~[(b)]~~ Except as otherwise provided by law, all expenses of the corporation shall be paid from revenue ~~[income]~~ of the corporation.

(d) ~~[(e)]~~ The corporation is subject to Chapters ~~[Chapter]~~ 551 and 552, Government Code.

(e) ~~[(d)]~~ Student loan borrower information collected, assembled, or maintained by the corporation is confidential and is not subject to disclosure under Chapter 552, Government Code.

SECTION 2. Subsection (a), Section 57.12, Education Code, is amended to read as follows:

(a) The Texas Guaranteed Student Loan Corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 2013 ~~[2017]~~.

SECTION 3. Subsection (b), Section 57.13, Education Code, is amended to read as follows:

(b) The governor, with the advice and consent of the senate, shall appoint 10 members to the board as follows:

(1) five members who must have knowledge of or experience in finance, including management of funds or business operations;

(2) one member who must be a student enrolled at a postsecondary educational institution for the number of credit hours required by the institution to be classified as a full-time student of the institution; and

(3) four members who must be members of the faculty or administration of a [an eligible] postsecondary educational institution that is an eligible institution for purposes of the Higher Education Act of 1965, as amended ~~[, as defined by Section 57.46]~~.

SECTION 4. Subsection (b), Section 57.1311, Education Code, is amended to read as follows:

(b) The training program must provide the person with information regarding:

(1) the provisions of this chapter, including the policies developed under Section 57.19(i) regarding the separation of policymaking and management responsibilities, and the corporation's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the corporation;

(3) the requirements of laws relating to open meetings, public information, and conflicts of interest; and

(4) any applicable ethics policies adopted by the corporation or the Texas Ethics Commission.

SECTION 5. Section 57.17, Education Code, is amended to read as follows:

Sec. 57.17. OFFICERS. The governor shall designate the chairman from among the board's membership. The board shall elect from among its members a [chairman,] vice-chairman[;] and other officers that the board considers necessary. The chairman and vice-chairman serve for a term of one year and may be redesignated or reelected, as applicable.

SECTION 6. Subchapter B, Chapter 57, Education Code, is amended by adding Section 57.181 to read as follows:

Sec. 57.181. MEETING BY TELEPHONE CONFERENCE CALL; QUORUM PRESENT AT ONE LOCATION REQUIRED. (a) Notwithstanding Chapter 551, Government Code, the board or a board committee may hold a meeting by telephone conference call only if a quorum of the board or board committee, as applicable, is physically present at one location of the meeting.

(b) A telephone conference call meeting is subject to the notice requirements applicable to other meetings, except that the meeting notice must also specify:

(1) the location of the meeting where a quorum of the board or board committee, as applicable, will be physically present; and

(2) the intent to have a quorum present at that location.

(c) The meeting location where a quorum is physically present must be open to the public during the open portions of a telephone conference call meeting. The open portions of the meeting must be audible to the public at the location where the quorum is present and be tape-recorded at that location. The tape recording must be made available to the public.

(d) The meeting location where a quorum is physically present must provide two-way communication during the entire telephone conference call meeting, and the identification of each party to the telephone conference call must be clearly stated before the party speaks.

(e) A member of the board who participates in a board or board committee meeting by telephone conference call but is not physically present at the meeting location where a quorum is physically present is not considered to be absent from the meeting for any purpose. The vote of a member of the board who participates in a board or board committee meeting by telephone conference call is counted for the purpose of determining the number of votes cast on a motion or other proposition before the board or board committee.

(f) A member of the board may participate remotely by telephone conference call instead of by being physically present at the location of a board meeting for not more than one board meeting per calendar year. A board member who participates remotely in any portion of a board meeting by telephone conference call is considered to have participated in the entire board meeting by telephone conference call. For purposes of this subsection, remote participation by telephone conference call in a meeting of a board committee does not count as remote participation by telephone conference call in a board meeting regardless of whether:

(1) a quorum of the full board attends the board committee meeting; or

(2) notice of the board committee meeting is also posted as notice of a board meeting.

(g) A person who is not a member of the board may not speak at the board or board committee meeting from a remote location by telephone conference call, except as provided by Section 551.129, Government Code.

(h) The authority provided by this section is in addition to the authority provided by Section 551.125, Government Code.

SECTION 7. Subsection (d), Section 57.19, Education Code, is amended to read as follows:

(d) The president or the president's designee shall develop a ~~[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 8. Subsection (a), Section 57.20, Education Code, is amended to read as follows:

(a) The corporation shall appoint an ombudsman ~~[maintain a system]~~ to promptly and efficiently act on complaints filed with the corporation. The ombudsman ~~[corporation]~~ shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

SECTION 9. Subsections (a) and (c), Section 57.21, Education Code, are amended to read as follows:

(a) The corporation shall take an active role in coordinating, facilitating, promoting, and providing assistance and support to:

(1) ~~programs that focus on and disseminate [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 10. The heading to Section 57.22, Education Code, is amended to read as follows:

Sec. 57.22. APPLICATION OF BUSINESS ORGANIZATIONS CODE [THE TEXAS NON PROFIT CORPORATION ACT].

SECTION 11. Subsection (a), Section 57.22, Education Code, is amended to read as follows:

(a) The corporation is subject to Chapter 22, Business Organizations Code [the Texas Non Profit Corporation Act (Article 1396 1.01 et seq., Vernon's Texas Civil Statutes)], except that:

- (1) the corporation may not make donations for the public welfare or for charitable or scientific purposes or in aid of war activities;
- (2) the corporation is not required to file articles of incorporation;
- (3) the corporation is not subject to voluntary or involuntary dissolution;
- (4) the corporation may not be placed in receivership; and
- (5) the corporation is not required to make reports to the secretary of state under Section 22.357, Business Organizations Code [~~Article 9.01 of that Act~~].

SECTION 12. Section 57.24, Education Code, is amended to read as follows:

Sec. 57.24. AUTHORITY TO PARTICIPATE IN OTHER REVENUE-GENERATING ACTIVITIES; LIMITATIONS. (a) The corporation may participate in a revenue-generating activity [~~that is consistent with the corporation's purposes~~] if the board determines that [~~the~~] revenue from the activity:

- (1) is sufficient to cover the costs of the activity; and
- (2) will enable the corporation to support educational purposes under Section 57.211 [~~may contribute to a reduction in the insurance premium paid by students under Section 57.43 of this code~~].

(b) If, under Subsection (a) [~~of this section~~], the board authorizes the corporation to perform additional services, the corporation may not require postsecondary educational institutions or students to use those services unless required by state or federal law.

SECTION 13. Subsection (a), Section 57.41, Education Code, is amended to read as follows:

(a) The corporation shall serve as the designated guarantee agency under the Federal Family Education Loan Program in accordance with [loans made to eligible borrowers by eligible lenders as provided by the federal guaranteed student loan program under] the Higher Education Act of 1965, 20 U.S.C. Section [~~See.~~] 1001 et seq., as amended, regulations adopted under that Act, and other applicable federal law.

SECTION 14. Section 57.461, Education Code, is amended to read as follows:

Sec. 57.461. [~~POSTSECONDARY EDUCATIONAL INSTITUTIONS AND LENDER~~] ADVISORY COMMITTEES. [~~(a)~~] The corporation shall establish advisory committees as the board considers appropriate[~~:-~~]

~~[(1) an advisory committee that is composed of 15 members who represent the postsecondary educational institutions that participate in the corporation's guaranteed student loan program; and~~

~~[(2) an advisory committee that is composed of 12 members including:~~

~~[(A) one member who represents the Texas Higher Education Coordinating Board; and~~

~~[(B) 11 members who represent lenders that participate in the corporation's guaranteed student loan program].~~

~~[(b) The board shall appoint advisory committee members on the recommendation of the president.~~

~~[(c) The board may establish other advisory committees as the board considers necessary.~~

~~[(d) The board shall:~~

~~[(1) specify each advisory committee's purpose and duties; and~~

~~[(2) require each committee to report to the board in a manner specified by the board relating to each committee's activities and work results.]~~

SECTION 15. Subsections (a), (b), and (d), Section 57.47, Education Code, are amended to read as follows:

(a) If a student borrower defaults on a loan and the corporation is required to honor the guarantee, the corporation may ~~[or the Texas Higher Education Coordinating Board shall]~~ bring suit against the defaulting party in accordance with the requirements of the Higher Education Act of 1965, 20 U.S.C. Section ~~[See.]~~ 1001 et seq., as amended.

(b) A suit against a defaulting party under this section may be brought in the county in which the defaulting person resides, in which the lender is located, or in Travis or Williamson County.

(d) Notwithstanding any other law, if the corporation ~~[or the Texas Higher Education Coordinating Board]~~ brings suit against a defaulting party under this section, the corporation ~~[or the coordinating board, as appropriate,]~~ shall pay 50 percent of the filing fee or other costs of court taxed and collected in advance that are in effect on the date on which the suit is filed. If the defaulting borrower prevails in the suit filed under this section, the corporation ~~[or the coordinating board, as appropriate,]~~ shall pay the remaining 50 percent of the statutory filing fee on the date of the final disposition of the suit. If the corporation ~~[or coordinating board]~~ prevails in the suit:

(1) the judgment shall find the defaulting borrower liable to the corporation ~~[or the coordinating board, as appropriate,]~~ for the amount of the filing fee; and

(2) the corporation ~~[or coordinating board, as appropriate,]~~ shall pay the remaining 50 percent of the statutory filing fee not later than one week after the date on which the defaulting borrower pays to the corporation ~~[or coordinating board, as appropriate,]~~ the full amount, including the filing fee, for which the borrower is liable to the corporation ~~[or coordinating board]~~.

SECTION 16. Subsections (a), (b), and (c), Section 57.481, Education Code, are amended to read as follows:

(a) ~~[In this section, "loan default rate" means the rate at which student borrowers default on loans guaranteed by the corporation as determined by the corporation in compliance with federal guidelines.]~~

~~[(b)]~~ The corporation shall take a comprehensive and ~~[an]~~ active role in coordinating, facilitating, and providing technical assistance on guaranteed student loan default prevention and reduction initiatives and programs that promote responsible borrowing, financial literacy, debt management, research, and informed policymaking ~~[in the state]~~ and shall work with the appropriate state agencies and other entities inside and outside this state, including eligible postsecondary educational institutions, eligible lenders, servicers, secondary markets, the Texas

Higher Education Coordinating Board, the Texas ~~[Central]~~ Education Agency, ~~[and]~~ state professional and occupational licensing agencies, and the United States Department of Education.

(b) ~~(e)~~ The corporation shall maintain a system of communication among the appropriate state agencies and entities to address student ~~[reduce]~~ loan default prevention issues ~~[claims]~~.

SECTION 17. Section 57.49, Education Code, is amended to read as follows:

Sec. 57.49. COOPERATION OF STATE AGENCIES AND SUBDIVISIONS.

Each agency and political subdivision of the state shall cooperate with the corporation in providing information to the agency's or political subdivision's clients concerning student financial aid, including information about delinquency, default prevention, and life-of-loan issues. Each agency and political subdivision shall provide information to the corporation on request to assist the corporation in curing delinquent loans, ~~[and]~~ collecting defaulted loans, and developing information and reports concerning responsible borrowing.

SECTION 18. Sections 57.50 and 57.71, Education Code, are amended to read as follows:

Sec. 57.50. NONDISCRIMINATION. Neither the corporation nor an eligible lender may discriminate against an eligible student in making a loan or loan guarantee on the basis of race, age, religion, or sex or any other basis prohibited by applicable law.

Sec. 57.71. FEDERAL ~~[RESERVE]~~ AND OPERATING FUNDS. The corporation shall maintain a federal fund ~~[establish reserve]~~ and operating fund ~~[funds]~~ in accordance with Sections ~~[Section]~~ 422, 422A, and 422B of the Higher Education Act of 1965 (20 U.S.C. Sections ~~[Section]~~ 1072, 1072a, and 1072b), as amended.

SECTION 19. Subchapter D, Chapter 57, Education Code, is amended by adding Section 57.762 to read as follows:

Sec. 57.762. REVIEW BY STATE AUDITOR. In addition to any other audit required by law, the state auditor shall periodically review the corporation's activities in a manner consistent with the state auditor's audit plan under Chapter 321, Government Code. The corporation shall reimburse the state auditor for all reasonable costs incurred by the state auditor in conducting a review under this section.

SECTION 20. Section 57.77, Education Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The corporation shall include in its annual report under this section a description of the corporation's participation in revenue-generating activities under Section 57.24. The description must:

(1) include the amounts of revenue from and expenses associated with the activities;

(2) demonstrate how that revenue is used for the support of educational purposes under Section 57.211; and

(3) certify:

(A) the reasonable and necessary amount of operating funds under Section 57.71 required to fulfill the corporation's responsibilities under Section 57.41(a); and

(B) the amount of excess operating funds under Section 57.71.

SECTION 21. Section 57.78, Education Code, is amended to read as follows:

Sec. 57.78. INVESTMENTS. The federal fund maintained by the corporation under Section 57.71 shall [~~All money of the corporation may~~] be invested in accordance with Section 422A of the Higher Education Act of 1965 (20 U.S.C. Section 1072a), as amended. The operating fund maintained by the corporation under Section 57.71 may be invested only in accordance with Chapter 2256, Government Code. Authority to invest the operating fund in accordance with Chapter 2256, Government Code, complies with Section 422B of the Higher Education Act of 1965 (20 U.S.C. Section 1072b), as amended.

SECTION 22. The following provisions of the Education Code are repealed:

- (1) Subsections (c), (g), and (h), Section 57.19;
- (2) Subsections (c) and (d), Section 57.41;
- (3) Section 57.42;
- (4) Section 57.43;
- (5) Section 57.44;
- (6) Section 57.45;
- (7) Section 57.46; and
- (8) Subsections (d), (e), (f), (g), and (h), Section 57.481.

SECTION 23. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 40** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 335

Senator Birdwell submitted the following Conference Committee Report:

Austin, Texas
May 28, 2011

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 335** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIRDWELL
ELLIS
PATRICK
NELSON

SHELTON
THOMPSON
CREIGHTON
BRANCH

DARBY

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 335** was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 1243 by Watson, In memory of Duard Desmond Linam of Austin.

SR 1244 by Watson, In memory of Kent Butler of Austin.

Congratulatory Resolutions

SR 1241 by Watson, Recognizing Jayme Mathias for his service as pastor of Cristo Rey Catholic Church.

SR 1242 by Watson, Congratulating Tex Mitchell IV for receiving the Heroism Award from the Boy Scouts of America.

SR 1245 by Watson and Ellis, Congratulating Susan Harry and Lisa Durnal on the birth of their daughter, Olivia Claire Durnal-Harry.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 7:21 p.m. adjourned, in memory of Kenneth Gary Vann, until 1:00 p.m. tomorrow.

APPENDIX

BILLS AND RESOLUTIONS ENROLLED

May 27, 2011

SB 5, SB 49, SB 71, SB 76, SB 78, SB 197, SB 209, SB 221, SB 222, SB 303, SB 321, SB 322, SB 332, SB 385, SB 391, SB 407, SB 425, SB 462, SB 469, SB 480, SB 498, SB 502, SB 573, SB 594, SB 629, SB 663, SB 731, SB 736, SB 760, SB 767, SB 776, SB 803, SB 809, SB 844, SB 859, SB 924, SB 932, SB 942, SB 943, SB 978, SB 981, SB 988, SB 993, SB 1003, SB 1035, SB 1048, SB 1068, SB 1094, SB 1170, SB 1178, SB 1179, SB 1185, SB 1196, SB 1209, SB 1216, SB 1233, SB 1234, SB 1250, SB 1271, SB 1285, SB 1286, SB 1413, SB 1416, SB 1422, SB 1449, SB 1546, SB 1551, SB 1605, SB 1616, SB 1620, SB 1636, SB 1649, SB 1732, SB 1733, SB 1736, SB 1760, SB 1796, SB 1810, SB 1909, SB 1920, SR 1177, SR 1220, SR 1221, SR 1222, SR 1223, SR 1224, SR 1225, SR 1226, SR 1228, SR 1229, SR 1230, SR 1232, SR 1233, SR 1234, SR 1235, SR 1236, SR 1237, SR 1238, SR 1239

SIGNED BY GOVERNORMay 28, 2011

**SB 118, SB 132, SB 248, SB 328, SB 331, SB 356, SB 403, SB 420, SB 509,
SB 533, SB 604, SB 628, SB 816, SB 977, SB 1125, SB 1140, SB 1150, SB 1165,
SB 1217, SB 1229, SB 1241, SB 1242, SB 1327, SB 1353, SB 1356, SB 1357,
SB 1385, SB 1433, SB 1496, SB 1608, SB 1693, SB 1806, SB 1886, SCR 25**

FILED WITHOUT SIGNATURE OF GOVERNORMay 28, 2011

SB 564, SB 1121, SB 1492

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

SEVENTY-FIRST DAY

(Sunday, May 29, 2011)

The Senate met at 1:17 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.

Bishop L. A. Wilkerson, Agapé Christian Ministries, Austin, offered the invocation as follows:

All mighty God, we pray that You bless these proceedings with Your presence. We pray for Your precious glory and heavenly power to fill this room. Please empower and anoint everyone here today with a supernatural ability to govern the affairs of this great State of Texas. Help them to meet the needs of all the people of this state. Glorious God, please do something special here today which will create a ripple effect that will be positively felt in years to come. God bless everyone here today to do Your will. We ask this in Your name. 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

Sunday, May 29, 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 168 Miller, Sid

Honoring John Cowan on the occasion of his retirement from the Texas Association of Dairymen.

HCR 176 Isaac

Instructing the enrolling clerk of the house to make corrections in H.B. No. 1517.

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1 (97 Yeas, 53 Nays)

SB 747 (148 Yeas, 0 Nays, 2 Present, not voting)

SB 1534 (147 Yeas, 0 Nays, 2 Present, not voting)

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 90 (146 Yeas, 2 Nays, 1 Present, not voting)

HB 1000 (148 Yeas, 0 Nays, 1 Present, not voting)

HB 2847 (147 Yeas, 0 Nays, 1 Present, not voting)

HB 2910 (148 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

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 5, SB 49, SB 71, SB 78, SB 209, SB 222, SB 303, SB 321, SB 322, SB 391, SB 407, SB 480, SB 498, SB 502, SB 573, SB 594, SB 629, SB 663, SB 731, SB 736, SB 760, SB 809, SB 844, SB 859, SB 924, SB 942, SB 943, SB 978, SB 981, SB 988, SB 993, SB 1003, SB 1035, SB 1048, SB 1094, SB 1178, SB 1185, SB 1196, SB 1209, SB 1216, SB 1233, SB 1250, SB 1271, SB 1449, SB 1551, SB 1605, SB 1636, SB 1649, SB 1732, SB 1796, SB 1920, HB 1046, HB 1071, HB 1080, HB 1113, HB 1528, HB 1568, HB 1622, HB 1756, HB 1757, HB 1758, HB 1797, HB 1822, HB 1844, HB 2047, HB 2096, HB 2104, HB 2193, HB 2238, HB 2469, HB 2784, HB 2819, HB 2972, HB 3085, HB 3161, HB 3324, HB 3421, HB 3422, HCR 115, HCR 165.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2608 ADOPTED**

Senator Hinojosa called from the President's table the Conference Committee Report on **HB 2608**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Hinojosa, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1248

Senator Huffman offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 2605 (the continuation and functions of the division of workers' compensation of the Texas Department of Insurance) to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add text not included in either the house or senate version of the bill to proposed Section 504.055, Labor Code, as added by Senate Floor Amendment No. 4 by Lucio, by adding Subsection (e) to read as follows:

(e) Except as otherwise provided by this section, a first responder is entitled to review of a medical dispute in the manner provided by Section 504.054.

Explanation: This addition is a cross-reference made necessary by the addition of proposed Section 504.054, Labor Code, as added by the senate committee substitute.

(2) Senate Rule 12.03(2) is suspended to permit the committee to omit text not in disagreement by omitting proposed Section 504.055, Labor Code, that reads as follows:

Sec. 504.055. FIRST RESPONDER MEDICAL DISPUTES; CONTESTED CASE HEARING AND JUDICIAL REVIEW. (a) In this section, "first responder" has the meaning assigned by Section 504.054.

(b) A first responder whose medical dispute remains unresolved after a review by an independent review organization is entitled to a contested case hearing. The independent review organization's decision is binding during the pendency of a dispute. A hearing under this subsection shall be conducted by the division in the same manner as a hearing conducted under Section 413.0311.

(c) A first responder who has exhausted all administrative remedies under Subsection (b) and is aggrieved by a final decision of the division may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided by Section 413.0311(d).

Explanation: The omission is necessary to prevent an inconsistency with proposed Section 504.054, Labor Code, as added by the senate committee substitute.

(3) Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in the proposed section containing the transition language added by Senate Floor Amendment No. 4 by Lucio to read as follows:

Section 504.055, Labor Code, as added by this Act, applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before that date is governed by the law in effect on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

Explanation: This change is necessary to correct a cross-reference.

SR 1248 was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2605 ADOPTED**

Senator Huffman called from the President's table the Conference Committee Report on **HB 2605**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Huffman, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1664 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **SB 1664**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2817 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **HB 2817**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1252

Senator Wentworth offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 2327 (establishment and operation of a motor-bus-only lane pilot program in certain counties) to consider and take action on the following matter:

Senate Rule 12.03(3) is suspended to permit the committee to add text on a matter which is not in disagreement by adding text in SECTION 1 of the bill, in added Section 455.006(a), Transportation Code, to read as follows:

(a) The department, in consultation with the Department of Public Safety and in conjunction with and with the elective participation of the appropriate metropolitan rapid transit authorities, county transportation authorities, municipal transit departments, and regional transportation authorities and the municipalities served by those mass transit entities, shall establish and operate a motor-bus-only lane pilot program for highways in Bexar, El Paso, Tarrant, and Travis Counties that are part of the state highway system and have shoulders of sufficient width and structural integrity.

Explanation: This change is necessary to clarify that a mass transit entity is not required to participate in the establishment and operation of the motor-bus-only lane pilot program.

SR 1252 was read and was adopted by the following vote: Yeas 30, Nays 1.

Nays: Nichols.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2327 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **HB 2327**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 22, Nays 9.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hegar, Hinojosa, Lucio, Nelson, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Huffman, Jackson, Nichols, Ogden, Patrick, Shapiro.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3109 ADOPTED**

Senator Seliger called from the President's table the Conference Committee Report on **HB 3109**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Seliger, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2226 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **HB 2226**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1543 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **SB 1543**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 27, Nays 4.

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, Zaffirini.

Nays: Birdwell, Nelson, Patrick, Williams.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 300 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **HB 300**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2357 ADOPTED**

Senator Williams called from the President's table the Conference Committee Report on **HB 2357**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Williams, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2490 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **HB 2490**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 293 ADOPTED**

Senator Watson called from the President's table the Conference Committee Report on **SB 293**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Watson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2380 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **HB 2380**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Shapiro, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 28 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **SB 28**. The Conference Committee Report was filed with the Senate on Tuesday, May 24, 2011.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 28, Nays 3.

Yeas: Birdwell, Carona, Deuell, Duncan, 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: Davis, Ellis, Patrick.

SENATE RESOLUTION 1256

Senator Jackson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 2457 (the Texas Enterprise Fund and the Texas emerging technology fund) to consider and take action on the following matters:

(1) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change and omit text not in disagreement in SECTION 1 of the bill, in added Section 481.078(h-1), Government Code, to read as follows:

(h-1) At least 14 days before the date the governor intends to amend a grant agreement, the governor shall notify and provide a copy of the proposed amendment to the speaker of the house of representatives and the lieutenant governor.

Explanation: This change is necessary to remove the requirement that the governor notify and provide a copy of a proposed amendment to a grant agreement to the presiding officers of the standing committees of both houses of the legislature with primary jurisdiction over economic development.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill, in SECTION 6 of the bill, by adding the following subsections in added Section 490.0521, Government Code, to read as follows:

(b) All information obtained and maintained pursuant to Subsection (a), including information derived from the financial statements, is confidential and is not subject to disclosure under Chapter 552, Government Code.

(c) The governor, on request or in the normal course of official business, shall provide information that is confidential under Subsection (b) to the Texas State Auditor's Office.

(d) This section does not affect release of information for legislative purposes pursuant to Section 552.008, Government Code.

Explanation: This change is necessary to ensure that information disclosed in the verified financial statement required under Section 490.0521, Government Code, is considered confidential and not subject to disclosure under Chapter 552, Government Code, and will be, on request or in the normal course of official business, provided by the governor to the Texas State Auditor's Office. In addition, the change is necessary to clarify that the section does not affect the release of information for legislative purposes.

SR 1256 was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2457 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **HB 2457**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3025 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 3025**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(President in Chair)

SENATE RESOLUTION 1249

Senator Van de Putte offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 100 (adoption of certain voting procedures and certain elections, including provisions necessary to implement the federal Military and Overseas Voter Empowerment Act, deadlines for declaration of candidacy and dates for certain elections, and terms of certain election officials) to consider and take action on the following matters:

(1) Senate Rule 12.03(3) is suspended to permit the committee to add text on a matter not in disagreement in proposed SECTION 5 of the bill, added Section 41.0052(c), Election Code, and in proposed SECTION 44 of the bill, amended Section 11.059(e), Education Code:

(c) . . . The change contained in the resolution supersedes a city charter provision . . . that requires the terms of members of the governing body to be staggered.

(e) . . . The resolution must provide for staggered terms [~~a term~~] of either three or four years and specify the manner in which the transition from the length of the former term to the modified term is made. . . .

Explanation: The changes are necessary to allow for a home-rule municipal charter provision that requires the use of staggered terms to elect members of the governing body of the municipality to be superseded by a resolution, and to require staggered terms for the trustees of the board of trustees of an independent school district.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 51 of the bill:

SECTION 51. The following are repealed:

(1) Section 41.0053, Election Code;

Explanation: The change is necessary to repeal the required use of an election date by certain political subdivisions.

SR 1249 was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 100 ADOPTED**

Senator Van de Putte called from the President's table the Conference Committee Report on **SB 100**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Van de Putte, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1103 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HB 1103**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 27, Nays 4.

Yeas: Birdwell, Carona, Davis, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Lucio, Nelson, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Jackson, Nichols, Patrick.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 89 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **SB 89**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 24, Nays 7.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Huffman, Jackson, Lucio, Nichols, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Hegar, Nelson, Ogden, Patrick.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2900 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 2900**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Harris, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Nelson.

SENATE RESOLUTION 1257

Senator Lucio offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 213 (certain loans secured by a lien on residential real property and other transactions involving residential real property; providing civil penalties) to consider and take action on the following matter:

Senate Rule 12.03(2) is suspended to permit the committee to omit text not in disagreement in SECTION 1 of the bill, from added Chapter 397, Finance Code, that reads as follows:

Sec. 397.102. ACTION BY DEBTOR. In addition to any other legal and equitable remedy available, a debtor injured by a violation of this chapter may bring an action for recovery of actual damages, including reasonable attorney's fees.

Sec. 397.102. ACTION BY BORROWER. In addition to any other legal and equitable remedy available, a borrower injured by a violation of this chapter may bring an action:

...
(2) to recover:

(A) actual damages, including reasonable attorney's fees;

Explanation: The omission of the text is necessary to remove the authorization of a private cause of action under added Chapter 397, Finance Code.

SR 1257 was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 213 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **HB 213**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 635 ADOPTED**

Senator Nichols called from the President's table the Conference Committee Report on **SB 635**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Nichols, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1247

Senator Ellis offered the following resolution:

SR 1247, Suspending limitations on conference committee jurisdiction, H.B. No. 3275.

The resolution was read.

Senator Ellis postponed further consideration of the resolution to a time certain of 6:00 p.m. today.

Question — Shall **SR 1247** be adopted?

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1010 ADOPTED**

Senator Huffman called from the President's table the Conference Committee Report on **SB 1010**. The corrected Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Huffman, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

BILLS SIGNED

The President announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

SB 76, SB 81, SB 144, SB 156, SB 197, SB 221, SB 223, SB 249, SB 263, SB 313, SB 332, SB 377, SB 385, SB 425, SB 462, SB 469, SB 563, SB 647, SB 767, SB 773, SB 776, SB 803, SB 875, SB 932, SB 1068, SB 1170, SB 1179, SB 1234, SB 1285, SB 1286, SB 1338, SB 1413, SB 1416, SB 1422, SB 1489, SB 1546, SB 1616, SB 1620, SB 1733, SB 1736, SB 1760, SB 1810, SB 1909.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 472 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **SB 472**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 516 ADOPTED**

Senator Patrick called from the President's table the Conference Committee Report on **SB 516**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Patrick, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1788 ADOPTED**

Senator Patrick called from the President's table the Conference Committee Report on **SB 1788**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Patrick, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 242 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **HB 242**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 28, Nays 3.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Nelson, Patrick.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 414 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **HB 414**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 542 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **SB 542**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 23 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 23**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Ellis.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1130 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **SB 1130**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE ON
SENATE BILL 408 DISCHARGED**

Senator Estes moved to discharge the Senate conferees and to concur in the House amendments to **SB 408**.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

REMARKS ORDERED PRINTED

On motion of Senator Estes and by unanimous consent, his remarks regarding **SB 408** were ordered reduced to writing and printed in the *Senate Journal* as follows:

This bill pertains to the John Graves Scenic Riverway, a section of the Brazos River located wholly inside Senate District 30. Members, Representative Keffer added a House amendment to add a penalty to a provision in the bill that banned the use of airboats on the John Graves Scenic Riverway. Under the Keffer amendment, a violation of the prohibition of airboats on the John Graves Scenic Riverway is a Class C misdemeanor. The House also specified that any peace officer, including a law enforcement officer commissioned by the Parks and Wildlife Commission, can enforce the prohibition. The conference committee attempted to renegotiate that a violation of the provisions of this bill is a Class C misdemeanor if the violation occurred only in a specific shorter section of the John Graves Scenic Riverway between the Morris Sheppard Dam and Hwy. 180 and not the entire stretch of the scenic riverway. Regrettably, the conferees could not agree. Therefore, I move to concur with House amendments on **SB 408**.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Sunday, May 29, 2011 - 2

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1103 (132 Yeas, 12 Nays, 1 Present, not voting)

HB 1286 (116 Yeas, 30 Nays, 2 Present, not voting)

HB 2605 (147 Yeas, 0 Nays, 2 Present, not voting)

SB 341 (118 Yeas, 20 Nays, 4 Present, not voting)

SB 542 (147 Yeas, 0 Nays, 2 Present, not voting)

SB 652 (145 Yeas, 1 Nays, 2 Present, not voting)

SB 1331 (142 Yeas, 0 Nays, 1 Present, not voting)

SB 1588 (132 Yeas, 13 Nays, 1 Present, not voting)

SB 1600 (134 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2770 ADOPTED**

Senator Williams called from the President's table the Conference Committee Report on **HB 2770**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Williams, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

HOUSE CONCURRENT RESOLUTION 176

The President laid before the Senate the following resolution:

WHEREAS, House Bill No. 1517 has been adopted by the house of representatives and the senate; 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 house of representatives be instructed to make the following correction:

In SECTION 1 of the bill, in amended Section 542.402(e), Transportation Code, between "municipality" and "shall", insert "or county".

HEGAR

HCR 176 was read.

On motion of Senator Hegar, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 753 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 753**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 29, Nays 2.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Ogden, Williams.

SENATE RESOLUTION 1254

Senator Rodriguez offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 1198 (decedents' estates) to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add text on matters which are not included in either the house or senate version of the bill by adding the following sections to the bill:

SECTION 1.08. Section 34A, Texas Probate Code, is amended to read as follows:

Sec. 34A. ATTORNEYS AD LITEM. (a) Except as provided by Section 53(c) of this code, the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of:

- (1) a person having a legal disability;
- (2) [;] a nonresident;
- (3) [;] an unborn or unascertained person;
- (4) [~~;~~] an unknown or missing heir; or
- (5) an unknown or missing person entitled to property deposited in an account in the court's registry under Section 408(b) of this code [~~in any probate proceeding~~].

(b) Subject to Subsection (c) of this section, an ~~Each~~ attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court. The court shall:

(1) tax the compensation ~~[and to be taxed]~~ as costs in the probate proceeding; or

(2) for an attorney ad litem appointed to represent the interests of an unknown or missing person described by Subsection (a)(5) of this section, order that the compensation be paid from money in the account described by that subdivision.

(c) The court order appointing an attorney ad litem to represent the interests of an unknown or missing person described by Subsection (a)(5) of this section must require the attorney ad litem to conduct a search for the person. Compensation paid under Subsection (b) of this section to the attorney ad litem may not exceed 10 percent of the amount on deposit in the account described by Subsection (a)(5) of this section on the date:

(1) the attorney ad litem reports to the court the location of the previously unknown or missing person; or

(2) the money in the account is paid to the comptroller as provided by Section 427 of this code.

SECTION 1.13. Subsections (a) and (b), Section 53C, Texas Probate Code, are amended to read as follows:

(a) This section applies in a proceeding to declare heirship of a decedent only with respect to an individual who~~±~~

~~[(1) petitions the court for a determination of right of inheritance as authorized by Section 42(b) of this code; and~~

~~[(2)] claims to be a biological child of the decedent~~±~~, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201, Family Code;] or [who] claims inheritance through a biological child of the decedent~~±~~, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code].~~

(b) The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Subsection (a) of this section, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code. ~~[Unless the results of genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence, the court shall find that the individual described by Subsection (a) of this section is an heir of the decedent if the results of genetic testing ordered under Section 53A of this chapter identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Subsection (a) of this section.]~~

SECTION 1.17. Section 77, Texas Probate Code, is amended to read as follows:

Sec. 77. ORDER OF PERSONS QUALIFIED TO SERVE. Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

(a) To the person named as executor in the will of the deceased.

(b) To the surviving husband or wife.

- (c) To the principal devisee or legatee of the testator.
- (d) To any devisee or legatee of the testator.
- (e) To the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes a person and his descendants who legally adopted the deceased or who have been legally adopted by the deceased.
- (f) To a creditor of the deceased.
- (g) To any person of good character residing in the county who applies therefor.
- (h) To any other person not disqualified under the following section [~~Section~~].

When persons [~~applicants~~] are equally entitled, letters shall be granted to the person [~~applicant~~] who, in the judgment of the court, is most likely to administer the estate advantageously, or letters [~~they~~] may be granted to [~~any~~] two or more of those persons [~~such applicants~~].

SECTION 1.32. Part 1, Chapter VIII, Texas Probate Code, is amended by adding Section 254 to read as follows:

Sec. 254. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, within the period prescribed by Section 250 of this code or any extension granted by the court.

(b) Any person interested in the estate on written complaint, or the court on the court's own motion, may have a personal representative to whom this section applies cited to file the inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, and show cause for the failure to timely file.

(c) If the personal representative does not file the inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, after being cited or does not show good cause for the failure to timely file, the court on hearing may fine the representative in an amount not to exceed \$1,000.

(d) The personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

SECTION 1.40. Section 407, Texas Probate Code, is amended to read as follows:

Sec. 407. CITATION AND NOTICE UPON PRESENTATION OF ACCOUNT FOR FINAL SETTLEMENT. Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. Citation [~~In case of the estates of deceased persons, notice~~] shall be given [~~by the personal representative~~] to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another method of service [~~type of notice~~] is directed by the court by written order. The citation [~~notice~~] must include a copy of the account for final settlement.

2. If the court deems further additional notice necessary, it shall require the same by written order. In its discretion, the court may allow the waiver of citation [~~notice~~] of an account for final settlement in a proceeding concerning a decedent's estate.

SECTION 1.41. Subsections (b), (c), and (d), Section 408, Texas Probate Code, are amended to read as follows:

(b) Distribution of Remaining Property. Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that a partition and distribution be made among the persons entitled to receive such estate. The court shall order the representative to deposit in an account in the court's registry any remaining estate property that is money and to which a person who is unknown or missing is entitled. In addition, the court shall order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. The court shall order the representative to deposit the sale proceeds in an account in the court's registry. The court shall hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

(c) Discharge of Representative When No Property Remains. If, upon such settlement, there be none of the estate remaining in the hands of the representative, the representative [~~he~~] shall be discharged from the representative's [~~his~~] trust and the estate ordered closed.

(d) Discharge When Estate Fully Administered. Whenever the representative of an estate has fully administered the same in accordance with this code [~~Code~~] and the orders of the court, and the representative's [~~his~~] final account has been approved, and the representative [~~he~~] has delivered all of said estate remaining in the representative's [~~his~~] hands to the person or persons entitled to receive the same, it shall be the duty of the court to enter an order discharging such representative from the representative's [~~his~~] trust, and declaring the estate closed.

SECTION 1.42. Section 427, Texas Probate Code, is amended to read as follows:

Sec. 427. WHEN ESTATES TO BE PAID INTO STATE TREASURY. If any person entitled to a portion of an estate, except a resident minor without a guardian, does [~~shall~~] not demand the person's [~~his~~] portion, including any portion deposited in an account in the court's registry under Section 408(b) of this code, from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, the court by written order shall require the executor or administrator to pay so much of said portion as is in

money to the comptroller; and such portion as is in other property the court [~~he~~] shall order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, the court shall order the same to be paid to the comptroller, in all such cases allowing the executor or administrator reasonable compensation for the executor's or administrator's [~~his~~] services. A suit to recover proceeds of the sale is governed by Section 433 of this code [~~Code~~].

SECTION 2.06. Section 53.104, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Except as provided by Section 202.009(b), the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of:

- (1) a person who has a legal disability;
- (2) a nonresident;
- (3) an unborn or unascertained person; [~~or~~]
- (4) an unknown or missing heir; or
- (5) an unknown or missing person entitled to property deposited in an

account in the court's registry under Section 362.011(b).

(b) Subject to Subsection (c), an [~~An~~] attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court. The court shall:

- (1) tax the compensation [~~to be taxed~~] as costs in the probate proceeding; or
- (2) for an attorney ad litem appointed to represent the interests of an

unknown or missing person described by Subsection (a)(5), order that the compensation be paid from money in the account described by that subdivision.

(c) The court order appointing an attorney ad litem to represent the interests of an unknown or missing person described by Subsection (a)(5) must require the attorney ad litem to conduct a search for the person. Compensation paid under Subsection (b) to the attorney ad litem may not exceed 10 percent of the amount on deposit in the account described by Subsection (a)(5) on the date:

(1) the attorney ad litem reports to the court the location of the previously unknown or missing person; or

(2) the money in the account is paid to the comptroller as provided by Section 551.001.

SECTION 2.21. Subchapter A, Chapter 202, Estates Code, as effective January 1, 2014, is amended by adding Section 202.0025 to read as follows:

Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH. Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death.

SECTION 2.24. Sections 204.151 and 204.152, Estates Code, as effective January 1, 2014, are amended to read as follows:

Sec. 204.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies in a proceeding to declare heirship of a decedent only with respect to an individual who[+]

~~[(1) petitions the court for a determination of right of inheritance as authorized by Section 201.052(c); and~~

~~[(2)] claims[-]~~

~~[(A)] to be a biological child of the decedent or claims[, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201, Family Code; or~~

~~[(B)] to inherit through a biological child of the decedent[, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code].~~

Sec. 204.152. PRESUMPTION; ~~[REQUIRED FINDINGS IN ABSENCE OF] REBUTTAL [EVIDENCE].~~ The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Section 204.151, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code. ~~[Unless the results of genetic testing of another individual who is an heir of the decedent who is the subject of a proceeding to declare heirship to which this subchapter applies are admitted as rebuttal evidence, the court shall find that the individual described by Section 204.151:~~

~~[(1) is an heir of the decedent, if the results of genetic testing ordered under Subchapter B identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151; or~~

~~[(2) is not an heir of the decedent, if the results of genetic testing ordered under Subchapter B exclude a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151.]~~

SECTION 2.37. Subsection (c), Section 304.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

(c) If persons ~~[applicants for letters testamentary or of administration]~~ are equally entitled to letters testamentary or of administration ~~[the letters]~~, the court:

(1) shall grant the letters to the person ~~[applicant]~~ who, in the judgment of the court, is most likely to administer the estate advantageously; or

(2) may grant the letters to two or more of those persons ~~[applicants]~~.

SECTION 2.57. Section 362.005, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT. (a) On the presentation of an account for final settlement by a temporary or permanent personal representative, the county clerk shall issue citation to the persons and in the manner provided by Subsection (b) ~~[Subsections (c) and (d)]~~.

(b) Citation issued under Subsection (a) must:

(1) contain:

(A) ~~[(+)]~~ a statement that an account for final settlement has been presented;

(B) ~~[(2)]~~ the time and place the court will consider the account; ~~[and]~~

(C) ~~[(3)]~~ a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and

(D) a copy of the account for final settlement; and

(2) be given[-

~~[(e) The personal representative shall give notice]~~ to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless the court by written order directs another method of service ~~[type of notice]~~ to be given ~~[- The notice must include a copy of the account for final settlement].~~

(c) ~~[(d)]~~ The court by written order shall require additional notice if the court considers the additional notice necessary.

(d) ~~[(e)]~~ The court may allow the waiver of citation ~~[notice]~~ of an account for final settlement in a proceeding concerning a decedent's estate.

SECTION 2.58. Section 362.011, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT IN COURT'S REGISTRY. (a) If, on final settlement of an estate, any of the estate remains in the personal representative's possession, the court shall order that a partition and distribution be made among the persons entitled to receive that part of the estate.

(b) The court shall order the personal representative to deposit in an account in the court's registry any remaining estate property that is money and to which a person who is unknown or missing is entitled. In addition, the court shall order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. The court shall order the representative to deposit the sale proceeds in an account in the court's registry. The court shall hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

SECTION 2.60. Subsection (a), Section 551.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) The court, by written order, shall require the executor or administrator of an estate to pay to the comptroller as provided by this subchapter the share of that estate of a person entitled to that share who does not demand the share, including any portion deposited in an account in the court's registry under Section 362.011(b), from the executor or administrator within six months after the date of, as applicable:

(1) a court order approving the report of the commissioners of partition made under Section 360.154; or

(2) the settlement of the final account of the executor or administrator.

Explanation: The addition is necessary to add provisions relating to attorneys ad litem, proceedings to declare heirship, granting of letters testamentary or of administration, filing of inventories, appraisements, and lists of claims, citation and notice on presentation of accounts for final settlement, distribution of remaining estate property and discharge of representatives on final settlement of estates, and estates to be paid into the state treasury.

(2) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text which is not in disagreement and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.11 of the bill, in amended Section 48, Texas Probate Code, to read as follows:

SECTION 1.11. Section 48, Texas Probate Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

...
(d) Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death.

Explanation: The change is necessary to specify when a proceeding to declare heirship may be brought.

(3) Senate Rules 12.03(1), (3), and (4) are suspended to permit the committee to change text which is not in disagreement, to add text on a matter which is not in disagreement, and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.12 of the bill, in amended Subsection (a), Section 49, Texas Probate Code, to read as follows:

SECTION 1.12. Subsection (a), Section 49, Texas Probate Code, is amended to read as follows:

(a) Such proceedings may be instituted and maintained under a circumstance specified in Section 48(a) of this code [in any of the instances enumerated above] by the qualified personal representative of the estate of such decedent, by a party seeking the appointment of an independent administrator under Section 145 of this code, by the trustee of a trust holding assets for the benefit of the decedent, by any person or persons claiming to be a secured or unsecured creditor or the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the following information:

- (1) the name of the decedent and the time and place of death;
- (2) the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the estate of the decedent or in the trust, as applicable;
- (3) all the material facts and circumstances within the knowledge and information of the applicant that might reasonably tend to show the time or place of death or the names or residences of all heirs, if the time or place of death or the names or residences of all the heirs are not definitely known to the applicant;
- (4) a statement that all children born to or adopted by the decedent have been listed;
- (5) a statement that each marriage of the decedent has been listed with the date of the marriage, the name of the spouse, and if the marriage was terminated, the date and place of termination, and other facts to show whether a spouse has had an interest in the property of the decedent;
- (6) whether the decedent died testate and if so, what disposition has been made of the will;
- (7) a general description of all the real and personal property belonging to the estate of the decedent or held in trust for the benefit of the decedent, as applicable;
and

(8) an explanation for the omission of any of the foregoing information that is omitted from the application.

Explanation: The change is necessary to authorize persons claiming to be unsecured creditors to institute proceedings to declare heirship.

(4) Senate Rules 12.03(1), (2), and (4) are suspended to permit the committee to change text which is not in disagreement, omit text which is not in disagreement, and add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.28 of the bill, in amended Section 149C, Texas Probate Code, to read as follows:

SECTION 1.28. Section 149C, Texas Probate Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) The ~~county~~ court, ~~[as that term is defined by Section 3 of this code,]~~ on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within ninety days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisalment, and list of claims;

(2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care;

(3) the independent executor fails to make an accounting which is required by law to be made;

(4) the independent executor fails to timely file the affidavit or certificate required by Section 128A of this code;

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties; ~~[or]~~

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes incapable of [legally incapacitated from] properly performing the independent executor's fiduciary duties; or

(7) the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(a-1) The court, on its own motion or on the motion of any interested person, and after the independent executor has been cited by certified mail, return receipt requested, to answer at a time and place stated in the citation, may remove an independent executor who is appointed under the provisions of this code if the independent executor:

(1) subject to Subsection (a-2)(1) of this section, fails to qualify in the manner and period required by law;

(2) subject to Subsection (a-2)(2) of this section, fails to return not later than the 90th day after the date the independent executor qualifies an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisalment, and list of claims, unless the period is extended by court order;

(3) cannot be served with notices or other processes because the:

(A) independent executor's location is unknown;

(B) independent executor is eluding service; or

(C) independent executor is a nonresident of this state who does not have a resident agent to accept service of process in a probate proceeding or other action relating to the estate; or

(4) subject to Subsection (a-2)(3) of this section, has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the independent executor's care.

(a-2) The court may remove an independent executor:

(1) under Subsection (a-1)(1) of this section only if the independent executor fails to qualify on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to qualify in the manner and period required by law;

(2) under Subsection (a-1)(2) of this section only if the independent executor fails to file an inventory and list of claims or an affidavit in lieu of the inventory, appraisalment, and list of claims as required by law on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to file the inventory and list of claims or affidavit; and

(3) under Subsection (a-1)(4) of this section only on presentation of clear and convincing evidence given under oath of the misapplication, embezzlement, or removal from this state of property as described by that subdivision.

Explanation: The change is necessary to make various revisions to the procedures for removal of independent executors.

(5) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text which is not in disagreement and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.49 of the bill, in Subsection (a) of that section, to read as follows:

(a) Subsection (c), Section 48, Subsection (c), Section 53C, Section 70, and Subsection (f), Section 251, Texas Probate Code, are repealed.

Explanation: The change is necessary to add a repeal of Subsection (c), Section 53C, Texas Probate Code.

(6) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.50 of the bill to read as follows:

(i) Sections 34A, 407, 408, and 427, Texas Probate Code, as amended by this article, and Section 254, Texas Probate Code, as added by this article, apply to the estate of a decedent that is pending or commenced on or after September 1, 2011, regardless of the date of the decedent's death.

(j) The changes in law made by this article to Section 77, Texas Probate Code, apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after September 1, 2011. An application for the grant of letters testamentary or of administration of a decedent's estate filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(k) The changes in law made by this article to Subsection (a), Section 83, Texas Probate Code, apply only to an application for the probate of a will or administration of the estate of a decedent that is pending or filed on or after September 1, 2011.

(l) The changes in law made by this article to Subsections (a) and (b), Section 53C, Texas Probate Code, apply only to a proceeding to declare heirship commenced on or after September 1, 2011. A proceeding to declare heirship commenced before that date is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

Explanation: The change is necessary to add transition provisions for sections of the Texas Probate Code that are amended in the bill.

(7) Senate Rules 12.03(1), (3), and (4) are suspended to permit the committee to change text which is not in disagreement, to add text on a matter which is not in disagreement, and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2.22 of the bill, in amended Section 202.004, Estates Code, as effective January 1, 2014, to read as follows:

SECTION 2.22. Section 202.004, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent may be commenced and maintained under a circumstance specified by Section 202.002 by:

- (1) the personal representative of the decedent's estate;
- (2) a person claiming to be a secured or unsecured creditor or the owner of all or part of the decedent's estate; ~~or~~
- (3) if the decedent was a ward with respect to whom a guardian of the estate had been appointed, the guardian of the estate, provided that the proceeding is commenced and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the decedent's death;
- (4) a party seeking the appointment of an independent administrator under Section 401.003; or
- (5) the trustee of a trust holding assets for the benefit of a decedent.

Explanation: The change is necessary to authorize persons claiming to be unsecured creditors to institute proceedings to declare heirship.

(8) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text which is not in disagreement and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2.47 of the bill, in amended Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, to read as follows:

SECTION 2.47. Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, is amended by adding Sections 309.056 and 309.057 to read as follows:

Sec. 309.057. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, within the period prescribed by Section 309.051 or any extension granted by the court.

(b) Any person interested in the estate on written complaint, or the court on the court's own motion, may have a personal representative to whom this section applies cited to file the inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, and show cause for the failure to timely file.

(c) If the personal representative does not file the inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, after being cited or does not show good cause for the failure to timely file, the court on hearing may fine the representative in an amount not to exceed \$1,000.

(d) The personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

Explanation: The change is necessary to provide a penalty against personal representatives of decedents' estates for failing to timely file an inventory, appraisal, and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims.

(9) Senate Rules 12.03(1), (2), and (3) are suspended to permit the committee to change and omit text which is not in disagreement and to add text on a matter which is not in disagreement in proposed SECTION 2.49 of the bill, in Section 352.004, Estates Code, as effective January 1, 2014, to read as follows:

SECTION 2.49. Section 352.004, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 352.004. DENIAL OF COMPENSATION. The court may, on application of an interested person or on the court's own motion, wholly or partly deny a commission allowed by this subchapter if:

(1) the court finds that the executor or administrator has not taken care of and managed estate property prudently; or

(2) the executor or administrator has been removed under Section 404.003 [~~149C~~] or Subchapter B, Chapter 361.

Explanation: This change is necessary to make a conforming change to a cross-reference in the Estates Code.

(10) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2.59 of the bill, in added Chapter 404, Estates Code, as effective January 1, 2014, to read as follows:

Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR. (a) The probate court, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within 90 days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims;

(2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care;

(3) the independent executor fails to make an accounting which is required by law to be made;

(4) the independent executor fails to timely file the affidavit or certificate required by Section 308.004;

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties;

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the independent executor's fiduciary duties; or

(7) the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(b) The probate court, on its own motion or on the motion of any interested person, and after the independent executor has been cited by certified mail, return receipt requested, to answer at a time and place stated in the citation, may remove an independent executor who is appointed under the provisions of this code if the independent executor:

(1) subject to Subsection (c)(1), fails to qualify in the manner and period required by law;

(2) subject to Subsection (c)(2), fails to return not later than the 90th day after the date the independent executor qualifies an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims, unless the period is extended by court order;

(3) cannot be served with notices or other processes because the:

(A) independent executor's location is unknown;

(B) independent executor is eluding service; or

(C) independent executor is a nonresident of this state who does not have a resident agent to accept service of process in a probate proceeding or other action relating to the estate; or

(4) subject to Subsection (c)(3), has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the independent executor's care.

(c) The probate court may remove an independent executor:

(1) under Subsection (b)(1) only if the independent executor fails to qualify on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to qualify in the manner and period required by law;

(2) under Subsection (b)(2) only if the independent executor fails to file an inventory and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims as required by law on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to file the inventory and list of claims or affidavit; and

(3) under Subsection (b)(4) only on presentation of clear and convincing evidence given under oath of the misapplication, embezzlement, or removal from this state of property as described by that subdivision.

(d) The order of removal shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed executor. The order of removal shall require that letters issued to the removed executor shall be surrendered and that all letters shall be canceled of record. If an independent executor is removed by the court under this section, the court may, on application, appoint a successor independent executor as provided by Section 404.005.

(e) An independent executor who defends an action for the independent executor's removal in good faith, whether successful or not, shall be allowed out of the estate the independent executor's necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

(f) Costs and expenses incurred by the party seeking removal that are incident to removal of an independent executor appointed without bond, including reasonable attorney's fees and expenses, may be paid out of the estate.

Explanation: The change is necessary to make various revisions to the procedures for removal of independent executors.

(11) Senate Rules 12.03(1), (2), and (4) are suspended to permit the committee to change text which is not in disagreement, omit text which is not in disagreement, and add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2.61 of the bill, in Subsections (a) and (b) of that section, to read as follows:

(a) Sections 202.003 and 255.201, Estates Code, as effective January 1, 2014, are repealed.

(b) The following sections of the Texas Probate Code are repealed:

(1) Sections 4D, 4H, 15, 34A, 37A, 48(a), 49, 53C(a) and (b), 59, 64, 67, 77, 81(a), 83(a), 84, 89A(a), 128A, 143, 227, 250, 256, 260, 271(a) and (b), 286, 293, 385(a), 407, 408(b), (c), and (d), 427, 436, 439, 452, 471, 472, and 473, as amended by Article 1 of this Act; and

(2) Sections 6A, 6B, 6C, 6D, 8A, 8B, 48(d), 145A, 145B, 145C, and 254, as added by Article 1 of this Act.

Explanation: The change is necessary to correct the repeal of a provision of the Estates Code and to repeal, when the Estates Code takes effect, certain provisions of the Texas Probate Code that are amended or added in Article 1 of the bill.

SR 1254 was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1198 ADOPTED**

Senator Rodriguez called from the President's table the Conference Committee Report on **SB 1198**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Rodriguez, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 8 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 8**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 22, Nays 9.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, Whitmire, Williams.

Nays: Davis, Ellis, Hinojosa, Lucio, Rodriguez, Van de Putte, Watson, West, Zaffirini.

REASON FOR VOTE

Senator Van de Putte submitted the following reason for vote on **SB 8**:

I voted against SB 8, as amended with HB 5, because the amendment would allow for the establishment of an Interstate Health Care Compact, which would authorize the Texas legislature to suspend the operation of federal laws, rules, regulations regarding health care that are inconsistent with a state law or regulation. The language amended onto SB 8 jeopardizes the uniformity that states have in regard to health care policy. I stand in opposition to SB 8 as amended because I cannot support legislation that favors block-granting of Medicare.

VAN DE PUTTE

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Sunday, May 29, 2011 - 3

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 628 (145 Yeas, 0 Nays, 1 Present, not voting)

HB 753 (116 Yeas, 27 Nays, 2 Present, not voting)

HB 1517 (140 Yeas, 3 Nays, 1 Present, not voting)

HB 2457 (145 Yeas, 2 Nays, 2 Present, not voting)

HB 3726 (144 Yeas, 3 Nays, 2 Present, not voting)

SB 158 (146 Yeas, 2 Nays, 1 Present, not voting)

SB 1134 (138 Yeas, 4 Nays, 1 Present, not voting)

SB 1664 (128 Yeas, 17 Nays, 2 Present, not voting)

THE HOUSE HAS REFUSED TO ADOPT THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 1816 (56 Yeas, 87 Nays, 3 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RULE 8.02 SUSPENDED**(Referral to Committee)**

Senator Carona moved to suspend Senate Rule 8.02 to take up for consideration **HCR 144** at this time.

The motion prevailed by a viva voce vote.

All Members are deemed to have voted "Yea" on suspension of the rule.

HOUSE CONCURRENT RESOLUTION 144

The President laid before the Senate the following resolution:

WHEREAS, The Lone Star State has benefited enormously from the contributions of its Italian American residents; and

WHEREAS, During the 17th, 18th, and early 19th centuries, the few Italians who came to Texas were mainly explorers, adventurers, or missionaries; Italians began to play a larger role toward the end of the 19th century, when Piedmontese made their homes in Montague County and Sicilians settled in the lower Brazos valley and on the Galveston County mainland; Modenese, Venetians, and Piedmontese worked the coal mines at Thurber, and Italian financier Joseph Telfener brought some 1,200 Lombards to help construct the New York, Texas and Mexican Railway between Victoria and Rosenberg; and

WHEREAS, Most of the railway builders and coal miners moved back to Italy or on to other places when their work was completed; however, the Italian American community in the Brazos valley fanned out into surrounding areas, and settlements in Houston, Galveston, and San Antonio expanded rapidly; new residents founded churches, newspapers, and benevolent-fraternal organizations, as well as businesses; prominent Italian Americans of the 20th century include bootmaker Sam Lucchese, sculptor Pompeo Coppini, rancher Antonio Mateo Bruni, and agriculturalist-developer Biagio Varisco; the towns of Bruni and Varisco and such names as Bruni Park, Varisco Airport, Liggio Street, and Laneri Avenue are a testament to the achievements of Italian Americans; and

WHEREAS, Through the years, individuals of Italian descent have excelled in all sectors of our society and economy, enriching our cultural tapestry, enhancing our prosperity, and securing the Lone Star State's reputation as a land of promise and possibility; June 2 represents an ideal date on which to honor those accomplishments, as Italians around the world celebrate this day as Festa della Repubblica to commemorate the 1946 referendum that ended the monarchy in Italy and established a republic; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby designate June 2 as Italian Heritage Day; and, be it further

RESOLVED, That, in accordance with the provisions of Section 391.004(d), Government Code, the designation expires on the 10th anniversary of the date this resolution is passed by the legislature.

CARONA

HCR 144 was read.

On motion of Senator Carona, 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.

(Senator Eltife in Chair)

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1717 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **SB 1717**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1400 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **HB 1400**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3328 ADOPTED**

Senator Fraser called from the President's table the Conference Committee Report on **HB 3328**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Fraser, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1250

Senator Hinojosa offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 660 (review and functions of the Texas Water Development Board, including the functions of the board and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area), to consider and take action on the following matters:

(1) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text not in disagreement and to add text on a matter not included in either the house or senate version of the bill in proposed Section 17 of the bill, by adding Section 36.1083, Water Code, to read as follows:

Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS. (a) In this section, "development board" means the Texas Water Development Board.

(b) ~~(4)~~ A person with a legally defined interest in the groundwater in the ~~groundwater~~ management area, a district in or adjacent to the ~~groundwater~~ management area, or a regional water planning group for a region in the ~~groundwater~~ management area may file a petition with the development board appealing the approval of the desired future conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the ~~groundwater~~ management area.

(c) ~~(m)~~ The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the

development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.

(d) ~~(a)~~ The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the ~~[groundwater]~~ management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.

Explanation: This change is necessary to restore language in current law regarding the method for appealing desired future conditions that was bracketed out by the house and senate versions of the bill.

(2) Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in proposed Section 24 of the bill to read as follows:

SECTION 24. The requirement that a groundwater conservation district's management plan under Subsection (a), Section 36.1071, Water Code, as amended by this Act, include the desired future conditions adopted under Section 36.108, Water Code, as amended by this Act, for submission to the executive administrator of the Texas Water Development Board before the plan is considered administratively complete applies only to a district management plan submitted to the executive administrator on or after the effective date of this Act. A management plan submitted before the effective date of this Act is governed by the law in effect on the date the plan was submitted, and that law is continued in effect for that purpose.

Explanation: This change is necessary to correct an error in a cross-reference.

(3) Senate Rule 12.03(2) is suspended to permit the committee to omit text not in disagreement in Section 25 of the senate and house versions of the bill that reads as follows:

SECTION 25. A petition filed and pending on the effective date of this Act before the Texas Water Development Board to appeal the adoption of desired future conditions by a groundwater management area under former Subsection (l), Section 36.108, Water Code, shall be handled by the Texas Water Development Board in compliance with Subsections (l), (m), and (n), Section 36.108, Water Code, as those subsections existed before the effective date of this Act.

Explanation: This change is necessary to reflect the addition of Section 36.1083, Water Code, which restores language in current law that was bracketed out by the house and senate versions of the bill.

SR 1250 was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 660 ADOPTED

Senator Hinojosa called from the President's table the Conference Committee Report on **SB 660**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Hinojosa, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1204

Senator Van de Putte offered the following resolution:

SR 1204, Suspending limitations on conference committee jurisdiction, H.B. No. 3726.

The resolution was read.

Senator Van de Putte withdrew further consideration of **SR 1204**.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3726 ADOPTED**

Senator Van de Putte called from the President's table the Conference Committee Report on **HB 3726**. The corrected Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Van de Putte, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1253

Senator West offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 362 (regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property) to consider and take action on the following matters:

(1) Senate Rule 12.03(3) is suspended to permit the committee, in SECTION 1 of the bill, in added Section 202.010(a), Property Code, to add text on a matter which is not in disagreement to read as follows:

(1) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; and

(B) a right to direct the size, shape, and composition of the subdivision.

(2) Senate Rule 12.03(3) is suspended to permit the committee, in SECTION 1 of the bill, in added Section 202.010, Property Code, to add text on a matter which is not in disagreement to read as follows:

(f) During the development period, the declarant may prohibit or restrict a property owner from installing a solar energy device.

(3) Senate Rule 12.03(1) is suspended to permit the committee, in SECTION 1 of the bill, in added Section 202.011(1), Property Code, to change text on a matter which is not in disagreement to read as follows:

(1) are designed primarily to:

(A) be wind and hail resistant;

(B) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or

(C) provide solar generation capabilities; and

Explanation: These changes are necessary to:

(1) clarify the application of provisions relating to the regulation of solar energy devices by property owners' associations; and

(2) modify the authority granted to property owners' associations relating to the installation of certain roofing materials.

SR 1253 was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 362 ADOPTED

Senator West called from the President's table the Conference Committee Report on **HB 362**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1259

Senator Lucio offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 1320 (the execution of written instruments relating to residential real estate transactions and deeds conveying residential real estate in connection with certain transactions involving residential real estate) to consider and take action on the following matters:

(1) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text on a matter not in disagreement and not included in either the house or senate version of the bill by adding Subsection (d) to proposed Section 21.002, Business & Commerce Code, to read as follows:

(d) A purchaser or borrower who is a prevailing party in an action to void a deed under this section may recover reasonable and necessary attorney's fees.

Explanation: The addition of text is necessary to authorize purchasers or borrowers to recover reasonable and necessary attorney's fees in an action to void a deed under proposed Section 21.002, Business & Commerce Code.

(2) Senate Rule 12.03(2) is suspended to permit the committee to omit text which is not in disagreement in SECTION 1 of the bill, by omitting proposed Section 21.003, Business & Commerce Code, which reads as follows:

Sec. 21.003. CIVIL ACTION FOR DAMAGES. A person who violates Section 21.002 is liable to the purchaser or borrower for:

(1) actual damages;

(2) exemplary damages in an amount equal to or greater than \$5,000 and not more than three times the amount of actual damages;

(3) court costs; and

(4) reasonable attorney's fees.

Explanation: The omission of the text is necessary to remove a civil action for damages under proposed Chapter 21, Business & Commerce Code.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill to proposed Chapter 21, Business & Commerce Code, to read as follows:

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.

Explanation: This change is necessary to authorize the attorney general to bring an action for injunctive relief or the recovery of a civil penalty and to allow a court to order the return of a deed to a purchaser under proposed Chapter 21, Business & Commerce Code.

(4) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill by adding the following section to the bill:

SECTION 2. Section 121.005(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it. An officer may accept, as satisfactory evidence of the identity of an acknowledging person, only:

- (1) the oath of a credible witness personally known to the officer; [✕]
- (2) a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person; or
- (3) with respect to a deed or other instrument relating to a residential real estate transaction, a current passport issued by a foreign country.

Explanation: This change is necessary to permit an officer to accept a foreign passport as proof of the identity of an individual acknowledging a written instrument relating to a residential real estate transaction.

SR 1259 was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1320 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **SB 1320**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 725 ADOPTED**

Senator Fraser called from the President's table the Conference Committee Report on **HB 725**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Fraser, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Nelson.

SENATE RESOLUTION 1255

Senator Watson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 2439 (posting suggestions and ideas on cost-efficiency on certain state agency websites, posting state budget documents on a state agency website, and a state agency website to provide information to the consumers of retail electric service) to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill by adding the following section to the bill:

SECTION 5. Section 39.916, Utilities Code, is amended by adding Subsection (i) to read as follows:

(i) A retail electric provider that does not purchase surplus electricity from a distributed renewable generation owner shall include on each residential customer's bill a statement, in at least 12-point type on the front of the first page, that informs the customer that the customer can get information at www.powertochoose.com regarding retail electric providers that do purchase surplus electricity from a distributed renewable generation owner.

Explanation: The change is necessary to require a retail electric provider to give written notice to each customer regarding the availability to the customer of a retail electric provider that purchases surplus electricity from a distributed renewable generation owner.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add text not included in either the house or senate version of the bill to added Section 322.0081, Government Code, by adding Subsections (d) and (e) to read as follows:

(d) The requirement under Subsection (a) does not supersede any exceptions provided under Chapter 552.

(e) The board shall promulgate rules to implement the provisions of this section.

Explanation: This addition is necessary to clarify that added Section 322.0081(a), Government Code, does not supersede any exceptions under Chapter 552, Government Code, and to require the Legislative Budget Board to promulgate rules to implement added Section 322.0081.

(3) Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in added Sections 322.0081(a) and (c), Government Code, to read as follows:

(a) The board shall post on the board's Internet website documents prepared by the board that are provided to a committee, subcommittee, or conference committee of either house of the legislature in connection with an appropriations bill.

(c) The document must be downloadable and provide data in a format that allows the public to search, extract, organize, and analyze the information in the document.

Explanation: The change is necessary to remove text that does not add to the clear meaning of the law and to indicate that the budget document on the website is not required to be in open standard format.

SR 1255 was read and was adopted by the following vote: Yeas 29, Nays 2.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Hegar.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2439 ADOPTED

Senator Watson called from the President's table the Conference Committee Report on **HB 2439**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Watson, the Conference Committee Report was adopted by the following vote: Yeas 29, Nays 2.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Hegar.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1588 ADOPTED

Senator Ogden called from the President's table the Conference Committee Report on **SB 1588**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Watson.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Sunday, May 29, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1335 (137 Yeas, 6 Nays, 1 Present, not voting)

HB 1400 (146 Yeas, 0 Nays, 1 Present, not voting)

SB 1420 (118 Yeas, 26 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2093 ADOPTED

Senator Van de Putte called from the President's table the Conference Committee Report on **HB 2093**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Van de Putte, the Conference Committee Report was adopted by the following vote: Yeas 26, Nays 5.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Nelson, Nichols, Patrick, Shapiro.

(President Pro Tempore Ogden in Chair)

HOUSE CONCURRENT RESOLUTION 173

The President Pro Tempore laid before the Senate the following resolution:

WHEREAS, House Bill No. 1451 has been adopted by the house of representatives and the senate 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 house of representatives be instructed to correct House Bill No. 1451 as follows:

(1) In added Section 802.002(17), Occupations Code, strike "802.062" and substitute "802.061".

(2) In added Section 802.064, Occupations Code, strike "802.063 or 802.103 or an investigation under Section 802.064" and substitute "802.062 or 802.103 or an investigation under Section 802.063".

(3) In SECTION 3 of the bill, strike "802.066" and substitute "802.065".

WHITMIRE

HCR 173 was read.

On motion of Senator Whitmire, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE ON
SENATE BILL 40 DISCHARGED**

Senator Zaffirini moved to discharge the Senate conferees and to concur in the House amendments to **SB 40**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 6 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **HB 6**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Shapiro, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1600 ADOPTED**

Senator Whitmire called from the President's table the Conference Committee Report on **SB 1600**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Whitmire, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3459 ADOPTED**

Senator Whitmire called from the President's table the Conference Committee Report on **HB 3459**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Whitmire, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2365 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **HB 2365**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Shapiro, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3468 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **HB 3468**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Shapiro, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 694 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **SB 694**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**MOTION TO ADOPT
CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3246**

Senator West called from the President's table the Conference Committee Report on **HB 3246**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

Senator West moved to adopt the Conference Committee Report on **HB 3246**.

The motion was lost by the following vote: Yeas 12, Nays 19.

Yeas: Davis, Duncan, Ellis, Estes, Hinojosa, Lucio, Seliger, Uresti, Van de Putte, Watson, West, Zaffirini.

Nays: Birdwell, Carona, Deuell, Eltife, Fraser, Gallegos, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Rodriguez, Shapiro, Wentworth, Whitmire, Williams.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 335 ADOPTED**

Senator Birdwell called from the President's table the Conference Committee Report on **HB 335**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

On motion of Senator Birdwell, the Conference Committee Report was adopted by the following vote: Yeas 26, Nays 5.

Yeas: Birdwell, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, Wentworth, West, Whitmire, Williams.

Nays: Davis, Lucio, Rodriguez, Watson, Zaffirini.

SENATE CONCURRENT RESOLUTION 60

The President Pro Tempore laid before the Senate the following resolution:

WHEREAS, Senate Bill No. 1420 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 make the following corrections:

(1) In SECTION 13 of the bill, in amended Section 201.401(b), Transportation Code (conference committee report page 10, line 3), strike ", outside, or retained".

(2) In SECTION 31 of the bill, in added Section 223.201(f)(6), Transportation Code (conference committee report page 49, line 9), between "the" and "Highway" insert "State".

HINOJOSA

SCR 60 was read.

On motion of Senator Hinojosa, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

MOMENT OF SILENCE OBSERVED

At the request of the President Pro Tempore, the Senate observed a moment of silence in memory of former Governor William Perry "Bill" Clements.

RECESS

On motion of Senator Whitmire, the Senate at 5:36 p.m. recessed until 8:30 p.m. today.

AFTER RECESS

The Senate met at 9:09 p.m. and was called to order by the President.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Sunday, May 29, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

- HB 414** (140 Yeas, 4 Nays, 1 Present, not voting)
HB 2380 (144 Yeas, 2 Nays, 2 Present, not voting)
HB 2817 (123 Yeas, 25 Nays, 1 Present, not voting)
HB 3109 (148 Yeas, 0 Nays, 1 Present, not voting)
HB 3246 (146 Yeas, 2 Nays, 1 Present, not voting)
SB 89 (121 Yeas, 25 Nays, 1 Present, not voting)
SB 472 (77 Yeas, 65 Nays, 1 Present, not voting)
SB 516 (147 Yeas, 0 Nays, 2 Present, not voting)
SB 660 (147 Yeas, 0 Nays, 1 Present, not voting)

THE HOUSE HAS REFUSED TO ADOPT THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

- HB 213** (63 Yeas, 83 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

**VOTES RECONSIDERED ON
HOUSE BILL 1665**

On motion of Senator Fraser and by unanimous consent, the vote by which **HB 1665** was finally passed was reconsidered:

HB 1665, Relating to the notification requirements regarding certain land use regulations in an area near military facilities.

Question — Shall **HB 1665** be finally passed?

On motion of Senator Fraser and by unanimous consent, the vote by which Floor Amendment No. 2 on Third Reading was adopted was reconsidered.

Question — Shall Floor Amendment No. 2 on Third Reading to **HB 1665** be adopted?

Senator Hinojosa withdrew Floor Amendment No. 2 on Third Reading.

On motion of Senator Fraser and by unanimous consent, the vote by which **HB 1665** was passed to third reading was reconsidered.

Question — Shall **HB 1665** be passed to third reading?

On motion of Senator Fraser and by unanimous consent, the vote by which Floor Amendment No. 1 was adopted was reconsidered.

Question — Shall Floor Amendment No. 1 to **HB 1665** be adopted?

Senator Fraser withdrew Floor Amendment No. 1.

On motion of Senator Fraser and by unanimous consent, the caption was amended to conform to the body of the bill.

HB 1665 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.

HOUSE BILL 1665 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 1665** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HB 1665 was again passed by the following vote: Yeas 31, Nays 0.

VOTE RECONSIDERED ON SENATE BILL 1198

Senator Rodriguez moved to reconsider the vote by which the Conference Committee Report on **SB 1198** was adopted.

The motion prevailed.

Question — Shall the Conference Committee Report on **SB 1198** be adopted?

Senator Rodriguez moved to recommit **SB 1198** to the conference committee.

The motion prevailed without objection.

CONFERENCE COMMITTEE ON SENATE BILL 1198 DISCHARGED

Senator Rodriguez moved to discharge the Senate conferees and to concur in the House amendments to **SB 1198**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Sunday, May 29, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 1811 (84 Yeas, 63 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RESOLUTION 1260

Senator Duncan offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 1811, relating to certain state fiscal matters; providing penalties, to consider and take action on the following matters:

(1) Senate Rule 12.03(4), is suspended to permit the committee to add text not included in either the house or senate version of the bill, in SECTION 43.01 of the bill, in amended Section 2155.082, Government Code, to read as follows:

SECTION 43.01. Section 2155.082, Government Code, is amended to read as follows:

Sec. 2155.082. PROVIDING CERTAIN PURCHASING SERVICES ON FEE-FOR-SERVICE BASIS OR THROUGH BENEFIT FUNDING. (a) The comptroller [commission] may provide open market purchasing services on a fee-for-service basis for state agency purchases that are delegated to an agency under Section 2155.131, 2155.132, ~~[2155.133,]~~ or 2157.121 or that are exempted from the purchasing authority of the comptroller [commission]. The comptroller [commission] shall set the fees in an amount that recovers the comptroller's [commission's] costs in providing the services.

(b) The comptroller [commission] shall publish a schedule of ~~[its]~~ fees for services that are subject to this section. The schedule must include the comptroller's [commission's] fees for:

- (1) reviewing bid and contract documents for clarity, completeness, and compliance with laws and rules;
- (2) developing and transmitting invitations to bid;
- (3) receiving and tabulating bids;
- (4) evaluating and determining which bidder offers the best value to the state;
- (5) creating and transmitting purchase orders; and
- (6) participating in agencies' request for proposal processes.

(c) If the state agency on behalf of which the procurement is to be made agrees, the comptroller may engage a consultant to assist with a particular procurement on behalf of a state agency and pay the consultant from the cost savings realized by the state agency.

EXPLANATION: This change is necessary to allow a state agency to have the authority to agree to the comptroller of public accounts engaging a consultant.

(2) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text on a matter not in disagreement and text on a matter not included in either version of the bill by adding provisions amending Chapter 490, Government Code, and Chapters 203, 204, and 302, Labor Code, to read as follows:

ARTICLE 57. ENTERPRISE AND EMERGING TECHNOLOGY FUNDS

SECTION 57.01. Section 481.078, Government Code, is amended by amending Subsections (e) and (j) and adding Subsections (f-1), (f-2), and (h-1) to read as follows:

(e) The administration of the fund is considered to be a trustee program within the office of the governor. The governor may negotiate on behalf of the state regarding awarding, by grant, money appropriated from the fund. The governor may award money appropriated from the fund only with the ~~[express-written]~~ prior approval of the lieutenant governor and speaker of the house of representatives. For purposes of this subsection, an award of money appropriated from the fund is considered disapproved by the lieutenant governor or speaker of the house of representatives if that officer does not approve the proposal to award the grant before the 91st day after the date of receipt of the proposal from the governor. The lieutenant governor or the speaker of the house of representatives may extend the review deadline applicable to that officer for an additional 14 days by submitting a written notice to that effect to the governor before the expiration of the initial review period.

(f-1) A grant agreement must contain a provision:

- (1) requiring the creation of a minimum number of jobs in this state; and
- (2) specifying the date by which the recipient intends to create those jobs.

(f-2) A grant agreement must contain a provision providing that if the recipient does not meet job creation performance targets as of the dates specified in the agreement, the recipient shall repay the grant in accordance with Subsection (j).

(h-1) At least 14 days before the date the governor intends to amend a grant agreement, the governor shall notify and provide a copy of the proposed amendment to the speaker of the house of representatives, the lieutenant governor, and the presiding officers of the standing committees of both houses of the legislature with primary jurisdiction over economic development.

(j) Repayment of a grant under Subsection (f)(1)(A) shall ~~[may]~~ be prorated to reflect a partial attainment of job creation performance targets, and may be prorated for a partial attainment of other performance targets.

SECTION 57.02. Subsections (a) and (b), Section 490.005, Government Code, are amended to read as follows:

(a) Not later than January 31 [+] of each year, the governor shall submit to the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over economic development matters and post on the office of the governor's Internet website a report that includes the following information regarding awards made under the fund during each ~~[for the]~~ preceding ~~[three]~~ state fiscal year ~~[years]~~:

- (1) the total number and amount of awards made;
- (2) the number and amount of awards made under Subchapters D, E, and F;
- (3) the aggregate total of private sector investment, federal government funding, and contributions from other sources obtained in connection with awards made under each of the subchapters listed in Subdivision (2);
- (4) the name of each award recipient and the amount of the award made to the recipient; and

(5) a brief description of the equity position that the governor, on behalf of the state, may take in companies receiving awards and the names of the companies in which the state has taken an equity position.

(b) The annual report must also contain:

(1) the total number of jobs actually created by each project receiving funding under this chapter;

(2) an analysis of the number of jobs actually created by each project receiving funding under this chapter; and

(3) a brief description regarding:

(A) the methodology used to determine the information provided under Subdivisions (1) and (2), which may be developed in consultation with the comptroller's office;

(B) [~~4~~] the intended outcomes of projects funded under Subchapter D during each [~~the~~] preceding [~~two~~] state fiscal year [~~years~~]; and

(C) [~~2~~] the actual outcomes of all projects funded under Subchapter D during each preceding state fiscal year [~~the fund's existence~~], including any financial impact on the state resulting from a liquidity event involving a company whose project was funded under that subchapter.

SECTION 57.03. Subchapter A, Chapter 490, Government Code, is amended by adding Section 490.006 to read as follows:

Sec. 490.006. VALUATION OF INVESTMENTS; INCLUSION IN ANNUAL REPORT. To the maximum extent practicable, the office of the governor shall annually perform a valuation of the equity positions taken by the governor, on behalf of the state, in companies receiving awards under the fund and of other investments made by the governor, on behalf of the state, in connection with an award under the fund. The valuation must:

(1) be based on a methodology that:

(A) may be developed in consultation with the comptroller's office; and

(B) is consistent with generally accepted accounting principles; and

(2) be included with the annual report required under Section 490.005.

SECTION 57.04. The heading to Section 490.052, Government Code, is amended to read as follows:

Sec. 490.052. APPOINTMENT TO COMMITTEE [~~BY GOVERNOR~~]; NOMINATIONS.

SECTION 57.05. Section 490.052, Government Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) The governor shall appoint to the committee 13 individuals nominated as provided by Subsection (b).

(a-1) The lieutenant governor shall appoint two individuals to the committee.

(a-2) The speaker of the house of representatives shall appoint two individuals to the committee.

SECTION 57.06. Subchapter B, Chapter 490, Government Code, is amended by adding Section 490.0521 to read as follows:

Sec. 490.0521. FINANCIAL STATEMENT REQUIRED. Each member of the committee shall file with the office of the governor a verified financial statement complying with Sections 572.022 through 572.0252 as is required of a state officer by Section 572.021.

SECTION 57.07. Section 490.054, Government Code, is amended to read as follows:

Sec. 490.054. TERMS. (a) Members of the committee appointed by the governor serve staggered two-year terms, subject to the pleasure of the governor.

(b) Members of the committee appointed by the lieutenant governor or the speaker of the house of representatives serve two-year terms.

SECTION 57.08. Section 490.056, Government Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) Each entity recommended by the committee for an award of money from the fund as provided by this chapter shall obtain and provide the following information to the office of the governor:

(1) a federal criminal history background check for each principal of the entity;

(2) a state criminal history background check for each principal of the entity;

(3) a credit check for each principal of the entity;

(4) a copy of a government-issued form of photo identification for each principal of the entity; and

(5) information regarding whether the entity or a principal of the entity has ever been subject to a sanction imposed by the Securities and Exchange Commission for a violation of applicable federal law.

(d) For purposes of Subsection (c), "principal" means:

(1) an officer of an entity; or

(2) a person who has at least a 10 percent ownership interest in an entity.

(e) With each proposal to award funding submitted by the governor to the lieutenant governor and speaker of the house of representatives for purposes of obtaining prior approval, the governor shall provide each officer with a copy of the information provided by the appropriate entity under Subsection (c).

SECTION 57.09. Section 490.057, Government Code, is amended to read as follows:

Sec. 490.057. CONFIDENTIALITY. (a) Except as provided by Subsection (b), information [Information] collected by the governor's office, the committee, or the committee's advisory panels concerning the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity being considered for, receiving, or having received an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

(b) The following information collected by the governor's office, the committee, or the committee's advisory panels under this chapter is public information and may be disclosed under Chapter 552:

(1) the name and address of an individual or entity receiving or having received an award from the fund;

(2) the amount of funding received by an award recipient;

(3) a brief description of the project that is funded under this chapter;

(4) if applicable, a brief description of the equity position that the governor, on behalf of the state, has taken in an entity that has received an award from the fund; and

(5) any other information designated by the committee with the consent of:

(A) the individual or entity receiving or having received an award from the fund, as applicable;

(B) the governor;

(C) the lieutenant governor; and

(D) the speaker of the house of representatives.

SECTION 57.10. Section 490.101, Government Code, is amended by amending Subsection (f) and adding Subsection (f-1) to read as follows:

(f) The administration of the fund is considered to be a trustee program within the office of the governor. The governor may negotiate on behalf of the state regarding awards from the fund. The governor may award money appropriated from the fund only with the ~~[express written]~~ prior approval of the lieutenant governor and speaker of the house of representatives.

(f-1) For purposes of Subsection (f), an award of money appropriated from the fund is considered disapproved by the lieutenant governor or speaker of the house of representatives if that officer does not approve the proposal to award funding before the 91st day after the date of receipt of the proposal from the governor. The lieutenant governor or the speaker of the house of representatives may extend the review deadline applicable to that officer for an additional 14 days by submitting a written notice to that effect to the governor before the expiration of the initial review period.

SECTION 57.11. Subsection (a), Section 490.151, Government Code, is amended to read as follows:

(a) Amounts allocated from the fund for use as provided by this subchapter shall be used only to provide direct funding to ~~[reserved for incentives for]~~ private or nonprofit entities for incentives to collaborate with public or private institutions of higher education in this state on emerging technology projects intended to accelerate the commercialization of intellectual property derived from the institutions of higher education ~~[with a demonstrable economic benefit to this state]~~.

SECTION 57.12. Subchapter D, Chapter 490, Government Code, is amended by adding Section 490.1521 to read as follows:

Sec. 490.1521. MINUTES OF CERTAIN MEETINGS. (a) Each regional center of innovation and commercialization established under Section 490.152, including the Texas Life Science Center for Innovation and Commercialization, shall keep minutes of each meeting at which applications for funding under this subchapter are evaluated. The minutes must:

(1) include the name of each applicant recommended by the regional center of innovation and commercialization to the committee for funding; and

(2) indicate the vote of each member of the governing body of the regional center of innovation and commercialization, including any recusal by a member and the member's reason for recusal, with regard to each application reviewed.

(b) Each regional center of innovation and commercialization shall retain a copy of the minutes of each meeting to which this section applies for at least three years.

SECTION 57.13. Section 203.021, Labor Code, is amended by adding Subsection (e) to read as follows:

(e) Money in the compensation fund may not be transferred to the:

(1) Texas Enterprise Fund created under Section 481.078, Government Code; or

(2) Texas emerging technology fund established under Section 490.101, Government Code.

SECTION 57.14. Section 204.123, Labor Code, is amended to read as follows:

Sec. 204.123. TRANSFER TO [~~TEXAS ENTERPRISE FUND,~~] SKILLS DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION FUND. (a) If, on September 1 of a year, the commission determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer from the holding fund created under Section 204.122:

(1) [~~from the first \$160 million deposited in the holding fund in any state fiscal biennium:~~

~~[(A) during the state fiscal biennium ending August 31, 2007:~~

~~[(i) 67 percent to the Texas Enterprise Fund created under Section 481.078, Government Code, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the Texas Enterprise Fund in that biennium; and~~

~~[(ii) 33 percent to the skills development fund created under Section 303.003, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and~~

~~[(B)] during any state fiscal biennium beginning on or after September 1, 2007, 100 [±~~

~~[(i) 75 percent to the Texas Enterprise Fund created under Section 481.078, Government Code, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the Texas Enterprise Fund in that biennium; and~~

~~[(ii) 25] percent to the skills development fund created under Section 303.003, except that the amount transferred under this subdivision [~~paragraph~~] may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and~~

(2) any remaining amount in the holding fund after the distribution under Subdivision (1) to the training stabilization fund created under Section 302.101.

(b) If, on September 1 of a year, the commission determines that the amount in the compensation fund will be at or below 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer to the compensation fund as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund. The commission shall transfer any remaining balance in the holding fund to the [~~Texas Enterprise Fund, the~~] skills development fund[~~]~~ and the training stabilization fund in the manner [~~in the percentages~~] prescribed by Subsection (a).

SECTION 57.15. Subsections (b) and (c), Section 302.101, Labor Code, are amended to read as follows:

(b) Money in the training stabilization fund may be used in a year in which the amounts in the employment and training investment holding fund are insufficient to meet the legislative appropriation for that fiscal year for ~~[either the Texas Enterprise Fund or]~~ the skills development program strategies and activities.

(c) Money in the training stabilization fund shall be transferred to the ~~[Texas Enterprise Fund and the]~~ skills development fund under Subsection (b) not later than September 30. ~~[The transfer under Subsection (b) shall consist of transferring 67 percent of the money in the training stabilization fund to the Texas Enterprise Fund and 33 percent of the money in the training stabilization fund to the skills development fund.]~~ The amount transferred from the training stabilization fund may not exceed the amounts appropriated to the ~~[Texas Enterprise Fund and]~~ skills development program strategies and activities in the fiscal year in which the transfer is made.

SECTION 57.16. Sections 481.078(e) and 490.101(f), Government Code, as amended by this article, and Section 490.101(f-1), Government Code, as added by this article, apply only to a proposal for an award from the Texas Enterprise Fund or Texas emerging technology fund submitted by the governor to the lieutenant governor or speaker of the house of representatives for prior approval on or after the effective date of this article. A proposal submitted by the governor for prior approval before the effective date of this article is governed by the law in effect on the date the proposal was submitted for that approval, and the former law is continued in effect for that purpose.

SECTION 57.17. Section 481.078(j), Government Code, as amended by this article, and Sections 481.078(f-1) and (f-2), Government Code, as added by this article, apply only to a grant agreement that is entered into on or after the effective date of this article. A grant agreement that is entered into before the effective date of this article is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 57.18. (a) The terms of the members of the Texas Emerging Technology Advisory Committee serving immediately before the effective date of this article expire September 1, 2011.

(b) As soon as practicable after this article takes effect, the governor, lieutenant governor, and speaker of the house of representatives shall appoint members to the Texas Emerging Technology Advisory Committee established under Subchapter B, Chapter 490, Government Code, in a manner that complies with that subchapter, as amended by this article.

(c) At the first meeting of members of the Texas Emerging Technology Advisory Committee established under Subchapter B, Chapter 490, Government Code, as amended by this article, occurring on or after September 1, 2011, the members appointed by the governor shall draw lots to determine which six members will serve a term expiring September 1, 2012, and which seven members will serve a term expiring September 1, 2013.

Explanation: This change is necessary to reform the functions and administration of the Texas Enterprise Fund and the Texas Emerging Technology Fund.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding Section 45.02 to Article 45 of the bill amending Chapter 322, Government Code, to read as follows:

SECTION 45.02. Chapter 322, Government Code, is amended by adding Section 322.0081 to read as follows:

Sec. 322.0081. BUDGET DOCUMENTS ONLINE. (a) The board shall post on the board's Internet website documents prepared by the board that are provided to a committee, subcommittee, or conference committee of either house of the legislature in connection with an appropriations bill.

(b) The board shall post a document to which this section applies as soon as practicable after the document is provided to a committee, subcommittee, or conference committee.

(c) The document must be downloadable and provide data in a format that allows the public to search, extract, organize, and analyze the information in the document.

(d) The requirement under Subsection (a) does not supersede any exceptions provided under Chapter 552.

(e) The board shall promulgate rules to implement the provisions of this section.

Explanation: This change is necessary to provide for certain budget documents to be made available on the Internet website of the Legislative Budget Board.

(4) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding Section 56.02 to Article 56 of the bill to read as follows:

SECTION 56.02. Subsection (c), Section 171.0002, Tax Code, is amended to read as follows:

(c) "Taxable entity" does not include an entity that is:

(1) a grantor trust as defined by Sections 671 and 7701(a)(30)(E), Internal Revenue Code, all of the grantors and beneficiaries of which are natural persons or charitable entities as described in Section 501(c)(3), Internal Revenue Code, excluding a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(2) an estate of a natural person as defined by Section 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(3) an escrow;

(4) a real estate investment trust (REIT) as defined by Section 856, Internal Revenue Code, and its "qualified REIT subsidiary" entities as defined by Section 856(i)(2), Internal Revenue Code, provided that:

(A) a REIT with any amount of its assets in direct holdings of real estate, other than real estate it occupies for business purposes, as opposed to holding interests in limited partnerships or other entities that directly hold the real estate, is a taxable entity; and

(B) a limited partnership or other entity that directly holds the real estate as described in Paragraph (A) is not exempt under this subdivision, without regard to whether a REIT holds an interest in it;

(5) a real estate mortgage investment conduit (REMIC), as defined by Section 860D, Internal Revenue Code;

(6) a nonprofit self-insurance trust created under Chapter 2212, Insurance Code, or a predecessor statute;

(7) a trust qualified under Section 401(a), Internal Revenue Code; ~~[or]~~

(8) a trust or other entity that is exempt under Section 501(c)(9), Internal Revenue Code; or

(9) an unincorporated entity organized as a political committee under the Election Code or the provisions of the Federal Election Campaign Act of 1971 (2 U.S.C. Section 431 et seq.).

Explanation: This change is necessary to ensure that certain unincorporated political committees are not considered "taxable entities" for purposes of the franchise tax.

(5) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 61 to read as follows:

ARTICLE 61. CERTAIN CONTRIBUTION RATE COMPUTATIONS

SECTION 61.01. Section 815.402, Government Code, is amended by adding Subsections (a-1) and (h-1) to read as follows:

(a-1) Notwithstanding Subsection (a)(1), if the state contribution to the retirement system is computed using a percentage less than 6.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

(h-1) Notwithstanding Subsection (h), if the state contribution to the law enforcement and custodial officer supplemental retirement fund is computed using a percentage less than 0.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

Explanation: This change is necessary to allow, for one year, for a difference between the percentage used for the computations of the state retirement system contributions and that used for members' retirement system contributions for certain system members.

(5) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 62 to read as follows:

ARTICLE 62. QUINQUENNIAL REPORTING OF CERTAIN INFORMATION FOR UNCLAIMED PROPERTY

SECTION 62.01. Subsection (a), Section 411.0111, Government Code, is amended to read as follows:

(a) Not later than June 1 of every fifth ~~each~~ year, the department shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address,

social security number, date of birth, and driver's license or state identification number of each person about whom the department has such information in its records.

SECTION 62.02. Subsection (a), Section 811.010, Government Code, as added by Chapter 232 (S.B. 1589), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(a) Not later than June 1 of every fifth [~~each~~] year, the retirement system shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each member, retiree, and beneficiary from the retirement system's records.

SECTION 62.03. Subsection (a), Section 821.010, Government Code, is amended to read as follows:

(a) Not later than June 1 of every fifth [~~each~~] year, the retirement system shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each member, retiree, and beneficiary from the retirement system's records.

SECTION 62.04. Subsection (a), Section 301.086, Labor Code, is amended to read as follows:

(a) Not later than June 1 of every fifth [~~each~~] year, the commission shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each person about whom the commission has such information in its records.

SECTION 62.05. The Department of Public Safety, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, and the Texas Workforce Commission shall provide information to the comptroller as required by Sections 411.0111(a), 811.010(a), and 821.010(a), Government Code, and Section 301.086(a), Labor Code, as amended by this article, beginning in 2016.

Explanation: This change is necessary to provide for certain reports, filed for the purpose of assisting the comptroller of public accounts in the identification of persons entitled to unclaimed property, to be filed every fifth year instead of annually.

(6) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 63 to read as follows:

ARTICLE 63. AD VALOREM TAXATION OF CERTAIN STORED PROPERTY

SECTION 63.01. Subsection (a), Section 11.253, Tax Code, is amended by amending Subdivision (2) and adding Subdivisions (5) and (6) to read as follows:

(2) "Goods-in-transit" means tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is stored under a contract of bailment by a public warehouse operator [~~detained~~] at one or more public warehouse facilities [~~a location~~] in this state that are not in any way owned or controlled by [~~in which~~] the owner of the personal

property ~~[does not have a direct or indirect ownership interest]~~ for the account of ~~[assembling, storing, manufacturing, processing, or fabricating purposes by]~~ the person who acquired or imported the property;

(C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and

(D) does not include oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory.

(5) "Bailee" and "warehouse" have the meanings assigned by Section 7.102, Business & Commerce Code.

(6) "Public warehouse operator" means a person that:

(A) is both a bailee and a warehouse; and

(B) stores under a contract of bailment, at one or more public warehouse facilities, tangible personal property that is owned by other persons solely for the account of those persons and not for the operator's account.

SECTION 63.02. Section 11.253, Tax Code, is amended by amending Subsections (e) and (h) and adding Subsections (j-1) and (j-2) to read as follows:

(e) In determining the market value of goods-in-transit that in the preceding year were ~~[assembled,]~~ stored~~[-, manufactured, processed, or fabricated]~~ in this state, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held by the owner of the component parts during the preceding year at a location in this state that was not owned by or under the control of the owner of the component parts in determining whether the component parts were transported to another location in this state or outside this state before the expiration of 175 days.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of property records so the chief appraiser can determine the amount and value of goods-in-transit and that the location in this state where the goods-in-transit were detained for storage ~~[assembling, storing, manufacturing, processing, or fabricating purposes]~~ was not owned by or under the control of the owner of the goods-in-transit. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(j-1) Notwithstanding Subsection (j) or official action that was taken under that subsection before September 1, 2011, to tax goods-in-transit exempt under Subsection (b) and not exempt under other law, a taxing unit may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after September 1, 2011, in the manner required for official action by the governing body, to provide for the taxation of the

goods-in-transit. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit or otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit.

(j-2) Notwithstanding Subsection (j-1), if under Subsection (j) the governing body of a taxing unit, before September 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, the tax officials of the taxing unit may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created.

SECTION 63.03. Subdivision (2), Subsection (a), Section 11.253, Tax Code, as amended by this article, applies only to an ad valorem tax year that begins on or after January 1, 2012.

SECTION 63.04. (a) Except as provided by Subsection (b) of this section, this article takes effect January 1, 2012.

(b) Section 63.02 of this article takes effect September 1, 2011.

Explanation: This change is necessary to clarify the law regarding the exemption from ad valorem taxation of certain property stored temporarily at a location in this state.

(7) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 64 to read as follows:

ARTICLE 64. FISCAL MATTERS CONCERNING ADVANCED PLACEMENT

SECTION 64.01. Subsection (h), Section 28.053, Education Code, is amended to read as follows:

(h) The commissioner may enter into agreements with the college board and the International Baccalaureate Organization to pay for all examinations taken by eligible public school students. An eligible student is a student ~~one~~ who:

(1) takes a college advanced placement or international baccalaureate course at a public school or who is recommended by the student's principal or teacher to take the test; and

(2) demonstrates financial need as determined in accordance with guidelines adopted by the board that are consistent with the definition of financial need adopted by the college board or the International Baccalaureate Organization.

Explanation: This change is necessary to provide that only students who demonstrate financial need are eligible students for the purpose of payments for certain examinations related to an advanced placement course or international baccalaureate course.

(8) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 65 to read as follows:

ARTICLE 65. FISCAL MATTERS CONCERNING TUITION EXEMPTIONS

SECTION 65.01. Subsection (c), Section 54.214, Education Code, is amended to read as follows:

(c) To be eligible for an exemption under this section, a person must:

- (1) be a resident of this state;
- (2) be a school employee serving in any capacity;
- (3) for the initial term or semester for which the person receives an exemption under this section, have worked as an educational aide for at least one school year during the five years preceding that term or semester;
- (4) establish financial need as determined by coordinating board rule;
- (5) be enrolled at the institution of higher education granting the exemption in courses required for teacher certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers at the public schools in this state [~~at the institution of higher education granting the exemption~~];
- (6) maintain an acceptable grade point average as determined by coordinating board rule; and
- (7) comply with any other requirements adopted by the coordinating board under this section.

SECTION 65.02. The change in law made by this article applies beginning with tuition and fees charged for the 2011 fall semester. Tuition and fees charged for a term or semester before the 2011 fall semester are covered by the law in effect during the term or semester for which the tuition and fees are charged, and the former law is continued in effect for that purpose.

Explanation: This change is necessary to provide for targeting tuition exemptions to course work in subject areas for which there is a shortage of teachers.

(9) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 66 to read as follows:

ARTICLE 66. FISCAL MATTERS CONCERNING DUAL HIGH SCHOOL
AND JUNIOR COLLEGE CREDIT

SECTION 66.01. Subsection (c), Section 130.008, Education Code, is amended to read as follows:

(c) The contact hours attributable to the enrollment of a high school student in a course offered for joint high school and junior college credit under this section, excluding a course for which the student attending high school may receive course credit toward the physical education curriculum requirement under Section 28.002(a)(2)(C), shall be included in the contact hours used to determine the junior college's proportionate share of the state money appropriated and distributed to public junior colleges under Sections 130.003 and 130.0031, even if the junior college waives all or part of the tuition or fees for the student under Subsection (b).

SECTION 66.02. This article applies beginning with funding for the 2011 fall semester.

Explanation: This change is necessary to prevent junior colleges from receiving state funding for high school students enrolled for dual credit in physical education courses.

(10) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 67 to read as follows:

ARTICLE 67. CLASSIFICATION OF ENTITIES AS ENGAGED IN RETAIL
TRADE FOR PURPOSES OF THE FRANCHISE TAX

SECTION 67.01. Subdivision (12), Section 171.0001, Tax Code, is amended to read as follows:

(12) "Retail trade" means:

(A) the activities described in Division G of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; and

(B) apparel rental activities classified as Industry 5999 or 7299 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

SECTION 67.02. This article applies only to a report originally due on or after the effective date of this Act.

SECTION 67.03. This article takes effect January 1, 2012.

Explanation: This change is necessary to clarify the treatment of clothing rental businesses for purposes of the franchise tax.

(11) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 68 to read as follows:

ARTICLE 68. RETENTION OF CERTAIN FOUNDATION SCHOOL
FUND PAYMENTS

SECTION 68.01. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2511 to read as follows:

Sec. 42.2511. AUTHORIZATION FOR CERTAIN DISTRICTS TO RETAIN ADDITIONAL STATE AID. (a) This section applies only to a school district that was provided with state aid under former Section 42.2516 for the 2009-2010 or 2010-2011 school year based on the amount of aid to which the district would have been entitled under that section if Section 42.2516(g), as it existed on January 1, 2009, applied to determination of the amount to which the district was entitled for that school year.

(b) Notwithstanding any other law, a district to which this section applies may retain the state aid provided to the district as described by Subsection (a).

(c) This section expires September 1, 2013.

SECTION 68.02. It is the intent of the legislature that the authorization provided by Section 42.2511, Education Code, as added by this article, to retain state aid described by that section is not affected by the expiration of that provision on September 1, 2013.

Explanation: This change is necessary to allow school districts that adopted a tax rate lower than the applicable compressed tax rate to retain additional state aid for tax reduction that was received in the 2009-2010 or 2010-2011 school year.

(12) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 69 to read as follows:

ARTICLE 69. THE STATE COMPRESSION PERCENTAGE

SECTION 69.01. Section 42.2516, Education Code, is amended by adding Subsection (b-2) to read as follows:

(b-2) If a school district adopts a maintenance and operations tax rate that is below the rate equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, the commissioner shall reduce the district's entitlement under this section in proportion to the amount by which the adopted rate is less than the rate equal to the product of the state compression percentage multiplied by the rate adopted by the district for the 2005 tax year. The reduction required by this subsection applies beginning with the maintenance and operations tax rate adopted for the 2009 tax year.

Explanation: This change is necessary to provide for a reduced amount of additional state aid for tax reduction to a school district that adopts a tax rate lower than the applicable compressed tax rate.

(13) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 70 to read as follows:

ARTICLE 70. TEXAS GUARANTEED STUDENT LOAN CORPORATION;
BOARD OF DIRECTORS

SECTION 70.01. Subsections (a) and (b), Section 57.13, Education Code, are amended to read as follows:

(a) The corporation is governed by a board of nine [~~14~~] directors in accordance with this section.

(b) The governor, with the advice and consent of the senate, shall appoint the [~~10~~] members of [~~10~~] the board as follows:

(1) four [~~five~~] members who must have knowledge of or experience in finance, including management of funds or business operations;

(2) one member who must be a student enrolled at a postsecondary educational institution for the number of credit hours required by the institution to be classified as a full-time student of the institution; and

(3) four members who must be members the faculty or administration of a [an eligible] postsecondary educational institution that is an eligible institution for purposes of the Higher Education Act of 1965, as amended, ~~as defined by Section 57.46~~.

SECTION 70.02. Section 57.17, Education Code, is amended to read as follows:

Sec. 57.17. OFFICERS. The governor shall designate the chairman from among the board's membership. The board shall elect from among its members a [chairman,] vice-chairman~~;~~ and other officers that the board considers necessary. The chairman and vice-chairman serve for a term of one year and may be redesignated or reelected, as applicable.

SECTION 70.03. Subsection (d), Section 57.13, Education Code, is repealed.

Explanation: This change is necessary to reform the governance of the Texas Guaranteed Student Loan Corporation.

(14) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 71 to read as follows:

ARTICLE 71. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION
CERTIFICATES

SECTION 71.01. Subchapter A, Chapter 521, Transportation Code, is amended by adding Section 521.007 to read as follows:

Sec. 521.007. SECURITY, VALIDITY, AND EFFICIENCY STUDY.

(a) Notwithstanding any other law, the commission shall study procedures and requirements necessary or advisable to ensure the security, validity, and efficiency of driver's licenses and personal identification certificates issued under this chapter. The study must include an analysis of potential cost savings, revenue issues, and other fiscal matters related to the issuance of the license and certificates. The commission shall adopt rules to implement any procedures or requirements the commission finds are necessary or advisable.

(b) Notwithstanding any other law, the commission by rule may specify the term of a driver's license or personal identification certificate issued under this chapter.

SECTION 71.02. The legislature declares that the Department of Public Safety had the statutory authority to adopt the rules regarding driver's licenses and personal identification certificates that are in effect on the effective date of this article and that the rules are valid.

SECTION 71.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this article to have immediate effect, this article takes effect September 1, 2011.

Explanation: This change is necessary to identify procedures and requirements to ensure the security, validity, and efficiency of driver's licenses and personal identification certificates, to identify the potential cost savings, revenue issues, and other fiscal matters related to the issuance of license and certificates, to provide for authority for rules to specify the terms of licenses and certificates, and to validate certain rules previously adopted regarding driver's licenses and personal identification certificates.

(15) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 72 to read as follows:

ARTICLE 72. FISCAL MATTERS CONCERNING LEASES OF PUBLIC LAND
FOR MINERAL DEVELOPMENT

SECTION 72.01. Subsections (a) and (c), Section 85.66, Education Code, are amended to read as follows:

(a) If oil or other minerals are developed on any of the lands leased by the board, the royalty or money as stipulated in the sale shall be paid to the general land office at Austin on or before the last day of each month for the preceding month during the life of the rights purchased, and shall be set aside ~~[in the state treasury]~~ as specified in Section 85.70 ~~[of this code]~~. The royalty or money paid to the general land office shall

be accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur, mineral ore, and other minerals produced and saved since the last report, the amount of oil, gas, sulphur, mineral ore, and other minerals produced and sold off the premises, and the market value of the oil, gas, sulphur, mineral ore, and other minerals, together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipeline receipts, gas line receipts and other checks and memoranda of the amounts produced and put into pipelines, tanks, vats, or pool and gas lines, gas storage, other places of storage, and other means of transportation.

(c) The commissioner of the general land office shall tender to the board on or before the 10th day of each month a report of all receipts that are collected from the lease or sale of oil, gas, sulphur, mineral ore, and other minerals and that are deposited ~~[turned into the state treasury,]~~ as provided by Section 85.70 during ~~[of this code, of]~~ the preceding month.

SECTION 72.02. Section 85.69, Education Code, is amended to read as follows:

Sec. 85.69. PAYMENTS; DISPOSITION. Payments under this subchapter shall be made to the commissioner of the general land office at Austin, who shall transmit to the board ~~[comptroller]~~ all royalties, lease fees, rentals for delay in drilling or mining, and all other payments, including all filing assignments and relinquishment fees, to be deposited ~~[in the state treasury]~~ as provided by Section 85.70 ~~[of this code]~~.

SECTION 72.03. Section 85.70, Education Code, is amended to read as follows:

Sec. 85.70. CERTAIN MINERAL LEASES; DISPOSITION OF MONEY; SPECIAL FUNDS; INVESTMENT. (a) Except as provided by Subsection (c) ~~[of this section]~~, all money received under and by virtue of this subchapter shall be deposited in ~~[the state treasury to the credit of]~~ a special fund managed by the board to be known as The Texas A&M University System Special Mineral Investment Fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the system and its component institutions. ~~The [With the approval of the comptroller, the board of regents of The Texas A&M University System may appoint one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the Special Mineral Investment Fund's securities with authority to hold the money realized from those securities pending completion of an investment transaction if the money held is reinvested within one business day of receipt in investments determined by the board of regents. Money not reinvested within one business day of receipt shall be deposited in the state treasury not later than the fifth day after the date of receipt. In the judgment of the board, this]~~ special fund may be invested so as to produce ~~[an]~~ income which may be expended under the direction of the board for the general use of any component of The Texas A&M University System, including erecting permanent improvements and in payment of expenses incurred in connection with the administration of this subchapter. The unexpended income likewise may be invested as ~~[herein]~~ provided by this section.

(b) The income from the investment of the special mineral investment fund created by ~~[under]~~ Subsection (a) ~~[of this section]~~ shall be deposited in ~~[to the credit of]~~ a fund managed by the board to be known as The Texas A&M University System

Special Mineral Income Fund, and is considered to be institutional funds, as defined by Section 51.009, of the system and its component institutions ~~[shall be appropriated by the legislature exclusively for the university system for the purposes herein provided].~~

(c) The board shall lease for oil, gas, sulphur, or other mineral development, as prescribed by this subchapter, all or part of the land under the exclusive control of the board owned by the State of Texas and acquired for the use of Texas A&M University–Kingsville and its divisions. Any money received by the board concerning such land under this subchapter shall be deposited in ~~[the state treasury to the credit of]~~ a special fund managed by the board to be known as the Texas A&M University–Kingsville special mineral fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the university and is[.] to be used exclusively for the university [Texas A&M University Kingsville] and its branches and divisions. [Money may not be expended from this fund except as authorized by the general appropriations act.]

(d) All deposits in and investments of the fund under this section shall be made in accordance with Section 51.0031.

(e) Section 34.017, Natural Resources Code, does not apply to funds created by this section.

SECTION 72.04. Subsection (b), Section 95.36, Education Code, is amended to read as follows:

(b) Except as provided in Subsection (c) of this section, any money received by virtue of this section and the income from the investment of such money shall be deposited in ~~[the State Treasury to the credit of]~~ a special fund managed by the board to be known as the Texas State University System special mineral fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the system and its component institutions and is[.] to be used exclusively for those entities. All deposits in and investments of the fund shall be made in accordance with Section 51.0031. Section 34.017, Natural Resources Code, does not apply to the fund [the university system and the universities in the system. However, no money shall ever be expended from this fund except as authorized by the General Appropriations Act].

SECTION 72.05. Subsection (b), Section 109.61, Education Code, is amended to read as follows:

(b) Any money received by virtue of this section shall be deposited in ~~[the state treasury to the credit of]~~ a special fund managed by the board to be known as the Texas Tech University special mineral fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the university and is[.] to be used exclusively for the university and its branches and divisions. All deposits in and investments of the fund shall be made in accordance with Section 51.0031. Section 34.017, Natural Resources Code, does not apply to the fund. [However, no money shall ever be expended from this fund except as authorized by the general appropriations act.]

SECTION 72.06. Subsections (a) and (c), Section 109.75, Education Code, are amended to read as follows:

(a) If oil or other minerals are developed on any of the lands leased by the board, the royalty as stipulated in the sale shall be paid to the general land office in Austin on or before the last day of each month for the preceding month during the life of the rights purchased. The royalty payments shall be set aside ~~[in the state treasury]~~ as specified in Section 109.61 ~~[of this code]~~ and used as provided in that section.

(c) The commissioner of the general land office shall tender to the board on or before the 10th day of each month a report of all receipts that are collected from the lease or sale of oil, gas, sulphur, or other minerals and that are deposited in ~~[turned into]~~ the special fund as provided by Section 109.61 ~~[in the state treasury]~~ during the preceding month.

SECTION 72.07. Subsection (b), Section 109.78, Education Code, is amended to read as follows:

(b) Payment of all royalties, lease fees, rentals for delay in drilling or mining, filing fees for assignments and relinquishments, and all other payments shall be made to the commissioner of the general land office at Austin. The commissioner shall transmit all payments received to the board ~~[comptroller]~~ for deposit to the credit of the Texas Tech University special mineral fund as provided by Section 109.61.

SECTION 72.08. Section 85.72, Education Code, is repealed.

SECTION 72.09. This article takes effect September 1, 2011.

Explanation: This change is necessary to provide for certain mineral income for the Texas A&M University System, Texas Tech University, and the Texas State University System to be treated similarly to mineral income for other institutions of higher education.

(16) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 73 to read as follows:

ARTICLE 73. FOUNDATION SCHOOL PROGRAM FINANCING; CERTAIN TAX INCREMENT FUND REPORTING MATTERS

SECTION 73.01. (a) This section applies only to a school district that, before May 1, 2011, received from the commissioner of education a notice of a reduction in state funding for the 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years based on the district's reporting related to deposits of taxes into a tax increment fund under Chapter 311, Tax Code.

(b) Notwithstanding any other law, including Section 42.302(b)(2), Education Code, the commissioner of education shall reduce by one-half the amounts of the reduction of entitlement amounts computed for purposes of adjusting entitlement amounts to account for taxes deposited into a tax increment fund for any of the school years described by Subsection (a) of this section.

(c) This section expires September 1, 2013.

Explanation: This change is necessary to provide for the proper adjustment of foundation school program entitlement amounts in cases of reductions resulting from tax increment fund deposit reporting for certain school years by certain school districts.

(17) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 74 to the bill to read as follows:

ARTICLE 74. CRIMINAL BACKGROUND CHECKS FOR CERTAIN
INTERSCHOLASTIC SPORTS OFFICIALS

SECTION 74.01. Subchapter D, Chapter 33, Education Code, is amended by adding Section 33.085 to read as follows:

Sec. 33.085. CRIMINAL BACKGROUND CHECKS FOR SPORTS OFFICIALS; COST RECOVERY. (a) In this section, "sports official" means a person who officiates, judges, or otherwise enforces contest rules in an official capacity for athletic competition. The term includes a referee, umpire, linesman, side judge, and back judge.

(b) The University Interscholastic League by rule may require a person to have a criminal background check conducted by the league as a precondition of acting as a sports official for interscholastic athletic competition.

(c) The University Interscholastic League may refuse to allow a person to act as a sports official for interscholastic athletic competition if a criminal background check conducted under league rules reveals a conviction of:

(1) an offense involving moral turpitude;

(2) an offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student;

(3) a felony offense involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(4) an offense involving the illegal transfer, appropriation, or use of school district funds or other district property; or

(5) an offense involving an attempt by fraudulent or unauthorized means to obtain or alter registration to serve as a sports official for interscholastic athletic competition.

(d) An interscholastic athletic league by rule may establish a cost recovery program to offset any costs the league incurs as a result of the implementation of this section.

Explanation: This change is necessary to provide for criminal background checks for certain sports officials for interscholastic athletic competition and for the recovery of costs associated with the program incurred by an interscholastic athletic league.

(18) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either version of the bill by adding proposed Article 75 to the bill to read as follows:

ARTICLE 75. FISCAL MATTERS RELATING TO PUBLIC SCHOOL FINANCE

SECTION 75.01. Effective September 1, 2011, Section 12.106, Education Code, is amended by amending Subsection (a) and adding Subsection (a-3) to read as follows:

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 equal to the greater of:

(1) the percentage specified by Section 42.2516(i) multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Sections 42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under

Chapter 42 as it existed on January 1, 2009, and an additional amount of the percentage specified by Section 42.2516(i) multiplied by \$120 for each student in weighted average daily attendance; or

(2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Section 42.302(a), to which the charter holder would be entitled for the school under Chapter 42 if the school were a school district without a tier one local share for purposes of Section 42.253 and without any local revenue for purposes of Section 42.2516.

(a-3) In determining funding for an open-enrollment charter school under Subsection (a), the commissioner shall apply the regular program adjustment factor provided under Section 42.101 to calculate the regular program allotment to which a charter school is entitled.

SECTION 75.02. Effective September 1, 2017, Subsection (a), Section 12.106, Education Code, is amended to read as follows:

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 equal to ~~the greater of:~~

~~[(1) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Sections 42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under Chapter 42 as it existed on January 1, 2009, and an additional amount of \$120 for each student in weighted average daily attendance; or~~

~~[(2)] the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Section 42.302(a), to which the charter holder would be entitled for the school under Chapter 42 if the school were a school district without a tier one local share for purposes of Section 42.253 [and without any local revenue for purposes of Section 42.2516].~~

SECTION 75.03. Effective September 1, 2011, Section 21.402, Education Code, is amended by amending Subsections (a), (b), (c), and (c-1) and adding Subsection (i) to read as follows:

(a) Except as provided by Subsection (d)~~[(e)]~~ or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors, as determined by commissioner rule, determined by the following formula:

$$MS = SF \times FS$$

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of the basic allotment as provided by Section 42.101 (a) or (b) for a school district with a maintenance and operations tax rate at least equal to the state maximum compressed tax rate, as defined by Section 42.101 (a) [state and local funds per weighted student, including funds provided under Section 42.2516, available to a district eligible to receive state assistance under Section 42.302 with a maintenance and operations tax rate per \$100 of taxable value equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50, except that the

~~amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.~~

(b) ~~Not later than June 1 of each year, the commissioner shall determine the basic allotment and resulting monthly salaries to be paid by school districts as provided by Subsection (a) [amount of state and local funds per weighted student available, for purposes of Subsection (a), to a district described by that subsection for the following school year].~~

(c) The salary factors per step are as follows:

Years Experience	0	1	2	3	4
Salary Factor	<u>.5464</u> [.6226]	<u>.5582</u> [.6369]	<u>.5698</u> [.6492]	<u>.5816</u> [.6627]	<u>.6064</u> [.6909]
Years Experience	5	6	7	8	9
Salary Factor	<u>.6312</u> [.7192]	<u>.6560</u> [.7474]	<u>.6790</u> [.7737]	<u>.7008</u> [.7985]	<u>.7214</u> [.8220]
Years Experience	10	11	12	13	14
Salary Factor	<u>.7408</u> [.8441]	<u>.7592</u> [.8650]	<u>.7768</u> [.8854]	<u>.7930</u> [.9035]	<u>.8086</u> [.9213]
Years Experience	15	16	17	18	19
Salary Factor	<u>.8232</u> [.9380]	<u>.8372</u> [.9539]	<u>.8502</u> [.9687]	<u>.8626</u> [.9828]	<u>.8744</u> [.9963]
Years Experience	20	and	over		
Salary Factor	<u>.8854</u> [1.009]				

(c-1) ~~Notwithstanding Subsections [Subsection] (a) and (b)[, for the 2009-2010 and 2010-2011 school years], each school district shall pay a monthly salary to [increase the monthly salary of] each classroom teacher, full-time speech pathologist, full-time librarian, full-time counselor certified under Subchapter B, and full-time school nurse that is at least equal to the following monthly salary or the monthly salary determined by the commissioner under Subsections (a) and (b), whichever is [by the] greater [of]:~~

<u>Years of Experience</u>	<u>Monthly Salary</u>
0	<u>2,732</u>
1	<u>2,791</u>
2	<u>2,849</u>
3	<u>2,908</u>
4	<u>3,032</u>
5	<u>3,156</u>
6	<u>3,280</u>
7	<u>3,395</u>
8	<u>3,504</u>
9	<u>3,607</u>

10	3,704
<u>11</u>	<u>3,796</u>
12	3,884
<u>13</u>	<u>3,965</u>
14	4,043
<u>15</u>	<u>4,116</u>
16	4,186
<u>17</u>	<u>4,251</u>
18	4,313
<u>19</u>	<u>4,372</u>
<u>20 & Over</u>	<u>4,427</u>

~~[(1) \$80; or~~

~~[(2) the maximum uniform amount that, when combined with any resulting increases in the amount of contributions made by the district for social security coverage for the specified employees or by the district on behalf of the specified employees under Section 825.405, Government Code, may be provided using an amount equal to the product of \$60 multiplied by the number of students in weighted average daily attendance in the school during the 2009-2010 school year.]~~

(i) Not later than January 1, 2013, the commissioner shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with primary jurisdiction over primary and secondary education a written report that evaluates and provides recommendations regarding the salary schedule. This subsection expires September 1, 2013.

SECTION 75.04. Effective September 1, 2017, Section 21.402, Education Code, is amended by amending Subsection (a) and adding Subsection (e-1) to read as follows:

(a) Except as provided by Subsection (d), (e-1) ~~[(e)]~~, or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors, as determined by commissioner rule, determined by the following formula:

$$MS = SF \times FS$$

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of the basic allotment as provided by Section 42.101(a) or (b) for a school district with a maintenance and operation tax rate at least equal to the state maximum compressed tax rate, as defined by Section 42.101(a) [state and local funds per weighted student, including funds provided under Section 42.2516, available to a district eligible to receive state assistance under Section 42.302 with a maintenance and operations tax rate per \$100 of taxable value equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50, except that the

amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001].

(e-1) If the minimum monthly salary determined under Subsection (a) for a particular level of experience is less than the minimum monthly salary for that level of experience in the preceding year, the minimum monthly salary is the minimum monthly salary for the preceding year.

SECTION 75.05. Subsection (a), Section 41.002, Education Code, is amended to read as follows:

(a) A school district may not have a wealth per student that exceeds:

(1) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student available to a district with maintenance and operations tax revenue per cent of tax effort equal to the maximum amount provided per cent under Section 42.101(a) or (b) [~~42.101~~], for the district's maintenance and operations tax effort equal to or less than the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student available to the Austin Independent School District, as determined by the commissioner in cooperation with the Legislative Budget Board, for the first six cents by which the district's maintenance and operations tax rate exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, subject to Section 41.093(b-1); or

(3) \$319,500, for the district's maintenance and operations tax effort that exceeds the first six cents by which the district's maintenance and operations tax effort exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year.

SECTION 75.06. The heading to Section 42.101, Education Code, is amended to read as follows:

Sec. 42.101. BASIC AND REGULAR PROGRAM ALLOTMENTS [~~ALLOTMENT~~].

SECTION 75.07. Section 42.101, Education Code, is amended by amending Subsections (a) and (b) and adding Subsections (c) and (c-1) to read as follows:

(a) The basic [~~For each student in average daily attendance, not including the time students spend each day in special education programs in an instructional arrangement other than mainstream or career and technology education programs, for which an additional allotment is made under Subchapter C, a district is entitled to an~~] allotment is an amount equal to the lesser of \$4,765 or the amount that results from the following formula:

$$A = \$4,765 \times (\text{DCR}/\text{MCR})$$

where:

"A" is the resulting amount for [~~allotment to which~~] a district [~~is entitled~~];

"DCR" is the district's compressed tax rate, which is the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year; and

"MCR" is the state maximum compressed tax rate, which is the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50.

(b) A greater amount for any school year for the basic allotment under Subsection (a) may be provided by appropriation.

(c) A school district is entitled to a regular program allotment equal to the amount that results from the following formula:

$$\text{RPA} = \text{ADA} \times \text{AA} \times \text{RPAF}$$

where:

"RPA" is the regular program allotment to which the district is entitled;

"ADA" is the number of students in average daily attendance in a district, not including the time students spend each day in special education programs in an instructional arrangement other than mainstream or career and technology education programs, for which an additional allotment is made under Subchapter C;

"AA" is the district's adjusted basic allotment, as determined under Section 42.102 and, if applicable, as further adjusted under Section 42.103; and

"RPAF" is the regular program adjustment factor, which is an amount established by appropriation.

(c-1) Notwithstanding Subsection (c), the regular program adjustment factor ("RPAF") is 0.9239 for the 2011-2012 school year and 0.98 for the 2012-2013 school year. This subsection expires September 1, 2013.

SECTION 75.08. Section 42.105, Education Code, is amended to read as follows:

Sec. 42.105. SPARSITY ADJUSTMENT. Notwithstanding Sections 42.101, 42.102, and 42.103, a school district that has fewer than 130 students in average daily attendance shall be provided a regular program [~~an adjusted basic~~] allotment on the basis of 130 students in average daily attendance if it offers a kindergarten through grade 12 program and has preceding or current year's average daily attendance of at least 90 students or is 30 miles or more by bus route from the nearest high school district. A district offering a kindergarten through grade 8 program whose preceding or current year's average daily attendance was at least 50 students or which is 30 miles or more by bus route from the nearest high school district shall be provided a regular program [~~an adjusted basic~~] allotment on the basis of 75 students in average daily attendance. An average daily attendance of 60 students shall be the basis of providing the regular program [~~adjusted basic~~] allotment if a district offers a kindergarten through grade 6 program and has preceding or current year's average daily attendance of at least 40 students or is 30 miles or more by bus route from the nearest high school district.

SECTION 75.09. Subsection (a), Section 42.251, Education Code, is amended to read as follows:

(a) The sum of the regular program [~~basic~~] allotment under Subchapter B and the special allotments under Subchapter C, computed in accordance with this chapter, constitute the tier one allotments. The sum of the tier one allotments and the guaranteed yield allotments under Subchapter F, computed in accordance with this chapter, constitute the total cost of the Foundation School Program.

SECTION 75.10. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2514 to read as follows:

Sec. 42.2514. ADDITIONAL STATE AID FOR TAX INCREMENT FINANCING PAYMENTS. For each school year, a school district, including a school district that is otherwise ineligible for state aid under this chapter, is entitled to state aid in an amount equal to the amount the district is required to pay into the tax increment fund for a reinvestment zone under Section 311.013(n), Tax Code.

SECTION 75.11. Effective September 1, 2011, Section 42.2516, Education Code, is amended by amending Subsections (a), (b), (d), and (f-2) and adding Subsection (i) to read as follows:

(a) In this title [~~section~~], "state compression percentage" means the percentage [~~as determined by the commissioner,~~] of a school district's adopted maintenance and operations tax rate for the 2005 tax year that serves as the basis for state funding [~~for tax rate reduction under this section~~]. If the state compression percentage is not established by appropriation for a school year, the [~~The~~] commissioner shall determine the state compression percentage for each school year based on the percentage by which a district is able to reduce the district's maintenance and operations tax rate for that year, as compared to the district's adopted maintenance and operations tax rate for the 2005 tax year, as a result of state funds appropriated for distribution under this section for that year from the property tax relief fund established under Section 403.109, Government Code, or from another funding source available for school district property tax relief.

(b) Notwithstanding any other provision of this title, a school district that imposes a maintenance and operations tax at a rate at least equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year is entitled to at least the amount of state revenue necessary to provide the district with the sum of:

(1) the percentage specified by Subsection (i) of the amount, as calculated under Subsection (c), [~~the amount~~] of state and local revenue per student in weighted average daily attendance for maintenance and operations that the district would have received during the 2009-2010 school year under Chapter 41 and this chapter, as those chapters existed on January 1, 2009, at a maintenance and operations tax rate equal to the product of the state compression percentage for that year multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the percentage specified by Subsection (i) of an amount equal to the product of \$120 multiplied by the number of students in weighted average daily attendance in the district; and

(3) [~~an amount equal to the amount the district is required to pay into the tax increment fund for a reinvestment zone under Section 311.013(n), Tax Code, in the current tax year; and~~

[(4)] any amount to which the district is entitled under Section 42.106.

(d) In determining the amount to which a district is entitled under Subsection (b)(1), the commissioner shall:

(1) include the percentage specified by Subsection (i) of any amounts received by the district during the 2008-2009 school year under Rider 86, page III-23, Chapter 1428 (H.B. 1), Acts of the 80th Legislature, Regular Session, 2007 (the General Appropriations Act); and

(2) for a school district that paid tuition under Section 25.039 during the 2008-2009 school year, reduce the amount to which the district is entitled by the amount of tuition paid during that school year.

(f-2) The rules adopted by the commissioner under Subsection (f-1) must:

(1) require the commissioner to determine, as if this section did not exist, the effect under Chapter 41 and this chapter of a school district's action described by Subsection (f-1)(1), (2), (3), or (4) on the total state revenue to which the district would be entitled or the cost to the district of purchasing sufficient attendance credits to reduce the district's wealth per student to the equalized wealth level; and

(2) require an increase or reduction in the amount of state revenue to which a school district is entitled under Subsection (b)(1) ~~[(b)]~~ that is substantially equivalent to any change in total state revenue or the cost of purchasing attendance credits that would apply to the district if this section did not exist.

(i) The percentage to be applied for purposes of Subsections (b)(1) and (2) and Subsection (d)(1) is 100.00 percent for the 2011-2012 school year and 92.35 percent for the 2012-2013 school year. For the 2013-2014 school year and each subsequent school year, the legislature by appropriation shall establish the percentage reduction to be applied.

SECTION 75.12. Effective September 1, 2017, the heading to Section 42.2516, Education Code, is amended to read as follows:

Sec. 42.2516. STATE COMPRESSION PERCENTAGE ~~[ADDITIONAL STATE AID FOR TAX REDUCTION]~~.

SECTION 75.13. Effective September 1, 2017, Subsection (a), Section 42.2516, Education Code, is amended to read as follows:

(a) In this title [section], "state compression percentage" means the percentage ~~as determined by the commissioner,~~ of a school district's adopted maintenance and operations tax rate for the 2005 tax year that serves as the basis for state funding ~~[for tax rate reduction under this section]~~. If the state compression percentage is not established by appropriation for a school year, the [The] commissioner shall determine the state compression percentage for each school year based on the percentage by which a district is able to reduce the district's maintenance and operations tax rate for that year, as compared to the district's adopted maintenance and operations tax rate for the 2005 tax year, as a result of state funds appropriated for [distribution under this section for] that year from the property tax relief fund established under Section 403.109, Government Code, or from another funding source available for school district property tax relief.

SECTION 75.14. Effective September 1, 2011, Subsection (a), Section 42.25161, Education Code, is amended to read as follows:

(a) The commissioner shall provide South Texas Independent School District with the amount of state aid necessary to ensure that the district receives an amount of state and local revenue per student in weighted average daily attendance that is at least the percentage specified by Section 42.2516(i) of \$120 greater than the amount the district would have received per student in weighted average daily attendance during the 2009-2010 school year under this chapter, as it existed on January 1, 2009, at a maintenance and operations tax rate equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, provided that the district imposes a maintenance and operations tax at that rate.

SECTION 75.15. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2525 to read as follows:

Sec. 42.2525. ADJUSTMENTS FOR CERTAIN DEPARTMENT OF DEFENSE DISTRICTS. The commissioner is granted the authority to ensure that Department of Defense school districts do not receive more than an eight percent reduction should the federal government reduce appropriations to those schools.

SECTION 75.16. Effective September 1, 2011, Subsections (h) and (i), Section 42.253, Education Code, are amended to read as follows:

(h) If the amount appropriated for the Foundation School Program for the second year of a state fiscal biennium is less than the amount to which school districts are entitled for that year, the commissioner shall certify the amount of the difference to the Legislative Budget Board not later than January 1 of the second year of the state fiscal biennium. The Legislative Budget Board shall propose to the legislature that the certified amount be transferred to the foundation school fund from the economic stabilization fund and appropriated for the purpose of increases in allocations under this subsection. If the legislature fails during the regular session to enact the proposed transfer and appropriation and there are not funds available under Subsection (j), the commissioner shall adjust [reduce] the total amounts due to each school district under this chapter and the total amounts necessary for each school district to comply with the requirements of Chapter 41 [amount of state funds allocated to each district] by an amount determined by applying to each district, including a district receiving funds under Section 42.2516, the same percentage adjustment so that the total amount of the adjustment to all districts [a method under which the application of the same number of cents of increase in tax rate in all districts applied to the taxable value of property of each district, as determined under Subchapter M, Chapter 403, Government Code,] results in an amount [a total levy] equal to the total adjustment necessary. A school district is not entitled to reimbursement in a subsequent fiscal year of the amount resulting from the adjustment authorized by this subsection [reduction. The following fiscal year, a district's entitlement under this section is increased by an amount equal to the reduction made under this subsection].

(i) Not later than March 1 each year, the commissioner shall determine the actual amount of state funds to which each school district is entitled under the allocation formulas in this chapter for the current school year, as adjusted in accordance with Subsection (h), if applicable, and shall compare that amount with the amount of the warrants issued to each district for that year. If the amount of the warrants differs from

the amount to which a district is entitled because of variations in the district's tax rate, student enrollment, or taxable value of property, the commissioner shall adjust the district's entitlement for the next fiscal year accordingly.

SECTION 75.17. Effective September 1, 2017, Subsection (h), Section 42.253, Education Code, is amended to read as follows:

(h) If the amount appropriated for the Foundation School Program for the second year of a state fiscal biennium is less than the amount to which school districts are entitled for that year, the commissioner shall certify the amount of the difference to the Legislative Budget Board not later than January 1 of the second year of the state fiscal biennium. The Legislative Budget Board shall propose to the legislature that the certified amount be transferred to the foundation school fund from the economic stabilization fund and appropriated for the purpose of increases in allocations under this subsection. If the legislature fails during the regular session to enact the proposed transfer and appropriation and there are not funds available under Subsection (j), the commissioner shall adjust ~~reduce~~ the total amounts due to each school district under this chapter and the total amounts necessary for each school district to comply with the requirements of Chapter 41 ~~[amount of state funds allocated to each district]~~ by an amount determined by applying to each district the same percentage adjustment so that the total amount of the adjustment to all districts [a method under which the application of the same number of cents of increase in tax rate in all districts applied to the taxable value of property of each district, as determined under Subchapter M, Chapter 403, Government Code,] results in an amount [a total levy] equal to the total adjustment necessary. A school district is not entitled to reimbursement in a subsequent fiscal year of the amount resulting from the adjustment authorized by this subsection [reduction. The following fiscal year, a district's entitlement under this section is increased by an amount equal to the reduction made under this subsection].

SECTION 75.18. Section 42.258, Education Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) If a school district has received an overallocation of state funds, the agency shall, by withholding from subsequent allocations of state funds for the current or subsequent school year or by requesting and obtaining a refund, recover from the district an amount equal to the overallocation.

(a-1) Notwithstanding Subsection (a), the agency may recover an overallocation of state funds over a period not to exceed the subsequent five school years if the commissioner determines that the overallocation was the result of exceptional circumstances reasonably caused by statutory changes to Chapter 41 or 46 or this chapter and related reporting requirements.

SECTION 75.19. Subsection (b), Section 42.260, Education Code, is amended to read as follows:

(b) For each year, the commissioner shall certify to each school district or participating charter school the amount of [±

~~(+)] additional funds to which the district or school is entitled due to the increase made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, to:~~

(1) [~~(A)]~~ the equalized wealth level under Section 41.002; or

(2) ~~(B)~~ the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302~~;~~ or

~~(2) additional state aid to which the district or school is entitled under Section 42.2513.~~

SECTION 75.20. Section 44.004, Education Code, is amended by adding Subsection (g-1) to read as follows:

(g-1) If the rate calculated under Subsection (c)(5)(A)(ii)(b) decreases after the publication of the notice required by this section, the president is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate.

SECTION 75.21. Subsection (a), Section 26.05, Tax Code, is amended to read as follows:

(a) The governing body of each taxing unit, before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted. The tax rate consists of two components, each of which must be approved separately. The components are:

(1) for a taxing unit other than a school district, the rate that, if applied to the total taxable value, will impose the total amount published under Section 26.04(e)(3)(C), less any amount of additional sales and use tax revenue that will be used to pay debt service, or, for a school district, the rate calculated ~~published~~ under Section 44.004(c)(5)(A)(ii)(b), Education Code; and

(2) the rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the next year.

SECTION 75.22. Effective September 1, 2017, Subsection (i), Section 26.08, Tax Code, is amended to read as follows:

(i) For purposes of this section, the effective maintenance and operations tax rate of a school district is the tax rate that, applied to the current total value for the district, would impose taxes in an amount that, when added to state funds that would be distributed to the district under Chapter 42, Education Code, for the school year beginning in the current tax year using that tax rate, ~~[including state funds that will be distributed to the district in that school year under Section 42.2516, Education Code,]~~ would provide the same amount of state funds distributed under Chapter 42, Education Code, ~~[including state funds distributed under Section 42.2516, Education Code,]~~ and maintenance and operations taxes of the district per student in weighted average daily attendance for that school year that would have been available to the district in the preceding year if the funding elements for Chapters 41 and 42, Education Code, for the current year had been in effect for the preceding year.

SECTION 75.23. Subsection (n), Section 311.013, Tax Code, is amended to read as follows:

(n) This subsection applies only to a school district whose taxable value computed under Section 403.302(d), Government Code, is reduced in accordance with Subdivision (4) of that subsection. In addition to the amount otherwise required to be paid into the tax increment fund, the district shall pay into the fund an amount equal to the amount by which the amount of taxes the district would have been

required to pay into the fund in the current year if the district levied taxes at the rate the district levied in 2005 exceeds the amount the district is otherwise required to pay into the fund in the year of the reduction. This additional amount may not exceed the amount the school district receives in state aid for the current tax year under Section 42.2514, Education Code. The school district shall pay the additional amount after the district receives the state aid to which the district is entitled for the current tax year under Section 42.2514, Education Code.

SECTION 75.24. Effective September 1, 2011, the following provisions of the Education Code are repealed:

- (1) Subsections (c-2), (c-3), and (e), Section 21.402;
- (2) Section 42.008; and
- (3) Subsections (a-1) and (a-2), Section 42.101.

SECTION 75.25. (a) Effective September 1, 2017, the following provisions of the Education Code are repealed:

- (1) Section 41.0041;
- (2) Subsections (b), (b-1), (b-2), (c), (d), (e), (f), (f-1), (f-2), (f-3), and (i), Section 42.2516;
- (3) Section 42.25161;
- (4) Subsection (c), Section 42.2523;
- (5) Subsection (g), Section 42.2524;
- (6) Subsection (c-1), Section 42.253; and
- (7) Section 42.261.

(b) Effective September 1, 2017, Subsections (i-1) and (j), Section 26.08, Tax Code, are repealed.

SECTION 75.26. (a) The speaker of the house of representatives and the lieutenant governor shall establish a joint legislative interim committee to conduct a comprehensive study of the public school finance system in this state.

(b) Not later than January 15, 2013, the committee shall make recommendations to the 83rd Legislature regarding changes to the public school finance system.

(c) The committee is dissolved September 1, 2013.

SECTION 75.27. It is the intent of the legislature, between fiscal year 2014 and fiscal year 2018, to continue to reduce the amount of Additional State Aid For Tax Reduction (ASATR) to which a school district is entitled under Section 42.2516, Education Code, and to increase the basic allotment to which a school district is entitled under Section 42.101, Education Code.

SECTION 75.28. Except as otherwise provided by this Act, the changes in law made by this Act to Chapter 42, Education Code, apply beginning with the 2011-2012 school year.

SECTION 75.29. The change in law made by Subsection (g-1), Section 44.004, Education Code, as added by this Act, applies beginning with adoption of a tax rate for the 2011 tax year.

Explanation: This change is necessary to adjust state aid payments to school districts and open-enrollment charter schools to the level of Foundation School Program appropriations made in H.B. No. 1, Acts of the 82nd Legislature, Regular Session, 2011.

SR 1260 was read and was adopted by the following vote: Yeas 19, Nays 11.

Yeas: Birdwell, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Van de Putte, Wentworth, West, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Jackson, Lucio, Rodriguez, Uresti, Watson, Whitmire, Zaffirini.

Absent: Carona.

REASON FOR VOTE

Senator Van de Putte submitted the following reason for vote on **SR 1260**:

I voted for SR 1260, the resolution to go outside the bounds on SB 1811, because the resolution was necessary to ensure inclusion of a provision I feel strongly should be included in any school finance plan that passes this current Legislature—the provision that caps losses to military school districts should their federal funding be cut drastically (S.B. 1811, CCR, Sec. 42.2525, page 198). Although I still remain opposed to the deep budget cuts in H.B. 1 and the enabling school funding system in S.B. 1811, without the additional provision included in S.B. 1811, the Department of Defense (DoD) school districts would be cut twice—once by federal budget cuts and again by state budget cuts. I therefore supported the resolution that allowed us to protect our DoD schools from even worse devastating cuts.

VAN DE PUTTE

MOTION TO ADOPT CONFERENCE COMMITTEE REPORT ON SENATE BILL 1811

Senator Duncan called from the President's table the Conference Committee Report on **SB 1811**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2011.

Senator Duncan moved to adopt the Conference Committee Report on **SB 1811**.

Senator Davis was recognized and spoke at length against the Conference Committee Report on **SB 1811**.

Question — Shall the Conference Committee Report on **SB 1811** be adopted?

POINT OF ORDER

Senator Whitmire raised a point of order that legislation cannot be considered in the last 24 hours of a legislative session.

POINT OF ORDER RULING

The President ruled that the point of order was well-taken and sustained.

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 3, HB 308, HB 326, HB 351, HB 422, HB 550, HB 590, HB 630, HB 680, HB 811, HB 968, HB 1040, HB 1090, HB 1111, HB 1199, HB 1224, HB 1234, HB 1334, HB 1371, HB 1495, HB 1504, HB 1638, HB 1658, HB 1759, HB 1760,

HB 1768, HB 1821, HB 1904, HB 1907, HB 1960, HB 2004, HB 2015, HB 2017, HB 2102, HB 2169, HB 2172, HB 2203, HB 2207, HB 2265, HB 2277, HB 2284, HB 2313, HB 2408, HB 2449, HB 2592, HB 2594, HB 2596, HB 2655, HB 2662, HB 2663, HB 2717, HB 2903, HB 2909, HB 2947, HB 2999, HB 3002, HB 3111, HB 3133, HB 3278, HB 3333, HB 3771, HB 3819, HB 3827, HB 3828, HB 3845, HCR 1, HCR 84, HCR 167.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

HCR 126 (Wentworth), In memory of the Honorable Edmund Kuempel of Seguin.

HCR 160 (Eltife), In memory of former state representative Dr. Bob Glaze.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 12:07 a.m. Monday, May 30, 2011, adjourned until 10:30 a.m. today.

APPENDIX

BILLS AND RESOLUTIONS ENROLLED

May 28, 2011

SB 81, SB 144, SB 156, SB 223, SB 249, SB 263, SB 313, SB 316, SB 377, SB 563, SB 602, SB 647, SB 773, SB 875, SB 1000, SB 1087, SB 1338, SB 1489, SR 1206, SR 1212, SR 1213, SR 1218, SR 1219, SR 1227, SR 1231, SR 1240, SR 1241, SR 1242, SR 1243, SR 1244, SR 1245, SR 1246

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

SEVENTY-SECOND DAY

(Monday, May 30, 2011)

The Senate met at 10:47 a.m. pursuant to adjournment and was called to order by the President.

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 announced that a quorum of the Senate was present.

The Reverend C. William Mays, Rising Star Missionary Baptist Church, Austin, offered the invocation as follows:

Our Father which is in heaven, we have now come to the close of the legislative session with thanksgiving in our hearts for all that You have allowed us to accomplish. We ask, Father God, that You will bless our efforts. Direct us, O Lord, in all our doings with Your most gracious favor and further us with Your continual help for the future. Now may Your grace abound and Your peace be with us all for ever and ever. In Jesus Christ's name we 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.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Monday, May 30, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 242 (80 Yeas, 61 Nays, 4 Present, not voting)
HB 300 (145 Yeas, 0 Nays, 1 Present, not voting)
HB 335 (139 Yeas, 0 Nays, 2 Present, not voting)
HB 362 (143 Yeas, 1 Nays, 2 Present, not voting)
HB 2093 (121 Yeas, 21 Nays, 4 Present, not voting)
HB 2327 (114 Yeas, 30 Nays, 1 Present, not voting)
HB 2357 (139 Yeas, 6 Nays, 1 Present, not voting)
HB 2608 (144 Yeas, 3 Nays, 1 Present, not voting)
HB 2770 (147 Yeas, 0 Nays, 1 Present, not voting)
HB 3025 (140 Yeas, 0 Nays, 2 Present, not voting)
HB 3275 (86 Yeas, 60 Nays, 1 Present, not voting)
HB 3328 (137 Yeas, 8 Nays, 2 Present, not voting)
HB 3468 (141 Yeas, 1 Nays, 2 Present, not voting)
SB 100 (147 Yeas, 0 Nays, 1 Present, not voting)
SB 293 (146 Yeas, 0 Nays, 1 Present, not voting)
SB 694 (119 Yeas, 21 Nays, 2 Present, not voting)
SB 1010 (147 Yeas, 0 Nays, 1 Present, not voting)
SB 1130 (140 Yeas, 0 Nays, 2 Present, not voting)
SB 1320 (112 Yeas, 15 Nays, 2 Present, not voting)
SB 1543 (140 Yeas, 6 Nays, 1 Present, not voting)
SB 1788 (144 Yeas, 0 Nays, 1 Present, not voting)

THE HOUSE HAS TAKEN THE FOLLOWING OTHER ACTION:

SB 316

The House discharges conferees on SB 316.

SB 1198

The House discharges conferees on SB 1198.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

PHYSICIAN OF THE DAY

Senator Wentworth was recognized and presented Dr. Eugene David Pampe of Dripping Springs as the Physician of the Day.

The Senate welcomed Dr. Pampe and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

ELECTION OF PRESIDENT PRO TEMPORE AD INTERIM EIGHTY-SECOND LEGISLATURE

The President announced that the time had arrived for the election of President Pro Tempore Ad Interim of the 82nd Legislature.

Senator Whitmire placed in nomination the name of Senator Mike Jackson for the office of President Pro Tempore Ad Interim of the 82nd Legislature.

On motion of Senator Eltife and by unanimous consent, the nominating speeches by Senators Whitmire, Fraser, Williams, Shapiro, Carona, and Watson were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Whitmire: Thank you Mr. President. Members, and Senator Jackson's family, and our guests in the gallery this morning, this is the time in the session where we choose one of our colleagues for the position of President Pro Tempore, which is a position that is called for in the instance of our Lieutenant Governor being out of state or not present to govern the Senate. This Senator becomes, essentially, the Lieutenant Governor. Also, that individual, when the Governor leaves the state, becomes our acting Governor. So it's a ceremony this morning where we get to honor one of our colleagues. It is really, really an important position. Certainly, in recent years the President Pro Tempore has acted as our Governor in overseeing executions, that most serious act of state government. They have seen, overseen crises such as hurricane preparation, recovery, forest fires. I could go on, the important position and responsibilities of this position. We all believe it is a real likelihood that during the future months that this position could even be more important than any time in recent history because of the likely aspirations of our Governor Perry and even our own Lieutenant Governor. So while we're going to have fun this morning and honor a very special friend, it's also a very sober process of choosing someone that we're actually going to place the reins and the full responsibilities of the 25 million Texans that look to state government to safeguard them, provide for them, and have access to their state government. It is my honor this morning to place in nomination Senator Mike Jackson. I have all the confidence, his colleagues, all 31 of us, have the confidence that Mike can fulfill the responsibility that he is fixing to be placed in. The greatest honor I could give him as a longtime friend and colleague is that he's a Senator's Senator. Now what I mean by that? It means if someone, students or my constituents or my family said, what do you Senators look for in a Senator? I would point to Mike Jackson, because Mike Jackson is committed to the people of Texas. He has stayed in touch with his district since he became a State Representative in 1999 and later a Senator, a Rep. in '89, a Senator in '99. The neatest thing, as his buddy, I could say is, he hasn't changed a bit. Some could say that's part of the problem, too. But I think it is tremendous. As someone who's been in public office his entire adult life as I have, I've seen them come and go around here. I've seen what the power and the influence and position can do to someone. It has not affected Mike in any negative way. His family knows this, his colleagues know this, his constituents know this. Mike is the

hard working, blue-collar, small business man, family man that he was when he came to Austin in 1999. He's a Senator's Senator because when he gives you his word, you can bet on it. Unfortunately, sometimes people in this forum will tell you they're going to do something, and they change their mind, and they don't tell you. I can poll this floor and come up with what the Members are going to do on a particular piece of legislation, and if I'm not recognized the day that I did my poll, I can place it in my desk, and it doesn't matter how long it stays in my desk, Members, you know that Mike Jackson's still committed to the position that he told you. Mike is a Senator's Senator. Let me tell you something else that I'm proud of Mike about. A lot of time people will ask me about this body, and they'll comment on some of us, what makes people do what they do, what's their personality on the Senate floor, or when they're in committees or campaigning? I'm fond of saying there's workhorses and show horses. Mike Jackson's a workhorse. And that's what we need in this body. We got enough show horses, quite frankly. We need workhorses in state government. Let me tell you about family, most of us really become friends in this body and bond because of our families. Mike's and my children are the same age. So as he became a Senator in '99, I knew him as a House Member, mostly on the golf course, but in '99 we started running together, and our kids were the same age. Sometime after that, he was sharing with me that Michelle was so active in 4-H, and she loved her four young heifers that were now mama cows. But we were having a tremendous drought that year, and Mike being the dad and family person, had these four mama cows in downtown La Porte. I'm surprised the animal cruelty didn't—the bill we passed the other day will probably take care of that situation, although we didn't have large animals. But he had a problem, he's committed to his daughter, the love of his life, to take care of her four mama cows that had become her pets, and he was having to feed them expensive hay, haul it over to a lot there in La Porte. And I said, well, Mike, why don't you let me help you out? We'll just take them over to my farm or ranch over at Brenham. He said, you'd do that? I said, in a heartbeat. So I had my ranch hand go pick up, and, of course, Michelle's concerned, Vickie, the mother and probably the boss of the family, they're worried how I was going to treat those cows. I said, don't worry, Tomas, we got about another hundred, they'll just, they'll fit right in. Now what they didn't tell me after we hauled them to my place in Chappell Hill, is that one of them, large Santa Gertrudis mama cows, one just refused to stay in the pasture. They didn't tell me that, you know, regularly would be jumping the fence. Messes up your entire herd when you have one that is so disruptive. But, you know, that's what friends are for. So my ranch hand would go gather this mama cow, then, but they really didn't tell me is, she liked to fight. So I'm trying to handle criminal justice and legislation over here, and my ranch hand's calling me, "What are we going to do about your best friend's mama cow, because she won't stay in, she's messing up the herd, and I have to act like I'm at a bullfight to get her back in our location?" That's how you become best of friends, and that's how you can go to someone and ask them for a vote on a piece of legislation that they may not want. And I'll say, Mike, remember the cows. In fact, I still got three of them. And of course, Vickie makes sure that when they have a calf, that we get the right prize for their offspring. But let me get back to being a Senator's Senator. In 2001, we had a real difficulty with redistricting, which speaks greatly to Senator Seliger's success this spring. In

2001, Senator Sibley decided that it would be in his party's best interest to go to the Redistricting Board. I think I was probably the senior Senator at that time, senior Democratic Senator at that time. So anybody that thought that I could come out of the redistricting in 2001 was not present. Everyone thought I was doomed. Most of us really didn't want to go to the Redistricting Board. Mike, I've already explained to you, had bonded, we're best of friends. Our kids are best of friends. Vickie is a close friend. And as we approached the deadline of that session, Mike and I most of the time didn't even want to talk about redistricting. I mean, really, it's the hardest thing you have to do, to deal with redistricting, because of the impact it has on your opportunity to continue representing the State of Texas. But let me tell you what Mike did. He knew he had to send it to the Redistricting Board because that was the position of his party and the majority of the Senators using, Senator Patrick, the two-thirds rule to block redistricting and send it to the Redistricting Board, which posed a real dilemma. Right before the end of the session, when it was becoming apparent we were running out of time, my good friend, a colleague, someone that I respect and care for and it's mutual, called me about seven o'clock on a Sunday evening and said, John, where are you? I said, I'm at home. He said, I need to see you, it's important. He said, and we don't have to go in the Capitol, if you'll just pull up, I need to speak to you briefly. Mike, when I got to the east side, was waiting in his pickup. I got in his pickup cab. Mike's not long on words, he said, John, he teared up, said, you know what I've got to do. I hate to do it to you, but I'm going to vote tomorrow, and we're going to send redistricting to the Redistricting Board. And I hate to do it to you because I know probably what the outcome will be. I said, Mike, I don't like it, but I understand. Folks, that's what good government and good friendship is about. He was doing his job for his district, but he cared enough about me to let me know why he was doing it and that he was going to do it. That's what being a State Senator and a part of this body should be all about. Looking out for one another as you represent your district, being honest, being a Senator's Senator, being a workhorse, keeping your word. And that's why I stand up for you this morning in these most challenging times as we go forward. It is my honor and pleasure to present to you and nominate Mike Jackson for President Pro Tempore because if he gets ready to do you in, he'll let you know before he does it. Mr. President, I yield at this time, and I'm excited about the presentation that I just made.

Senator Fraser: Thank you, Governor. I will now also rise to second the nomination of Mike "Landslide" Jackson. I actually, Michael, I've sat here thinking about the potential of what could happen in the next year and a half. And those of us that have done it and kind of know what you're headed into, probably it would've been smart if you asked me to filibuster your nomination. I'm extremely honored to get to do this. And we were sitting here, Michelle was laughing a while ago because I was frantically making notes, and Jackson said, you know, you've known about this for weeks. Then I said, yeah, but the speech I was going to make I threw in the trash, and I'm rewriting because I look over here at people, and I recognize faces, and we've had a pretty interesting journey that we've taken to get to where we're sitting on the Senate, House. Mike and I think, other than family that are here, I think I probably have known him longer than anybody that's in this room, I think. Way back in 1987 when I was being recruited to run for the Texas House, I started hearing stories. I

said, well, who else are you trying to get to run? And they said, well, you know, we got a guy out of Fort Worth named Brimer that we're trying to get to run, and there's a guy in San Antonio, a Wentworth guy, that is down there, that I think is probably going to try to run in a special election. We've got a real crazy guy out in El Paso, Haggerty, that we understand is running. And I said, but we got a real sharp whippersnapper, young businessman, down in La Porte that we feel very, very strongly about. He's got two little kids, got a real good wife, runs a business, and we're real, real high on this guy. So I watched during that period, and we ran, and, interestingly, Mike was running in a Democrat district that was held by a veteran Democrat, probably, realistically, unwinnable. I was running in a district that was held by a veteran Democrat, probably unwinnable, they forgot to tell us that, though. We didn't realize to look it up before we ran. And a combination of husband, wife, kids, family, knocking on doors, we went out, and we were victorious, and we ended up winning. My race was narrow, but it wasn't anything close to "Landslide" Jackson. On election night, I'm setting in my house, we're counting votes, and, obviously, I'm watching mine, but I'm also—that was before computers, so we're on the phone, and we're calling back and forth and asking. And so, I call to headquarters and I said, how's the guy in La Porte doing, how's Jackson doing? And they said, well, it's pretty close, you know, we're not ready to call it yet. And so, we followed it through the night. Next morning they called back in and they said, he squeaked by, he won by 17 votes. And I go, great. Well, within about a day we realized 17 votes might not stand. So Ed Watson, who he was running against, called for a recount, and that recount took, what, another week or so to do. And first recount he loses 5 votes, so he's down to 12 as his margin. And so, we think, well, 12, 12's pretty good, but Ed Watson wasn't through, and Ed Watson challenged again, and there was a second recount. Second recount they found some other ballots that they decided to throw out, and so he loses 5 more, and he's down to 7. So Mike is ahead by 7 votes. They attempt to challenge it. They go ahead and say, well it's certified. Well, everybody agreed with that except Ed Watson. So if Haggerty setting over here on the back, and he, I remember how upsetting it was now, and I can remember it as if it was yesterday. I walk into the Texas House, and I'm setting there, and I noticed there's a lot of, you know, discussion and unrest, and I'm asking, what's going on? I said something about, what's happening? And they said, Watson won't leave. He's refusing to leave his seat and that he's going to force a vote of the House to try to overthrow the election. And I said, what does that mean? And they said, well your first vote's going to be a pretty hard one. And so, I'm sitting there watching it, and I noticed Gib Lewis is up on the stand, and he's, you know, they're going through a lot of discussion, and there's a, I look in the back and Mike is standing on the back wall, on the right side of the wall, leaning against the wall almost at attention, just standing there. Gib Lewis, there's a big, you know, he, I can see that he's made a decision. He come walking down, and then right across from me, right across the aisle, and he walks there, and I can hear the conversation. He come up and he said, Ed, get up, you got beat. Get up, you know you lost the election. Get out of the seat. Go, you know, go ahead and leave the Chamber. So Watson gets up, walks over, walks out the back door, Jackson walks up, sits down in his seat. Gib comes in, gavels in, and we start our career together. The other thing that was really interesting about that is that all of us as

freshmen, that was when we were all in the Capitol, and we got just atrocious offices. The offices were terrible that we had, except Jackson, because he had waited, he got Watson's office, and he had this gigantic office of a veteran Member. We've had so much fun during the years. I've got to watch your kids grow up. The first memory of these two I remember was the Easter egg hunt in 1989. Got rained out, and we had to have the Easter egg hunt inside the Chamber, and had all the kids in there with Governor Clements that was here, and he was there presiding over it. But, we've had some fun through the years, we've had a lot of things that we look back on. I will tell you, Michael, 22 years of us setting here looking at legislation, assuming there was seven to eight thousand bills, you know, filed per year, I would suspect you and I have maybe had, it could be as much as tens of thousands of discussions about bills. And I would suspect, during that period of time, you can count on one hand the number of times we voted differently. You're my oldest friend, for sure, in the Senate, without a doubt one of my most trusted friends. You're a very, very trusted political ally. You're one of the few people that when you and I, like Whitmire, we have a discussion, we talk about it, it always amazes me when we go into setting in committee, which we've done a lot, when I'm trying to decide who, which side is really telling the truth, you have the ability to ask the question that drills down and cuts through all the rhetoric, and it makes it so clear where we need to be. You're a good friend. You're going to be a very, very good President Pro Tem. During this period that you're serving under, assuming, depending on who runs for what, you could pull a Rodney Ellis and end up with your picture on the back wall. So I wish you luck during this period. I will now stand to second the nomination of Mike "Landslide" Jackson.

Senator Williams: Thank you Mr. President. I'm honored to rise and second the nomination for my friend and colleague, Mike Jackson, for President Pro Tempore of the Texas Senate. Now, you've really heard most of what I had to say from Senator Whitmire and Senator Fraser. I loved the story. I like to tease Mike and call him "Landslide" Jackson, too. I didn't come into the House within, during that session, but rather Mike's next. His last session in the Texas House was my first session, and Mike was one of those guys that, he was disarming with his good humor and his almost laconic way of responding to you when you ask him a question. He always had something kind of funny to say about it. But I soon learned that he was a very serious legislator, and he was someone that I could look to for how I wanted to vote if I wanted to be a good conservative and if I wanted to have a good voting record for business. Because he certainly had those things in mind and always had done his homework and knew exactly what the issue was and what needed to be said about it. Now, you know, we've already heard we're lucky to have you here, Mike, because it almost wasn't to be. If they hadn't been able to get Ed to leave, you know, we might not have the benefit of having you serve as President Pro Tem of the Senate. You know, from this exciting start in his political career, Mike has had a very distinguished career, both in the House and since 1999 in the Texas Senate. And the citizens of Texas and, in particular, folks along the Gulf Coast have all benefited from your hard work and your astute political advice along the way. He's loved and respected at home by all of his constituents in the community. But like so many of us, the real secret to his success is not in his business or his political career, it's in who he married. And if you want to know who the force is in Force construction, you look to Vickie Jackson,

right. And so, everybody's smiling and they know that that's the truth. You know, I often joke that people call me Mr. Marsha Williams. Well, that would make you Mr. Vickie Jackson, I think. And so, it's, Vickie has not only loved and supported Mike and his political endeavors, she's made a beautiful home for them, raised two wonderful children, and she's been involved in the Senate Ladies Club and many civic activities back home. Mike and Vickie have been such good friends to Marsha and I during our time in the Legislature. And I can tell you that back in 2002, when I was thinking of running for the Senate and giving up my House seat, I had a pretty dead cinch House seat I knew I could get reelected to, and did I want to roll the dice and run for that Senate seat? And so, Marsha just wasn't sure. My wife was on the bubble, and the person that she called to talk to this about was Vickie Jackson, because she knew that Vickie would tell it like it was, and she knew that Vickie, like Marsha, was involved in the business together, and they not only worked together but were involved in the political career together, and they had been such great friends to us. I can't tell you how much your whole family, your friendship has meant to Marsha and I through the years. Members, it's my great honor and pleasure to second the nomination for Senator Mike Jackson for President Pro Tempore of the Texas Senate. You'll do a great job.

Senator Shapiro: Thank you Mr. President and Members. I rise to second the nomination of my desk mate. What in the world is a desk mate? I have no idea what that is, but that's what he always says to me, my desk mate. I think a desk mate over on the other side is someone that sits right next to you, but then again we have to remember that Mike Jackson was House-trained. I think Mike Jackson is going to be an amazing President Pro Tempore. I think that although he sits in front of me, one of the things that I can honestly tell you is, he's always got my back. And that's an unusual thing to be involved in in this particular body. When we ask ourselves as Senators, what is it that we're looking for, what characteristics, what qualities do we look for in a President Pro Tempore, a person that's going to be the third highest ranking person in this Capitol? We think about a lot of different things and what comes to mind for me, for this current President Pro Tempore, is I think about someone who is knowledgeable. I think about someone who's committed. I think about someone who's courageous. Let me start with knowledgeable. I don't know how many of you realize this, but when we look at issues, Mike Jackson knows all the issues. I know that because we talk about them together every single day when I'm on the floor. This is a man who is always involved in all the issues. He will sit at his desk and study and talk and be sure that all of us recognize what the issues are, and his knowledge expands to all of us, and for that we're very lucky. I would say that of all of us sitting here today, there's a good chance that if we were looking at how often people sit on the floor and spend their time on the floor, Mike Jackson probably spends more time on the Senate floor listening to the debate and the dialogue than just about anybody that I know, save, of course, Senator Zaffirini. I think we look for someone who's committed, as I mentioned earlier. He's always at his desk. He's never wandering the halls. I have never found him to come into the lounge just to lounge around. He does what he needs to do, whether it's a meal or a conversation, and comes right back out on the Senate floor. He's also very courageous. I say he's courageous for a lot of different reasons, but no matter what the issue is, he's got this

conviction and the sense of courage that he's willing to stand up and do what needs to be done when it's time to talk about an issue. Particularly, he's courageous on anything that has anything to do, Senator Duncan, with tobacco. Seems to me that no matter how many times we talk about issues on this floor, and he is knowledgeable, when the word tobacco is in the sentence, he is very courageous, and he will stand up and defend at all costs the issue of tobacco. Always courageous because he's standing alone. He is just about the only person I know that will stand up alone on any tobacco issue in this body. And I'm here to tell you that he is also very witty. For those of you that know him well, you know about his dry wit. For those of you that don't, please make sure that you spend a little quality time with Mike Jackson. He has an amazing, an amazing sense of humor. In fact, each and every day he'll turn his chair around, and he'll start to talk to me, and you would be amazed at all the witty things he says about each and every one of you. Are you embarrassed? I hope so. That is the truth. But I have a philosophy, what happens on the Senate floor, stays on the Senate floor. So none of you can pry those witticisms out from me because I am not going to reveal what his innermost thoughts are, I assure you. So as we select the President Pro Tempore for this 83rd, nope, nope, nope, interim close, what we will be doing is we will be putting a man in office that I believe has all those qualities that we admire, that we care most about. And I want to make sure that we realize that we are going to put into office a man who, I believe, and you've heard it from several other people, who's word is his bond, who believes that he is here with a conviction and purpose and a rationale for why we do, sometimes, the very difficult work that we do in the Texas Senate. But more than anything else, what I want you to remember is, this is a man who has your back no matter where you sit on the Senate floor. Mike Jackson has your back. And so, with that, Mr. President, I am proud and honored to be able to stand here and second the nomination of our friend, Mike Jackson, for President Pro Tempore of the Texas Senate.

Senator Carona: Members, as I begin, I will remind you there are celebratory mustaches for those of you inclined to place one on today in recognition of this gentleman that we are about to honor, my good friend, Mike Jackson. So I stand to second the nomination of Mike Jackson as President Pro Tempore. But, Members, I'd like to talk to you for just a few minutes about my friend, Mike Jackson. In preparation for these remarks I asked fellow staff members and friends and others for stories about Mike that I could share with the body. And I have to tell you I got a similar response from almost all of them: Not on the Senate floor. But don't worry, because I always have a few in my back pocket that I've been waiting just for this opportunity to share. Now I know that every interim and every session we appoint a new President Pro Tem, but, Members, I have to tell you, for some time now, I've been looking forward to Mike's term. If you have to spend any time on the floor, you know how Mike likes to announce from his chair, Members, my desk is clear. And although he's never been in the President's chair during one of these pronouncements, and it's usually long before we actually get to adjourn, I've been heeding his word for some time now and have taken it as my cue to leave. So I'll be glad for this to be official for final, if for once, once along the way. Senator, I encourage you to continue this grand tradition. It's enabled me to be at Ruth's Chris hours before the rest of you. So, thank you. It's this humor of Mike's that has made him such a good friend and a

good colleague. I recall a session or two, Senator Wentworth introduced a bill which required drivers to turn on their headlights if their windshield wipers were in use. Well, when the bill went to the floor, Senator Jackson, without missing a beat, politely asked the author of the bill if his windshield wipers were on intermittently, would he be required to flash his headlights, too? That's Mike Jackson. Mike always has a way of getting to the heart of the issue. It was just a week or two ago, on the floor, I was listening to the debate between Senator Hegar and Senator Fraser, actually, on Senate Bill, I'm sorry, on House Bill 725, it was the omnibus water bill, as I recall. And as I sat here listening, they were using terms like firm water, interruptible water, trigger levels, projected demand, and drought contingency manners, and somehow they managed to compare the whole thing to apples and oranges. And yet, I haven't had the pleasure of serving on Natural Resources, Mr. President, not that I'm asking you for that pleasure at this time, but as an outsider, this insider baseball, as Senator Hegar called it, was really somewhat exhausting. So I found respite in the lounge where Mike and I spoke for a few minutes about the discussion on the floor, and I mentioned that I was not familiar with all of the water terminology, since I had never served on Natural Resources, and some of the issues that surrounded the discussion with House Bill 725. But in a single sentence, Mike was able to break down the issue so someone like myself could understand. What he said was this, he said, well, basically, Senator Hegar is trying to protect the aquifers and Senator Fraser's just trying to make sure there's enough water in the lake for his jet skis. And that pretty well explained it. Suddenly, I understood exactly what they were talking about. Well, it, this job comes with a lot of pressure, and one comes to truly appreciate those like Mike that can have a good attitude about all of it. Even during a difficult session like this one, Mike has kept his lighthearted manner. You might've noticed that several of the bills we've heard on the floor in the past session would typically have gone to the Local and Uncontested Calendar, and you might've spent all session blaming Senator Ogden for bringing some of these bills onto the floor. But I have to tell you, I think the culprit might, in fact, be Mike Jackson. And let me tell you why. There is nobody on this floor that has taken greater pleasure than to question Members on such issues as eyelash extensions, manure, noodling. In fact, thanks to Senator Jackson's scrutiny, Senator Deuell's noodling bill has received a lot more attention than any of the major bills I tried to carry this session. But in the spirit of fairness, I'd like to take time to highlight a few of Senator Jackson's bills for the session because I want you to know what a focused man he is. For example there was Senate Bill 252, related to the management, breeding, and destruction of deer and to procedures regarding certain deer permits, not to forget Senate Bill 498 of Senator Jackson, relating to the trapping and transport of surplus white-tailed deer. But, of course, that's not enough, Senate Bill 499, relating to the identification of breeder deer by microchips. Well, I could go on and on but, frankly, it'd be pretty repetitive. In addition to hunting, Mike enjoys riding his motorcycle, and I know that he shared this hobby on occasion with Senator Watson. While I've never had the pleasure to take one of these rides with Senator Jackson, at the end of the last Regular Session, he presented me with a gift of a helmet inscribed with my Senate District number for the work that we had done on the Transportation Committee together. And I treasure that gift and that personal touch to which Mike Jackson brings to all of his friendships and all of his work. Senator

Jackson's also a champion for his constituents. He's always concerned about how legislation will affect them, and he has his finger on the pulse of his district. And judging by his questions, frankly, I think everybody in his district drives a pickup truck and lives at the beach. I can tell you with certainty he has vetted these issues thoroughly. Truly though, one of my favorite stories about Mike is that, is really what happened after the very storm of Hurricane Ike, 2008. Much of Mike's district was devastated. And many of you know Mike's own home was destroyed during that time, and he lived temporarily in a trailer, I believe out in front of your house, while they were rebuilding his home. He was also in the middle of an election, only eight weeks out, and, frankly, he could've been very focused on himself, his campaign, the circumstance of his, of his own home, but he wasn't. Instead he went right out into the community, and he began helping people rebuild that community. And for that very commitment to his community, he's been awarded by numerous groups, recognized, and it's that, I believe, commitment to his community that has assured his reelection. There's one more quality I'd like to highlight about my friend and his perseverance. Mike Jackson is a man of perseverance. When Mike is passionate about an issue, he truly sticks to his guns. I could give you a few examples. Well, red-light cameras would be one, but we're not going to talk about that. But what I will tell you is I'd like to highlight his work on the Texas Windstorm Insurance Association because as a coastal legislator and a veteran Member of the Committee on Business and Commerce, Senator Jackson has truly been an asset to myself, to the entire Committee, as we worked through all of the issues surrounding TWIA. His stance has not been partisan but rather it's been one of personal experience, someone who understands the issues of the coast and seeks the best possible resolution for his constituents. And that means a great deal, I think, to all of us. And although this has been a difficult issue, he has risen to the occasion. Not too long ago, when we were hearing matters of TWIA at one of our Committee hearings in the extension auditorium, he gave what—Mike, I'm very serious about this—he gave what amounts to one of the most elegant and articulate speeches that I've ever heard any of us give in this Chamber. And I really, I was really impressed by it. I went back to the archives to listen to it again, and, unfortunate, Mike, as it turns out the, as you would expect, the microphone was off. We even went on to the video to check that, and all you can hear is a dull hum, and, frankly, that could've been Senator Harris. So we really, I will tell you this, I really, I heard that speech, I was there that day, and I mean what I say, your passion and your expertise on the issue couldn't have come through any clearer. And, frankly, it's for those reasons that I'm recommending to the Governor and the Lieutenant Governor that you handle TWIA during the Special Session. Members, with that, my desk is clear.

Senator Watson: Thank you very much, Mr. President. I am really happy to have the opportunity to second the nomination of Mike Jackson to be President Pro Tem of the Senate, and let me start off by addressing the family, loved ones, and friends. I am not related to Ed Watson. You know, I only first met Senator Jackson about four years ago, little over four years ago now, but I feel like I've known him forever. I sort of feel like I grew up with Mike Jackson. Jackson makes us all feel like that. He's the kind of guy that makes you feel like you're always with one of your old friends. He's the sort of guy who's kind but not obnoxious, generous but not obvious, and confident but not

arrogant. The sort of strong, solid person who makes you feel better so that you always look forward to seeing. He's happy, quick with that smile, and as ready to take a joke as to dish it out, and you can disagree with Mike Jackson. And I will say that from my perspective, he's very, very wrong about many, many things. He's unique in this building. In fact, he's unique in any building, or anywhere, for that matter. Personally, as Senator Carona just talked about, some of my favorite times with Mike have been talking about motorcycles and riding them. A few weeks back, the Senator and I took our motorcycles, and we went out into the Hill Country. Picture Peter Fonda and Dennis Hopper. Imagine Steppenwolf music blaring as we took off. Now, I'm a relatively new rider and I'm really proud of my bike, quite proud of my bike. But compared to Jackson's, it's sort of, well, let's just say it's smaller, and he's been very gracious about how he addresses that. But anyway, we were out in the Hill Country, he was Easy Rider, I was cheesy rider. Born to be wild versus born to be mild. We rode off to Llano to eat at Cooper's. We drove the Willow City Loop. We stopped at Harry's on the Loop. We went through Johnson City, and then we came on home. And he's totally at ease, as comfortable out on the road as he is in this Chamber, and, as you might expect, he was happy. But I can't really imagine him any other way. While we were eating ribs and sausage out there in Llano, he told me the funny story that Senator Fraser just brought up and we've referred to about his first election. He also told me, as a newcomer to riding motorcycles, about all of his years riding on motorcycles. For example, he told me the story about when he was back in college, every summer he'd travel up to Washington state and go mountain climbing. He would go to Washington state to mountain climb, and, of course, looking over there at him, so full of life and, obviously, fleet of foot, I mean, I'm sure he was a great mountain climber. But he and some of his friends would go up there and they would work days at the Green Giant cannery. His job was canning green beans. A life experience that we can only assume provided the foundation for his astonishingly consistent disgust with all legislation that can be considered green in any way. He and his buddies would work to save enough dough to spend the rest of the summer on the mountain, mostly Mount Rainier. Anyway, he told me about how one trip he decided to ride his motorcycle all the way out there. It was on, as he described it, one of those old, boxy Honda 750s. He had all of his possessions in a backpack. It was such an unpleasant experience that he tried everything he could to get that bike back to Texas without actually having to ride it. But he didn't have the money to get both the bike and himself back to Texas, other than crawling back in the saddle and just pointing it south. That was also a foundational experience for Mike Jackson. This is a man who found that he would never again ride anything small. He will now only ride the big bikes like his Harley Road King. Riding with Senator Jackson, obviously, left me with a lot of good memories, and I look forward to a lot of future road trips. But my favorite image of him on that trip was out on 290 as we were coming back into Austin. He'd blown past me on that big dude, and I'm pedaling as fast as I can behind him. Traffic is whizzing past us. I'm worried about the wind blowing me off the road. My right hand has become numb from the number of miles we've ridden that day, and, of course, he keeps telling me how you need to get a cruise control. I'm hunkered down, quietly praying I'll survive. And I look up ahead, and there he is throwing both of his arms out to the side, no hands. A happy man, totally

comfortable. Mike, I'm very happy you are my friend. And congratulations to you on this wonderful honor. Mr. President, I proudly second the nomination of Senator Mike Jackson to be the President Pro Tempore of the Texas Senate.

President: Thank you Senator Watson. Members, the question before us, boy, y'all look good in those mustaches.

On motion of Senator Whitmire, Senator Jackson was elected President Pro Tempore Ad Interim by acclamation.

The President declared that the Honorable Mike Jackson had been duly elected President Pro Tempore Ad Interim of the 82nd Legislature.

The President appointed the following committee to escort Senator Jackson, his wife, Vickie, son, Vic, and daughter, Michelle, to the President's Rostrum: Senators Huffman, Nelson, Wentworth, and Zaffirini.

Senator Jackson and his party were then escorted to the President's Rostrum by the committee.

OATH OF OFFICE ADMINISTERED

The President administered the Oath of Office to Senator Jackson as follows:

I, Mike Jackson, do solemnly swear, that I will faithfully execute the duties of the office of President Pro Tempore Ad Interim of the Senate of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this state, so help me God.

ADDRESS BY PRESIDENT PRO TEMPORE AD INTERIM

President Pro Tempore Ad Interim Jackson addressed the Senate as follows:

Thank you. Wow. What an honor. I really appreciate all of the things that everybody has had to say here today. I want to say thank you to all of you who had to study hard and probably embellish quite a bit in order to say so many nice things about me, and then, of course, my family. You honor me, you honor my family, you honor my friends by this honor today. I am very, very humbled. I must say thanks to Vickie, my wife of, well, almost 28 years. Without her help and her encouragement and her tenacity, and, Senator Whitmire, I think you had it about right about who's the boss, but I would certainly not be here today without their help. My son, Vic, and my daughter, Michelle, who are up with me, of which I am so proud, they grew up, as you heard, during my tenure as serving in the House and through the Senate. And, Senator Fraser, you know the same thing, your kids, that's the life that they know and they get subjected to. But, Vic was four years old when we first ran for office, and I don't know if any of y'all got very close to him, but he grew up. Michelle was two, and I remember Vickie pushing her around in a stroller when we were going around knocking on doors and campaigning. And, you know, they're just two of the finest kids you'd ever want to see. And Vickie and I now always think that we must've been just about the world's best parents because our two kids were lucky enough to

go through high school and graduate. They both went to universities here in Texas, in the state, and graduated, and they loved it so much they just came right back home after that. So it's got to be, it's got to be what it is. I wish, one thing I really do wish is that my mother and father were still here for today's activities or were still with us. I'm pretty sure they would've been quite amazed and would've never dreamt that one day I would be up here as the President Pro Tempore of the Senate. It's quite an honor. I know they're probably looking down today on us, and with a smile. But I also want to acknowledge my family and my friends that are here today, and I thank them for all of their support for all of the years I had. My two sisters, Kathy and Karen, are right here, Kathy's husband, Bill. We've got Vickie's sister, Patricia, and her husband, Sadegh, the Davari family, and Vickie's mom, Marjorie. A lot of you have probably, have met over the years as we have traveled together sometime in the summer. And I couldn't be functional around this place, as you all well know, without the staff of people that we have here that are so loyal and dedicated and help us and make us look good. They don't help us, they make us look good because we probably have enough things that we do that we shouldn't do that they kind of turn us around on, but my chief of staff is Holly Deshields, right here, Beth Shields. I've got Riley Stinnett, Jason Damen, Jenna Dailey, Judy Brooks. Thank all of you for all of your hard work, not to mention our staff that is back in the district taking care of business when we're up here doing that. I would be remiss if I didn't say thanks to Lieutenant Governor David Dewhurst for trusting in me and appointing me Chairman of the Economic Development Committee. David Dewhurst, I really do appreciate your leadership, your talent that you exhibit here, and it's great for, I'm proud to call you my friend, I really appreciate your help. You know, economic development, it's kind of a touchy subject this session when we have no money. One of the things that I think has made Texas great over the past ten years where a lot of other states have faltered, is that we have invested a lot of time and effort in economic development and setting up an environment in our state where businesses want to move to and do business in the State of Texas, and we're all a lot better off for it. So I also have to mention about my colleagues in the Senate, this is one of the most talented group of individuals that I have ever been around. And I hate to start naming names because each and every one of you possess skills that work together. When you combine all those skills, we are able to achieve some monumental things. Senator Whitmire, one of the most, well, one of those discussions I remember the most the other day were when you and Senator West were debating on a criminal justice bill on the floor and Senator Ellis, maybe, and you're right there too, you guys can put a face on an issue more clearly than anybody I've ever seen. You say, what do all these words mean? Well, you know, you can just turn it around and relate it to somebody trying to go to work, has a problem, and you're expert at it. Senator Whitmire, I don't know how you do it but you're able to put a lid on a pot of boiling water before it all spills out and blows up. Somehow through your talents that you possess as Dean of this

Senate, because we have had several times, as all you Members know, some very contentious issues that we need to try to resolve, and Senator Whitmire is one that kind of keeps us all in line, so we appreciate that. Senator Shapiro, Senator Fraser, Senator Duncan, I think the Lieutenant Governor would agree with me, Senator Duncan is the negotiator premier of the Texas Senate. He can make the two sides of an issue that is so far apart come together more quickly than anybody I've ever seen. Senator Williams, Senator Carona, thank all of you for all of your hard work. Without you we wouldn't have gotten as far as we got this session with all of the issues that we had there. Senator Carona brought a whole new meaning to the Business and Commerce Committee this year. I think I served on that Committee for about four or five terms, and four or five sessions, and he brought a new meaning to, heck yeah, I'll hear your bill, we may not pass it, but we'll sure hear it. We had more bills in the Business and Commerce than ever before. But, Senator Shapiro, your expertise on education is kind of, you've been our guiding light through this process. Senator Ogden, with his talents on the budget and finance. Senator Eltife, somebody said I had a, I had a good humor. Well, I think Senator Eltife's going to win that, he'll win that award because he just makes every day to be around him fun. It's truly amazing, an amazing place. The responsibility as serving as President Pro Tem is truly humbling. According to research by our great Secretary of the Senate, the lovely Ms. Patsy Spaw, I will be Texas' two hundred and sixty-third President Pro Tempore. As it's outlined in our Constitution, the Senate shall, at the beginning and the close of each session, and at such other times as may be necessary, elect one of its Members President Pro Tempore, who shall perform the duties of the Lieutenant Governor in any case of absence or temporary disability of that officer. When the Governor and the Lieutenant Governor are both out of the state or unable to perform their duties, the President Pro Tempore of the Senate acts as a temporary Governor. So as Senator Whitmire alluded to a little bit ago, this is a day of celebration, ceremony, but there's definitely a far more serious side of this office, and I've just, yesterday, been briefed on an upcoming execution scheduled sometime in the month of June, middle part of June. And it's possible that day that both Lieutenant Governor Dewhurst and Governor Perry may be out of the state, and in case of their absence it would be my responsibility to oversee the sobering logistics of such an event. And I tell you what, Members, it makes you think about it. Senator Ellis was sharing with me earlier some of the activities and actions he had to take back when he was President Pro Tem, and it's a big responsibility. So trust me when I say I treat this office with high regard. The history books are filled with amazing examples of others who have served in this capacity before me. Over 165 years ago, the first President Pro Tem was Edward Burleson, who served the First through the Fourth Legislatures. His service ended only with his death from pneumonia. Hopefully, that won't follow through with this. But Burleson was a hero of the Texas revolution and he served as the first Vice President of the Republic of Texas, and he was elected to the

Texas Senate after Texas achieved its statehood. And, Senator Zaffirini, Margie E. Neal was the first woman to serve as a Senator in Texas, and during the late 1920s and '30s, the first woman to serve as President Pro Tempore. Senator Ellis, I know one that you revere and hold closely, as we all do, Barbara Jordan became the first African American woman to be elected President Pro Tempore in 1972. There's a lot of history that goes with this office. For more than 55 years now, the Senate has had the tradition of swearing in the President Pro Tempore as Governor for a Day, and this is a tradition that I do plan to uphold during either the spring or the fall of next year, year 2012. Members, our work with TWIA is unfinished, Senator Carona, as you referred to. We haven't passed a congressional redistricting map. And now, after last night, we have some other financial issues that we probably have to deal with. I don't know where we will end up exactly in dealing with that, that'll be Governor Perry and Governor Dewhurst, and I'm sure Speaker Straus' conversation about those. I was going to say be very, very careful on your way home either tonight or in the morning when you leave, but I'm not so sure we're going to be leaving anymore. But Texans are engaging more in state government than ever before, in my observation, and I want to tell all of you that when we go home to keep your ears to the ground and your eyes open and just remember that this building, this Capitol, is the people's Capitol, and we need to take care and serve the people of this great State of Texas. And let us not forget that today is Memorial Day. The most important thing about today is Memorial Day, and we think about families who have members of their family have given the ultimate sacrifice. I want to thank you for this honor. It's truly humbling for me. You make me very, very proud, and I will endeavor to return this favor to you as we go home and back to our districts. Texas is a great, great state, and all I can say is God bless all of you Members for everything that you do in taking care of the state, and may God bless the State of Texas. Thank you very much.

VIDEO RELEASE POLICY WAIVED

On motion of Senator Eltife and by unanimous consent, the Senate policy that governs the release of recordings of the Senate proceedings was waived in order to grant the request of Senator Jackson for a DVD of today's session.

RECESS

On motion of Senator Whitmire, the Senate at 12:00 p.m. recessed until 2:30 p.m. today.

AFTER RECESS

The Senate met at 3:16 p.m. and was called to order by the President.

SENATE RESOLUTION 1264

Senator Eltife offered the following resolution:

WHEREAS, It is a pleasure for the Texas Senate to honor a respected longtime staff member, Scott Caffey, by naming him the 2011 administrative recipient of the Betty King Public Service Award; and

WHEREAS, The Committee Coordinator for the Senate, Scott Caffey has served the Senate with honor and distinction for 18 years and 11 months; over the course of his career, he has handled his responsibilities with dedication and skill, and he is held in high regard by the legislators and the many Capitol staff members with whom he works; and

WHEREAS, Scott joined the Senate staff in 1992 and worked for Senator Zaffirini with the Human Services Committee; in 2001, he joined the staff of Senator Moncrief and served with the Health and Human Services Committee; Scott became the Committee Coordinator in January of 2003; in that capacity, he assists committee clerks with the preparation of hearing notices, committee reports, and meeting arrangements; he also is responsible for scheduling and posting all legislative committee hearings during sessions and interims; and

WHEREAS, In addition, Scott is in charge of the public use of the Senate chamber and committee rooms and is responsible for coordinating the services of a sign language interpreter when needed for committee hearings or other Senate-related activities; and

WHEREAS, Widely admired for his organizational skills and efficiency, Scott plays a major role in helping to keep the Senate committee procedures running smoothly, and due to his imperturbable attitude and thorough understanding of the legislative process and what is needed for timely scheduling, he has become an invaluable asset to the Senate; and

WHEREAS, A role model for anyone in public service, Scott is known for his wry humor, his professionalism, and his ability to accomplish whatever mission is set before him; his high standards and commitment to excellence represent the finest qualities of this institution; and

WHEREAS, He is highly respected for his dedication, his loyalty, and his positive attitude, and he is most deserving of his selection for the Betty King Public Service Award; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby extend sincere appreciation to Scott Caffey for his outstanding service to the Texas Senate and congratulations to him on earning a 2011 Betty King Public Service Award; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as an expression of esteem from the Texas Senate.

SR 1264 was read and was adopted without objection.

SENATE RESOLUTION 1265

Senator Eltife offered the following resolution:

WHEREAS, It is a pleasure for the Texas Senate to honor a beloved and respected longtime staff member, Reta Cooke, by naming her a 2011 legislative recipient of the Betty King Public Service Award; and

WHEREAS, The Executive Assistant in the office of Senator Tommy Williams, Reta is known for handling her multifaceted duties with enthusiasm, dedication, and efficiency, and she is cherished by legislators and by her colleagues for treating all who walk the Capitol halls with unfailing courtesy, warmth, and graciousness; and

WHEREAS, After working in the House of Representatives for 19 years, Reta joined the Senate as part of Senator Williams's staff in January of 2003 and has served with distinction in his office for over eight years; as the senator's Executive Assistant, she holds a position that entails a wide range of responsibilities and puts her in daily contact with the public; and

WHEREAS, Talented and resourceful, she has a well-established reputation for carrying out her duties in a flawless manner; she performs highly responsible administrative work and is known for using her initiative to handle the complex work in the office and for her reliable judgment; and

WHEREAS, An exemplary Senate employee, Reta is noted for her poise, her cheerful spirit, and her ready smile, and her ability to maintain composure, even in the midst of chaos, endears her to all who know and work with her; and

WHEREAS, Reta has now served the state for 27 years and four months; she is a valuable team leader who is highly respected for her loyalty, integrity, and professionalism, and she is most deserving of her selection for the Betty King Public Service Award; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby extend sincere appreciation to Reta Cooke for her commendable service to the Texas Senate and congratulations to her on earning a 2011 Betty King Public Service Award; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her as an expression of esteem from the Texas Senate.

SR 1265 was read and was adopted without objection.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Monday, May 30, 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 180 Hughes

In memory of Angus McSwain, dean emeritus of Baylor Law School.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Monday, May 30, 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:

HCR 174 Truitt
Instructing the enrolling clerk of the house to make corrections in H.B. No. 1422.

HCR 177 Veasey
Instructing the enrolling clerk of the senate to make corrections in S.B. No. 167.

HCR 181 Zedler
Instructing the enrolling clerk of the house to make corrections in H.B. No. 2329.

HCR 182 Hartnett
Instructing the enrolling clerk of the house to make corrections in S.B. No. 1198.

SCR 60 Hinojosa
Instructing the enrolling clerk of the senate to make corrections in S.B. No. 1420.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RESOLUTION 1266

Senator Eltife offered the following resolution:

WHEREAS, It is a pleasure for the Texas Senate to pay tribute to a cherished and highly valued longtime staff member, Pat Kelly, by naming her a 2011 legislative recipient of the Betty King Public Service Award; and

WHEREAS, The Deputy Chief of Staff in the office of Senator Jeff Wentworth, Pat is widely regarded for her managerial efficiency and the dedication with which she approaches her tasks, no matter the challenges they entail; and

WHEREAS, Pat has loyally served the Senate for eight years and 11 months; she became a member of the Senate staff in 1996 and worked in the Human Resources office; she joined the staff of Senator Zaffirini in 1997, where she served until 2000; Pat joined Senator Wentworth's office in November of 2005, and as the senator's Deputy Chief of Staff, she holds a position that involves multiple responsibilities, all of which she faces with enthusiasm and handles with proficiency; and

WHEREAS, Respected and well liked by legislators and her co-workers, she plays an important role in helping to meet the needs of constituents and to address their concerns; she brings insight and experience and a thorough understanding of

policy issues to her position and helps to shepherd bills through the legislative process; along with a staff of legislative aides, she replies to the many questions on the various political issues that are typically directed to a senator's office; and

WHEREAS, A first-rate team leader with superior organizational skills, Pat is a model Senate employee who is noted for her convivial personality and the high standards she

consistently upholds, and she is truly a treasured asset to the Senate staff; and

WHEREAS, Respected and admired for her loyalty and for her commitment to excellence in all of her endeavors, Pat is most deserving of her selection for the Betty King Public Service Award; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby extend sincere appreciation to Pat Kelly for her valuable service to the Texas Senate and congratulations to her on earning a 2011 Betty King Public Service Award; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her as an expression of esteem from the Texas Senate.

SR 1266 was read and was adopted without objection.

HOUSE CONCURRENT RESOLUTION 71

The President laid before the Senate the following resolution:

HCR 71, Conferring the Texas Legislative Medal of Honor on U.S. Marine Corporal Roy Cisneros of San Antonio.

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.

REMARKS ORDERED PRINTED

On motion of Senator Patrick and by unanimous consent, his remarks regarding Officer Kevin Will of Harris County were ordered reduced to writing and printed in the *Senate Journal* as follows:

Members, if I could have you take your seats. It is with a heavy heart I stand today. Senator Van de Putte was on this floor just yesterday. A police officer in San Antonio was gunned down. I lost an officer from Senate District No. 7 overnight, a night and a half ago. His name was Kevin Will. He was 38 years old, and I've been thinking about this, really, since it happened. Your heart breaks for the family. He has a six year old, he has a ten year old, and his wife is six months pregnant. Kevin, 38, had worked on a unit that investigates accidents, and at 3:15 in the morning, in Senator Whitmire's district, up on the North Loop, even though there were barricades around the accident scene, even though there were police cruisers with lights flashing around the accident scene, police have arrested a man, the alleged driver, who barreled through those barrels. And as Officer Will

stood there taking witness testimony, he had a moment to either save his life or the life of the person, the citizen he was taking facts from. And he shouted to the witness, "Get out of the way!" And in that split second that he waited there for a moment, even though he saw the car barreling towards him, the citizen was saved, but the officer was run down by an alleged drunken driver who now police say was in this country illegally. When are we in this nation and when are we in this state going to take the issue of driving while drunk seriously? Texas leads the nation in drunk driving. Harris County leads Texas. And when are we going to secure our border? Kevin Will should be at home today with his two children and his pregnant wife. He celebrated one year that morning on this detail and joked with his officers at morning call, was he now a veteran? We need to make driving while drinking a zero tolerance policy in this state. And, obviously, we need to secure our borders. Kevin Will should be alive today and his family should be rejoicing his one year on this unit. So I hope the next time that we take a tough vote on these types of issues, we remember Kevin Will and all of the other people in the State of Texas who have been mowed down, their life taken from them by a drunk driver, whether they are a citizen or a noncitizen. It is time we in this Legislature stand tall in the name of Kevin and everyone else. Kevin was a hero, the last thing he did to serve the citizens of Houston was to save a citizen. And I ask that you keep his family in your prayers, and I ask the Dean that we close in memory of Kevin Will, an officer who gave the total sacrifice for the citizens of Houston.

HOUSE CONCURRENT RESOLUTION 180

The President laid before the Senate the following resolution:

HCR 180, In memory of Angus McSwain, dean emeritus of Baylor Law School.

WATSON

The resolution was read.

On motion of Senator Watson, the resolution was considered immediately and was adopted by a rising vote of the Senate.

In honor of the memory of Angus McSwain, the text of the resolution is printed at the end of today's *Senate Journal*.

HOUSE CONCURRENT RESOLUTION 181

The President laid before the Senate the following resolution:

WHEREAS, House Bill No. 2329 has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains typographical 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 house be instructed to make the following corrections:

(1) In the first sentence of added Subsection (a), Article 7B.08, Code of Criminal Procedure (DURATION OF POST-TRIAL PROTECTIVE ORDER), strike "7B.03" and substitute "7B.04".

(2) In the first sentence of added Subsection (b), Article 7B.08, Code of Criminal Procedure (DURATION OF POST-TRIAL PROTECTIVE ORDER), strike "7B.03" and substitute "7B.04".

VAN DE PUTTE

HCR 181 was read.

On motion of Senator Van de Putte, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Monday, May 30, 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:

HCR 2 Branch
In memory of former governor William P. "Bill" Clements.

HCR 15 Gallego
In memory of John R. Boettiger, Jr., of Houston.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

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:

SB 28, SB 40, SB 89, SB 158, SB 316, SB 341, SB 408, SB 472, SB 516, SB 542, SB 602, SB 652, SB 747, SB 1000 (Signed subject to Sec. 49-a, Art. III, Texas Constitution), **SB 1087, SB 1134, SB 1331, SB 1534, SB 1588, SB 1600, SB 1664, HB 9, HB 51, HB 90, HB 167, HB 200, HB 218, HB 232, HB 242, HB 290, HB 300, HB 335, HB 362, HB 411, HB 414, HB 628, HB 736, HB 742, HB 753, HB 871, HB 971, HB 992, HB 1000** (Signed subject to Sec. 49-a, Art. III, Texas Constitution), **HB 1043, HB 1103, HB 1112, HB 1173, HB 1178, HB 1206, HB 1228, HB 1244, HB 1286, HB 1335, HB 1400, HB 1413, HB 1451, HB 1496, HB 1517, HB 1541, HB 1616, HB 1646, HB 1711, HB 1720, HB 1728, HB 1732, HB 1754, HB 1781, HB 1788, HB 1951, HB 2048, HB 2089, HB 2093, HB 2154,**

HB 2194, HB 2226, HB 2327, HB 2337, HB 2357, HB 2367, HB 3109, HB 3268, HB 3302, HB 3395, HB 3396, HB 3409, HB 3453, HB 3468, HB 3577, HB 3691, HB 3708, HB 3804, HB 3841, HB 3859, HCR 126, HCR 144, HCR 160, HCR 166, HCR 172, HCR 173, HCR 176.

HOUSE CONCURRENT RESOLUTION 174

The President laid before the Senate the following resolution:

WHEREAS, House Bill No. 1422 has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

WHEREAS, The bill contains a technical error that should be corrected; now, therefore, be it

RESOLVED, by the 82nd Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to correct House Bill No. 1422 in amended Section 501.092(a), Transportation Code, by striking "Section 502.0925" and substituting "Section 501.0925".

WATSON

HCR 174 was read.

On motion of Senator Watson, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

HOUSE CONCURRENT RESOLUTION 182

The President laid before the Senate the following resolution:

WHEREAS, Senate Bill No. 1198 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 make the following corrections:

(1) In the recital to SECTION 1.40 of the bill (house committee report, page 59, lines 18 and 19), strike "Subsection (i), Section 25.0022, Government Code, is amended" and substitute "Section 25.0022, Government Code, is amended by amending Subsection (i) and adding Subsection (t-1)".

(2) Between SECTIONS 1.40 and 1.41 of the bill (house committee report, page 59 between lines 23 and 24), insert the following and renumber subsequent SECTIONS in Article 1 of the bill accordingly:

(t-1) The service requirement in Subsection (t)(4) is 72 months instead of 96 months.

SECTION 1.40A. 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.

(3) In SECTION 2.53 of the bill (house committee report, page 136, line 14), strike "352.003" and substitute "255.201".

RODRIGUEZ

HCR 182 was read.

On motion of Senator Rodriguez, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

HOUSE CONCURRENT RESOLUTION 169

The President laid before the Senate the following resolution:

WHEREAS, House Bill No. 3833 has been adopted by the house of representatives and the senate 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 house of representatives be instructed to correct House Bill No. 3833 as follows:

(1) In added Section 15.111(3)(C), Family Code, strike "15.107(b)" and substitute "15.107".

(2) In added Section 15.112(a)(1), Family Code, strike "77.0021(b)" and substitute "71.0021(b)".

HARRIS

HCR 169 was read.

On motion of Senator Harris, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

SENATE RULES SUSPENDED

Senator Birdwell moved to suspend all necessary rules to take up for consideration **HCR 83** at this time.

The motion prevailed without objection.

HOUSE CONCURRENT RESOLUTION 83

The President laid before the Senate the following resolution:

WHEREAS, Texas is widely known for its excellent recreational activities and vacation destinations, and among the state's most unspoiled and inviting getaways is the picturesque Lake Whitney area; and

WHEREAS, Located in the Brazos River Basin, Lake Whitney was one of the earliest recreational lakes built near the Dallas/Fort Worth area; completed in April 1951 as part of the Brazos River Conservation and Reclamation Program, it is maintained by the United States Army Corps of Engineers, Fort Worth District, and is situated five miles from the town of Whitney on the edge of Hill and Bosque Counties; other nearby communities that help provide visitors with the comforts of home include Hillsboro, Clifton, Meridian, Aquilla, Morgan, Lakeside Village, Laguna Park, Blum, Valley Mills, and Kopperl; and

WHEREAS, The 955-acre Lake Whitney State Park features campsites, screened shelters, swimming beaches, boat ramps, and an air strip; the region also provides full service marinas and a broad range of overnight accommodations; and

WHEREAS, Lake Whitney's reputation as a premier location to catch bass and catfish is a big draw for the nation's fishing enthusiasts, and the lake has received positive coverage from national sporting publications; and

WHEREAS, For those who prefer their recreation on land, the area is home to a number of golf courses and 3,000 acres of winding trails for horseback riding; bird and wildlife watchers can delight in the lake area's 300 migratory and nonmigratory bird species, and a local wildlife population that features more than 50 different species of mammals, including the white-tailed deer; and

WHEREAS, Historically visited by everyone from Native Americans and European settlers to gunslingers, such as John Wesley Hardin, the Lake Whitney area is today easily accessible from major metropolitan areas of the state, making it the perfect getaway for those who enjoy a relaxed pace and abundant amenities; and

WHEREAS, The 79th Legislature of the State of Texas designated the Lake Whitney area as the Getaway Capital of Texas in 2005 in recognition of its myriad attractions; this outstanding destination remains as enjoyable as ever, and it is indeed fitting that this official title be continued; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby redesignate the Lake Whitney area as the Getaway Capital of Texas.

BIRDWELL

HCR 83 was read.

On motion of Senator Birdwell, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

HOUSE CONCURRENT RESOLUTION 2

The President laid before the Senate the following resolution:

HCR 2, In memory of former governor William P. "Bill" Clements.

CARONA

The resolution was read.

On motion of Senator Wentworth and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Carona, the resolution was considered immediately and was adopted by a rising vote of the Senate.

In honor of the memory of William P. "Bill" Clements, the text of the resolution is printed at the end of today's *Senate Journal*.

SENATE RESOLUTION 1262 (Caucus Report)

Senator Whitmire offered the following resolution:

BE IT RESOLVED BY THE SENATE OF THE STATE OF TEXAS:

SECTION 1. CAUCUS REPORT. At a caucus held on May 30, 2011, and attended by 26 members of the senate, the caucus made the recommendations for the operation of the senate contained in this resolution.

SECTION 2. EMPLOYEES. (a) The lieutenant governor may employ the employees necessary for the operation of the office of the lieutenant governor from the closing of this session and until the convening of the next session. The lieutenant governor and the secretary of the senate shall be furnished postage, telegraph, telephone, express, and all other expenses incident to their respective offices.

(b) The secretary of the senate is the chief executive administrator and shall be retained during the interval between adjournment of this session and the convening of the next session of the legislature. The secretary of the senate may employ the employees necessary for the operation of the senate and to perform duties as may be required in connection with the business of the state from the closing of this session and until the convening of the next session.

(c) Each senator may employ secretarial and other office staff for the senator's office.

(d) The chairman of the administration committee is authorized to retain a sufficient number of staff employees to conclude the work of the enrolling clerk, calendar clerk, journal clerk, and sergeant-at-arms. The administration committee shall establish the salaries for the senate staff.

SECTION 3. SENATE OFFICERS. (a) The following elected officers of the 82nd Legislature shall serve for the interval between adjournment of this session and the convening of the next session of the legislature:

- (1) Secretary of the Senate—Patsy Spaw;
- (2) Calendar Clerk—Linda Tubbs;
- (3) Doorkeeper—Austin Osborn;
- (4) Enrolling Clerk—Mardi Alexander;
- (5) Journal Clerk—Polly Emerson; and
- (6) Sergeant-at-Arms—Rick DeLeon.

(b) All employees and elected officers of the senate shall operate under the direct supervision of the secretary of the senate during the interim.

(c) Officers named in this section serve at the will of the senate.

SECTION 4. DUTIES OF CHAIRMAN OF ADMINISTRATION COMMITTEE. (a) The chairman of the administration committee shall place the senate chamber in order and purchase supplies and make all necessary repairs and improvements between the adjournment of this session and the convening of the next session of the legislature.

(b) The chairman shall make an inventory of all furniture and fixtures in the senate chamber and in the private offices of the members, as well as of the supplies and equipment on hand in the purchasing and supply department and shall close the books for the Regular Session of the 82nd Legislature.

(c) The chairman shall not acquire any equipment on a rental/purchase plan unless the equipment is placed on the senate inventory at the termination of the plan.

(d) The chairman shall examine records and accounts payable out of the contingent expense fund as necessary to approve all claims and accounts against the senate, and no claim or account shall be paid without the consent and approval of the chairman.

(e) The chairman and any member of the administration committee shall be entitled to receive actual and necessary expenses incurred during the interim.

(f) In addition to the duties of the administration committee expressly imposed by this resolution, the committee shall take actions necessary to ensure that the administrative operations of the senate comply with applicable law and are conducted effectively and efficiently.

SECTION 5. JOURNAL. (a) The secretary of the senate shall have 225 volumes of the Senate Journal of the Regular Session of the 82nd Legislature printed. Two hundred and twenty-five copies shall be bound in buckram and delivered to the secretary of the senate who shall forward one volume to each member of the senate, the lieutenant governor, and each member of the house of representatives on request.

(b) The printing of the journals shall be done in accordance with the provisions of this resolution under the supervision of the chairman of the administration committee. The chairman shall refuse to receive or receipt for the journals until corrected and published in accordance with the preexisting law as finally approved by the chairman of the administration committee. When the accounts have been certified by the chairman of the administration committee, the accounts shall be paid out of the contingent expense fund of the 82nd Legislature.

SECTION 6. PAYMENT OF SALARIES AND EXPENSES. (a) Salaries and expenses authorized by this resolution shall be paid out of the per diem and contingent expense fund of the 82nd Legislature as provided by this section.

(b) The senate shall request the comptroller of public accounts to issue general revenue warrants for:

(1) payment of the employees of the lieutenant governor's office, the lieutenant governor, members of the senate, employees of the senate committees, and employees of the senate, except as provided by Subchapter H, Chapter 660, Government Code, upon presentation of the payroll account signed by the chairman of the administration committee and the secretary of the senate; and

(2) the payment of materials, supplies, and expenses of the senate, including travel expenses for members and employees, upon vouchers signed by the chairman of the administration committee and the secretary of the senate.

SECTION 7. EXPENSE REIMBURSEMENT AND PER DIEM. (a) In furtherance of the legislative duties and responsibilities of the senate, the administration committee shall charge to the individual member's office budget:

(1) the reimbursement of all actual expenses incurred by the members when traveling in performance of legislative duties and responsibilities or incident to those duties; and

(2) the payment of all other reasonable and necessary expenses for the operation of the office of the individual senator during any period the legislature is not in session. Expenditures for these services by the administration committee are authorized as an expense of the senate and shall not be restricted to Austin but may be incurred in individual senatorial districts. Such expenses shall be paid from funds

appropriated for the use of the senate on vouchers approved by the chairman of the administration committee and the secretary of the senate in accordance with regulations governing such expenditures.

(b) Each senator shall be permitted a payroll of \$35,625 per month to employ secretarial and other office staff and for intrastate travel expenses for staff employees. This payroll amount accrues on the first day of the month and may not be expended prior to the month in which it accrues, but any unexpended portion for a month may be carried forward from month to month until the end of the fiscal year. Other expenses, including travel expenses or other reasonable and necessary expenses incurred in the furtherance and performance of legislative duties or in operation of the member's office or incident thereto, shall be provided in addition to the maximum salary authorized.

(c) The secretary of the senate may order reimbursement for legislative expenses consistent with this resolution and the establishment by the Texas Ethics Commission of per diem rates.

(d) Any member of the senate and the lieutenant governor are eligible to receive such reimbursement on application of the member or the lieutenant governor to the secretary of the senate.

(e) On the application of a member of the senate or the lieutenant governor, the applicant shall be entitled to reimbursement for legislative expenses for each legislative day.

(f) For purposes of this section, a legislative day includes each day of a regular or special session of the legislature, including any day the legislature is not in session for a period of four consecutive days or less, and all days the legislature is not in session if the senator or lieutenant governor attends a meeting of a joint, special, or legislative committee as evidenced by the official record of the body, and each day, limited to 12 days per month for non-chairs or 16 days per month for chairs and the lieutenant governor, the senator or the lieutenant governor, including those living within a 50-mile radius, is otherwise engaged in legislative business as evidenced by claims submitted to the chairman of the administration committee.

SECTION 8. MEMBER'S EMPLOYEE LEAVE POLICY. (a) An employee of a senator accrues vacation leave, compensatory leave, or sick leave in accordance with policies adopted by the senator consistent with the requirements of this section.

(b) An employee may accrue vacation leave, compensatory leave, or sick leave only if the employee files a monthly time record with the senate human resources office. Time records are due not later than the 10th day of the following month.

(c) Compensatory time must be used not later than the last day of the 12th month following the month in which the time was accrued.

(d) An employee is not entitled to compensation for accrued but unused compensatory time.

SECTION 9. DESIGNATION FOR ATTENDANCE AT MEETINGS AND FUNCTIONS. (a) The lieutenant governor may appoint any member of the senate, the secretary of the senate, or any other senate employee to attend meetings of the National Conference of State Legislatures and other similar meetings. Necessary and actual expenses are authorized upon the approval of the chairman of the administration committee and the secretary of the senate.

(b) The lieutenant governor may designate a member of the senate to represent the senate at ceremonies and ceremonial functions. The necessary expenses of the senator and necessary staff for this purpose shall be paid pursuant to a budget approved by the administration committee.

SECTION 10. MEETINGS DURING INTERIM. (a) Each of the standing committees and subcommittees of the senate of the 82nd Legislature may continue to meet at such times and places during the interim as determined by such committees and subcommittees and to hold hearings, recommend legislation, and perform research on matters directed either by resolution, the lieutenant governor, or as determined by majority vote of each committee.

(b) Each continuing committee and subcommittee shall continue to function under the rules adopted during the legislative session where applicable.

(c) Expenses for the operation of these committees and subcommittees shall be paid pursuant to a budget prepared by each committee and approved by the administration committee.

(d) The operating expenses of these committees shall be paid from the contingent expense fund of the senate, and committee members shall be reimbursed for their actual expenses incurred in carrying out the duties of the committees.

SECTION 11. SENATE OFFICES. Members not returning for the 83rd Legislature shall vacate their senate offices by December 15, 2012.

SECTION 12. FURNISHING OF INFORMATION BY SENATE EMPLOYEE. An employee of the senate may not furnish any information to any person, firm, or corporation other than general information pertaining to the senate and routinely furnished to the public.

SECTION 13. OUTSIDE EMPLOYMENT. An employee of the senate may not be employed by and receive compensation from any other person, firm, or corporation during the employee's senate employment without the permission of the employee's senate employer.

SECTION 14. REMOVAL OF SENATE PROPERTY. The secretary of the senate is specifically directed not to permit the removal of any of the property of the senate from the senate chamber or the rooms of the senate except as authorized by the chairman of the administration committee.

SR 1262 was read and was adopted by the following vote: Yeas 31, Nays 0.

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 2380, HB 2457, HB 2463, HB 2477, HB 2490, HB 2499, HB 2516, HB 2549, HB 2560, HB 2605, HB 2608, HB 2643, HB 2694, HB 2702, HB 2728, HB 2729, HB 2734, HB 2761, HB 2770, HB 2779, HB 2810, HB 2817, HB 2847, HB 2853, HB 2857, HB 2910, HB 2931, HB 2949, HB 2975, HB 2981, HB 3025, HB 3033, HB 3090, HB 3099, HB 3726, HB 3743.

MOTION TO ADJOURN SINE DIE

On motion of Senator Whitmire, the Senate of the 82nd Legislature, Regular Session, at 4:55 p.m. agreed to adjourn sine die, in memory of Angus McSwain, Kevin Will, and William P. "Bill" Clements, subject to the completion of administrative duties.

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:

SB 100, SB 293, SB 660, SB 694, SB 1010, SB 1082, SB 1130, SB 1198, SB 1320, SB 1420, SB 1543, SB 1788, SCR 60, HB 1 (Signed subject to Sec. 49-a, Art. III, Texas Constitution), **HB 4** (Signed subject to Sec. 49-a, Art. III, Texas Constitution), **HB 1386, HB 1422, HB 1665, HB 2329, HB 2466, HB 3328, HB 3647** (Signed subject to Sec. 49-a, Art. III, Texas Constitution), **HB 3833, HCR 2, HCR 15, HCR 71, HCR 83, HCR 169, HCR 174, HCR 180, HCR 181, HCR 182.**

CO-AUTHOR OF SENATE BILL 575

On motion of Senator Van de Putte, Senator Zaffirini will be shown as Co-author of **SB 575**.

CO-AUTHOR OF SENATE BILL 903

On motion of Senator Patrick, Senator Ellis will be shown as Co-author of **SB 903**.

CO-AUTHOR OF SENATE BILL 1051

On motion of Senator Ellis, Senator Zaffirini will be shown as Co-author of **SB 1051**.

CO-AUTHOR OF SENATE BILL 1524

On motion of Senator Hinojosa, Senator Zaffirini will be shown as Co-author of **SB 1524**.

CO-AUTHOR OF SENATE BILL 1718

On motion of Senator Duncan, Senator Wentworth will be shown as Co-author of **SB 1718**.

CO-AUTHOR OF SENATE BILL 1848

On motion of Senator Hegar, Senator Van de Putte will be shown as Co-author of **SB 1848**.

CO-AUTHOR OF SENATE BILL 1863

On motion of Senator Davis, Senator Lucio will be shown as Co-author of **SB 1863**.

CO-AUTHOR OF SENATE BILL 1930

On motion of Senator Nelson, Senator Nichols will be shown as Co-author of **SB 1930**.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 1268 by Wentworth, In memory of Kenneth Gary Vanni of Bexar County.

HCR 15 (Uresti), In memory of John R. Boettiger, Jr., of Houston.

Congratulatory Resolutions

SR 1261 by Hegar, Commending the citizens of Smithville on their Texas Soldiers Memorial proposal.

SR 1263 by Fraser, Recognizing Linda Hopkins on the occasion of her retirement from the Texas Senate.

SR 1267 by Eltife, Paying tribute to the service and legacy of Jean Moffett Dendy and Diana Sue Brown.

SR 1269 by Lucio, Recognizing Jose S. Mayorga for his leadership of the Texas Military Forces as adjutant general.

ADJOURNMENT SINE DIE

The President announced that the hour for final adjournment of the Regular Session of the 82nd Legislature had arrived and, in accordance with a previously adopted motion, declared the Regular Session of the 82nd Legislature adjourned sine die, in memory of Angus McSwain, Kevin Will, and William P. "Bill" Clements, at 7:55 a.m. Tuesday, May 31, 2011.

APPENDIX

BILLS AND RESOLUTIONS ENROLLEDMay 29, 2011

SB 28, SB 40, SB 89, SB 158, SB 341, SB 408, SB 472, SB 516, SB 542, SB 652, SB 747, SB 1134, SB 1331, SB 1534, SB 1588, SB 1600, SB 1664, SR 1248, SR 1249, SR 1250, SR 1252, SR 1253, SR 1254, SR 1255, SR 1256, SR 1257, SR 1259, SR 1260

May 30, 2011

SB 100, SB 293, SB 660, SB 694, SB 1010, SB 1082, SB 1130, SB 1198, SB 1320, SB 1420, SB 1543, SB 1788, SCR 60, SR 1261, SR 1262, SR 1263, SR 1264, SR 1265, SR 1266, SR 1267, SR 1268, SR 1269

SENT TO GOVERNORMay 30, 2011

SB 5, SB 49, SB 71, SB 76, SB 78, SB 81, SB 144, SB 156, SB 197, SB 209, SB 221, SB 222, SB 223, SB 249, SB 263, SB 303, SB 313, SB 321, SB 322, SB 332, SB 377, SB 385, SB 391, SB 407, SB 425, SB 462, SB 469, SB 480, SB 498, SB 502, SB 563, SB 573, SB 594, SB 629, SB 647, SB 663, SB 731, SB 736, SB 760, SB 767, SB 773, SB 776, SB 803, SB 809, SB 844, SB 859, SB 875, SB 924, SB 932, SB 942, SB 943, SB 978, SB 981, SB 988, SB 993, SB 1003, SB 1035, SB 1048, SB 1068, SB 1094, SB 1170, SB 1178, SB 1179, SB 1185, SB 1196, SB 1209, SB 1216, SB 1233, SB 1234, SB 1250, SB 1271, SB 1285, SB 1286, SB 1338, SB 1413, SB 1416, SB 1422, SB 1449, SB 1489, SB 1546, SB 1551, SB 1605, SB 1616, SB 1620, SB 1636, SB 1649, SB 1732, SB 1733, SB 1736, SB 1760, SB 1796, SB 1810, SB 1909, SB 1920

SIGNED BY GOVERNORMay 30, 2011**SB 1928****SENT TO COMPTROLLER**May 31, 2011**SB 1000****SENT TO GOVERNOR**May 31, 2011

SB 28, SB 40, SB 89, SB 100, SB 158, SB 293, SB 316, SB 341, SB 408, SB 472, SB 516, SB 542, SB 602, SB 652, SB 660, SB 694, SB 747, SB 1010, SB 1082, SB 1087, SB 1130, SB 1134, SB 1198, SB 1320, SB 1331, SB 1420, SB 1534, SB 1543, SB 1588, SB 1600, SB 1664, SB 1788, SCR 60

June 2, 2011**SB 1000****SIGNED BY GOVERNOR**June 8, 2011**SB 247**June 17, 2011

SB 5, SB 17, SB 19, SB 20, SB 27, SB 28, SB 29, SB 31, SB 32, SB 36, SB 41, SB 43, SB 49, SB 54, SB 58, SB 61, SB 71, SB 74, SB 76, SB 77, SB 78, SB 80, SB 81, SB 82, SB 86, SB 89, SB 100, SB 101, SB 116, SB 122, SB 131, SB 141, SB 144, SB 149, SB 150, SB 155, SB 156, SB 158, SB 162, SB 166, SB 173, SB 176, SB 179, SB 181, SB 187, SB 189, SB 192, SB 193, SB 197, SB 199, SB 201, SB 209, SB 218, SB 219, SB 220, SB 221, SB 222, SB 223, SB 226, SB 227, SB 229, SB 233, SB 234, SB 244, SB 246, SB 249, SB 256, SB 258,

SB 260, SB 263, SB 264, SB 266, SB 267, SB 283, SB 290, SB 293, SB 303,
SB 304, SB 310, SB 311, SB 313, SB 315, SB 316, SB 321, SB 322, SB 324,
SB 327, SB 329, SB 332, SB 335, SB 349, SB 350, SB 364, SB 365, SB 370,
SB 373, SB 377, SB 385, SB 387, SB 391, SB 400, SB 402, SB 407, SB 412,
SB 419, SB 422, SB 425, SB 430, SB 431, SB 432, SB 434, SB 436, SB 438,
SB 449, SB 460, SB 461, SB 462, SB 469, SB 470, SB 471, SB 472, SB 475,
SB 479, SB 480, SB 481, SB 482, SB 485, SB 489, SB 490, SB 493, SB 494,
SB 496, SB 498, SB 502, SB 508, SB 510, SB 512, SB 514, SB 516, SB 519,
SB 520, SB 524, SB 530, SB 540, SB 542, SB 543, SB 544, SB 545, SB 548,
SB 554, SB 558, SB 563, SB 573, SB 577, SB 578, SB 579, SB 580, SB 587,
SB 594, SB 601, SB 602, SB 609, SB 613, SB 626, SB 627, SB 633, SB 639,
SB 647, SB 650, SB 652, SB 660, SB 662, SB 663, SB 682, SB 688, SB 690,
SB 694, SB 701, SB 710, SB 717, SB 731, SB 735, SB 736, SB 738, SB 743,
SB 747, SB 760, SB 761, SB 762, SB 764, SB 766, SB 767, SB 768, SB 773,
SB 776, SB 778, SB 781, SB 789, SB 791, SB 792, SB 794, SB 795, SB 796,
SB 799, SB 800, SB 801, SB 802, SB 803, SB 804, SB 809, SB 810, SB 811,
SB 812, SB 813, SB 819, SB 822, SB 844, SB 847, SB 851, SB 855, SB 859,
SB 860, SB 864, SB 866, SB 867, SB 875, SB 880, SB 882, SB 886, SB 888,
SB 889, SB 896, SB 898, SB 899, SB 901, SB 910, SB 917, SB 924, SB 932,
SB 937, SB 943, SB 953, SB 957, SB 959, SB 966, SB 969, SB 975, SB 981,
SB 988, SB 990, SB 992, SB 993, SB 1000, SB 1002, SB 1003, SB 1008, SB 1009,
SB 1010, SB 1020, SB 1026, SB 1030, SB 1042, SB 1043, SB 1044, SB 1046,
SB 1047, SB 1048, SB 1055, SB 1057, SB 1058, SB 1065, SB 1068, SB 1073,
SB 1082, SB 1087, SB 1094, SB 1100, SB 1103, SB 1106, SB 1120, SB 1124,
SB 1130, SB 1132, SB 1133, SB 1134, SB 1154, SB 1159, SB 1167, SB 1169,
SB 1170, SB 1176, SB 1178, SB 1179, SB 1184, SB 1185, SB 1187, SB 1196,
SB 1197, SB 1198, SB 1200, SB 1208, SB 1209, SB 1216, SB 1220, SB 1225,
SB 1228, SB 1231, SB 1233, SB 1234, SB 1243, SB 1248, SB 1250, SB 1271,
SB 1273, SB 1290, SB 1291, SB 1292, SB 1295, SB 1308, SB 1311, SB 1320,
SB 1322, SB 1330, SB 1331, SB 1338, SB 1342, SB 1352, SB 1360, SB 1361,
SB 1368, SB 1378, SB 1383, SB 1386, SB 1393, SB 1404, SB 1410, SB 1413,
SB 1414, SB 1416, SB 1420, SB 1421, SB 1422, SB 1431, SB 1434, SB 1438,
SB 1441, SB 1449, SB 1477, SB 1480, SB 1484, SB 1489, SB 1493, SB 1504,
SB 1518, SB 1521, SB 1522, SB 1534, SB 1543, SB 1545, SB 1546, SB 1551,
SB 1557, SB 1560, SB 1578, SB 1588, SB 1596, SB 1598, SB 1600, SB 1605,
SB 1610, SB 1613, SB 1616, SB 1617, SB 1618, SB 1619, SB 1620, SB 1630,
SB 1635, SB 1636, SB 1638, SB 1649, SB 1660, SB 1661, SB 1662, SB 1664,
SB 1667, SB 1668, SB 1669, SB 1681, SB 1686, SB 1687, SB 1692, SB 1698,
SB 1714, SB 1719, SB 1726, SB 1732, SB 1733, SB 1736, SB 1737, SB 1739,
SB 1751, SB 1755, SB 1760, SB 1787, SB 1788, SB 1789, SB 1796, SB 1799,
SB 1810, SB 1812, SB 1831, SB 1857, SB 1887, SB 1907, SB 1909, SB 1910,
SB 1913, SB 1914, SB 1915, SB 1916, SB 1920, SB 1925, SB 1926, SB 1927,
SCR 2, SCR 5, SCR 10, SCR 11, SCR 16, SCR 18, SCR 35, SCR 39, SCR 50,
SCR 51, SCR 53, SCR 54, SCR 55, SCR 56, SCR 57, SCR 58, SCR 60

FILED WITHOUT SIGNATURE OF GOVERNORJune 17, 2011**SB 271, SB 341, SB 367, SB 629, SB 683, SB 900, SB 942, SB 987, SB 1285, SB 1286, SB 1875, SB 1877, SB 1880, SB 1882, SB 1895, SB 1899, SB 1922****VETOED BY GOVERNOR**June 17, 2011**SB 40, SB 167, SB 191, SB 408, SB 978, SB 1035, SB 1807****VETO PROCLAMATIONS**

The following Veto Proclamations by the Governor were filed with the Secretary of the Senate:

PROCLAMATION**BY THE****GOVERNOR OF THE STATE OF TEXAS****TO ALL TO WHOM THESE PRESENTS SHALL COME:**

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 40 as passed by the Eighty-Second Texas Legislature, Regular Session, because of the following objections:

Senate Bill 40 would make a number of changes to the enabling statute of the Texas Guaranteed Student Loan Corporation (TGS LC), a state-chartered nonprofit corporation that serves as the guarantor for subsidized student loans originated under the Federal Family Education Loan Program (FFELP). FFELP was terminated last year by the federal government.

Many of the changes in Senate Bill 40, such as allowing TGS LC board members to attend meetings via teleconference or requiring TGS LC's to appoint an ombudsman for internal complaints, are good for TGS LC and the state. However, their benefits are outweighed by other parts of the bill.

Senate Bill 40 gives TGS LC much broader authority to enter into revenue-generating activities, but does so at a time when TGS LC loan portfolio will shrink, limiting the resources available for new ventures and exposing TGS LC's operating fund to additional risk.

TGS LC also faces uncertainty at the federal level. TGS LC is a strong guarantor, but it would be unwise to commit scarce resources without additional clarity as to future policies regarding guarantors and the residual FFELP portfolio.

Senate Bill 40 also contains language regarding the governor's appointments to TGS LC that conflicts with TGS LC language in other bills that are moving toward passage in the special session.

Since the Eighty-Second Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 17th day of June, 2011.

(Seal)

/s/Rick Perry
Governor of Texas

ATTESTED BY:
/s/Hope Andrade
Secretary of State

PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 167 as passed by the Eighty-Second Texas Legislature, Regular Session, because of the following objections:

Senate Bill 167 suffers from technical citation problems and a need to correct language. House Concurrent Resolution 177, which sought to correct the problems in Senate Bill 167, did not pass both houses. The intent of Senate Bill 167 is covered in House Bill 351.

Since the Eighty-Second Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 17th day of June, 2011.

(Seal)

/s/Rick Perry
Governor of Texas

ATTESTED BY:
/s/Hope Andrade
Secretary of State

PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 191 as passed by the Eighty-Second Texas Legislature, Regular Session, because of the following objections:

I am vetoing Senate Bill 191 because I have serious concerns regarding overreliance on the State Office of Administrative Hearings (SOAH) in the disposition of contested case hearings at the Texas Medical Board. This provision is also included in House Bill 680.

The board is charged with regulating the practice of medicine in Texas by, among other things, enforcing physicians' standards of conduct and imposing appropriate sanctions when those standards are violated. When the board is unable to resolve a case, it is referred to an administrative law judge (ALJ) at SOAH. Senate Bill 191 requires the board to accept an ALJ's findings of fact on whether a physician has committed a violation.

This provision weakens the board's authority to oversee physicians, and vests that authority instead in the ALJ. This bill treats the Texas Medical Board differently from every other occupational licensing agency by mandating that the board accept the ALJ's findings.

The responsibility for deciding whether a physician has violated a standard of conduct should belong to the multimember board, and not to a single ALJ. ALJs serve the important role of providing an independent forum for conducting adjudicative hearings to determine the facts, but their role is to assist agencies in reaching a proper decision, not to supplant them or relieve them of that duty.

Since the Eighty-Second Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 17th day of June, 2011.

(Seal)

/s/Rick Perry
Governor of Texas

ATTESTED BY:

/s/Hope Andrade
Secretary of State

PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 408 as passed by the Eighty-Second Texas Legislature, Regular Session, because of the following objections:

Senate Bill 408 includes a provision that would prohibit the use of boats or other crafts that use an aircraft-type propeller for propulsion on approximately 113 miles of the John Graves Scenic Riverway. Attempting to balance private property rights with water conservation and recreational use of this riverway is laudable. However, I am vetoing Senate Bill 408 at the request of the bill's sponsor, and I am directing the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality (TCEQ) to study and report the potential effects of a prohibition of the commercial or recreational use of these types of boats on the riverway. This review will be part of TCEQ's biennial report to the legislature.

Since the Eighty-Second Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 17th day of June, 2011.

(Seal)

/s/Rick Perry
Governor of Texas

ATTESTED BY:

/s/Hope Andrade
Secretary of State

PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 978 as passed by the Eighty-Second Texas Legislature, Regular Session, because of the following objections:

Senate Bill 978 would allow the entire City of McAllen and members of Hidalgo County Water Improvement District No. 3 to vote for the dissolution of the district. This bill puts the district at a clear disadvantage because the overwhelming majority of votes would come from outside the boundaries of the district, effectively allowing the city to take the district's water rights and property. This would set a troubling precedent.

Since the Eighty-Second Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 17th day of June, 2011.

(Seal)

/s/Rick Perry
Governor of Texas

ATTESTED BY:

/s/Hope Andrade
Secretary of State

PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 1035 as passed by the Eighty-Second Texas Legislature, Regular Session, because of the following objections:

Senate Bill 1035 would expand county permitting of motor vehicle title service companies and create a state licensing requirement administered by the Texas Department of Motor Vehicles (DMV). The bill would establish additional criminal and civil penalties, including a state jail felony if a service company violated a license requirement.

While the state may benefit from the DMV performing a licensing or oversight function, this bill would not address the burden imposed on motor vehicle title service companies by a state licensing requirement, nor would it address the inherent problems of the creation of 254 different county registration processes. The dual state and county registration and licensing procedures, and different associated fees, are too cumbersome.

Senate Bill 1035 could also have unintended consequences through its definition of a motor vehicle title service company. That definition would include any individual directly or indirectly assisting with the registration process. It would be problematic that a friend or family member who is familiar with the registration process could not assist, if any compensation was received, without being subject to civil and criminal penalties.

Because I appreciate the goal of Senate Bill 1035, I am requesting the DMV to work with the motor vehicle title service industry and county governments to find a reasonable solution that does not add layers of government, but protects Texans against individuals operating with the intent to defraud consumers or the state.

Since the Eighty-Second Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 17th day of June, 2011.

(Seal)

/s/Rick Perry
Governor of Texas

ATTESTED BY:

/s/Hope Andrade
Secretary of State

PROCLAMATION
BY THE
GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 1807 as passed by the Eighty-Second Texas Legislature, Regular Session, because of the following objections:

Senate Bill 1807 would allow the 444th District Court of Cameron County to have concurrent jurisdiction in Willacy County. However, this bill was not thoroughly discussed with all affected entities in Willacy and Cameron counties. While I appreciate any attempt to improve the efficiency of Texas courts, all parties affected by this change should be involved in determining the best methods for making such improvements.

Since the Eighty-Second Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 17th day of June, 2011.

(Seal)

/s/Rick Perry
Governor of Texas

ATTESTED BY:

/s/Hope Andrade
Secretary of State

SENATE RESOLUTION 1267
(Jean Moffett Dendy and Diana Sue Brown)

WHEREAS, The men and women who work at the Texas Senate are an exceptionally dedicated and talented group who understand that their service to the institution is both a privilege and a deep responsibility; and

WHEREAS, The Betty King Public Service Award is given each regular legislative session to one legislative and one administrative employee who embodies the spirit of state service exemplified by longtime Secretary of the Senate Betty King; and

WHEREAS, This year, two long-standing members of the Senate family were nominated posthumously for these awards to honor their exceptional contributions over the course of many years; and

WHEREAS, It is a reflection of the spirit of this body that the contributions of these two individuals are still remembered and cherished by Senate members and staff, who have put forward their names to commemorate their legacies of service and loyalty; and

WHEREAS, Jean Moffett Dendy was posthumously nominated for the Legislative Betty King Public Service Award; Jean served the Texas Senate for nearly two decades as a special assistant and administrator for Senator Mike Moncrief, Senator Rodney Ellis, and Senator Wendy Davis; she inspired in all those with whom she worked a spirit of collegiality and mutual respect, and her grace, warmth, and good humor left a lasting impression on everyone she knew; and

WHEREAS, Diana Sue Brown was posthumously nominated for the Administrative Betty King Public Service Award; for 27 years, Susie served the Texas Senate as a messenger, sharing her unique point of view, her love of red hats, her cheerful outlook on life, and her indomitable determination with people throughout the Capitol; and

WHEREAS, Both Jean and Susie became a part of the Senate family, and their service and their contributions are remembered with great warmth and affection; it is truly fitting that the institution they both loved so much honor them for their dedication and for the many contributions they made to the state; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby pay tribute to the extraordinary service, the life, and the legacy of Jean Moffett Dendy and Diana Sue Brown.

ELTIFE

In Memory
of
Angus McSwain

House Concurrent Resolution 180

WHEREAS, The life of a distinguished legal scholar and educator drew to a close with the passing of Angus McSwain, dean emeritus of Baylor Law School, who passed away on May 29, 2011; and

WHEREAS, Born in 1923, Mr. McSwain graduated from Stephen F. Austin High School in Bryan; he enrolled at Texas A&M University but interrupted his studies to serve in the U.S. Army Corps of Engineers during World War II; following the war, he completed his civil engineering degree at A&M in 1947 and graduated cum laude two years later with his bachelor of laws degree from Baylor, where he was first in his class; he went on to receive a master of laws degree from the University of Michigan; and

WHEREAS, Mr. McSwain became a professor at Baylor Law School in 1949; he was appointed dean in 1965 and guided the institution for the next 19 years; during his tenure, he maintained the high academic standards that are the hallmark of Baylor Law School and helped to bring in a number of outstanding faculty members; and

WHEREAS, After returning to teaching in 1984, Dean McSwain became the Governor Bill and Vara Faye Daniel Chair of Property Law, and he received the Master Teacher designation, Baylor's highest teaching honor, in 1990; his official retirement came four years later, but this remarkable professor continued to conduct classes until 2008, when he marked his 59th year with the law school; and

WHEREAS, A highly respected figure in the Texas legal community, he served as both secretary and chair of the Family Law Section of the Texas Bar Association and was the author of numerous articles for the *Texas Bar Journal* as well as textbooks and casebooks; in all of his endeavors, he enjoyed the love and support of his wife, Betty Ann, who preceded him in death, and his son, Andy, who followed in his father's footsteps as a Baylor Law graduate; and

WHEREAS, Angus McSwain influenced generations of Baylor Law School students with his unwavering commitment to excellence, and his legacy will continue to resonate for years to come; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby pay tribute to the life of Dean Emeritus Angus McSwain and extend deepest condolences to the members of his family: to his son, Andy McSwain, and his wife, Chris; to his grandson, Stewart McSwain; and to his other relatives and friends; and, be it further

RESOLVED, That an official copy of this resolution be prepared for his family and that when the Texas House of Representatives and Senate adjourn this day, they do so in memory of Dean Angus McSwain.

WATSON

In Memory
of
William P. "Bill" Clements
House Concurrent Resolution 2

WHEREAS, The Lone Star State lost a distinguished and pivotal figure in Texas politics on May 29, 2011, with the death of former governor William P. Clements, Jr.; and

WHEREAS, The state's second-longest-serving governor and first Republican governor since Reconstruction, Bill Clements was initially elected in 1978, having never before run for public office; he served until 1983 and then made a stunning comeback four years later to serve another term; and

WHEREAS, During his combined eight-year tenure, he established a reputation as an efficient, business-like chief executive, and his gubernatorial appointments generally reflected a results-oriented approach; he also named the first two women to the Texas Supreme Court and the first African American to the Texas Court of Criminal Appeals; moreover, he took a leading role in the war on drugs and advocated powerfully for anticrime bills passed by the legislature, and he initiated an extensive renovation of the State Capitol; and

WHEREAS, Born in Dallas on April 13, 1917, Bill Clements was an all-state guard on the Highland Park High School football team; he was offered athletic scholarships but turned them down in order to help his family during the Great Depression; after working in South Texas as a roughneck and driller, he attended The University of Texas at Austin and graduated from Southern Methodist University in 1939; he returned to the oil fields, and in 1947 he and two partners borrowed the money to buy two oil rigs and start a company, SEDCO, which grew to become the world's largest oil drilling contracting firm; and

WHEREAS, This self-made multimillionaire initially rejected attempts by Texas Republicans to recruit him for public office though he worked actively in the party; in 1972, he served as Texas co-chair of President Richard Nixon's reelection campaign, and he was appointed deputy secretary of defense the following year and remained at the Pentagon during the Ford administration; he decided to run for governor in 1978 and surprised many when he defeated a better-known opponent; and

WHEREAS, Over the years, Governor Clements was a generous benefactor of institutions of higher education; he and his wife, Rita, contributed well over \$20 million for facilities, programs, and professorships at SMU, and he served several terms as a member and officer of the board of trustees; through his support, the university's William P. Clements Center for Southwest Studies developed into an internationally known catalyst for

research, publishing, and public programming in a variety of disciplines related to the American Southwest and the U.S.-Mexico borderlands; named trustee emeritus in 1991, he was also recognized with the Mustang Award, an honorary Doctor of Humane Letters degree, and the SMU Distinguished Alumni Award; in 2009, Governor Clements continued his philanthropy and gave a remarkable \$100 million to UT Southwestern Medical Center in Dallas, the largest single gift in the history of the institution; and

WHEREAS, Plain-spoken, pragmatic, and dedicated to the prosperity of the Lone Star State, Bill Clements brought a business perspective to government, and his achievements will continue to resonate in the lives of his fellow Texans for years to come; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby pay tribute to the memory of the Honorable William P. Clements, Jr., and extend sincere condolences to the members of his family: to his wife, Rita Crocker Clements; to his daughter, Nancy Clements Seay; and to all those who mourn the passing of this esteemed Texan; and, be it further

RESOLVED, That an official copy of this resolution be prepared for his family and that when the Texas House of Representatives and Senate adjourn this day, they do so in memory of former governor Bill Clements.

CARONA

