

# EIGHTY-SECOND DAY

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SATURDAY, MAY 26, 2001

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## PROCEEDINGS

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini, Mr. President.

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

Senate Doorkeeper Don Long offered the invocation as follows:

Holy and merciful heavenly father in whom we live and move and have our being, we are assembled by Your authority this day and we pray Your blessing upon each and every person in the Texas Senate Chamber. May we endeavor to do Your will for our lives and for the benefit of others who may need our assistance in their lives today.

May these Senators remember the words of Abraham Lincoln to his Cabinet in the dark days of the Civil War, "Let us not pray that God be on our side, rather let us pray that we are on God's side." Let it be said of each Member of this body as was said of Israel's great king, David, "And David shepherded them with integrity of heart; with skillful hands he led them." (Psalms 78:72) Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

## **MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and was filed with the Secretary of the Senate:

OFFICIAL MEMORANDUM  
STATE OF TEXAS  
OFFICE OF THE GOVERNOR

Austin, Texas  
May 26, 2001

## MESSAGE

TO THE MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES  
OF THE SEVENTY-SEVENTH TEXAS LEGISLATURE, REGULAR SESSION:

Article 4, Section 14, of the Texas Constitution directs and regulates when and how the Governor can approve or disapprove any bill passed by both houses of the Legislature.

The Legislature has passed and sent to me Senate Concurrent Resolution No. 70 requesting that I return Senate Bill No. 1672 by Jackson to the Senate for further consideration. In this instance, I have taken no formal action on SB 1672 and I am agreeing to the request of the Legislature.

While under no obligation to comply with this request and pursuant to established case law, I hereby return the enrolled copy of Senate Bill No. 1672 with this message to the Senate for further consideration.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 26th day of May, 2001.

/s/Rick Perry  
Governor of Texas

ATTESTED BY:

/s/Henry Cuellar, Ph.D.  
Secretary of State

### CONCLUSION OF MORNING CALL

The President at 10:05 a.m. announced the conclusion of morning call.

### GUESTS PRESENTED

Senator Truan was recognized and introduced to the Senate Jessica Windrow, daughter of Sergeant-at-Arms Carleton Turner and a 2001 graduate of Dripping Springs High School in Dripping Springs, and his wife, Cindy, accompanied by Jessica's grandparents, Ted and Mattie Hofbauer, of Kingston, New York.

The Senate welcomed its guests.

### CONFERENCE COMMITTEE ON HOUSE BILL 1148

Senator Armbrister 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 1148** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 1148** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Fraser, Lucio, Jackson, and Van de Putte.

### CONFERENCE COMMITTEE ON HOUSE BILL 981

Senator Armbrister 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 981** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 981** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Brown, Bernsen, Bivins, and Ogden.

### **HOUSE CONCURRENT RESOLUTION 319**

The President laid before the Senate the following resolution:

**HCR 319**, Commemorating the quasiquicentennial of the Texas Constitution.

NELSON

The resolution was read.

On motion of Senator Nelson and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2890**

Senator Madla 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 2890** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2890** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Armbrister, West, Shapiro, and Barrientos.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2914**

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2914** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2914** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Ellis, Harris, Ogden, and Zaffirini.

**SENATE RESOLUTION 1217**

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, 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 No. 393, relating to certain nonprofit entities that provide health or long-term care or health benefits plans and providing a penalty, to consider and take action on the following matters:

1. Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 4(a)(4) of the Act so that the subdivision reads as follows:

(4) closes a licensed facility operated by the nonprofit provider or dissolves.

Explanation: This change is necessary to clarify that the provision applies only to licensed facilities.

2. Senate Rule 12.03(2) is suspended to permit the committee to omit the text of Sections 5(c), (e), (f), (g), and (h) of the bill.

Explanation: This change is necessary to remove certain restrictions, and certain exceptions to the restrictions, on the use of charitable health care assets subject to the Act.

3. Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 7(d)(1) of the Act so that the subdivision reads as follows:

(1) each county in which a licensed facility that is operated by the nonprofit provider and that is affected by an agreement or transaction described by Section 4 of this Act is located;

Explanation: This change is necessary to clarify that the provision applies only to licensed facilities.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 195 WITH HOUSE AMENDMENT**

Senator Lucio called **SB 195** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 195** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the Border Trade Advisory Committee.

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

SECTION 1. Subchapter C, Chapter 201, Transportation Code, is amended by adding Section 201.114 to read as follows:

Sec. 201.114. BORDER TRADE ADVISORY COMMITTEE. (a) The commission shall establish the Border Trade Advisory Committee to define and develop a strategy and make recommendations to the commission for addressing the highest priority border trade transportation challenges. In determining action to be taken on the recommendations, the commission shall consider the importance of trade with the United Mexican States, potential sources of infrastructure funding at border ports, and the value of trade activity in the department's districts adjacent to the border with the United Mexican States.

(b) The commission may adopt rules governing the Border Trade Advisory Committee.

SECTION 2. This Act takes effect September 1, 2001.

The amendment was read.

On motion of Senator Lucio, the Senate concurred in the House amendment to **SB 195** by a viva voce vote.

### 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 1** (signed subject to Sec. 49-a, Art. III, Texas Constitution), **SB 4**, **SB 5**, **SB 113**, **SB 192**, **SB 217**, **SB 224**, **SB 393**, **SB 450**, **SB 563**, **SB 577**, **SB 583**, **SB 609**, **SB 616**, **SB 654**, **SB 965**, **SB 1047**, **SB 1074**, **SB 1091**, **SB 1125**, **SB 1164**, **SB 1212**, **SB 1268**, **SB 1282**, **SB 1308**, **SB 1467**, **SB 1684**, **SB 1763**, **SB 1797**, **SCR 59**, **SCR 62**, **SCR 66**, **SCR 70**, **SJR 49**.

### SENATE BILL 1776 WITH HOUSE AMENDMENT

Senator Lindsay called **SB 1776** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

#### Committee Amendment No. 1

Amend **SB 1776** (Engrossed version) as follows:

- (1) In SECTION 6 of the bill, in Subsection (c) (page 4, line 5), strike "or".
- (2) In SECTION 6 of the bill, at the end of Subsection (c), between "Code" and the period (page 4, line 6), insert ", or a telecommunications provider as defined by Section 51.002, Utilities Code".
- (3) In SECTION 7 of the bill, between "line," and "pipeline" (page 4, between lines 9 and 10), insert "telecommunications or other public utility facility,".

The amendment was read.

On motion of Senator Lindsay, the Senate concurred in the House amendment to **SB 1776** by a viva voce vote.

**SENATE BILL 1777 WITH HOUSE AMENDMENT**

Senator Lindsay called **SB 1777** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **SB 1777** (Engrossed version) as follows:

- (1) In SECTION 6 of the bill, in Subsection (c) (page 3, line 26), strike "or".
- (2) In SECTION 6 of the bill, at the end of Subsection (c), between "Code" and the period (page 4, line 1), insert ", or a telecommunications provider as defined by Section 51.002, Utilities Code".
- (3) In SECTION 7 of the bill, between "line," and "pipeline" (page 4, between lines 4 and 5), insert "telecommunications or other public utility facility,".

The amendment was read.

On motion of Senator Lindsay, the Senate concurred in the House amendment to **SB 1777** by a viva voce vote.

**SENATE BILL 279 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 279** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **SB 279** (engrossed version) as follows:

- (1) Between the enacting clause and SECTION 1 of the bill (page 1, between lines 4 and 5), insert the following appropriately numbered section:

SECTION \_\_\_\_\_. Section 241.051, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) Information obtained or compiled by the department in connection with a complaint or investigation that is confidential by law remains confidential and is not subject to disclosure under Chapter 552, Government Code.

- (2) Between SECTIONS 7 and 8 of the bill (page 9, between lines 17 and 18), insert the following appropriately numbered section:

SECTION \_\_\_\_\_. Section 577.013, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) Information obtained or compiled by the department in connection with a complaint or investigation that is confidential by law remains confidential and is not subject to disclosure under Chapter 552, Government Code.

- (3) Strike SECTION 9 of the bill (page 11, lines 10 through 14), and substitute the following appropriately numbered sections:

SECTION \_\_\_\_\_. Sections 241.051(d) and (e) and 577.013(d) and (e), Health and Safety Code, are repealed.

SECTION \_\_\_\_\_. (a) Except as provided by this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

(b) The changes in law made by this Act to Sections 241.051 and 577.013, Health and Safety Code, take effect September 1, 2001.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 279**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### **SENATE BILL 889 WITH HOUSE AMENDMENT**

Senator Ogden called **SB 889** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 889** by adding the following new SECTIONS to the bill, appropriately numbered, and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 622, Transportation Code, is amended by adding Section 622.018 to read as follows:

Sec. 622.018. DEFENSE TO PROSECUTION: BOND IN EFFECT. (a) It is a defense to prosecution under Section 622.017 that the person charged produces a surety bond that complies with Section 622.013 that was valid at the time the offense is alleged to have occurred.

(b) If the court verifies the bond produced by the person, the court shall dismiss the charge.

SECTION \_\_\_\_\_. Subchapter J, Chapter 622, Transportation Code, is amended by adding Section 622.137 to read as follows:

Sec. 622.137. DEFENSE TO PROSECUTION: BOND IN EFFECT. (a) It is a defense to prosecution under Section 622.136 that the person charged produces a surety bond that complies with Section 622.134 that was valid at the time the offense is alleged to have occurred.

(b) If the court verifies the bond produced by the person, the court shall dismiss the charge.

SECTION \_\_\_\_\_. Subchapter H, Chapter 623, Transportation Code, is amended by adding Section 623.166 to read as follows:

Sec. 623.166. DEFENSE TO PROSECUTION: BOND IN EFFECT. (a) It is a defense to prosecution under Section 623.165 that the person charged produces a surety bond that complies with Section 623.163 that was valid at the time the offense is alleged to have occurred.

(b) If the court verifies the bond produced by the person, the court shall dismiss the charge.

The amendment was read.

On motion of Senator Ogden, the Senate concurred in the House amendment to **SB 889** by a viva voce vote.

**SENATE BILL 893 WITH HOUSE AMENDMENT**

Senator Moncrief called **SB 893** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Floor Amendment No 1.**

Amend **SB 893** on page 1, line 8, between "cooperatives" and "and", by inserting "that purchase drugs on behalf of consumers".

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 893** by a viva voce vote.

**CONFERENCE COMMITTEE ON  
SENATE BILL 382 DISCHARGED**

On motion of Senator Gallegos and by unanimous consent, the Senate conferees on **SB 382** were discharged.

Question—Shall the Senate concur in the House amendments to **SB 382**?

On motion of Senator Gallegos and by unanimous consent, the Senate concurred in the House amendments to **SB 382** by a viva voce vote.

**SENATE RESOLUTION 1218**

Senator Wentworth offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, 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 No. 900, relating to the administration of statutory probate courts and to the assignment of statutory probate court judges, to consider and take action on the following matter:

Senate Rule 12.03(2) is suspended to permit the committee to omit the following from the bill:

(1) The text of proposed Section 25.0022(d)(1), Government Code, which reads as follows:

"ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court"

(2) The text of proposed Section 25.0022(d)(3), Government Code, which reads as follows:

"perform a duty of a local administrative statutory probate court judge under Section 25.00224 if the local administrative judge does not perform that duty"

(3) The text of proposed Section 25.0022(h)(8), Government Code, which reads as follows:

"a local administrative statutory probate court judge requests the assignment of a statutory probate judge to hear a matter in a statutory probate court"

Explanation: These omissions are necessary to conform to the text of the bill to the deletion of Section 2 of the bill relating to establishing the office of local administrative statutory probate court judge.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 26, 2001

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 320**, Instructing the enrolling clerk of the house to make technical corrections to House Bill No. 247.

**SCR 72**, In memory of Allen Grobe of Palestine, a former speaker of the Texas Silver-Haired Legislature.

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**SENATE BILL 1411 WITH HOUSE AMENDMENTS**

Senator Moncrief called **SB 1411** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 1411** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to dental services provided under the medical assistance program.

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

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.053 to read as follows:

Sec. 32.053. DENTAL SERVICES. (a) For purposes of this section, the "dental necessity" for a dental service or product is defined as the circumstances under which a prudent dentist, acting in accordance with generally accepted practices of the professional dental community and within the parameters of care of the American Dental Association and within the quality assurance criteria of the American Academy of Pediatric Dentistry, as applicable, would provide the service or product to a patient to diagnose, prevent, or treat orofacial pain, infection, disease, dysfunction, or disfiguration.

(b) A dental service or product may not be provided under the medical assistance program unless there is a dental necessity for the service or product.

(c) In providing dental services under the medical assistance program, the department shall:

(1) ensure that a stainless steel crown is not used as a preventive measure;

(2) require a dentist participating in the medical assistance program to document, through x-rays or other methods established by department rule, the dental necessity for a stainless steel crown before the crown is applied;

(3) require a dentist participating in the medical assistance program to comply with a minimum standard of documentation and recordkeeping for each of the dentist's patients;

(4) replace the 15-point system used for determining the dental necessity for hospitalization and general anesthesia with a more objective and comprehensive system developed by the department; and

(5) take all necessary action to eliminate unlawful acts described by Section 36.002 in the provision of dental services under the medical assistance program, including:

(A) aggressively investigating and prosecuting any dentist who abuses the system for reimbursement under the medical assistance program; and

(B) conducting targeted audits of dentists whose billing activities under the medical assistance program are excessive or otherwise inconsistent with the billing activities of other similarly situated dentists.

(d) In setting reimbursement rates for dental services under the medical assistance program, the department shall:

(1) set the reimbursement rate for a stainless steel crown at an amount equal to the reimbursement rate for an amalgam or resin filling;

(2) reduce the amount of the hospitalization fee in effect on December 1, 2000, and redistribute amounts made available through reduction of that fee to other commonly billed dental services for which adequate accountability measures exist;

(3) eliminate the nutritional consultation fee and redistribute amounts made available through elimination of that fee to other commonly billed dental services for which adequate accountability measures exist;

(4) provide for reimbursement of a behavior management fee only if:

(A) the patient receiving dental treatment has been previously diagnosed with mental retardation or a mental disability or disorder, and extraordinary behavior management techniques are necessary for therapeutic dental treatment because of the patient's uncooperative behavior; and

(B) the dentist includes in the patient's records and on the claim form for reimbursement a narrative description of:

(i) the specific behavior problem demonstrated by the patient that required the use of behavior management techniques;

(ii) the dentist's initial efforts to manage the patient's behavior through routine behavior management techniques; and

(iii) the dentist's extraordinary behavior management techniques subsequently required to manage the patient's behavior; and

(5) redistribute amounts made available through limitation of the behavior management fee under Subdivision (4) to other commonly billed dental services for which adequate accountability measures exist.

(e) The department shall develop the minimum standard described by Subsection (c)(3) in cooperation with the State Board of Dental Examiners.

SECTION 2. 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 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, 2001.

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

Amend **CSSB 1411** in SECTION 1 of the bill, in added Section 32.053(a), Human Resources Code (House Committee Report, page 1, lines 11 and 12), by striking "parameters of care of the American Dental Association" and substituting "American Dental Association's parameters of care for dentistry".

The amendments were read.

On motion of Senator Moncrief, the Senate concurred in the House amendments to **SB 1411** by a viva voce vote.

### **SENATE BILL 791 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 791** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

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

Amend **SB 791** between SECTIONS 25 and 26 (engrossed version page 44, between lines 10 and 11) by inserting the following appropriately numbered sections and renumbering subsequent sections of the bill appropriately:

SECTION \_\_\_\_\_. (a) The following provisions are repealed:

- (1) Sections 50.0225(h) and (i), Human Resources Code;
- (2) Sections 11B(h) and (i), Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes);
- (3) Sections 5B(h) and (i), Chapter 498, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512d, Vernon's Texas Civil Statutes);
- (4) Sections 16D(h) and (i), Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes);
- (5) Sections 16C(h) and (i), Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes);
- (6) Sections 24A(h) and (i), Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes);
- (7) Sections 11B(h) and (i), Texas Medical Physics Practice Act (Article 4512n, Vernon's Texas Civil Statutes);
- (8) Sections 19A(h) and (i), Licensed Perfusionists Act (Article 4529e, Revised Statutes);
- (9) Sections 1.12C(h) and (i), Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.12C, Vernon's Texas Civil Statutes); and
- (10) Sections 6A(h) and (i), Orthotics and Prosthetics Act (Article 8920, Revised Statutes).

(b) This section takes effect on September 1, 2001, but only if the Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes, does not take effect.

SECTION \_\_\_\_\_. (a) The following sections of the Occupations Code, as added by the Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes, are repealed:

- (1) Sections 401.2535(h) and (i);
- (2) Sections 402.154(h) and (i);
- (3) Sections 451.110(h) and (i);
- (4) Sections 502.2045(h) and (i);
- (5) Sections 503.2545(h) and (i);
- (6) Sections 505.2545(h) and (i);
- (7) Sections 602.1525(h) and (i);
- (8) Sections 603.2041(h) and (i);
- (9) Sections 605.2021(h) and (i); and
- (10) Sections 701.2041(h) and (i).

(b) This section takes effect on September 1, 2001, but only if the Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes, takes effect.

SECTION \_\_\_\_\_. Sections 8C(h) and (i), Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes), are repealed.

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

Amend **SB 791** (engrossed version) as follows:

Amend SECTION 1, Subchapter I, Chapter 203, Occupations Code, page 1, line 9, by adding the word "midwifery" after "The" and before "board"

Amend page 1, line 10, by adding the word "midwifery" after "of" and before "board" and again after "the" and before "board"

Amend page 1, line 12, by adding the word "midwifery" between "the" and before "board"

Amend SECTION 2, Subchapter F, Chapter 352, Occupations Code, page 2, line 7 by changing "board" to "department and deleting "board or a"

Amend page 2, line 8, by deleting "three member committee of board members designated by the board"

Amend page 2, line 10, by changing "board or committee" to "department"

Amend SECTION 3, Subchapter E, Chapter 353, Occupations Code, page 3, line 2, by changing "board" to "department and deleting "board or a"

Amend page 3, line 3, by deleting "three member committee of board members designated by the board"

Amend page 3, line 5, by changing "board or committee" to "department"

Amend SECTION 9, Subchapter F, Chapter 455, Occupations Code, page 11, line 9, by changing "board" to "department" and deleting "board or a"

Amend page 11, line 10, by deleting "three member committee of board members designated by the board"

Amend page 11, line 12, by changing "board or committee" to "department" changing "board" to "department and deleting "board or a"

Amend SECTION 13, Subchapter G, Chapter 601, Occupations Code, page 18, line 1, by changing "board" to "department" and deleting "board or a"

Amend page 2, line 8, by deleting "three member committee of board members designated by the board"

Amend page 2, line 10, by changing "board or committee" to "department"

The amendments were read.

On motion of Senator Nelson, the Senate concurred in the House amendments to **SB 791** by a viva voce vote.

**SENATE BILL 338 WITH HOUSE AMENDMENTS**

Senator Madla called **SB 338** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

**Committee Amendment No. 1**

Amend **SB 338** (Senate engrossment) by inserting the following appropriately numbered SECTIONS and renumbering the remaining SECTIONS appropriately:

SECTION \_\_\_\_\_. Subchapter G, Chapter 301, Occupations Code, is amended by adding Section 301.304 to read as follows:

Sec. 301.304. HEPATITIS C COMPONENT IN CONTINUING EDUCATION.

(a) As part of any continuing education requirements under Section 301.303, a license holder shall participate in not less than two hours of continuing education relating to hepatitis C. This subsection applies only to a license holder who renews a license on or after June 1, 2002.

(b) The board shall recognize, prepare, or administer a hepatitis C training component for use in continuing education for license holders under Subsection (a).

(c) The training component must provide information relating to the prevention, assessment, and treatment of hepatitis C.

(d) This section expires June 1, 2004.

SECTION \_\_\_\_\_. The change in law made by Section 301.304, Occupations Code, as added by this Act, applies only to continuing education offered on or after June 1, 2002.

**Committee Amendment No. 2**

Amend **SB 338** as follows:

(1) In Section 94.002, Health and Safety Code, as amended and redesignated by the bill, following the section heading (Senate engrossed version, page 2, line 12), insert "(a)".

(2) At the end of Section 94.002, Health and Safety Code, as amended and redesignated by the bill (Senate engrossed version, page 3, between lines 2 and 3), insert the following:

(b) In developing the prevention program required by Subsection (a)(5), the department may forecast the economic and clinical impacts of hepatitis C and the impact of hepatitis C on quality of life. The department may develop the forecasts in conjunction with an academic medical center or a nonprofit institution with experience using disease management prospective modeling and simulation techniques.

The amendments were read.

Senator Madla moved to concur in the House amendments to **SB 338**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 1190 WITH HOUSE AMENDMENT**

Senator Ellis called **SB 1190** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **SB 1190** (senate engrossment) by inserting the following at the end of proposed Chapter 153, Education Code (on page 5, between lines 22 and 23):

Sec. 153.008. BIENNIAL REPORT. Not later than December 1 of each even-numbered year, the Texas Higher Education Coordinating Board shall report to the governor and to the legislature regarding activities conducted at institutions of higher education under this chapter. The form of the report shall be developed by the Texas Higher Education Coordinating Board in consultation with institutions of higher education and shall include the following measures for each institution of higher education:

(1) revenues received from licenses, royalties, fees, cashed-in equity and other forms of income permitted by this chapter;

(2) the number of shares of stock or other equity interest held under agreements created pursuant to this chapter;

(3) the fair market value of stock or other equity interests held in publicly-traded enterprises created pursuant to this chapter;

(4) new invention disclosures received;

(5) the number of new patent applications filed and new patents granted;

(6) the number of new license agreements executed;

(7) the number of new corporations, partnerships or other business entities established to commercialize intellectual property owned by the institution of higher education; and

(8) direct expenditures for all activities conducted under this chapter.

The amendment was read.

On motion of Senator Ellis, the Senate concurred in the House amendment to **SB 1190** by a viva voce vote.

**SENATE BILL 1051 WITH HOUSE AMENDMENT**

Senator Shapleigh called **SB 1051** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **SB 1051** (the engrossed version) as follows:

(1) On page 2, line 12 add "The Board may adopt rules to exempt a promotora or community health worker from mandatory training who has served for three or more years or who has 1000 or more hours of experience."

The amendment was read.

On motion of Senator Shapleigh, the Senate concurred in the House amendment to **SB 1051** by a viva voce vote.

**HOUSE CONCURRENT RESOLUTION 317**

The President laid before the Senate the following resolution:

**HCR 317**, Recalling **HB 3038** from the governor.

NELSON

The resolution was read.

On motion of Senator Nelson and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

**SENATE BILL 975 WITH HOUSE AMENDMENTS**

Senator Shapleigh called **SB 975** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

**Committee Amendment No. 1**

Amend **SB 975** as follows:

(1) In SECTION 1 of the bill, in added Section 29.903(c), Education Code (page 2, line 1), strike "or".

(2) In SECTION 1 of the bill, in added Section 29.903(c), Education Code (page 2, line 2), strike the period and substitute "; or".

(3) In SECTION 1 of the bill, in added Section 29.903(c), Education Code (page 2, between lines 2 and 3), insert the following:

(3) population of underserved gifted and talented students, as determined by the commissioner.

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

Amend **SB 975** on third reading as follows:

(1) In SECTION 1 of the bill, in added Section 29.903(d), Education Code (House committee report, page 2, line 5), strike "January" and substitute "July".

(2) In SECTION 2 of the bill, (House committee report, page 3, line 17), strike "May 1, 2002" and substitute "July 1, 2001".

(3) In SECTION 2 of the bill, (House committee report, page 3, line 18), strike "implement" and substitute "begin implementation of".

The amendments were read.

Senator Shapleigh moved to concur in the House amendments to **SB 975**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 1078 WITH HOUSE AMENDMENT**

Senator Barrientos called **SB 1078** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **SB 1078** (Senate engrossment) on page 1, line 20, by striking "sixth [~~+2th~~]" and substituting "12th".

The amendment was read.

Senator Barrientos moved to concur in the House amendment to **SB 1078**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 736 WITH HOUSE AMENDMENT**

Senator Duncan called **SB 736** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 736** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the operation of the self-directed semi-independent agency pilot project; making an appropriation.

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

SECTION 1. Section 14, Article 8930, Revised Statutes, is amended to read as follows:

Sec. 14. FEES AND DISPOSITION OF FUNDS. (a) Subject to the limitations, if any, in the applicable enabling legislation, each project agency may set the amount of fees by statute or rule as necessary for the purpose of carrying out the functions of the project agency.

(b) All fees and funds collected by a project agency during the pilot project and any funds appropriated to the project agency shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the project agency for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and its customers.

SECTION 2. Subsection (b), Section 15, Article 8930, Revised Statutes, is amended to read as follows:

(b) If a state agency no longer has status under this Act as a self-directed semi-independent project agency either because of the expiration of this Act or for any other reason, ownership of any property or other asset acquired by the agency during the time the agency participated in the pilot project, including unexpended fees in a

deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to the state.

SECTION 3. (a) This Act takes effect September 1, 2001.

(b) To provide a reasonable period for each project agency under Article 8930, Revised Statutes, as amended by this Act, to establish itself as self-directed semi-independent after the conclusion of fiscal year 2001, each agency is appropriated an amount equal to 50 percent of that agency's appropriated amount for fiscal year 2001. This appropriation may be spent as the project agency directs and shall be repaid to the general revenue fund by the agency as funds become available.

(c) Examination fees collected prior to September 1, 2001, for examinations conducted after September 1, 2001, shall be made available to the project agency to be spent as the agency directs.

The amendment was read.

On motion of Senator Duncan, the Senate concurred in the House amendment to **SB 736** by a viva voce vote.

### SENATE BILL 687 WITH HOUSE AMENDMENT

Senator Brown called **SB 687** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

#### Amendment

Amend **SB 687** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to criminal penalties for the intentional or knowing discharge of waste or pollutants.

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

SECTION 1. Sections 7.145(a) and (b), Water Code, are amended to read as follows:

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant;

(1) into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency; or

(2) from a point source in violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(F) [~~7.187(2)(D)~~] or both.

SECTION 2. Section 7.146, Water Code, is repealed.

SECTION 3. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

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

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, 2001.

The amendment was read.

Senator Brown moved to concur in the House amendment to **SB 687**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### RECESS

The President at 10:57 a.m. announced the Senate would stand recessed until 1:00 p.m. today.

### AFTER RECESS

The Senate met at 1:00 p.m. and was called to order by the President.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 26, 2001

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 321**, Recalling Senate Bill No. 826 from the senate to the house.

**HCR 322**, Recalling H.B. No. 1515 from the governor.

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

**HB 2914** (148 Ayes, 0 Nays, 1 Present Not Voting)

**HJR 81** (146 Ayes, 0 Nays, 1 Present Not Voting)

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**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 342, HB 396, HB 472, HB 653, HB 678, HB 704, HB 785, HB 820, HB 821, HB 824, HB 834, HB 936, HB 1006, HB 1018, HB 1022, HB 1023, HB 1050, HB 1096, HB 1118, HB 1161, HB 1183, HB 1188, HB 1200, HB 1214, HB 1241, HB 1243, HB 1258, HB 1285, HB 1287, HB 1333** (signed subject to Sec. 49-a, Art. III, Texas Constitution), **HB 1359, HB 1365, HB 1403, HB 1408, HB 1418, HB 1445, HB 1562, HB 1572, HB 1617, HB 1645, HB 1659, HB 1685, HB 1691, HB 1692, HB 1697, HB 1712, HB 1716, HB 1757, HB 1794, HB 1811, HB 1856, HB 1887, HB 1913, HB 1938.**

**MESSAGE FROM THE HOUSE****HOUSE CHAMBER**

Austin, Texas

May 26, 2001

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 236** (80 Ayes, 56 Nays, 1 Present Not Voting)  
**HB 328** (144 Ayes, 1 Nays, 1 Present Not Voting)  
**HB 658** (non-record vote)  
**HB 757** (non-record vote)  
**HB 787** (142 Ayes, 0 Nays, 1 Present Not Voting)  
**HB 1234** (non-record vote)  
**HB 1922** (non-record vote)  
**HB 2164** (137 Ayes, 1 Nays, 1 Present Not Voting)  
**HB 2446** (non-record vote)  
**SB 22** (141 Ayes, 0 Nays, 1 Present Not Voting)  
**SB 115** (non-record vote)  
**SB 406** (non-record vote)  
**SB 516** (non-record vote)  
**SB 536** (142 Ayes, 0 Nays, 1 Present Not Voting)  
**SB 555** (145 Ayes, 0 Nays, 1 Present Not Voting)  
**SB 768** (non-record vote)  
**SB 1057** (124 Ayes, 21 Nays, 1 Present Not Voting)  
**SB 1119** (non-record vote)  
**SB 1444** (143 Ayes, 0 Nays, 2 Present Not Voting)

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

**HB 1739** (non-record vote)

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

### SENATE RESOLUTION 1216

Senator Harris offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, 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 No. 1831, relating to the general power of the Texas Department of Transportation to contract, to consider and take action on the following matter:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add a new section to the bill to read as follows:

SECTION 2. (a) Section 502.299, Transportation Code, as added by Chapter 433, Acts of the 76th Legislature, Regular Session, 1999, is amended by amending Subsections (b) and (c) and by adding Subsection (d) to read as follows:

(b) The department shall issue license plates under this section to a person who:

(1) applies to the county assessor-collector of the county in which the person resides on a form provided by the department; and

(2) pays an [the] annual fee of \$30 [established by the department under Subsection (e)], in addition to the fee prescribed by Section 502.161 or 502.162, and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(c) Of each fee collected under Subsection (b)(2), \$5 shall be used by the department only to defray the cost of administering this section. The department shall deposit the remainder of each fee collected to the credit of the YMCA account established by Section 7.025, Education Code [The department by rule shall establish the annual fee for registration under this section 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 issuing license plates under this section].

(d) If the owner of a vehicle for which license plates were issued under this section disposes of the vehicle during a registration year, the owner shall return the special license plates to the department.

(b) Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.025 to read as follows:

Sec. 7.025. YMCA ACCOUNT. The YMCA account is a separate account in the general revenue fund. The account is composed of money deposited to the credit of the account under Section 502.299, Transportation Code, as added by Chapter 433, Acts of the 76th Legislature, Regular Session, 1999. The Texas Education Agency administers the account and may spend money credited to the account only to make grants to benefit the youth and government programs sponsored by the Young Men's Christian Associations located in Texas.

(c) Notwithstanding any other provision of this Act, this section takes effect September 1, 2001. The changes in law made by this section apply only to the registration of a motor vehicle that is applied for on or after that date. The registration of a motor vehicle that was applied for before the effective date of this section is covered by the law in effect on the date the registration was applied for, and the former law is continued in effect for that purpose.

Explanation: This addition is necessary to provide for collection and disposition of fees in connection with special license plates in honor of the YMCA in Texas.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add a new section to the bill to read as follows:

SECTION 3. (a) Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.2735 to read as follows:

Sec. 502.2735. TEXANS CONQUER CANCER LICENSE PLATES. (a) The department shall issue specially designed license plates for passenger cars and light trucks that include the words "Texans Conquer Cancer."

(b) The department shall design the license plates in consultation with the Texas Cancer Council.

(c) The department shall issue license plates under this section to a person who:

(1) applies to the assessor-collector of the county in which the person resides on a form provided by the department; and

(2) pays an annual fee of \$30, in addition to the fee prescribed by Section 502.161 or Section 502.162, and, if personalized prestige license plates are issued, in addition to the fee prescribed by Section 502.251.

(d) Of each fee collected under Subsection (c)(2), \$5 shall be used by the department only to defray the cost of administering this section. The department shall deposit the remainder of each fee collected to the credit of the Texans Conquer Cancer account established by Section 102.017, Health and Safety Code.

(e) If the owner of a vehicle for which license plates were issued under this section disposes of the vehicle during a registration year, the owner shall return the special license plates to the department.

(b) Chapter 102, Health and Safety Code, is amended by adding Sections 102.017 and 102.018 to read as follows:

Sec. 102.017. TEXANS CONQUER CANCER ACCOUNT. (a) The Texans Conquer Cancer account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 502.2735, Transportation Code; and

(2) gifts, grants, and donations.

(b) The council administers the account. The council may spend money credited to the account only to:

(1) make grants to nonprofit organizations that provide support services for cancer patients and their families; and

(2) defray the cost of administering the account.

(c) The council:

(1) may accept gifts, donations, and grants from any source for the benefit of the account; and

(2) by rule shall establish guidelines for spending money credited to the account.

Sec. 102.018. TEXANS CONQUER CANCER ADVISORY COMMITTEE. (a) The council shall appoint a seven-member Texans Conquer Cancer advisory committee.

(b) The committee shall:

(1) assist the council in establishing guidelines for the expenditure of money credited to the Texans Conquer Cancer account; and

(2) review and make recommendations to the council on applications submitted to the council for grants funded with money credited to the Texans Conquer Cancer account.

(c) Members of the committee serve without compensation and are not entitled to reimbursement for expenses. Each member serves a term of four years, with the terms of three or four members expiring on January 31 of each odd-numbered year.

(d) Section 2110.008, Government Code, does not apply to the committee.

Explanation: This addition is necessary to provide for issuance of Texans Conquer Cancer license plates.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### HOUSE CONCURRENT RESOLUTION 321

The President laid before the Senate the following resolution:

**HCR 321**, Recalling **SB 826** from the senate to the house.

TRUAN

The resolution was read.

On motion of Senator Truan and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

### SENATE BILL 220 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 220** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### Amendment

Amend **SB 220** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the regulation and enforcement of weight limitations and safety standards for certain motor vehicles and the enforcement of certain other traffic laws; providing penalties.

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

SECTION 1. Subsection (a), Section 251.153, Transportation Code, is amended to read as follows:

(a) The commissioners court of a county may establish load limits for any county road or bridge in the manner prescribed by Section 621.301.

SECTION 2. Subchapter A, Chapter 621, Transportation Code, is amended by adding Section 621.007 to read as follows:

Sec. 621.007. EVIDENCE OF VIOLATION. (a) In a proceeding in which a violation of a weight restriction under this subtitle may be an issue, a document is admissible as relevant evidence of the violation if:

(1) the document is:

(A) a record kept under Section 621.410; or

(B) a bill of lading, freight bill, weight certification, or similar document that is issued by a person consigning cargo for shipment or engaged in the business of transporting or forwarding cargo; and

(2) the document states:

(A) a gross weight of the vehicle or combination of vehicles and cargo that exceeds a weight restriction under this subtitle; or

(B) a gross weight of the cargo that combined with the empty weight of the vehicle or combination of vehicles exceeds a weight restriction under this subtitle.

(b) This section does not limit the admissibility of any other evidence relating to the violation.

SECTION 3. Section 621.101, Transportation Code, is amended to read as follows:

Sec. 621.101. MAXIMUM WEIGHT OF LOAD. (a) A vehicle or combination of vehicles may not be operated over or on a public highway [~~outside the territory of a municipality, over or on a state-maintained public highway inside the territory of a municipality;~~] or at a port-of-entry between Texas and the United Mexican States if the vehicle or combination has:

(1) ~~a single [an] axle weight [that carries a load] heavier than 20,000 pounds[;~~

~~[(A) 16,000 pounds on high-pressure tires; or~~

~~(B) 20,000 pounds on low-pressure tires, including all enforcement tolerances];~~

(2) a tandem axle weight heavier than 34,000 pounds, including all enforcement tolerances;

(3) an overall gross weight on a group of two or more consecutive axles heavier than the weight computed using the following formula and rounding the result to the nearest 500 pounds:

$$W = 500((LN/(N-1)) + 12N + 36)$$

where:

"W" is maximum overall gross weight on the group;

"L" is distance in feet between the axles of the group that are the farthest apart; and

"N" is number of axles in the group; or

(4) tires that carry a weight greater than the weight specified and marked on the sidewall of the tire, unless the vehicle is being operated under the terms of a special permit [a weight heavier than:

[(A) 600 pounds for each inch of tire width concentrated on the surface of the highway on a wheel using high-pressure tires; or

[(B) 650 pounds for each inch of tire width concentrated on the surface of the highway on a wheel using low-pressure tires; or

[(5) a wheel that carries a load heavier than:

[(A) 8,000 pounds on high-pressure tires; or

[(B) 10,000 pounds on low-pressure tires].

(b) Notwithstanding Subsection (a)(3), two consecutive sets of tandem axles may carry a gross load of not more than 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets is 36 feet or more. The overall gross weight on a vehicle [group of two or more consecutive axles] may not be heavier than 80,000 pounds, regardless of tire ratings, axle spacing (bridge), and number of axles [including all enforcement tolerances].

(c) This section does not:

(1) authorize size or weight limits on the national system of interstate and defense highways in this state greater than those permitted under 23 U.S.C. Section 127; or

(2) prohibit the operation of a vehicle or combination of vehicles that could be lawfully operated on a highway or road of this state on December 16, 1974.

(d) In [For the purposes of] this section:

(1) "Single axle" means the weight of one axle with two or more tires.

(2) "Tandem axle" means the weight of two axles spaced not more than eight feet apart with the axles mounted on a single suspension system to provide equal distribution of loads between the axles[; the load carried on an axle is the total load transmitted to the road by all wheels the centers of which can be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle].

SECTION 4. Subsection (a), Section 621.301, Transportation Code, is 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 department. A load limit shall be deemed concurred with by the department 30 days after the county submits to the department the load limit accompanied by supporting documentation and calculations reviewed and sealed by an engineer licensed in this state, though the department may review the load limit and withdraw concurrence at any time after the 30-day period.

SECTION 5. Subchapter F, Chapter 621, Transportation Code, is amended by adding Section 621.410 to read as follows:

Sec. 621.410. WEIGHT RECORD. (a) This section applies only to cargo transported by a commercial motor vehicle.

(b) A person who weighs cargo before or after unloading shall keep a written record, in the form prescribed by the department, containing the information required by Subsection (c).

(c) A record under this section must state:

(1) the origin, weight, and composition of the cargo;

(2) the date of loading or unloading, as applicable;

(3) the name and address of the shipper;

(4) the total number of axles on the vehicle or combination of vehicles transporting the cargo;

(5) an identification number of the vehicle or other identification of the vehicle required by department rules; and

(6) any other information required by the department.

(d) A person required to keep a record under this section shall keep the record for not less than 180 days after the date it is created. The person shall make the record available to inspection and copying by a weight enforcement officer on demand.

SECTION 6. Subchapter G, Chapter 621, Transportation Code, is amended by adding Section 621.509 to read as follows:

Sec. 621.509. FAILURE TO MAINTAIN WEIGHT RECORD. (a) A person commits an offense if the person fails to keep a weight record in violation of Section 621.410.

(b) An offense under this section is a Class C misdemeanor.

SECTION 7. Subsection (c), Section 623.011, Transportation Code, is amended to read as follows:

(c) A permit issued under this section:

(1) is valid for one year; and

(2) must be carried in the vehicle for which it is issued[; and

~~[(3) does not authorize the operation on the national system of interstate and defense highways in this state of vehicles with a weight greater than authorized by federal law].~~

SECTION 8. Subchapter B, Chapter 623, Transportation Code, is amended by adding Section 623.0113 to read as follows:

Sec. 623.0113. ROUTE RESTRICTIONS. (a) Except as provided by Subsection (b), a permit issued under Section 623.011 does not authorize the operation of a vehicle on:

(1) the national system of interstate and defense highways in this state if the weight of the vehicle is greater than authorized by federal law; or

(2) a bridge for which a maximum weight and load limit has been established and posted by the Texas Transportation Commission under Section 621.102 or the commissioners court of a county under Section 621.301, if the gross weight of the vehicle and load or the axles and wheel loads are greater than the limits established and posted under those sections.

(b) The restrictions under Subsection (a)(2) do not apply if a bridge described by Subsection (a)(2) provides the only public vehicular access from an origin or to a destination by a holder of a permit issued under Section 623.011.

SECTION 9. Subchapter A, Chapter 644, Transportation Code, is amended by adding Section 644.005 to read as follows:

Sec. 644.005. DEPARTMENT DATABASE. The department shall develop and maintain a database on roadside vehicle inspection reports for defects on any intermodal equipment. The database shall include all citations involving intermodal equipment issued by officers certified under Section 644.101. The database shall be used to identify violations discovered on intermodal equipment during a roadside inspection.

SECTION 10. Section 644.101, Transportation Code, is amended to read as follows:

Sec. 644.101. CERTIFICATION OF CERTAIN PEACE [MUNICIPAL POLICE] OFFICERS. (a) The department shall establish procedures, including training, for the certification of municipal police officers, sheriffs, and deputy sheriffs to enforce this chapter.

(b) A police officer of any of the following municipalities is eligible to apply for certification under this section:

(1) a municipality with a population of 100,000 or more;

(2) a municipality with a population of 25,000 or more any part of which is located in a county with a population of two ~~[2.4]~~ million or more;

(3) a municipality with a population of less than 25,000:

(A) any part of which is located in a county with a population of 2.4 million; and

(B) that contains or is adjacent to an international port; or

(4) a municipality any part of which is located in a county bordering the United Mexican States.

(c) A sheriff or a deputy sheriff of a county bordering the United Mexican States or of a county with a population of 2.2 million or more is eligible to apply for certification under this section.

(d) A sheriff, a deputy sheriff, or any peace officer that does not attend continuing education courses on the enforcement of traffic and highway laws and on the use of radar equipment as prescribed by Subchapter F, Chapter 1701, Occupations Code, shall not enforce traffic and highway laws.

(e) The department by rule shall establish reasonable fees sufficient to recover from a municipality or a county the cost of certifying its peace [police] officers under this section.

SECTION 11. Section 644.102, Transportation Code, is amended to read as follows:

Sec. 644.102. MUNICIPAL AND COUNTY ENFORCEMENT REQUIREMENTS. (a) The department by rule shall establish uniform standards for municipal or county enforcement of this chapter.

(b) A municipality or county that engages in enforcement under this chapter:

(1) shall pay all costs relating to the municipality's or county's enforcement;

(2) may not be considered, in the context of a federal grant related to this chapter:

(A) a party to a federal grant agreement; or

(B) a grantee under a federal grant to the department; and

(3) must comply with the standards established under Subsection (a).

(c) Municipal or county enforcement under Section 644.103(b) is not considered departmental enforcement for purposes of maintaining levels of effort required by a federal grant.

(d) In each fiscal year, a municipality may retain fines from the enforcement of this chapter in an amount not to exceed 110 percent of the municipality's actual expenses for enforcement of this chapter in the preceding fiscal year, as determined by the comptroller after reviewing the most recent municipal audit conducted under Section 103.001, Local Government Code. If there are no actual expenses for enforcement of this chapter in the most recent municipal audit, a municipality may retain fines in an amount not to exceed 110 percent of the amount the comptroller estimates would be the municipality's actual expenses for enforcement of this chapter during the year.

(e) In each fiscal year, a county may retain fines from the enforcement of this chapter in an amount not to exceed 110 percent of the county's actual expenses for enforcement of this chapter in the preceding fiscal year, as determined by the comptroller after reviewing the most recent county audit conducted under Chapter 115, Local Government Code. If there are no actual expenses for enforcement of this chapter in the most recent county audit, a county may retain fines in an amount not to exceed 110 percent of the amount the comptroller estimates would be the county's actual expenses for enforcement of this chapter during the year.

(f) A municipality or county shall send to the comptroller the proceeds of all fines that exceed the limit imposed by Subsection (d) or (e). The comptroller shall then deposit the remaining funds to the credit of the Texas Department of Transportation.

(g) [(f)] The department shall revoke or rescind the certification of any peace [municipal police] officer who fails to comply with any standard established under Subsection (a).

SECTION 12. Subsection (b), Section 644.103, Transportation Code, is amended to read as follows:

(b) A municipal police officer who is certified under Section 644.101 may detain on a highway or at a port of entry within the territory of the municipality a motor vehicle that is subject to this chapter. A sheriff or deputy sheriff who is certified under Section 644.101 may detain on a highway or at a port of entry within the territory of the county a motor vehicle that is subject to this chapter.

SECTION 13. (a) Except as provided by Subsection (c) of this section, this Act takes effect September 1, 2001.

(b) Section 621.101, Transportation Code, as amended by this Act, applies only to a vehicle or combination of vehicles operated on a public highway or at a port-of-entry on or after the effective date of this Act. A vehicle or combination of vehicles operated on a public highway or at a port-of-entry before the effective date of this Act is governed by the law in effect at the time the vehicle or combination of vehicles was operated, and the former law is continued in effect for that purpose.

(c) Section 621.509, Transportation Code, as added by this Act, takes effect October 1, 2001.

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

Amend **CSSB 220** as follows:

On page 5, line 19, after Section 621.410(d), add the following new subsection (e):

"(e) This section does not apply to a vehicle that transports material regulated under Section 623.161."

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

Amend **CSSB 220** as follows:

(1) In SECTION 3 of the bill, in amended Section 621.101(a)(1), Transportation Code (Committee Printing, page 2, lines 19 and 20), strike Subdivision (B) and substitute:

~~[(B) 20,000 pounds on low-pressure tires]~~, including all enforcement tolerances;

(2) In SECTION 3 of the bill, in amended Section 621.101(b), Transportation Code (Committee Printing, page 3, lines 24-26), strike "regardless of tire ratings, axle spacing (bridge), and number of axles [including all enforcement tolerances]" and substitute "including all enforcement tolerances, regardless of tire ratings, axle spacing (bridge), and number of axles".

(3) In SECTION 3 of the bill, in amended Section 621.101, Transportation Code (Committee Printing, page 4, lines 7-16), strike Subsection (d) and substitute:

~~[(d) For the purposes of this section, the load carried on an axle is the total load transmitted to the road by all wheels the centers of which can be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.]~~

(4) Insert the following appropriately numbered SECTION and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 621.001, Transportation Code, is amended by adding Subdivisions (10) and (11) to read as follows:

(10) "Single axle weight" means the total weight transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(11) "Tandem axle weight" means the total weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

### Floor Amendment No. 3

Amend **CSSB 220** in SECTION 5 of the bill, added Section 621.410(a), Transportation Code, (Committee Printing, page 5, line 3), between "cargo" and "transported" by inserting "other than timber or another agricultural product in its natural state".

The amendments were read.

On motion of Senator Shapiro, the Senate concurred in the House amendments to **SB 220** by a viva voce vote.

### SENATE BILL 917 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 917** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

### Amendment

Amend **SB 917** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the aggregation of amounts involved in the offense of breach of computer security to determine punishment.

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

SECTION 1. Section 33.02, Penal Code, is amended by adding Subsection (c) to read as follows:

(c) When benefits are obtained, a victim is defrauded or harmed, or property is altered, damaged, or deleted in violation of this section, whether or not in a single incident, the conduct may be considered as one offense and the value of the benefits obtained and of the losses incurred because of the fraud, harm, or alteration, damage, or deletion of property may be aggregated in determining the grade of the offense.

SECTION 2. This Act takes effect September 1, 2001, and applies only to an offense committed on or after that date. 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. 1

Amend **CSSB 917** on page 1, line 14, by adding a new SECTION 2 and renumbering the subsequent section appropriately:

SECTION 2. Chapter 38 of the Code of Criminal Procedure is amended by adding Article 38.39 to read as follows:

Evidence in an aggregation prosecution with numerous victims. In trials involving an allegation of a continuing scheme of fraud or theft alleged to have been committed against a large class of victims in an aggregate amount or value, it need not be proved by direct evidence that each alleged victim did not consent or did not effectively consent to the transaction in question. It shall be sufficient if the lack of consent or effective consent to a particular transaction or transactions is proven by either direct or circumstantial evidence.

The amendments were read.

On motion of Senator Shapiro, the Senate concurred in the House amendments to **SB 917** by a viva voce vote.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 3348**

Senator Staples, on behalf of Senator Haywood, 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 3348** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 3348** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Haywood, Chair; Ogden, Staples, Bernsen, and Brown.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2404**

Senator Brown 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 2404** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2404** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Armbrister, Lucio, Bivins, and Wentworth.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2932**

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 2932** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2932** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carona, Chair; Moncrief, Sibley, Duncan, and Cain.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 3578**

Senator Shapleigh 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 3578** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 3578** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapleigh, Chair; Van de Putte, Nelson, Carona, and Lucio.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 3244**

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3244** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 3244** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Armbrister, Ogden, Ellis, and Zaffirini.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 3016**

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 3016** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 3016** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapiro, Chair; Carona, Nelson, Zaffirini, and Van de Putte.

**CONFERENCE COMMITTEE ON HOUSE BILL 2509**

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 2509** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2509** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapiro, Chair; Staples, Madla, Jackson, and Fraser.

**SENATE RESOLUTION 1094**

Senator Barrientos offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in recognizing The University of Texas at Austin's Coach Jody Conradt, for coaching her 1,000th basketball game on January 17, 2001; and

WHEREAS, The first woman in history to coach 1,000 games in the National Collegiate Athletic Association, Division One, this outstanding coach is one of a select group of 17 Division One coaches who have coached that many games; and

WHEREAS, A living legend, Jody Conradt says that circumstances have changed in women's basketball since she began her career; and

WHEREAS, Jody Conradt began her profession 32 seasons ago, in 1969, when she went to work for Sam Houston State University as a coach and physical education teacher; at that point, there was little activity for women's collegiate sports at the Division One level; and

WHEREAS, Although she coached her first game at age 28, Coach Conradt says that today, a university would be reluctant to hire someone that young who had no experience coaching at the Division One level; and

WHEREAS, In 1973 Jody began a women's basketball program at The University of Texas at Arlington and coached softball and volleyball as well; and

WHEREAS, Arriving at The University of Texas at Austin in 1976, Jody Conradt took charge of basketball and volleyball; she immediately began to change schedules to include more talented teams as opponents and to include more Top 10 teams; and

WHEREAS, Guiding her team into the Top 20 rankings during her first year, Jody Conradt began to establish a formidable team which has not left the Top 20 often; and

WHEREAS, In her fourth year, she guided her team to a 33-4 season and won National Coach of the Year; in her fifth year, the Lady Longhorns won the AIAW State Title; and

WHEREAS, Reaching new heights after joining the National Collegiate Athletic Association in 1982, Coach Conradt's team became number one in the nation for four years in a row; and

WHEREAS, During the 1985 through 1986 season she gathered together one of the finest teams ever in basketball and led them through the first unbeaten season in the history of the women's NCAA; and

WHEREAS, From the beginning, Jody Conradt made special efforts to attract fans, and the fans drew others to the games; over the past 24 years, millions of loyal fans have continued to follow the Lady Longhorns closely; and

WHEREAS, The recipient of countless honors, Coach Conradt was inducted into the Texas Women's Hall of Fame in 1986 and the International Women's Sports Hall of Fame in 1995; she was selected as National Coach of the Year and the Southwest Conference Coach of the Year innumerable times; and

WHEREAS, A woman of uncommon perseverance, honesty, and dedication, Coach Jody Conradt has touched the lives of thousands of young women and made invaluable contributions to the world of women's sports; having coached her 1,000th basketball game is a distinguished mark of success; such an outstanding coach is truly worthy of legislative recognition; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby commend Coach Jody Conradt for coaching her 1,000th basketball game on January 17, 2001, and congratulate her on her impressive career; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her as an expression of highest regard from the Texas Senate.

The resolution was again read.

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

The resolution was previously adopted on Friday, May 18, 2001.

#### **GUESTS PRESENTED**

Senator Barrientos was recognized and introduced to the Senate Jody Conradt, Coach of The University of Texas at Austin women's basketball team, accompanied by Chris Plonsky, Acting Director of Women's Athletics.

The Senate welcomed its guests.

#### **MOTION TO SUSPEND SENATE RULE 11.13 (Consideration of Bills in Committee)**

Senator Ellis asked unanimous consent to suspend Senate Rule 11.13 to grant the conference committee on **HB 1839** permission to meet while the Senate was meeting today.

There was objection and the motion was lost.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 3507**

Senator Moncrief 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 3507** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 3507** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Moncrief, Chair; Carona, Brown, Sibley, and Van de Putte.

**CONFERENCE COMMITTEE ON HOUSE BILL 588**

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 588** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 588** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Jackson, Chair; Duncan, West, Shapiro, and Cain.

**SENATE RESOLUTION 1219**

Senator Ogden offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, 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 No. 886, relating to motor vehicle size and weight limitations; providing penalties, to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add the following new sections to the bill:

SECTION \_\_\_\_\_. Section 521.242, Transportation Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) A person may apply for an occupational license by filing a verified petition only with the clerk of the county court or district court in which the person was convicted if:

(1) the person's license has been automatically suspended or canceled under this chapter [~~or Chapter 522~~] for a conviction of an offense under the laws of this state; and

(2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of this state.

(f) A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies.

SECTION \_\_\_\_\_. Subdivisions (12), (23), and (25), Section 522.003, Transportation Code, are amended to read as follows:

(12) "Driver's license" has the meaning assigned by Section 521.001 [~~means a license issued by a state to an individual that authorizes the individual to drive a motor vehicle~~].

(23) "Out-of-service order" means:

(A) a temporary prohibition against driving a commercial motor vehicle issued under Section 522.101, the law of another state, or 49 C.F.R. Section 383.5; or

(B) a declaration by the Federal Motor Carrier Safety Administration [~~highway administration~~] or an authorized enforcement officer of a state or local jurisdiction that a driver, commercial motor vehicle, or motor carrier operation is out of service under 49 C.F.R. Section 383.5.

(25) "Serious traffic violation" means a conviction arising from the driving of a commercial motor vehicle, other than a parking, vehicle weight, or vehicle defect violation, for:

- (A) excessive speeding, involving a single charge of driving 15 miles per hour or more above the posted speed limit;
- (B) reckless driving, as defined by state or local law;
- (C) a violation of a state or local law related to motor vehicle traffic control, including a law regulating the operation of vehicles on highways, arising in connection with a fatal accident;
- (D) improper or erratic traffic lane change; ~~or~~
- (E) following the vehicle ahead too closely; ~~or~~
- (F) operating a commercial motor vehicle in violation of Section 522.011 or 522.015.

SECTION \_\_\_\_\_. Section 522.011, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) It is a defense to prosecution under Subsection (a)(1)(A) if the person charged produces in court a commercial driver's license that:

- (1) was issued to the person;
- (2) is appropriate for the class of vehicle being driven; and
- (3) was valid when the offense was committed.

SECTION \_\_\_\_\_. Subsections (b), (c), and (d), Section 522.012, Transportation Code, are amended to read as follows:

(b) In granting a waiver under this section, the department is subject to any condition or requirement established for the waiver by the secretary or the Federal Motor Carrier Safety Administration ~~[highway administration]~~.

(c) In addition to any restriction or limitation imposed by this chapter or the department, a restricted commercial driver's license issued under this section is subject to any restriction or limitation imposed by the secretary or the Federal Motor Carrier Safety Administration ~~[highway administration]~~.

(d) In this section, "farm-related service industry" has the meaning assigned by the secretary or the Federal Motor Carrier Safety Administration ~~[highway administration]~~ under the federal act.

SECTION \_\_\_\_\_. Subsection (a), Section 522.021, Transportation Code, is amended to read as follows:

(a) An application for a commercial driver's license or commercial driver learner's permit must include:

- (1) the full name and current residence and mailing address of the applicant;
- (2) a physical description of the applicant, including sex, height, and eye color;
- (3) the applicant's date of birth;
- (4) the applicant's social security number, unless the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction;
- (5) certifications, including those required by 49 C.F.R. Section 383.71(a); and
- (6) any other information required by the department.

SECTION \_\_\_\_\_. Subsection (a), Section 522.042, Transportation Code, is amended to read as follows:

SECTION \_\_\_\_\_. Subsection (a), Section 522.042, Transportation Code, is amended to read as follows:

- (a) The department may issue a commercial driver's license with endorsements:
- (1) authorizing the driving of a vehicle transporting hazardous materials;
  - (2) authorizing the towing of a double or triple trailer or a trailer over a specified weight;
  - (3) authorizing the driving of a vehicle carrying passengers;
  - (4) authorizing the driving of a tank vehicle; ~~or~~
  - (5) representing a combination of hazardous materials and tank vehicle endorsements; or
  - (6) authorizing the driving of a school bus, as defined by Section 541.201.

SECTION \_\_\_\_\_. Subsection (a), Section 522.062, Transportation Code, is amended to read as follows:

(a) ~~If [Not later than the 10th day after the date the department receives a report of a conviction of]~~ a person holds a commercial driver's license issued by [who has a domicile in] another state and is finally convicted of [or in a foreign jurisdiction for] a violation of a state traffic law or local traffic ordinance ~~[relating to motor vehicle traffic control, including a law regulating the operation of vehicles on highways,]~~ that was committed in a commercial motor vehicle, the department shall notify the driver's licensing authority in the issuing [licensing] state of that [the] conviction, in the time and manner required by 49 U.S.C. Section 31311.

SECTION \_\_\_\_\_. The heading to Section 522.072, Transportation Code, is amended to read as follows:

Sec. 522.072. EMPLOYER RESPONSIBILITIES [PERMITTING UNAUTHORIZED DRIVING PROHIBITED].

SECTION \_\_\_\_\_. Subsection (b), Section 522.072, Transportation Code, is amended to read as follows:

(b) An employer may not knowingly require a driver to operate a commercial motor vehicle in violation of a federal, state, or local law that regulates the operation of a motor vehicle at a railroad grade crossing.

(c) In addition to any penalty imposed under this chapter, an employer who violates this section [Subsection (a) or an out-of-service order] may be penalized or disqualified under 49 C.F.R. Part 383.

SECTION \_\_\_\_\_. Subsections (a) and (b), Section 522.081, Transportation Code, are amended to read as follows:

(a) This subsection applies only to a violation committed while operating a commercial motor vehicle. A person is disqualified from driving a commercial motor vehicle for:

(1) 60 days if convicted of:

- (A) two serious traffic violations that occur within a three-year period; or

(B) one violation of a law that regulates the operation of a motor vehicle at a railroad grade crossing;

(2) ~~[-or]~~ 120 days if convicted of:

- (A) three serious traffic violations~~[-committed in a commercial motor vehicle]~~ arising from separate incidents occurring within a three-year period; or

(B) two violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period; or

(3) one year if convicted of three violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period.

(b) A person is disqualified from driving a commercial motor vehicle for one year on first conviction of:

(1) driving a commercial motor vehicle under the influence of alcohol or a controlled substance, including a violation of Section 49.04 or 49.07, Penal Code;

(2) driving a commercial motor vehicle while the person's alcohol concentration was 0.04 or more;

(3) intentionally leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(4) using a commercial motor vehicle in the commission of a felony, other than a felony described by Subsection (d)(2); [or]

(5) refusing to submit to a test to determine the person's alcohol concentration or the presence in the person's body of a controlled substance or drug while driving a commercial motor vehicle;

(6) causing the death of another person through the negligent or criminal operation of a commercial motor vehicle; or

(7) driving a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled, or while the person is disqualified from driving a commercial motor vehicle, for an action or conduct that occurred while operating a commercial motor vehicle.

SECTION \_\_\_\_\_. Subsections (a) and (b), Section 522.087, Transportation Code, are amended to read as follows:

(a) A person is automatically disqualified under Section 522.081(a)(1)(B), Section 522.081(b)(1), (3), [or] (4), (6), or (7), or Section 522.081(d)(2). An appeal may not be taken from the disqualification.

(b) Disqualifying a person under Section 522.081(a), other than under Subdivision (1)(B) of that subsection or Section 522.081(d)(1) is subject to the notice and hearing procedures of Sections 521.295-521.303. An appeal of the disqualification is subject to Section 521.308.

SECTION \_\_\_\_\_. Section 522.102, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) This section and Section 522.103 apply only to a person who is stopped or detained while driving a commercial motor vehicle.

SECTION \_\_\_\_\_. Section 522.103, Transportation Code, is amended to read as follows:

Sec. 522.103. WARNING BY PEACE OFFICER. (a) A peace officer requesting a person to submit a specimen under Section 522.102 shall warn the person that a refusal to submit a specimen will result in the person's being immediately placed out of service for 24 hours and being disqualified from driving a commercial motor vehicle for at least one year under Section 522.081.

(b) A peace officer requesting a person to submit a specimen under Section 522.102 is not required to comply with Section 724.015.

SECTION \_\_\_\_\_. Subdivision (20), Section 522.003, Transportation Code, is repealed.

SECTION \_\_\_\_\_. (a) This Act takes effect September 1, 2001.

(b) Subsection (d), Section 522.011, Transportation Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(c) Subsection (a), Section 522.021, Transportation Code, as amended by this Act, applies only to an application for a commercial driver's license that is filed on or after the effective date of this Act. An application for a commercial driver's license that was filed before the effective date of this Act 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) Subsection (a), Section 522.062, Transportation 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 immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) Section 522.081, Transportation 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 immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(f) Section 522.087, Transportation Code, as amended by this Act, applies only to a disqualification that is issued under Chapter 522, Transportation Code, on or after the effective date of this Act. A disqualification that is issued under that chapter before the effective date of this Act is governed by the law in effect on the date the disqualification was issued, and the former law is continued in effect for that purpose.

(g) Sections 522.102 and 522.103, Transportation Code, as amended by this Act, apply 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 immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

Explanation: This addition is necessary to address the changes to the commercial driver licensing program required by the passage of the federal Motor Vehicle Safety Act of 1999.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### CONFERENCE COMMITTEE ON HOUSE BILL 2146

Senator Bivins 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 2146** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2146** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Sibley, Shapiro, Lucio, and Nelson.

### CONFERENCE COMMITTEE ON HOUSE BILL 1763

Senator Sibley 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 1763** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 1763** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Carona, Fraser, Shapleigh, and Lucio.

### CONFERENCE COMMITTEE ON HOUSE BILL 3452

Senator Sibley 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 3452** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 3452** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Fraser, Shapiro, Lucio, and Zaffirini.

### SENATE BILL 280 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 280** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### Floor Amendment No. 1

Amend **SB 280** as follows:

In SECTION 1 of the bill, amend Section (a) to read as follows:

(a) In this Act, "vaccines for children program":

(1) means the program operated by the Texas Department of Health under authority of 42 U.S.C. Section 1396s, as amended; and

(2) includes the program allowing each health care provider participating in the federal vaccines for children program, beginning with each such health care provider located in the largest major metropolitan area in the state with the lowest immunization rate of children, to select vaccines from the list of all vaccines that are recommended and approved by the federal advisory committee on immunization practices and under contract with the Centers for Disease Control of the United State Public Health Service and to use combination vaccines.

**Floor Amendment No. 2**

Amend **SB 280** as follows:

(1) In SECTION 1 of the bill (House Committee Printing page 1, between lines 15-16), insert new Subsection (d) to read as follows:

"(d) Out of funds saved from more efficient and effective storage and distribution of vaccinations used in the vaccines for children program, the Texas Department of Health shall allow each health care provider participating in the federal vaccines for children program, beginning with each such health care provider located in a major metropolitan area with an immunization rate below the national average, to:

(1) select vaccines from the list of all vaccines that are recommended and approved by the federal advisory committee on immunization practices and under and contract with the Centers for Disease Control of the United States Public Health Service; and

(2) use combination vaccines."

(2) In SECTION 1 of the bill (House Committee Printing page 1, line 16), reletter Subsection (d) as Subsection (e) and strike "This Act" and substitute "Subsections (b) and (c) of this Act".

The amendments were read.

On motion of Senator Nelson, the Senate concurred in the House amendments to **SB 280** by a viva voce vote.

**SENATE BILL 929 WITH HOUSE AMENDMENT**

Senator Bernsen called **SB 929** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 929** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to a restriction on the financing of multifamily residential developments by housing authorities and housing finance corporations.

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

SECTION 1. Section 303.042, Local Government Code, is amended to read as follows:

Sec. 303.042. TAXATION. (a) A public facility, including a leasehold estate in a public facility, that is owned by a corporation and that, except for the purposes and nonprofit nature of the corporation, would be taxable to the corporation under Title 1, Tax Code, shall be assessed to the user of the public facility to the same extent and subject to the same exemptions from taxation as if the user owned the public facility. If there is more than one user of the public facility, the public facility shall be assessed to the users in proportion to the value of the rights of each user to occupy, operate, manage, or use the public facility.

(b) The user of a public facility is considered the owner of the facility for purposes of the application of:

(1) sales and use taxes in the construction, sale, lease, or rental of the public facility; and

(2) other taxes imposed by this state or a political subdivision of this state.

(c) A corporation is engaged exclusively in performance of charitable functions and is exempt from taxation by this state or a municipality or other political subdivision of this state. Bonds issued by a corporation under this chapter, a transfer of the bonds, interest on the bonds, and a profit from the sale or exchange of the bonds are exempt from taxation by this state or a municipality or other political subdivision of this state.

(d) An exemption under this section for a multifamily residential development which is owned by a public facility corporation created by a housing authority under this chapter and which does not have at least 20 percent of its units reserved for public housing units, applies only if:

(1) the housing authority holds a public hearing, at a regular meeting of the authority's governing body, to approve the development; and

(2) at least 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80 percent of the area median family income.

(e) For the purposes of Subsection (d), a "public housing unit" is a dwelling unit for which the landlord receives a public housing operating subsidy. It does not include a unit for which payments are made to the landlord under the federal Section 8 Housing Choice Voucher Program.

SECTION 2. Section 392.005, Local Government Code, is amended to read as follows:

Sec. 392.005. TAX EXEMPTION. (a) The property of an authority is public property used for essential public and governmental purposes. The authority and the authority's property are exempt from all taxes and special assessments of a municipality, a county, another political subdivision, or the state.

(b) If a municipality, county, or political subdivision furnishes improvements, services, or facilities for a housing project, an authority may, in lieu of paying taxes or special assessments, agree to reimburse in payments to the municipality, county, or political subdivision an amount not greater than the estimated cost to the municipality, county, or political subdivision for the improvements, services, or facilities.

(c) An exemption under this section for a multifamily residential development which is owned by (i) a public facility corporation created by a housing authority under Chapter 303, (ii) a housing development corporation, or (iii) a similar entity created by a housing authority and which does not have at least 20 percent of its units reserved for public housing units, applies only if:

(1) the authority holds a public hearing, at a regular meeting of the authority's governing body, to approve the development; and

(2) at least 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80 percent of the area median family income.

(d) For the purposes of Subsection (c), a "public housing unit" is a dwelling unit for which the owner receives a public housing operating subsidy. It does not include a unit for which payments are made to the landlord under the federal Section 8 Housing Choice Voucher Program.

SECTION 3. Subchapter Z, Chapter 394, Local Government Code, is amended by adding Section 394.9025 to read as follows:

Sec. 394.9025. MULTIFAMILY RESIDENTIAL DEVELOPMENT.

(a) Following a public hearing, a housing finance corporation may issue bonds to finance a multifamily residential development to be owned by the housing finance corporation if at least 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80 percent of the area median family income.

(b) Following a public hearing by the governing body of the local government, a housing finance corporation may issue bonds to finance a multifamily residential development to be owned by the housing finance corporation in accordance with Section 394.004 if the housing finance corporation receives approval of the governing body of the local government

SECTION 4. (a) The change in law made by Subsection (d), Section 303.042, Local Government Code, as added by this Act, applies only to a multifamily residential development that is developed as a result of an official decision by a housing authority or an entity created by the housing authority to develop the property that occurs on or after the effective date of this Act.

(b) The change in law made by Subsection (c), Section 392.005, Local Government Code, as added by this Act, applies only to a multifamily residential development that is developed as a result of an official decision by a housing authority or an entity created by the housing authority to develop the property that occurs on or after the effective date of this Act.

(c) The change in law made by Section 394.9025, Local Government Code, as added by this Act, applies only to a multifamily residential development that is financed by bonds issued under Chapter 394, Local Governmental Code, as a result of an official decision to issue bonds that occurs on or after the effective date of this Act.

SECTION 5. This Act takes effect August 31, 2002.

The amendment was read.

On motion of Senator Bernsen, the Senate concurred in the House amendment to **SB 929** by a viva voce vote.

### **SENATE BILL 1690 WITH HOUSE AMENDMENT**

Senator Ellis called **SB 1690** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 1690** by inserting a new SECTION on page 4, after line 2 and making necessary conforming changes:

SECTION \_\_\_\_\_. Section 14, Article 4.10 of the Insurance Code is amended to read as follows:

Sec. 14. ~~No occupational tax shall be levied on insurance carriers or companies herein subjected to this premium receipts tax by any county, city, or town. The taxes~~

~~in this article shall constitute all taxes collectible under the laws of Texas against any such insurance carrier, except maintenance taxes specifically levied under the laws of Texas and assessed by the commissioner and administered by the comptroller. Farm mutuals, local mutual aid associations and burial associations are not subject to the franchise tax.~~

~~No other tax shall be levied or collected from any insurance carrier by the state, county, or city or any town, but this law shall not be construed to prohibit the levy and collection of state, county, and municipal taxes upon the real and personal property of such carrier.~~

Amend **SB 1690** by deleting all of SECTION 4 on page 5, line 16, and substituting the following:

SECTION \_\_\_\_\_. Section 9, Article 4.11 of the Insurance Code is repealed.

The amendment was read.

On motion of Senator Ellis, the Senate concurred in the House amendment to **SB 1690** by a viva voce vote.

### **SENATE BILL 1767 WITH HOUSE AMENDMENT**

Senator Carona called **SB 1767** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

#### **Amendment**

Amend **SB 1767** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the issuance of a protective custody order by a magistrate.

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

SECTION 1. Section 574.021(e), Health and Safety Code, is amended to read as follows:

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders, including a magistrate appointed by the judge of another court if the magistrate has at least the qualifications required for a magistrate of the court in which the application is pending [in the judge's absence]. A magistrate's duty under this section is in addition to the magistrate's duties prescribed by other law.

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, 2001.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1767**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 1181 WITH HOUSE AMENDMENT**

Senator Shapleigh called **SB 1181** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 1181** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to requiring health insurers and related entities to disclose certain information.

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

SECTION 1. Subchapter C, Chapter 21, Insurance Code, is amended by adding Article 21.24-3 to read as follows:

Art. 21.24-3. IDENTITY OF EMPLOYEE FOR HEALTH INSURER OR RELATED ENTITY

Sec. 1. DEFINITION. In this article, "health benefit plan" means a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 20 of this code;

(3) a fraternal benefit society operating under Chapter 10 of this code;

(4) a stipulated premium insurance company operating under Chapter 22 of this code;

(5) a reciprocal exchange operating under Chapter 19 of this code;

(6) a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(7) a multiple employer welfare arrangement that holds a certificate of authority under Article 3.95-2 of this code; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Article 21.52F of this code.

Sec. 2. DISCLOSURE REQUIRED. After an oral or written request by an insured or enrollee of a health benefit plan for the information, the issuer of the health benefit plan shall provide to the insured or enrollee the name or employee identifier, mailing address, business city and state location, and job title of the employee of the issuer of the health benefit plan who is available to the enrollee or insured to respond to communications and questions from the insured or enrollee relating to coverage and benefits provided by the health benefit plan to the insured or enrollee.

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, 2001.

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 1181**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**(Senator Brown in Chair)**

**(President in Chair)**

**SENATE BILL 512 WITH HOUSE AMENDMENTS**

Senator Duncan called **SB 512** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 512** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the investment and management of the permanent school fund.

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

ARTICLE 1. PERMANENT SCHOOL FUND

ADVISORY COMMITTEE

SECTION 1.01. Subchapter D, Chapter 7, Education Code, is amended by adding Section 7.113 to read as follows:

Sec. 7.113. CONTRACT WITH STATE AUDITOR FOR INVESTIGATIONS.

(a) In this section, "investigation" has the meaning assigned by Section 321.0136, Government Code.

(b) The board shall enter into a written contract with the state auditor under Chapter 771, Government Code, for the state auditor to investigate any allegation made in writing to the board raising the issue of misfeasance or malfeasance relating to the management or investment of the permanent school fund, including an allegation relating to:

(1) the board's compliance with the investment standards prescribed under Section 5(d), Article VII, Texas Constitution;

(2) any violation of the ethics policy adopted by the board under Section 43.0031;

(3) any violation of Section 43.0032;

(4) any conflict of interest that affects the board's decisions relating to:

(A) consultant and money manager selection;

(B) asset allocation; and

(C) broker-dealer eligibility requirements; and

(5) the effect of an informal advisor on the board's decisions relating to management or investment of the permanent school fund.

SECTION 1.02. Chapter 43, Education Code, is amended by adding Sections 43.0011 and 43.0012 to read as follows:

Sec. 43.0011. DEFINITION. In this chapter, "interested person" means a person who applies for or receives anything of value as a direct or indirect result of permanent school fund investments.

Sec. 43.0012. PERMANENT SCHOOL FUND INVESTMENT ADVISORY COMMITTEE. (a) The permanent school fund investment advisory committee shall advise the State Board of Education regarding management and investment of the permanent school fund.

(b) The committee is composed of:

(1) three members appointed by the governor, who are not subject to confirmation by the senate;

(2) three members appointed by the lieutenant governor; and

(3) three members appointed by the speaker of the house of representatives.

(c) A member of the committee serves at the will of the member's appointing authority.

(d) A person appointed to the committee must possess substantial experience and expertise in investments, as determined by the appointing authority.

(e) The committee shall select a presiding officer from among its members and shall meet at the call of the presiding officer.

(f) A member of the committee may not receive compensation but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the committee as provided by the General Appropriations Act.

(g) The committee is not subject to Chapter 2110, Government Code.

SECTION 1.03. Section 43.0031(b), Education Code, is amended to read as follows:

(b) The ethics policy must include provisions applicable to:

(1) members of the State Board of Education;

(2) members of the permanent school fund investment advisory committee;

(3) the commissioner;

(4) [~~3~~] employees of the agency; [and]

(5) [~~4~~] any person who provides services to the board relating to the management or investment of the permanent school fund; and

(6) an interested person.

SECTION 1.04. Section 43.0032, Education Code, is amended to read as follows:

Sec. 43.0032. CONFLICTS OF INTEREST. (a) This section applies to:

(1) a [~~A~~] member of the State Board of Education;

(2) a member of the permanent school fund advisory committee;

(3) [;] the commissioner;

(4) [;] an employee of the agency;

(5) [~~or~~] a person who provides services to the board that relate to the management or investment of the permanent school fund; and

(6) an interested person.

(b) A person to whom this section applies who has a business, commercial, or other relationship that a reasonable person would find likely [could reasonably be expected] to diminish the person's independence of judgment in the performance of the person's responsibilities relating to the management or investment of the fund shall disclose the relationship in writing to the board.

(c) ~~(b)~~ The board or the board's designee shall, in the ethics policy adopted under Section 43.0031, define the kinds of relationships that may create a possible conflict of interest.

(d) ~~(c)~~ A person who files a statement under Subsection (b) ~~(a)~~ disclosing a possible conflict of interest may not give advice or make decisions about a matter affected by the possible conflict of interest unless the board, after consultation with the general counsel of the agency, expressly waives this prohibition. The board may delegate the authority to waive the prohibition established by this subsection.

SECTION 1.05. Section 43.0033, Education Code, is amended to read as follows:

Sec. 43.0033. REPORTS OF EXPENDITURES. A consultant, advisor, broker, money manager, investment manager, dealer, or other person providing services to the State Board of Education relating to the management and investment of the permanent school fund shall file with the board regularly, as determined by the board, a report that describes in detail any expenditure of more than \$50 made by the person on behalf of:

- (1) a member of the board;
- (2) a member of the permanent school fund advisory committee;
- (3) the commissioner; ~~or~~

(4) ~~(3)~~ an employee of the agency or of a nonprofit corporation created under Section 43.006; or

- (5) an interested person.

SECTION 1.06. Chapter 43, Education Code, is amended by adding Sections 43.0035, 43.0036, 43.0051, and 43.0052 to read as follows:

Sec. 43.0035. FAILURE TO DISCLOSE POTENTIAL CONFLICT OF INTEREST RELATING TO MANAGEMENT OR INVESTMENT OF PERMANENT SCHOOL FUND. If an interested person enters into an arrangement involving the management or investment of the permanent school fund under which the interested person serves as a consultant, advisor, broker, money manager, investment manager, dealer, or vendor of a consultant, advisor, broker, money manager, investment manager, or dealer, and the interested person fails to disclose a relationship described by Section 43.0032(a) with another interested person:

(1) the arrangement is voidable by the State Board of Education or the comptroller; and

(2) the State Board of Education or the comptroller may enter an order declaring the person ineligible to contract for business relating to management or investment of the permanent school fund.

Sec. 43.0036. INFORMATION REGARDING PERSONS INTERESTED IN INVESTMENTS OF PERMANENT SCHOOL FUND. (a) The State Board of Education shall maintain on an Internet website a listing of each interested person. The list must include the person's full name and business address and must be updated at least once each calendar quarter.

(b) The State Board of Education may use an Internet website established and maintained by the agency to comply with this section.

Sec. 43.0051. REQUIRED CONTRACT PROVISION. The State Board of Education shall include as a part of each contract under which a consultant, advisor, broker, money manager, investment manager, dealer, or other person agrees to provide services to the board relating to the management or investment of the permanent school fund a standard provision adopted by the board:

(1) requiring the person to comply with all applicable statutes and rules relating to the services provided by the person to the board; and

(2) acknowledging that the board may terminate the contract or any other arrangement between the board and the person if the person fails to comply with those statutes and rules.

Sec. 43.0052. COOPERATION RELATING TO INVESTIGATION OR DISCIPLINARY ACTIONS OF CERTAIN PERSONS INTERESTED IN MANAGEMENT OR INVESTMENT OF PERMANENT SCHOOL FUND. (a) As appropriate, the comptroller shall provide information relating to disciplinary actions taken by the State Board of Education or the comptroller against a consultant, advisor, broker, money manager, investment manager, or dealer doing business with or seeking to do business with the permanent school fund to:

(1) the United States Securities and Exchange Commission;

(2) the Securities Commissioner;

(3) self-regulatory organizations, including the National Association of Securities Dealers, Inc.; and

(4) professional organizations of persons involved in management or investment of institutional funds, including the Association for Investment Management and Research.

(b) The comptroller shall closely cooperate with persons described by Subsections (a)(1)-(4) in those persons' investigations involving consultants, brokers, or dealers doing business with or seeking to do business with the permanent school fund.

SECTION 1.07. Subsection (f) Section 43.006, Education Code, is amended to read as follows:

(f) The corporation shall file [~~quarterly~~] reports with the State Board of Education concerning matters required by the board. The board may determine the frequency of reports under this subsection.

SECTION 1.08. Chapter 43, Education Code, is amended by adding Sections 43.0061, 43.0062, and 43.0063 to read as follows:

Sec. 43.0061. BARRING CERTAIN PERSONS FROM CONTRACTING TO PROVIDE SERVICES RELATING TO MANAGEMENT OR INVESTMENT OF PERMANENT SCHOOL FUND. (a) An interested person may be barred from contracting with the State Board of Education or another interested person to provide services relating to the management or investment of the permanent school fund if it is determined at a contested case hearing held under Section 43.0062 that the interested person who is the subject of the hearing has violated:

(1) the ethics policy adopted by the board under Section 43.0031; or

(2) the conflict of interest restrictions under Section 43.0032.

(b) This section does not affect the validity of a contract entered into before a determination is made that the interested person should be barred from contracting with the board or another interested person unless the contract may be voided under this chapter.

Sec. 43.0062. HEARINGS BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The commissioner, on behalf of the State Board of Education, and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding under which the State Office of Administrative Hearings conducts the contested case hearings required for purposes of Section 43.0061.

(b) The memorandum of understanding must require the chief administrative law judge and the board to cooperate in connection with a contested case hearing required for purposes of Section 43.0061.

(c) The memorandum of understanding must provide that the administrative law judge who conducts a contested case hearing for the State Office of Administrative Hearings on behalf of the board, after completing the hearing, shall:

(1) determine whether a ground exists under Section 43.0061(a) so that an interested person should be barred from contracting with the State Board of Education or another interested person to provide services relating to the management or investment of the permanent school fund; and

(2) if a determination is made that the interested person should be barred from contracting with the board or another interested person, notwithstanding Section 2003.042, Government Code, enter the final decision in the case concerning the period for which the person is barred based on:

(A) whether the person has previously violated the ethics policy or conflict of interest restrictions;

(B) the seriousness of the person's violation; and

(C) the damage to the interests of the permanent school fund.

(d) A person may obtain judicial review of a decision of an administrative law judge under this section in the manner provided by Subchapter G, Chapter 2001, Government Code.

Sec. 43.0063. MANAGEMENT AND PERFORMANCE AUDIT. (a) As frequently as the legislative audit committee determines necessary or advisable, the committee shall select an independent firm with substantial experience in evaluating institutional investment practices and performance to evaluate investment management practices and performance relating to the permanent school fund.

(b) The legislative audit committee shall determine specific areas to be evaluated.

(c) A firm selected under this section shall file a report of the firm's evaluation under this section with the legislative audit committee not later than the date specified by the committee.

(d) The agency shall pay the costs of each evaluation under this section out of the available school fund.

SECTION 1.09. Section 43.007, Education Code, is amended to read as follows:

Sec. 43.007. PURCHASE AND SALE OR EXCHANGE OF INVESTMENTS [SECURITIES]. (a) The State Board of Education may authorize the purchase of all investments [of the types of securities] in which it is authorized by law to invest the permanent school fund [in either registered or negotiable form]. The board may authorize the reissue of those investments [securities] held at any time for the account of the permanent school fund [in either registered or negotiable form]. The State Board of Education may authorize the sale of any investments [of the securities] held for the account of the permanent school fund and reinvest the proceeds of sale for the fund and may authorize the exchange of any investments [of the securities] held for the account of the permanent school fund.

(b) In making purchases, sales, exchanges, and reissues, the State Board of Education shall exercise the standard of care prescribed by Section 5(d), Article VII, Texas Constitution [judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital].

(c) When any investments [~~securities~~] are sold, reissued, or exchanged as provided by Subsection (a), the custodian of the investments [~~securities~~] shall deliver the investments [~~securities~~] sold, reissued, or exchanged in accordance with the directions of the State Board of Education.

SECTION 1.10. The heading to Section 43.010, Education Code, is amended to read as follows:

Sec. 43.010. DEFAULT OF SCHOOL DISTRICT BONDS [~~SECURITIES~~] HELD BY [~~THE~~] PERMANENT SCHOOL FUND.

SECTION 1.11. Sections 43.010(b) and (d), Education Code, are amended to read as follows:

(b) Revenue collected by either method specified by Subsection (a) shall be distributed proportionately to all owners of the defaulted bonds [~~securities~~] in compliance with the following:

(1) the proportionate share for each owner is based on the interest and principal requirements of the original bond [~~security~~] before authorized refunding; and

(2) prior acceptance of refunding bonds [~~securities~~] does not reduce an owner's proportionate share.

(d) The comptroller may not issue any warrant from the foundation school fund to or for the benefit of any district that has been for as long as two years in default in the payment of principal or interest on any bond [~~security~~] owned by the permanent school fund until the State Board of Education certifies that the district has satisfactorily complied with the appropriate provisions of this section, in which event the comptroller shall resume making payments to or for the benefit of the district, including the making of premitted payments.

SECTION 1.12. Section 43.015(f), Education Code, is amended to read as follows:

(f) The comptroller shall be the custodian of investments [~~all securities enumerated in Section 43.003(6) and of other securities as~~] designated by the State Board of Education in which the school funds of the state are invested. The comptroller shall keep those investments [~~securities~~] in the comptroller's custody until paid off, discharged, delivered as required by the State Board of Education, or otherwise disposed of by the proper authorities of the state, and on the proper installment of any interest or dividend, shall see that the proper credit is given, and the coupons on bonds, when paid, shall be separated from the bonds and cancelled by the comptroller.

SECTION 1.13. Section 43.017, Education Code, is amended to read as follows:

Sec. 43.017. USE OF COMMERCIAL BANKS AS AGENTS FOR COLLECTION OF INCOME FROM PERMANENT SCHOOL FUND INVESTMENTS. (a) The State Board of Education may contract with one or more commercial banks to receive payments of dividends and interest on investments [~~securities~~] in which the state permanent school funds are invested and transmit that money with identification of its source to the comptroller for the account of the available school fund by the fastest available means.

(b) In choosing each commercial bank with which to contract as authorized by Subsection (a), the State Board of Education shall assure itself of:

(1) the financial stability of the bank;

(2) the location of the bank with respect to its proximity to the banks on which checks are drawn in payment of dividends and interest on investments [~~securities~~] of the permanent school fund;

(3) the experience and reliability of the bank in acting as agent for others in the similar collection and expeditious remittance of money; and

(4) the reasonableness of the bank's charges for the services, both in amount of the charges and in relation to the increased investment earnings of the available school fund that will result from speedier receipt by the comptroller of the money.

SECTION 1.14. Section 43.018(b), Education Code, is amended to read as follows:

(b) The State Board of Education may contract with a commercial bank pursuant to this section only if:

(1) the bank is located in a city having a major stock exchange;

(2) the bank is experienced in the operation of a fully secured securities loan program;

(3) the bank has adequate capital in the prudent judgment of the State Board of Education to assure the safety of the securities entrusted to it as a custodian;

(4) the bank will require of any securities broker or dealer to which it lends securities owned by the state permanent school fund that the broker or dealer deliver to it cash collateral for the loan of securities, and that the cash collateral will at all times be not less than 100 percent of the market value of the securities lent;

(5) the bank executes an indemnification agreement, satisfactory in form and content to the State Board of Education, fully indemnifying the permanent and available school funds against loss resulting from borrower default or the failure of the bank to properly execute the responsibilities of the bank under the applicable securities lending agreement [~~the bank's service as custodian of securities of the permanent school fund and its operation of a securities loan program using securities of the permanent school fund~~];

(6) the bank will speedily collect and remit on the day of collection by the fastest available means to the comptroller any dividends and interest collectible by it on securities held by it as custodian, together with identification as to the source of the dividends or interest; and

(7) the bank is the bank agreeing to pay to the available school fund the largest sum or highest percentage of the income derived by the bank from use of the securities of the permanent school fund in the operation of a securities loan program.

SECTION 1.15. Section 321.013, Government Code, is amended by adding Subsection (j) to read as follows:

(j) The State Auditor shall enter into a written contract with the State Board of Education for the State Auditor to investigate an allegation relating to the management and investment of the permanent school fund as prescribed by Section 7.113, Education Code. After an investigation of an allegation is completed, the State Auditor shall prepare a written report of the results of that investigation. The State Auditor shall submit the report to the committee before publication. The State Auditor shall file a copy of the report with the governor, the lieutenant governor, the speaker of the house of representatives, each member of the State Board of Education, and each member of the standing committees of the senate and of the house of representatives with primary jurisdiction over the State Board of Education.

SECTION 1.16. Not later than March 1, 2002, the governor, lieutenant governor, and speaker of the house of representatives shall appoint members of the investment advisory committee, as required by Section 43.0012, Education Code, as added by this article.

SECTION 1.17. Sections 43.0035 and 43.0051, Education Code, as added by this article, apply only to an arrangement or contract entered into on or after January 1, 2002.

SECTION 1.18. Not later than March 1, 2002, the State Board of Education shall post on an Internet website the information required by Section 43.0036, Education Code, as added by this article.

SECTION 1.19. Not later than March 1, 2002, the commissioner of education, on behalf of the State Board of Education, and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding as prescribed by Section 43.0062, Education Code, as added by this article.

SECTION 1.20. Not later than March 1, 2002, the legislative audit committee shall select an independent firm to evaluate investment management practices and performance relating to the permanent school fund as required by Section 43.0063, Education Code, as added by this article. The evaluation must include a comprehensive analysis of the State Board of Education's investment program relating to the permanent school fund.

SECTION 1.21. This article takes effect September 1, 2002.

## ARTICLE 2. COMPOSITION OF AND AUTHORIZED INVESTMENTS FOR PERMANENT SCHOOL FUND

SECTION 2.01. Section 43.003, Education Code, is repealed.

SECTION 2.02. Sections 43.001(a) and (b), Education Code, are amended to read as follows:

(a) The permanent school fund, which is a perpetual endowment for the public schools of this state, consists of:

(1) all land appropriated for the public schools by the constitution and laws of this state;

(2) all of the unappropriated public domain remaining in this state, including all land recovered by the state by suit or otherwise except pine forest land as defined by Section 88.111;

(3) all proceeds from the authorized sale of permanent school fund land;

(4) all proceeds from the lawful sale of any other properties belonging to the permanent school fund;

(5) all investments [~~authorized by Section 43.003~~] of properties belonging to the permanent school fund; and

(6) all income from the mineral development of permanent school fund land, including income from mineral development of riverbeds and other submerged land.

(b) The available school fund, which shall be apportioned annually to each county according to its scholastic population, consists of:

(1) the interest and dividends arising from any investments [~~securities~~] or funds belonging to the permanent school fund;

(2) all interest derivable from the proceeds of the sale of land set apart for the permanent school fund;

(3) all money derived from the lease of land belonging to the permanent school fund;

(4) one-fourth of all revenue derived from all state occupation taxes, exclusive of delinquencies and cost of collection;

(5) one-fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law; and

(6) all other appropriations to the available school fund made by the legislature for public school purposes.

SECTION 2.03. This article takes effect September 1, 2001.

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

Amend **CSSB 512** (house committee report) as follows:

(1) In SECTION 1.16 of the bill (page 15, line 17), strike "March 1, 2002" and substitute "December 1, 2001".

(2) In SECTION 1.17 of the bill (page 15, line 24), strike "January 1, 2002" and substitute "September 1, 2001".

(3) In SECTION 1.18 of the bill (page 15, line 25), strike "March 1, 2002" and substitute "December 1, 2001".

(4) In SECTION 1.19 of the bill (page 16, line 2), strike "March 1, 2002" and substitute "December 1, 2001".

(5) In SECTION 1.20 of the bill (page 16, line 8), strike "March 1, 2002" and substitute "December 1, 2001".

(6) In SECTION 1.21 of the bill (page 16, line 15), strike "September 1, 2002" and substitute "September 1, 2001".

The amendments were read.

On motion of Senator Duncan, the Senate concurred in the House amendments to **SB 512** by a viva voce vote.

### **RECORD OF VOTE**

Senator Ogden asked to be recorded as voting "Nay" on the concurrence in the House amendments to **SB 512**.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2061**

Senator Cain 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 2061** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2061** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Cain, Chair; Zaffirini, Ogden, Brown, and West.

### **SENATE BILL 1656 WITH HOUSE AMENDMENT**

Senator Sibley called **SB 1656** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 1656** by adding new sections to read as follows:

SECTION 1. Subsection (5), 2308.002, Government Code, is amended to read as follows:

(5) "Workforce education" means articulated post-secondary career-path programs and the constituent courses of those programs that lead to initial or continuing licensing or certification or associate degree-level accreditation and that:

SECTION 2. Subsection (b) Section 2308.052, Government Code, is amended to read as follows:

(b) The council is composed of;

(1) three voting members who represent education, one of whom represents local public education, one of whom represents public post-secondary education, and one of whom represents workforce [~~vocational~~] education;

Renumber SECTIONS accordingly.

The amendment was read.

Senator Sibley 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.

The President asked if there were any motions to instruct the conference committee on **SB 1656** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Fraser, Jackson, Lucio, and Shapleigh.

### **HOUSE CONCURRENT RESOLUTION 322**

The President laid before the Senate the following resolution:

**HCR 322**, Recalling **HB 1515** from the governor.

BERNSEN

The resolution was read.

On motion of Senator Bernsen and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

### **SENATE BILL 1654 WITH HOUSE AMENDMENTS**

Senator Bernsen called **SB 1654** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

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

Amend **SB 1654** as follows:

- (1) By striking on page 3, line 1 the words "or suggest"
- (2) By striking on page 3, line 2 the words "should or must" and inserting the word "to".

**Floor Amendment No. 2**

Amend **SB 1654** in SECTION 1 of the bill in added Subsection (b), Section 104.006, Insurance Code, by striking "shall" and substituting "may" (house committee printing, page 4, line 14).

The amendments were read.

On motion of Senator Bernsen, the Senate concurred in the House amendments to **SB 1654** by a viva voce vote.

**SENATE BILL 1646 WITH HOUSE AMENDMENT**

Senator Bernsen called **SB 1646** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **SB 1646** as follows:

In Section 3, on page 6, line 4, after the word, "outstanding", insert:

"The Authority is authorized to enter into an agreement granting an option to purchase the authority's refunding bonds on the terms and conditions the board determines advisable which may be for a term of up to four years. Alternatively, the Authority may enter into a bond purchase agreement to sell the refunding bonds of the Authority on such terms and conditions as the board determines advisable which may provide for delivery of the bonds for a period of up to four years."

The amendment was read.

On motion of Senator Bernsen, the Senate concurred in the House amendment to **SB 1646** by a viva voce vote.

**SENATE BILL 1773 WITH HOUSE AMENDMENTS**

Senator Bernsen called **SB 1773** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 1773** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the creation of the Port Bolivar Improvement District; providing authority to impose a tax and issue bonds.

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

SECTION 1. Chapter 376, Local Government Code, is amended by adding Subchapter K to read as follows:

**SUBCHAPTER K. PORT BOLIVAR IMPROVEMENT DISTRICT**

Sec. 376.451. CREATION AND NAME OF DISTRICT. (a) The Port Bolivar Improvement District is created as a special district under Section 59, Article XVI, Texas Constitution.

(b) The board by resolution may change the district's name.

Sec. 376.452. DECLARATION OF INTENT. (a) The creation of the district is necessary to promote and expand business opportunities and to create jobs in the Port Bolivar area of Galveston County.

(b) The creation of the district and this legislation do not relieve the county from providing the level of services, as of the effective date of this subchapter, to the area in the district or release the county from the obligations it has to provide services to that area. The district is created to supplement and not supplant the county services provided in the area in the district.

(c) The creation of the district is essential to accomplish the purposes of Section 52, Article III, Section 59, Article XVI, and Section 52-a, Article III, Texas Constitution, and other public purposes stated in this subchapter.

Sec. 376.453. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the district.

(2) "County" means Galveston County, Texas.

(3) "District" means the Port Bolivar Improvement District.

Sec. 376.454. BOUNDARIES. The district includes all the territory contained in the following Galveston County election precincts as of February 1, 2001:

(1) 101;

(2) 102;

(3) 103; and

(4) 104.

Sec. 376.455. FINDINGS RELATING TO BOUNDARIES. The boundaries and field notes of the district form a closure. If a mistake is made in the field notes or in copying the field notes in the legislative process, the mistake does not in any way affect the district's:

(1) organization, existence, or validity;

(2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond;

(3) right to impose or collect an assessment or tax; or

(4) legality or operation.

Sec. 376.456. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit. All the land and other property included in the district will be benefited by the improvements and services to be provided by the district under powers conferred by Section 52, Article III, Section 59, Article XVI, and Section 52-a, Article III, Texas Constitution, and other powers granted under this subchapter.

(b) The creation of the district is in the public interest and is essential to:

(1) further the public purposes of the development and diversification of the economy of the state; and

(2) eliminate unemployment and underemployment and develop or expand transportation and commerce.

(c) The district will:

(1) promote the health, safety, and general welfare of residents, employers, potential employees, employees, visitors, consumers in the district, and the general public;

(2) provide needed funding for the Port Bolivar area to preserve, maintain, and enhance the economic health and vitality of the area as a community and business center; and

(3) further promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty.

(d) The district will not act as the agent or instrumentality of any private interest even though many private interests will be benefited by the district, as will the general public.

Sec. 376.457. INITIAL DIRECTORS. (a) The Commissioners Court of Galveston County shall appoint five initial directors. To be eligible for appointment, a director must have the qualifications specified in Section 376.462.

(b) In making appointments, the commissioners court shall attempt to appoint directors who reflect the residents in the area of the district.

Sec. 376.458. CONFIRMATION ELECTION. (a) The initial directors shall meet as soon as practicable after all initial directors have qualified for office. The board shall call an election to confirm the creation of the district. The board shall call the confirmation election at the first meeting unless the board calls a hearing to exclude territory from the district.

(b) The confirmation election shall be held in the manner provided by Section 49.102, Water Code. The election must be held on the first uniform election date provided by Section 41.001, Election Code, that falls on or after the 45th day after the date of the order calling the election.

(c) If a majority of the votes cast in the election are against confirmation, the board may not call or hold another confirmation election until the expiration of six months after the date of the most recent confirmation election.

(d) The board may not hold more than three confirmation elections.

(e) Before the creation of the district is confirmed, the district may not borrow money or impose taxes. The district may carry on other business as the board determines.

Sec. 376.459. ELECTION OF DIRECTORS. (a) As soon as practicable after the first anniversary of the date on which the creation of the district is confirmed, the board shall call and hold an election to elect the initial permanent directors.

(b) The election shall be held in the manner provided by Section 49.102, Water Code.

(c) The election must be held on the first uniform election date provided by Section 41.001, Election Code, that falls on or after the 45th day after the date of the order calling the election. The directors elected at the first election shall draw lots to determine their terms so that two serve terms expiring on the first July 1 of an even-numbered year after the election and three serve terms expiring July 1 of the second year after the year in which the first terms expire.

(d) An election to elect the appropriate number of successor directors shall be held on the uniform election date, established by the Election Code, in May of each even-numbered year.

Sec. 376.460. BOARD OF DIRECTORS; TERMS. The district is governed by a board of five directors who serve staggered four-year terms, with two or three members' terms expiring July 1 of each even-numbered year.

Sec. 376.461. ADMINISTRATION OF BOARD. Sections 375.066-375.070 apply to the board as if it were established under Chapter 375.

Sec. 376.462. QUALIFICATIONS OF DIRECTOR. (a) To be qualified to serve as a director, a person must be at least 18 years of age and:

- (1) be a qualified voter who resides in the district;
- (2) own real property in the district;
- (3) own stock in a corporation that owns real property in the district;
- (4) own a beneficial interest in a trust that owns real property in the district; or
- (5) be an agent, employee, or tenant of a person covered by Subdivision (2), (3), or (4).

(b) A person or entity that owns an interest in a general or limited partnership owning real property in the district or that has a lease of real property in the district with a remaining term of 10 years or more, excluding options, is considered to be an owner of real property for purposes of this section.

Sec. 376.463. GENERAL POWERS. The district has:

- (1) all powers necessary or required to accomplish the purposes for which the district was created;
- (2) the powers and duties of a municipal management district under Subchapter E, Chapter 375; and
- (3) the powers given to an industrial development corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

Sec. 376.464. SPECIFIC POWERS AND LIMITATIONS. (a) The district may:

- (1) impose and collect, and apply the proceeds from, a limited sales and use tax for the district's purposes;
- (2) borrow money for the corporate purposes of the district;
- (3) add or exclude territory in the manner provided by Subchapter J, Chapter 49, Water Code;
- (4) contract with a person to accomplish the district's purposes, including entering into a contract for the payment of costs incurred by the person on behalf of the district, including all or part of the costs of an improvement project, from tax proceeds or any other specified source of money;
- (5) contract with a person to receive, administer, and perform the district's duties under a gift, grant, loan, conveyance, transfer, bequest, donation, or other financial arrangement relating to the investigation, planning, analysis, acquisition, construction, completion, implementation, or operation of a proposed or existing improvement project;
- (6) establish and collect user fees, concession fees, admission fees, rental fees, or other similar fees or charges and apply the proceeds from those fees or charges for the enjoyment, sale, rental, or other use of the district's facilities, services, or improvement projects;
- (7) adopt rules for:
  - (A) the administration and operation of the district;
  - (B) the use, enjoyment, availability, protection, security, and maintenance of the district's facilities; and
  - (C) the provision of public safety and security in the district;
- (8) provide or secure the payment or repayment of any district expense, including:

(A) a district cost relating to an improvement project;

(B) a district contractual obligation or indebtedness, because of a lease, installment purchase contract, or other agreement; or

(C) a tax, user fee, concession fee, rental fee, or other revenue or resources of the district; and

(9) undertake improvement projects separately or jointly with other persons or entities and pay all or part of the costs of improvement projects, including improvement projects that:

(A) improve, enhance, or support public safety and security, fire protection, emergency medical services, or law enforcement in the district;

(B) confer a general benefit on the entire district and the areas adjacent to the district; or

(C) confer a special benefit on all or part of the district.

(b) The district may not employ peace officers.

(c) The district may not impose an ad valorem tax on property in the district.

(d) The district may, as if the district was a home-rule municipality with a population of more than 100,000:

(1) issue bonds and lease, acquire, or construct a building or facility as provided by Section 380.002; and

(2) establish and administer a program as provided by Subchapter A, Chapter 1509, Government Code.

Sec. 376.465. SPECIFIC POWERS AND LIMITATIONS RELATING TO IMPROVEMENTS. (a) An improvement project or service provided by the district may include:

(1) the construction, acquisition, lease, rental, installment purchase, improvement, rehabilitation, repair, relocation, and operation of:

(A) landscaping; lighting, banners, or signs; streets or sidewalks; pedestrian or bicycle paths and trails; pedestrian walkways, skywalks, crosswalks, or tunnels; and highway right-of-way or transit corridor beautification and improvements;

(B) drainage or storm water detention improvements and solid waste, water, sewer, or power facilities and services, including electrical, gas, steam, and chilled water facilities and services;

(C) parks, lakes, gardens, recreational facilities, open space, scenic areas, and related exhibits and preserves; fountains, plazas, or pedestrian malls; public art or sculpture and related exhibits and facilities; educational or cultural exhibits and facilities, including exhibits, displays, attractions, or facilities for special events, holidays, or seasonal or cultural celebrations;

(D) off-street parking facilities, bus terminals, heliports, mass-transit, and roadway or water transportation systems; and

(E) other public improvements, facilities, or services similar to the improvements, facilities, or services described by Paragraphs (A)-(D);

(2) the cost of removal, razing, demolition, or clearing of land or improvements in connection with providing an improvement project;

(3) the acquisition of property or an interest in the property that is made in connection with an authorized improvement project; and

(4) the provision of special or supplemental services to improve or promote the area in the district or to protect the public health and safety in the district, including

advertising, promotion, tourism, health and sanitation, public safety, security, fire protection or emergency medical services, business recruitment, development, elimination of traffic congestion, and recreational, educational, or cultural improvements, enhancements, or services.

(b) The district may not undertake an improvement project or provide a service unless the district uses a method approved by the General Land Office, the attorney general, or any other governmental entity with the authority to regulate the improvement project or service.

Sec. 376.466. PUBLIC BEACHES. (a) In this section, "line of vegetation" and "public beach" have the meanings assigned by Section 61.001, Natural Resources Code.

(b) The district may not undertake a project seaward of the line of vegetation on a public beach.

(c) The district may provide district money for a state or local government project, including a county project, that complies with Section 61.022, Natural Resources Code, for the protection of the shore or for any other lawful purpose.

Sec. 376.467. RELATION TO OTHER LAW. If a law referenced in Section 376.463 or referenced in Subchapter E, Chapter 375, is in conflict with or inconsistent with this subchapter, this subchapter prevails. A law referenced in Section 376.463 or Subchapter E, Chapter 375, that is not in conflict with or inconsistent with this subchapter is adopted and incorporated by reference and may be used by the district independently of each other.

Sec. 376.468. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

Sec. 376.469. CERTAIN RESIDENTIAL PROPERTY EXEMPT. The district may not impose an impact fee or assessment on a single family residential property or a residential duplex, triplex, fourplex, or condominium.

Sec. 376.470. SALES AND USE TAX; EXCISE TAX. (a) For purposes of this section:

(1) "Taxable items" includes all items subject to any sales and use tax that is imposed by the county if the county has imposed a sales and use tax.

(2) "Use," with respect to a taxable service, means the derivation in the district of a direct or indirect benefit from the service.

(b) The district may impose a sales and use tax for the benefit of the district if authorized by a majority of the qualified voters of the district voting at an election called for that purpose.

(c) If the district adopts the tax:

(1) a tax is imposed on the receipts from the sale at retail of taxable items in the district; and

(2) an excise tax is imposed on the use, storage, or other consumption in the district of taxable items purchased or rented from a retailer during the period that the tax is effective in the district.

(d) The rate of the excise tax is the same as the rate of the sales tax portion of the tax applied to the sales price of the taxable items and is included in the sales tax.

Sec. 376.471. TAX ELECTION PROCEDURES. (a) The board by order may call an election to adopt, change the rate of, or abolish a sales and use tax. The election may be held at the same time and in conjunction with a confirmation or directors election.

(b) The election must be held on the next uniform election date that falls on or after the 45th day after the date the order calling the election is adopted.

(c) Notice of the election shall be given and the election shall be held and conducted in the manner prescribed for bond elections under Subchapter D, Chapter 49, Water Code.

(d) In an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in the Port Bolivar Improvement District at the rate of (proposed tax rate)."

(e) In an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax imposed in the Port Bolivar Improvement District from (tax rate on election date) percent to (proposed tax rate) percent."

(f) In an election to abolish the tax, the ballot shall be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax in the Port Bolivar Improvement District."

Sec. 376.472. IMPOSITION, COMPUTATION, ADMINISTRATION, AND GOVERNANCE OF TAX. (a) Chapter 323, Tax Code, to the extent not inconsistent with this subchapter, governs the application, collection, and administration of the tax under this subchapter, except Sections 323.401-323.406 and 323.505, Tax Code, do not apply. Subtitles A and B, Title 2, and Chapter 151, Tax Code, govern the administration and enforcement of the taxes under this subchapter.

(b) Chapter 323, Tax Code, does not apply to the use and allocation of revenues under this subchapter.

(c) In applying Chapter 323, Tax Code, the district's name shall be substituted for references in that chapter to "the county" and the board is substituted for references in that chapter to "commissioners court."

Sec. 376.473. EFFECTIVE DATE OF TAX OR TAX CHANGE. The adoption of a tax rate or change in the tax rate takes effect after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the results of the election.

Sec. 376.474. TAX RATES. The district may impose the sales and use tax under this subchapter in increments of one-eighth of one percent, with a minimum tax of one-half percent and a maximum tax of one percent.

Sec. 376.475. ABOLITION OF TAX RATE. The board by order may abolish the local sales and use tax rate without an election.

Sec. 376.476. USE OF TAX. Taxes collected under this subchapter may be used only for the purposes for which the district was created.

Sec. 376.477. SUBMISSION OF ANNEXATION INFORMATION. Not later than the 10th day after the date on which the district annexes or excludes territory, the board shall send to the comptroller a certified copy of any resolution, order, or ordinance relating to the annexation or exclusion.

Sec. 376.478. BONDS. (a) The board may issue bonds as provided by Subchapter J, Chapter 375.

(b) In addition to the sources described in Subchapter J, Chapter 375, the bonds issued by the district may be secured and made payable, wholly or partly, by a pledge of any part of the net proceeds the district receives from a specified portion of not more than one-half of the maximum sales and use tax amount authorized and approved by voters of the district under Section 376.471.

(c) Sections 375.207 and 375.208 do not apply to bonds issued under this section.

Sec. 376.479. CONTRACTING AUTHORITY. (a) The district may contract with any person to carry out the purposes of this subchapter on terms and for the period the board determines.

(b) Any person, including any type of governmental entity, may contract with the district to carry out the purposes of this subchapter.

Sec. 376.480. DISSOLUTION BY BOARD ORDER. The board by order may dissolve the district at any time unless the district has outstanding indebtedness or contractual obligations.

Sec. 376.481. DISSOLUTION BY PETITION OF OWNERS. (a) The board by order shall dissolve the district if the board receives a written petition signed by the owners of 75 percent or more of the real property acreage in the district.

(b) After the date the district is dissolved, the district may not levy taxes.

(c) If on the date the district is dissolved the district has outstanding liabilities, the board shall, not later than the 30th day after the dissolution, adopt a resolution certifying each outstanding liability. The county in which the district is located shall assume the outstanding liabilities. The county shall collect the sales and use tax for the district for the remainder of the calendar year. The county may continue to collect the tax for an additional calendar year if the commissioners court finds that the tax revenue is needed to retire the district liabilities that were assumed by the county.

(d) The district may continue to operate for a period not to exceed two months after carrying out the responsibilities required by Subsection (c). The district is continued in effect for the purpose of satisfying these responsibilities.

(e) If the district is continued in effect under Subsection (d), the district is dissolved entirely on the first day of the month following the month in which the board certifies to the secretary of state that the district has satisfied the responsibilities of Subsection (c).

Sec. 376.482. ADMINISTRATION OF DISTRICT PROPERTY FOLLOWING DISSOLUTION. (a) After the board orders the dissolution of the district, the board shall transfer ownership of all district property to the county, except as provided by Subsection (b).

(b) If, on the date on which the board orders the dissolution, more than 50 percent of the district territory is in a municipality, the board shall transfer ownership of the district's property to the municipality.

SECTION 2. The legislature finds that:

(1) the proper and 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 by the constitution and laws of this state, including the governor, who has submitted the notice and a copy of this Act to the Texas Natural Resource Conservation Commission;

(2) the Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time;

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

(4) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 3. Subchapter K, Chapter 376, Local Government Code, as added by this Act, expires January 1, 2003, unless before that date the district is confirmed at an election held under Section 376.458, Local Government Code, as added by this Act.

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, 2001.

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

Amend **CSSB 1773** as follows:

(1) In Section 1 of the bill, in added Section 376.464(d)(1), Local Government Code (page 8, line 26), strike "Section 380.002" and substitute "Subchapter A, Chapter 1509, Government Code".

(2) In Section 1 of the bill, in added Section 376.464(d)(2), Local Government Code (page 9, line 1), strike "Subchapter A, Chapter 1509, Government Code" and substitute "Section 380.002".

The amendments were read.

Senator Bernsen moved to concur in the House amendments to **SB 1773**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### **SENATE RESOLUTION 1230**

Senator Cain offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, 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 No. 2061, relating to establishing a historical representation advisory committee, to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add Section 442.0087, Government Code, to read as follows:

Sec. 442.0087. EQUITABLE REPRESENTATION IN MONUMENTS. (a) In this section, "monument" has the meaning assigned by Section 443.015, as added by Chapter 1141, Acts of the 75th Legislature, Regular Session, 1997.

(b) To ensure that the diverse history of Texas is accurately represented on land owned by the state other than the Capitol Complex, the Texas Historical Commission shall:

(1) collect information relating to each monument on land owned by the state other than the Capitol Complex; and

(2) in cooperation with the chair of the history department at Prairie View A&M University, at The University of Texas at Austin, or at any other land grant university in the state, as determined by the committee, ensure the:

(A) historical accuracy of the monuments; and

(B) equitable representation of all Texans, including African slaves, African Americans, Hispanic Americans, Native Americans, women in Texas history, and Texans exemplifying rural heritage in monuments on land owned by the state other than the Capitol Complex.

(c) The commission shall make the information collected under this section available to the public.

Explanation: The added text is necessary to require the Texas Historical Commission to ensure that an equitable representation of all Texans is reflected in the monuments on state property other than the capitol complex and to ensure that certain information about the monuments is available to the public.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### **SENATE BILL 1775 WITH HOUSE AMENDMENT**

Senator Lindsay called **SB 1775** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 1775** (Engrossed version) as follows:

- (1) In SECTION 6 of the bill, in Subsection (c) (page 4, line 9), strike "or".
- (2) In SECTION 6 of the bill, at the end of Subsection (c), between "Code" and the period (page 4, line 10), insert ", or a telecommunications provider as defined by Section 51.002, Utilities Code".
- (3) In SECTION 7 of the bill, between "line," and "pipeline" (page 4, between lines 13 and 14), insert "telecommunications or other public utility facility,".

The amendment was read.

On motion of Senator Lindsay, the Senate concurred in the House amendment to **SB 1775** by a viva voce vote.

### **SENATE BILL 688 WITH HOUSE AMENDMENT**

Senator Brown called **SB 688** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 688** by adding a new SECTION 3, SECTION 4, and SECTION 5 on page 4, between lines 22 and 23 to read as follows and renumbering the remaining SECTION appropriately:

SECTION 3. Subchapter M, Chapter 5, Water Code, is amended by adding Section 5.557 to read as follows:

Sec. 5.557. DIRECT REFERRAL TO CONTESTED CASE HEARING. (a) Immediately after the executive director issues a preliminary decision on an application under Section 5.553, the commission, on the request of the applicant or the executive director, shall refer the application directly to the State Office of Administrative Hearings for a contested case hearing on whether the application complies with all applicable statutory and regulatory requirements.

(b) Sections 5.554-5.556 of this code and Sections 2003.047(e) and (f), Government Code, do not apply to an application referred for a hearing under Subsection (a).

(c) Notwithstanding Subsection (b), the commission by rule shall provide for public comment and the executive director's response to public comment to be entered into the administrative record of decision on an application.

SECTION 4. Section 382.056(n), Health and Safety Code, is amended to read as follows:

(n) Except as provided by Section 382.0561, the commission shall consider a request that the commission reconsider the executive director's decision or hold a public hearing in accordance with the procedures provided by Sections [Section] 5.556 and 5.557, Water Code.

SECTION 5. The Texas Natural Resource Conservation Commission shall adopt rules to implement Section 5.557, Water Code, as added by this Act, and Section 382.056(n), Health and Safety Code, as amended by this Act, as soon as is necessary for the rules to take effect on or before January 1, 2002.

The amendment was read.

Senator Brown moved to concur in the House amendment to **SB 688**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 236 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HB 236**. The Conference Committee Report was again filed with the Senate on Thursday, May 24, 2001.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 20, Nays 9, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Duncan, Ellis, Gallegos, Harris, Lindsay, Lucio, Madla, Moncrief, Shapleigh, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Carona, Fraser, Haywood, Jackson, Nelson, Ogden, Shapiro, Sibley, Staples.

Present-not voting: Mr. President.

Absent: Wentworth.

#### **SENATE BILL 333 WITH HOUSE AMENDMENT**

Senator Moncrief called **SB 333** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 333** (Senate Engrossment), in SECTION 1 of the bill, in amended Section 6, Chapter 235, Acts of the 76th Legislature, Regular Session, 1999

(page 1, lines 15-16), by striking "In the event of lapse in coverage, the" and substituting "The".

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 333** by a viva voce vote.

### CONFERENCE COMMITTEE ON HOUSE BILL 660

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 660** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 660** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Van de Putte, Chair; Staples, Shapleigh, Bivins, and Shapiro.

### SENATE RESOLUTION 1222

Senator Van de Putte offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, 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 No. 3305, relating to changing the deadlines and authority for ordering the election and filing for candidacy in political subdivision elections, to consider and take action on the following matter:

Senate Rule 12.03(1) is suspended to permit the committee to change text that is not in disagreement by substituting "November" for "September" so that the effective date of the bill reads as follows:

This Act takes effect November 1, 2001.

Explanation: The changed text is necessary to allow political subdivisions adequate time to modify their election cycles to comply with the bill.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### SENATE BILL 144 WITH HOUSE AMENDMENT

Senator Carona called **SB 144** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

#### Committee Amendment No. 1

Amend **SB 144** as follows:

(1) In SECTION 1 of the bill, in added Section 301.309(g), Occupations Code, between "201.302(a)(3)" and the period (Senate Engrossment page 1, line 12), insert the following:

"if the applicant has at least 20 years' experience in the practice of chiropractic. A person to whom a provisional license is issued under this subsection must comply with the requirements of Section 201.302(a)(3) not later than the third anniversary of the date the provisional license is issued".

(2) Strike SECTION 2 of the bill (Senate Engrossment page 1, lines 13-19) and renumber the subsequent sections accordingly.

(3) In SECTION 3 of the bill, strike Subsection (b) (Senate Engrossment page 1, line 21, through page 2, line 3) and substitute the following:

(b) The change in law made by this Act applies only to the eligibility for a provisional license to practice chiropractic of a person who files an application on or after the effective date of this Act. The eligibility for a provisional license to practice chiropractic of a person who files an application before the effective date of this Act is governed by the law in effect on the date the application is filed, and the former law is continued in effect for that purpose.

The amendment was read.

On motion of Senator Carona, the Senate concurred in the House amendment to **SB 144** by a viva voce vote.

### **SENATE BILL 372 WITH HOUSE AMENDMENT**

Senator Barrientos called **SB 372** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 372**, on third reading, by adding the following appropriately numbered sections and renumbering the sections of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 833, Government Code, is amended by adding Section 833.106 to read as follows:

Sec. 833.106. CREDIT FOR YEAR IN WHICH ELIGIBLE FOR OFFICE.  
(a) A member who has not retired may establish service credit in the retirement system for any calendar year during which the member:

(1) held an office included in the membership of the retirement system; or

(2) was eligible to take the oath for an office included in the membership of the retirement system.

(b) A member may establish service credit under this section by depositing with the retirement system a contribution computed for each month of credit claimed at the rate of six percent of the member's current monthly salary, plus, if the member does not establish credit before the first anniversary of the date of first eligibility, interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date of first eligibility to the date of deposit.

SECTION \_\_\_\_\_. Subsection (b), Section 834.102, Government Code, is amended to read as follows:

(b) The retirement system shall increase by 10 percent of the amount of the applicable state salary under Subsection (a) or (d)[;] the annuity of a member who on the effective date of retirement;

(1) has not been out of judicial office for more than one year; or

(2) has served as a visiting judge in this state and the first anniversary of the last day of that service has not occurred.

SECTION \_\_\_\_\_. Section 835.101, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), each [Each] month the payroll officer responsible for paying the state compensation of a judicial officer who is a member of the retirement system shall deduct from the state compensation of the judicial officer a contribution computed at the rate required of a member of the employee class of the Employees Retirement System of Texas.

(c) A member who accrues 20 years of service credit in the retirement system ceases making contributions under this section.

SECTION \_\_\_\_\_. Subchapter B, Chapter 838, Government Code, is amended by adding Section 838.106 to read as follows:

Sec. 838.106. CREDIT FOR YEAR IN WHICH ELIGIBLE FOR OFFICE.

(a) A contributing member may establish service credit in the retirement system for any calendar year during which the member:

(1) held an office included in the membership of the retirement system; or

(2) was eligible to take the oath for an office included in the membership of the retirement system.

(b) A member may establish service credit under this section by depositing with the retirement system a contribution computed for each month of credit claimed at the rate of six percent of the member's current monthly salary, plus, if the member does not establish credit before the first anniversary of the date of first eligibility, interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date of first eligibility to the date of deposit.

SECTION \_\_\_\_\_. Subsection (b), Section 839.102, Government Code, is amended to read as follows:

(b) The retirement system shall increase by 10 percent of the amount of the applicable state salary under Subsection (a) or (c) the annuity of a member who on the effective date of retirement;

(1) has not been out of judicial office for more than one year; or

(2) has served as a visiting judge in this state and the first anniversary of the last day of that service has not occurred.

The amendment was read.

On motion of Senator Barrientos, the Senate concurred in the House amendment to **SB 372** by a viva voce vote.

### **SENATE BILL 544 WITH HOUSE AMENDMENT**

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

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 544** as follows:

(1) On page 1 add the following new sections and renumber the subsequent section appropriately, "SECTION 2. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 39 to read as follows:

Sec. 39. CREDENTIALING OF PHYSICIANS AND PROVIDERS. (a) Rules adopted by the commissioner under Section 37 of this Act that relate to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with:

(1) this section; and

(2) standards promulgated by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state.

(b) The commissioner shall require a health maintenance organization to verify that a physician's license to practice medicine and any other certificate the physician is required to hold, including a certificate issued by the Department of Public Safety of the State of Texas or the federal Drug Enforcement Agency or a certificate issued under the Medicare program, is valid as of the date of initial credentialing and on the date of each recredentialing.

(c) The commissioner shall require a health maintenance organization that conducts a site visit for the purpose of initial credentialing to evaluate during the visit a site's accessibility, appearance, space, medical or dental recordkeeping practices, availability of appointments, and confidentiality procedures. The commissioner may not require the health maintenance organization to evaluate the appropriateness of equipment during the site visit.

(d) The commissioner may not require that a health maintenance organization:

(1) formally recredential physicians or providers more frequently than once in any three-year period;

(2) verify the validity of a license or certificate held by a physician other than as of the date of initial credentialing or recredentialing of the physician;

(3) use clinical personnel to perform a site visit for initial credentialing of a physician or provider unless clinical review is needed during the site visit; or

(4) require a site visit be performed for recredentialing of a physician or provider.

(e) This section does not preclude a health maintenance organization from performing a site visit of a physician or provider at any time for cause, including a complaint made by a member or another external complaint made to the health maintenance organization.

SECTION 3. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.58D to read as follows:

Art. 21.58D. STANDARDIZED FORM FOR VERIFICATION OF PHYSICIAN CREDENTIALS

Sec. 1. DEFINITION. In this article, "physician" means an individual licensed to practice medicine in this state.

Sec. 2. STANDARDIZED FORM. (a) The commissioner by rule shall:

(1) adopt a standardized form for the verification of the credentials of a physician; and

(2) require that a public or private hospital, a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), or a preferred provider organization operating under Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, use the form for verification of credentials.

(b) In adopting a form under Subsection (a) of this section, the commissioner shall consider any credentialing application form that is widely used in this state.

SECTION 4. (a) The Texas State Board of Medical Examiners shall study the establishment of a program for standardized credentials verification through using a credentialing information system.

(b) Not later than January 1, 2003, the Texas State Board of Medical Examiners shall report on its recommendations for proposed legislation, based on the study conducted under Subsection (a) of this section, to:

- (1) the governor;
- (2) the lieutenant governor; and
- (3) the speaker of the house of representatives."

(2) On page 1, line 19, insert the following after the period and before "This": "Sections 2, 3 and 4 of this Act take effect September 1, 2001. Section 1. of".

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 544** by a viva voce vote.

#### **SENATE BILL 1299 WITH HOUSE AMENDMENT**

Senator Lucio called **SB 1299** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 1299** as follows:

- (1) On page 2, line 8, strike "." and replace with ", and"
- (2) On page 2, line 8, insert "(5) representatives of one or more health maintenance organizations that arrange health care services for members in Medicaid managed care or the child health plan program or both, so long as experience in both Medicaid managed care and the child health plan program is represented on the task force." and (6) one or more public representative.

And renumber thereafter.

The amendment was read.

On motion of Senator Lucio, the Senate concurred in the House amendment to **SB 1299** by a viva voce vote.

#### **SENATE BILL 533 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 533** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

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

Amend **SB 533** as follows:

- (1) Between SECTIONS 4 and 5 of the bill (Senate Engrossed Version page 2, between lines 21 and 22), insert the following section, appropriately numbered, and renumber the subsequent sections accordingly:

SECTION \_\_\_\_\_. Section 256.101(a), Occupations Code, is amended to read as follows:

(a) The board shall issue a license to practice dentistry to a reputable dentist or a license to practice dental hygiene to a reputable dental hygienist who:

(1) pays the fee set by the board;

(2) is licensed in good standing as a dentist or dental hygienist in another state that has licensing requirements substantially equivalent to the requirements of this subtitle;

(3) has not been the subject of a final disciplinary action and is not the subject of a pending disciplinary action in any jurisdiction in which the dentist or dental hygienist is or has been licensed;

(4) has graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board under board rule;

(5) has passed a national or other examination relating to dentistry or dental hygiene and recognized by the board;

(6) has passed the board's jurisprudence examination;

(7) has submitted documentation of current cardiopulmonary resuscitation certification;

(8) has practiced dentistry or dental hygiene:

(A) for at least the five years preceding the date of application under this section for a license to practice dentistry or for at least the three years preceding the date of application under this section for a license to practice dental hygiene [under this section]; or

(B) as a dental educator at a dental school or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for at least the five years preceding the date of application for a license under this section;

(9) has been endorsed by the board of dentistry in the jurisdiction in which the applicant practices at the time of application; and

(10) meets any additional criteria established by board rule.

(2) In SECTION 9(a) of the bill (Senate Engrossed Version page 5, line 19), strike "Section 257.004" and substitute "Sections 256.101(a) and 257.004".

The amendment was read.

On motion of Senator Nelson, the Senate concurred in the House amendment to **SB 533** by a viva voce vote.

**(Senator Bivins in Chair)**

### **SENATE BILL 1245 WITH HOUSE AMENDMENT**

Senator Moncrief called **SB 1245** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1245** by substituting in lieu thereof the following:

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

relating to reporting certain acts of misconduct by and background checks of certain employees and applicants for employment of certain health care agencies and facilities.

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

SECTION 1. Chapter 48, Human Resources Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. EMPLOYEE MISCONDUCT REGISTRY

Sec. 48.401. DEFINITIONS. In this subchapter:

(1) "Agency" means an entity licensed under Chapter 142, Health and Safety Code.

(2) "Employee" means a person who:

(A) works for an agency;

(B) provides personal care services, active treatment, or any other personal services to an individual receiving agency services; and

(C) is not licensed by the state to perform the services the person performs for the agency.

(3) "Employee misconduct registry" means the employee misconduct registry established under Chapter 253, Health and Safety Code.

(4) "Executive director" means the executive director of the Department of Protective and Regulatory Services.

(5) "Reportable conduct" includes:

(A) abuse or neglect that causes or may cause death or harm to an individual receiving agency services;

(B) sexual abuse of an individual receiving agency services;

(C) financial exploitation of an individual receiving agency services in an amount of \$25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual receiving agency services.

Sec. 48.402. RULES RELATING TO REPORTABLE CONDUCT. The department may adopt rules to further define reportable conduct.

Sec. 48.403. FINDING. After an investigation and following the procedures of this subchapter, if the department confirms or validates the occurrence of reportable conduct by an employee, the department shall forward the finding to the Texas Department of Human Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

Sec. 48.404. NOTICE OF FINDING. (a) The department shall give written notice of the department's findings under Section 48.403 to the employee. The notice must include:

(1) a brief summary of the department's findings;

(2) a statement of the employee's right to a hearing on the department's findings; and

(3) a statement notifying the employee that if the employee fails to timely respond to the notice, the finding that the employee committed the reportable conduct will be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code.

(b) Not later than the 30th day after the date the notice is received, the employee notified may accept the finding of the department made under Section 48.403 or may make a written request for a hearing on that finding.

(c) If the employee notified of the violation accepts the finding of the department or fails to timely respond to the notice, the executive director or the executive director's designee shall issue an order approving the finding and ordering that the department's

findings be forwarded to the Texas Department of Human Services to be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code.

Sec. 48.405. HEARING; ORDER. (a) If the employee requests a hearing, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the employee; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the executive director or the executive director's designee a proposal for decision as to the occurrence of the reportable conduct.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the executive director or the executive director's designee by order may find that the reportable conduct has occurred. If the executive director or the executive director's designee finds that reportable conduct has occurred, the executive director or the executive director's designee shall issue an order approving the finding.

Sec. 48.406. NOTICE; JUDICIAL REVIEW. (a) The department shall give notice of the order under Section 48.405 to the employee alleged to have committed the reportable conduct. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) a statement of the right of the employee to judicial review of the order; and
- (3) a statement that the reportable conduct will be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code, if:

- (A) the employee does not request judicial review of the finding; or
- (B) the finding is sustained by the court.

(b) Not later than the 30th day after the date the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the finding, the department shall send a record of the department's findings to the Texas Department of Human Services to record in the employee misconduct registry under Section 253.007, Health and Safety Code.

(c) Judicial review of the order:

- (1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and
- (2) is under the substantial evidence rule.

(d) If the court sustains the finding of the occurrence of the reportable conduct, the department shall forward the finding of reportable conduct to the Texas Department of Human Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

Sec. 48.407. INFORMAL PROCEEDINGS. The department by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT REGISTRY. (a) When the department forwards a finding of reportable conduct to the Texas Department of Human Services for recording in the employee misconduct registry, the department shall provide the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address

of the agency, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) If a governmental agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may send to the Texas Department of Human Services, for recording in the employee misconduct registry, the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date of the act, and a description of the act.

SECTION 2. Section 250.002, Health and Safety Code, is amended to read as follows:

Sec. 250.002. INFORMATION OBTAINED BY FACILITY, REGULATORY AGENCY, OR PRIVATE AGENCY. (a) A facility, a regulatory agency, 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) [licensed, certified, or under contract with the agency, as specified by Section 250.001(3), or who is] an employee of a [that] 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[and] whose employment duties would or do involve direct contact with a consumer in the [a] facility.

(b) A facility may:

(1) pay a private agency to obtain criminal history record information for an applicant or employee described by Subsection (a) directly from the Department of Public Safety of the State of Texas; or

(2) obtain the information directly from the Department of Public Safety [from the regulatory agency that obtains the information from the Department of Public Safety of the State of Texas regarding that facility].

(c) The [~~regulatory agency or~~] private agency[~~, as appropriate,~~] shall forward criminal history record information received under this section to the facility requesting the information.

(d) A regulatory agency may adopt rules relating to the processing of information requested or obtained under this chapter.

SECTION 3. Section 250.003, Health and Safety Code, is amended to read as follows:

Sec. 250.003. VERIFICATION OF EMPLOYABILITY; DISCHARGE. (a) A facility may not employ a person [~~in a position the duties of which involve direct contact with a consumer in the facility~~] if the facility determines, as a result of a criminal history check, that a person 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 serves, and if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry and verifies that the applicant is not designated in the registry 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. A person licensed under another law of this state is exempt from the requirements of this chapter.

(b) The facility may not employ an applicant covered by Subsection (a), except that in an emergency requiring immediate employment, a facility may hire on a temporary or interim basis a person not listed in the registry pending the results of a criminal conviction check, which must be requested within 72 hours of employment. ~~[The request shall be mailed, sent by telephonic facsimile machine, sent by electronic means, or otherwise forwarded to the facility's regulatory agency by the facility or a private agency working with the facility, or to the Department of Public Safety of the State of Texas by a private agency working with the facility.]~~

(c) A facility shall immediately discharge any employee ~~[in a position the duties of which involve direct contact with a consumer in the facility]~~ who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 as having committed an act of abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property, or whose criminal history check reveals conviction of a crime that bars employment or that the facility determines is a contraindication to employment as provided by this chapter.

SECTION 4. Subsection (a), Section 250.004, Health and Safety Code, is amended to read as follows:

(a) Identifying information of an employee ~~[in direct contact with a consumer]~~ in a covered facility 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 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.

SECTION 5. Section 250.006, Health and Safety Code, is amended to read as follows:

Sec. 250.006. **CONVICTIONS BARRING EMPLOYMENT.** A person for whom the facility is entitled to obtain criminal history record information may not be employed in a facility if the person has been convicted of an offense listed in this section ~~[may not be employed in a position the duties of which involve direct contact with a consumer in a facility]:~~

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and false imprisonment);
- (3) an offense under 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); ~~or~~  
(13) an offense under Section 29.03, Penal Code (aggravated robbery); ~~or~~  
(14) 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 under Subdivisions (1)-(13).

SECTION 6. Section 253.001, Health and Safety Code, is amended by adding Subdivision (5) to read as follows:

(5) "Reportable conduct" includes:

(A) abuse or neglect that causes or may cause death or harm to a resident or consumer of a facility;

(B) sexual abuse of a resident or consumer of a facility;

(C) financial exploitation of a resident or consumer of a facility in an amount of \$25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to a resident or consumer of a facility.

SECTION 7. Section 253.002, Health and Safety Code, is amended to read as follows:

Sec. 253.002. INVESTIGATION BY DEPARTMENT. If the department receives a report that an employee of a facility committed reportable conduct [~~has abused, neglected, or exploited a resident or consumer of a facility or misappropriated a resident's or consumer's property~~], the department shall investigate the report to determine whether the employee has committed the reportable conduct [~~act of abuse, neglect, exploitation, or misappropriation~~].

SECTION 8. Subsections (a) and (c), Section 253.003, Health and Safety Code, are amended to read as follows:

(a) If, after an investigation, the department determines that the reportable conduct occurred [~~employee abused, neglected, or exploited a resident or consumer of the facility or misappropriated a resident's or consumer's property~~], the department shall give written notice of the department's findings. The notice must include:

(1) a brief summary of the department's findings; and

(2) a statement of the person's right to a hearing on the occurrence of the reportable conduct [~~misconduct~~].

(c) If the employee notified of the violation accepts the determination of the department or fails to timely respond to the notice, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the reportable conduct [~~incident of misconduct~~] be recorded in the registry under Section 253.007.

SECTION 9. Subsections (b) and (c), Section 253.004, Health and Safety Code, are amended to read as follows:

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the reportable conduct [~~violation~~].

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may find that the reportable conduct [~~an act of misconduct~~] has occurred. If the commissioner or the commissioner's designee finds that the reportable conduct [~~an act of misconduct~~] has occurred, the commissioner or the commissioner's designee shall issue an order approving the determination.

SECTION 10. Subsections (a), (b), and (d), Section 253.005, Health and Safety Code, are amended to read as follows:

(a) The department shall give notice of the order under Section 253.004 to the employee alleged to have committed the reportable conduct [~~act of misconduct~~]. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) a statement of the right of the employee to judicial review of the order; and

(3) a statement that the reportable conduct [~~incident of misconduct~~] will be recorded in the registry under Section 253.007 if:

(A) the employee does not request judicial review of the determination; or

(B) the determination is sustained by the court.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct [~~an act of misconduct~~]. If the employee does not request judicial review of the determination, the department shall record the reportable conduct [~~incident of misconduct~~] in the registry under Section 253.007.

(d) If the court sustains the finding of the occurrence of the reportable conduct [~~an act of misconduct~~], the department shall record the reportable conduct [~~incident of misconduct~~] in the registry under Section 253.007.

SECTION 11. Subsections (a) and (b), Section 253.007, Health and Safety Code, are amended to read as follows:

(a) If an employee commits reportable conduct [~~abuses, neglects, or exploits a resident or consumer of a facility or misappropriates a resident's or consumer's property~~], the department shall make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date [of] the reportable conduct occurred [~~act of misconduct~~], and a description of the reportable conduct [~~act of misconduct~~].

(b) If an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct [~~abused, neglected, or exploited a resident or consumer of a facility or misappropriated a resident's or consumer's property~~], the department may make a record in the employee misconduct registry of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date of the act [of misconduct], and a description of the act [of misconduct].

SECTION 12. Section 253.008, Health and Safety Code, is amended to read as follows:

Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a facility or an agency licensed under Chapter 142 may hire an employee, the facility or agency shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the person is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from an agency licensed under Chapter 142.

(b) A facility or agency licensed under Chapter 142 may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or

consumer of a facility or an individual receiving services from an agency licensed under Chapter 142.

SECTION 13. Subsection (a), Section 253.009, Health and Safety Code, is amended to read as follows:

(a) Each facility or each agency licensed under Chapter 142 shall notify its employees in a manner prescribed by the department:

- (1) about the employee misconduct registry; and
- (2) that an employee may not be employed if the employee is listed in the registry.

SECTION 14. Chapter 253, Health and Safety Code, is amended by adding Sections 253.0075 and 253.010 to read as follows:

Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. On receipt of a finding of reportable conduct by the Department of Protective and Regulatory Services under Subchapter I, Chapter 48, Human Resources Code, the department shall record the information in the employee misconduct registry.

Sec. 253.010. REMOVAL FROM REGISTRY. The department may remove a person from the employee misconduct registry if, after receiving a written request from the person, the department determines that the person does not meet the requirements for inclusion in the employee misconduct registry.

SECTION 15. (a) Except as provided by Subsection (b), 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, 2001.

(b) Section 1 of this Act takes effect January 1, 2002.

(c) Subchapter I, Chapter 48, Human Resources Code, as added by this Act, applies only to reportable conduct that occurs on or after the effective date of this Act.

The amendment was read.

Senator Moncrief moved to concur in the House amendment to **SB 1245**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### **SENATE BILL 1050 WITH HOUSE AMENDMENT**

Senator Van de Putte called **SB 1050** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Bivins in Chair, laid the bill and the House amendment before the Senate.

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

Amend **SB 1050** by striking SECTION 2 of the bill (engrossed version, page 1, lines 23-25 and page 2, lines 1-3) and renumbering the remaining SECTIONS of the bill as appropriate.

The amendment was read.

On motion of Senator Van de Putte, the Senate concurred in the House amendment to **SB 1050** by a viva voce vote.

**SENATE RESOLUTION 1231**

Senator Moncrief offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, 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 No. 1094, relating to the creation of a state prescription drug program for certain Medicare beneficiaries, to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add Subsection (c) to proposed Section 531.302, Government Code, to read as follows:

(c) In adopting rules for the state prescription drug program, the commission shall consult with an advisory panel composed of an equal number of physicians, pharmacists, and pharmacologists appointed by the commissioner.

Explanation: This change is necessary to require the Health and Human Services Commission to consult with an advisory panel in adopting rules for the state prescription drug program.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 465 WITH HOUSE AMENDMENT**

Senator Shapleigh called **SB 465** from the President's table for consideration of the House amendment to the bill.

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

**Committee Amendment No. 1**

Amend **SB 465** by the following:

Page 1 line 19 add the words "non voting" between one and member.

Page 1 line 20 strike "four" and add "three"

Page 1 line 22 strike "four" and add "three"

Page 1, after line 23 but before line 24 add the following:

(4) three members approved by the Transportation Policy Board of the El Paso Region.

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 465**.

The motion prevailed the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 1296 WITH HOUSE AMENDMENT**

Senator Lucio called **SB 1296** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Bivins in Chair, laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 1296** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the issuance of general obligation bonds and notes to provide financial assistance to counties for roadway projects to serve border colonias.

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

SECTION 1. Subtitle G, Title 9, Government Code, is amended by adding Chapter 1403 to read as follows:

CHAPTER 1403. GENERAL OBLIGATION BONDS  
FOR CERTAIN BORDER COLONIA PROJECTS

Sec. 1403.001. DEFINITIONS. In this chapter:

- (1) "Authority" means the Texas Public Finance Authority.
- (2) "Commission" means the Texas Transportation Commission.

Sec. 1403.002. GENERAL OBLIGATION BONDS AND NOTES FOR BORDER COLONIA ROADWAY PROJECTS. (a) As provided by Section 49-1, Article III, Texas Constitution, the authority shall, in accordance with requests from the office of the governor:

(1) issue general obligation bonds and notes in an aggregate amount not to exceed \$175 million, as authorized by the office of the governor under Subsection (b); and

(2) as directed by the Texas Department of Transportation, distribute the proceeds from the sale of the bonds and notes to counties to provide financial assistance for colonia access roadway projects to serve border colonias.

(b) The office of the governor shall determine the amount of bonds or notes to be issued at any one time by the authority under Subsection (a)(1) and the times at which the bonds or notes are issued.

(c) The commission shall establish a program to administer the use of the proceeds of the bonds and notes. The Texas Department of Transportation shall administer the program in cooperation with the office of the governor, the secretary of state, and the Texas A&M University Center for Housing and Urban Development.

(d) The commission, in cooperation with the office of the governor, shall:

(1) define by rule "border colonia";  
(2) establish by rule criteria for selecting which areas and which colonia access roadway projects are eligible for assistance under this chapter;

(3) determine the counties and the colonia access roadway projects that are to receive financial assistance and the amount of assistance given to a county or project;

(4) establish by rule minimum road standards a county's colonia access roadway proposal must meet to be awarded a grant;

(5) establish by rule grant application procedures; and

(6) establish by rule financial reporting requirements for counties that receive assistance for colonia access roadway projects to serve border colonias.

(e) The issuance of general obligation bonds under this chapter shall comply with and is subject to Subtitle A, of this title, Chapter 1231, and applicable provisions of Chapters 1232 and 1371.

(f) In connection with bonds or notes issued under this section, the authority may enter into one or more credit agreements at any time for a period and on conditions the authority approves. For purposes of this subsection, "credit agreement" includes:

- (1) an interest rate swap agreement;
- (2) an interest rate lock agreement;
- (3) a currency swap agreement;
- (4) a forward payment conversion agreement;
- (5) an agreement to provide payments based on levels of or changes in interest rates or currency exchange rates;
- (6) an agreement to exchange cash flows or a series of payments;
- (7) an option, put, or call to hedge payment, currency, rate, spread, or other exposure; or
- (8) another agreement that enhances the marketability, security, or creditworthiness of bonds or notes.

SECTION 2. This Act takes effect on the date on which the constitutional amendment proposed by the 77th Legislature, Regular Session, 2001, authorizing the issuance of state general obligation bonds or notes to provide financial assistance to counties for roadway projects to serve border colonias takes effect. If that amendment is not approved by the voters, this Act has no effect.

The amendment was read.

On motion of Senator Lucio, the Senate concurred in the House amendment to **SB 1296** by a viva voce vote.

### **SENATE BILL 416 WITH HOUSE AMENDMENT**

Senator Ogden called **SB 416** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 416** by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS accordingly:

"SECTION \_\_\_\_\_. Section 203.004, Transportation Code, is amended to read as follows:

Sec. 203.004. CONTRACTS FOR MANAGEMENT [ADMINISTRATION] OF PROPERTY USED [ACQUIRED] FOR MITIGATION OF ADVERSE ENVIRONMENTAL IMPACTS. (a) The department may contract with any public or private entity [the Parks and Wildlife Department] for the management [administration, control, or maintenance] or property used [acquired under Subchapter D] for the mitigation of an adverse environmental impact directly resulting from the construction or maintenance of a state highway.

(b) A contract under this section is not subject to Chapter 771, Government Code.

(c) In this section, "management," in connection with property, means administration, control, or maintenance that is required by an agency of the United States."

The amendment was read.

Senator Ogden moved to concur in the House amendment to **SB 416**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 161 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 161** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 161** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to authorizing transitional support services to former recipients of Temporary Assistance for Needy Families (TANF) benefits.

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

SECTION 1. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.00351 to read as follows:

Sec. 31.00351. TRANSITIONAL SUPPORT SERVICES. (a) In this section, "support services" includes:

- (1) transportation assistance;
- (2) emergency assistance;
- (3) job coaches;
- (4) education;
- (5) housing-related assistance;
- (6) assistance in accessing child-care services; and
- (7) other appropriate services designed to support a successful transition

from public assistance to self-support.

(b) Subject to the availability of funds, the department and the Texas Workforce Commission may provide transitional support services to a person who was receiving financial assistance but is no longer eligible to receive the assistance because:

- (1) the person's household income has increased; or
- (2) the person has exhausted the person's benefits under Section 31.0065.

(c) Each agency may provide the support services that the agency determines are necessary and that are appropriate for the agency to provide. Each agency must provide the support services in accordance with agency rules and federal law.

(d) The agencies may provide the support services only until the earlier of:

- (1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or
- (2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

SECTION 2. Subsection (c), Section 31.012, Human Resources Code, is amended to read as follows:

(c) A person who is the caretaker of a physically or mentally disabled child who requires the caretaker's presence is not required to participate in a program under this section. Effective January 1, 2000, a single person who is the caretaker of a child is not required to participate in a program under this section until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of three. Effective September 1, 2000, a single person who is the caretaker of a child is

exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of two. Effective September 1, 2001, a single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the department shall provide to a person who is exempt under this subsection and who voluntarily participates in a program under Subsection (a)(2) six months of transitional benefits other than transitional support services in addition to the applicable limit prescribed by Section 31.0065.

SECTION 3. 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, the agency shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. This Act takes effect September 1, 2001, and applies only to a person who receives financial assistance under Chapter 31, Human Resources Code, on or after that date, regardless of the date on which eligibility for that assistance was determined.

The amendment was read.

On motion of Senator Zaffirini, the Senate concurred in the House amendment to **SB 161** by a viva voce vote.

**(Senator Carona in Chair)**

### **SENATE BILL 581 WITH HOUSE AMENDMENTS**

Senator Duncan called **SB 581** 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 581** by substituting in lieu thereof the following:

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

relating to document preparation costs related to certain mental health proceedings.

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

SECTION 1. Section 574.031(k), Health and Safety Code, is amended to read as follows:

(k) Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed \$50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018. For a mental health proceeding, the fee assessed under this subsection includes costs incurred for the preparation of documents related to the proceeding.

SECTION 2. Section 44.343(b), Government Code, is amended to read as follows:

(b) The criminal district attorney shall collect the fees, commissions, and perquisites that are provided by law for similar services rendered by a district or county

attorney. [Additionally, the criminal district attorney is entitled to be reimbursed a reasonable fee for prosecuting cases arising under Chapter 574, Health and Safety Code, in which the patient or proposed patient is a resident of a county other than Wichita County. Said fee is to be taxed as costs and is to be paid by the county of residence of the patient or proposed patient. "Reasonable fee" as used herein shall mean an amount equal to the fee ordered by the Court for any attorney court-appointed to represent the patient or proposed patient at each hearing. Fees collected under this section shall be deposited in the account from which Wichita County assistant criminal district attorneys are paid.]

SECTION 3. Notwithstanding any other law, a county that, before September 1, 2001, collected a fee for the preparation of documents related to mental health proceedings under Chapter 574, Health and Safety Code, is not liable to any other person for repayment of any portion of the fee, regardless of whether the fee was collected under adequate legal authority.

SECTION 4. This Act takes effect September 1, 2001.

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

Amend **CSSB 581** in Section 1 of the bill, at the end of amended Subsection (k), Section 574.031, Health and Safety Code (house committee printing, page 1, line 13), by adding:

The court may award as court costs fees for other costs of a mental health proceeding against the county responsible for the payment of the costs of the hearing under Section 571.018.

The amendments were read.

On motion of Senator Duncan, the Senate concurred in the House amendments to **SB 581** by a viva voce vote.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 22 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **SB 22**. The Conference Committee Report was filed with the Senate on Thursday, May 24, 2001.

On motion of Senator Shapiro, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**(Senator Armbrister in Chair)**

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1922 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **HB 1922**. The Conference Committee Report was filed with the Senate on Thursday, May 24, 2001.

On motion of Senator Duncan, the Conference Committee Report was adopted by a viva voce vote.

(Senator Brown in Chair)

**SENATE BILL 1377 WITH HOUSE AMENDMENT**

Senator Armbrister called **SB 1377** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1377** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 321, Government Code, is amended by adding Section 321.017 to read as follows:

Sec. 321.017. REVIEW AND OVERSIGHT OF FUNDS AND ACCOUNTS RECEIVING COURT COSTS. (a) The state auditor may review each fund and account into which money collected as a court cost is directed by law to be deposited to determine whether:

(1) the money is being used for the purpose or purposes for which the money is collected; and

(2) the amount of the court cost is appropriate, considering the purpose or purposes for which the cost is collected.

(b) The state auditor may perform reviews under this section as specified in the audit plan developed under Section 321.013.

(c) The state auditor shall make the findings of a review performed under this section available to the public and shall report the findings to the governor, the chief justice of the supreme court, the presiding judge of the court of criminal appeals, and the committee. The report may include the state auditor's recommendations for legislation or policy changes.

SECTION 2. (a) This Act takes effect September 1, 2001.

(b) Notwithstanding Section 321.017(b), Government Code, as added by this Act, the state auditor shall perform and complete a review described by Subsection (a) of that section and report the findings of the review before December 1, 2002.

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 1377** by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 658 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HB 658**. The Conference Committee Report was filed with the Senate on Thursday, May 24, 2001.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2446 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **HB 2446**. The Conference Committee Report was filed with the Senate on Thursday, May 24, 2001.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

**SENATE BILL 734 WITH HOUSE AMENDMENT**

Senator Duncan called **SB 734** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 734** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to a report by the Legislative Budget Board on the performance of the state's major investment funds.

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

SECTION 1. Chapter 322, Government Code, is amended by adding Section 322.014 to read as follows:

Sec. 322.014. REPORT ON MAJOR INVESTMENT FUNDS. (a) In this section, "state investment fund" means any investment fund administered by or under a contract with any state governmental entity, including a fund:

- (1) established by statute or by the Texas Constitution; or
- (2) administered by or under a contract with:

(A) a public retirement system as defined by Section 802.001 that provides service retirement, disability retirement, or death benefits for officers or employees of the state;

(B) an institution of higher education as defined by Section 61.003, Education Code; or

(C) any other entity that is part of state government.

(b) The board shall evaluate and publish an annual report on the risk-adjusted performance of each state investment fund that in the opinion of the board contains a relatively large amount of assets belonging to or administered by the state. The board in its report shall:

- (1) compare the risk-adjusted performance of the funds; and
- (2) examine the risk-adjusted performance, within and among the funds, of similar asset classes and comparable portfolios within asset classes.

(c) Each state governmental entity that administers a state investment fund and each person that administers a state investment fund under contract shall provide the board with the information the board requests regarding the performance of the fund.

(d) The board shall publish the annual report in a format and using terminology that a person without technical investment expertise can understand.

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, 2001.

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 734**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 516 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **SB 516**. The Conference Committee Report was filed with the Senate on Thursday, May 24, 2001.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 555 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **SB 555**. The Conference Committee Report was filed with the Senate on Friday, May 18, 2001.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**(Senator Armbrister in Chair)**

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1444 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **SB 1444**. The Conference Committee Report was filed with the Senate on Thursday, May 24, 2001.

On motion of Senator Brown, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 65 ADOPTED**

Senator Moncrief called from the President's table the Conference Committee Report on **SB 65**. The Conference Committee Report was filed with the Senate on Friday, May 18, 2001.

On motion of Senator Moncrief, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 606 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **HB 606**. The Conference Committee Report was filed with the Senate on Thursday, May 24, 2001.

On motion of Senator Nelson, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 304 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **SB 304**. The Conference Committee Report was filed with the Senate on Tuesday, May 22, 2001.

On motion of Senator Lucio, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1596 ADOPTED**

Senator Bivins called from the President's table the Conference Committee Report on **SB 1596**. The Conference Committee Report was filed with the Senate on Tuesday, May 22, 2001.

On motion of Senator Bivins, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 1815 WITH HOUSE AMENDMENT**

Senator Truan called **SB 1815** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Armbrister in Chair, laid the bill and the House amendment before the Senate.

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

Amend **SB 1815** on third reading by amending SECTION 2, on page 2, line 19, by inserting the following:

Sec. 486.053. LEASEHOLD AND OTHER POSSESSORY INTERESTS. (a) Section 25.07(a), Tax Code, does not apply to a leasehold or other possessory interest in real property granted by an authority created pursuant to Chapter 378, Local Government Code, that is located in an eligible community.

(b) This subsection and subsection (a) expire September 1, 2007.

The amendment was read.

Senator Truan moved to concur in the House amendment to **SB 1815**.

**POINT OF ORDER**

Senator Bivins raised a point of order that the House amendment to **SB 1815** was not germane to the body of the bill.

On motion of Senator Bivins and by unanimous consent, the point of order was withdrawn.

On motion of Senator Truan and by unanimous consent, the motion to concur in the House amendment to **SB 1815** was withdrawn.

Senator Truan then 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.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1815** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Truan, Chair; Van de Putte, Shapleigh, Fraser, and Bivins.

### SENATE BILL 1224 WITH HOUSE AMENDMENTS

Senator Harris called **SB 1224** from the President's table for consideration of the House amendments to the bill.

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

#### Floor Amendment No. 1

Amend **SB 1224** (house committee printing) as follows:

(1) In SECTION 1 of the bill, strike amended Subdivisions (1) and (6), Section 1702.002, Occupations Code (page 1, lines 7 through 18), and substitute the following:

(1) "Alarm system" means an alarm system, burglar alarm signal device, electronic keypad with a panic alarm feature, burglar alarm, robbery alarm, closed circuit [television] camera used as a detection device, medical alert services button, or remote panic alarm button [~~still camera used to signal the presence of an emergency to which law enforcement or emergency services are expected to respond~~].

(6) "Detection device" means an electronic device used as a part of a burglar, emergency, or robbery alarm, including an electronic security control panel [a control], audible alarm, communications device, motion detector, door or window switch, sound detector, vibration detector, light beam, pressure mat, wiring used as part of an alarm device, an electronic device used to limit a person's access into a structure or gate compound, including a card reader, proximity reader, push-button keypad, door or gate entry device, or similar device.

(2) Between SECTIONS 14 and 15 of the bill (page 9, between lines 12 and 13), insert the following appropriately numbered section:

SECTION \_\_\_\_\_. Subsection (b), Section 1702.324, Occupations Code, is amended to read as follows:

(b) This chapter does not apply to:

(1) a manufacturer or a manufacturer's authorized distributor who sells equipment to a license holder that is used in the operations for which the person is required to be licensed;

(2) a person engaged exclusively in the business of obtaining and providing information to:

(A) determine creditworthiness;

(B) collect debts; or

(C) ascertain the reliability of information provided by an applicant for property, life, or disability insurance or an indemnity or surety bond;

(3) a person engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(4) a locksmith who:

(A) does not install or service detection devices;

(B) does not conduct investigations; and

(C) is not a security services contractor;

(5) a person who:

(A) is engaged in the business of psychological testing or other testing and interviewing services, including services to determine attitudes, honesty, intelligence, personality, and skills, for preemployment purposes; and

(B) does not perform any other service that requires a license under this chapter;

(6) a person who:

(A) is engaged in obtaining information that is a public record under Chapter 552, Government Code, regardless of whether the person receives compensation;

(B) is not a full-time employee, as defined by Section 61.001, Labor Code, of a person licensed under this chapter; and

(C) does not perform any other act that requires a license under this chapter;

(7) a licensed professional engineer practicing engineering or directly supervising engineering practice under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), including forensic analysis, burglar alarm system engineering, and necessary data collection;

(8) an employee of a cattle association who inspects livestock brands under the authority granted to the cattle association by the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture;

(9) a landman performing activities in the course and scope of the landman's business;

(10) an attorney while engaged in the practice of law;

(11) a person who obtains a document for use in litigation under an authorization or subpoena issued for a written or oral deposition; ~~or~~

(12) an admitted insurer, insurance adjuster, agent, or insurance broker licensed by the state, performing duties in connection with insurance transacted by that person;

(13) a person who:

(A) installs, repairs, or performs services on garage door operators and garage door remote controllers in single and multiple family residential structures; and

(B) does not perform any other act that requires a license under this chapter;

(14) a person who:

(A) installs, repairs, or performs services on gate operators and remote gate controllers in single family residential structures or performs services on gate operators in multiple family residential or commercial facilities; and

(B) does not perform any other act that requires a license under this chapter; or

(15) a person who installs, repairs, or performs services on a single door access system that is not connected to a central system.

(3) In SECTION 17 of the bill (page 9, line 23, through page 10, line 4), change the references to sections of the bill accordingly to take into account the renumbering of SECTIONS of the bill.

(4) In SECTION 18 of the bill, between "Section 1702.002," and "and Sections 1702.062," (page 10, line 9) insert "Subsection (b), Section 1702.324,".

(5) Renumber the sections of the bill accordingly.

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

Amend **SB 1224** (house committee printing) as follows:

(1) In SECTION 6 of the bill, in amended Subsection (a) of Section 1702.062, Occupations Code (page 3, line 15), strike "[~~a~~]" and substitute "(a)".

(2) In SECTION 6 of the bill, strike amended Subsection (b) of Section 1702.062, Occupations Code (page 5, lines 4 through 11), and substitute:

(b) In addition to ~~other~~ fees established under this chapter or the General Appropriations Act, the commission may charge a fee each time the commission requires a person regulated under this chapter to resubmit a set of fingerprints for processing by the commission during the application process for a license, registration, or commission. The commission shall set the fee in an amount that is reasonable and necessary to cover the commission's administrative expenses related to processing the fingerprints.

(c) A person whose pocket card has not expired is not eligible to receive from the commission another pocket card in the same classification in which the pocket card is held.

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

Amend **SB 1224** (house committee printing) as follows:

(1) In SECTION 12 of the bill, in added Subsection (a), Section 1702.309, Occupations Code, in the first sentence, strike "in handgun proficiency" (page 7, line 8).

(2) In SECTION 12 of the bill, in added Subsection (a), Section 1702.309, Occupations Code, strike the third sentence (page 7, line 11 through line 19) and substitute the following:

The course must include at least six hours of instruction determined by the director of the commission.

(3) In SECTION 13 of the bill, in amended Subsection (a), Section 1702.309, Occupations Code, in the first sentence, strike "in handgun proficiency" (page 8, line 4) and substitute "in handgun proficiency".

(4) In SECTION 13 of the bill, in amended Subsection (a), Section 1702.309, Occupations Code, strike the third sentence (page 8, lines 6 through 13) and substitute the following:

The course must include[:

~~[(+) at least six [two] hours of instruction determined by the director of the commission [on one or more of the subjects listed in Section 1702.1675(g); and  
(2) other information that the director determines is appropriate].~~

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

Amend **SB 1224** (house committee printing) as follows:

(1) In SECTION 14 of the bill, in amended Subsection (d)(1) of Section 1702.323, Occupations Code, after the semicolon (page 9, line 1), strike "and" and substitute "[~~and~~]".

(2) In SECTION 14 of the bill, in amended Subsection (d)(2) of Section 1702.323, Occupations Code, strike "or the name of the employer" (page 9, line 4) and substitute "[~~or the name of the employer~~]".

(3) In SECTION 14 of the bill, at the end of amended Subsection (d)(2) of Section 1702.323, Occupations Code, between "apparel" and the period (page 9, line 5), insert the following:

; and

(3) performs a duty described by Section 1702.222

#### **Floor Amendment No. 5**

Amend **SB 1224** (house committee printing) as follows:

(1) Add the following appropriately numbered section:

SECTION \_\_\_\_\_. 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;

(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 reserve peace officer for a county or for a department, precinct, or political subdivision of a county if the county has a population of less than 20,000, while the reserve officer is performing duties at an event or function sponsored or sanctioned by a political subdivision, school, or nonprofit organization in a county with a population of less than 20,000;

(4) a peace officer acting in an official capacity in responding to a burglar alarm or detection device; or

(5) [(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.

(2) In SECTION 17 of the bill (page 9, line 23 through page 10, line 4), change the references to sections of the bill accordingly to take into account the renumbering of the SECTIONS of the bill.

(3) In SECTION 18 of the bill, between "1702.115," and "and" (page 10, line 9), insert "1702.322,".

(4) Renumber the sections of the bill accordingly.

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

Amend **SB 1224**, on third reading, at the end of Subsection (d)(2) of Section 1702.323, Occupations Code, as amended by the Geren Amendment No. 4, after the semicolon, strike "and" and substitute "or".

### **Floor Amendment No. 3 on Third Reading**

Amend **SB 1224** on third reading by adding the following appropriately numbered Sections to the bill and renumbering subsequent Sections of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter P, Chapter 1702, Occupations Code, is amended by adding Section 1702.3863 to conform to Section 1, Chapter 388, and Section 31, Chapter 974, Acts of the 76th Legislature, Regular Session, 1999, and by amending that section to read as follows:

Sec. 1702.3863. UNAUTHORIZED CONTRACT WITH BAIL BOND SURETY; OFFENSE. (a) A person commits an offense if the person contracts with a bail bond surety as defined by Chapter 1704 to secure the appearance of a person who has forfeited a bail bond, unless the person is:

(1) a peace officer;

(2) an individual licensed as a private investigator or the manager of a licensed investigations company;

(3) a commissioned security officer employed by a licensed guard company;

(4) a bail bond surety who holds a license under Chapter 1704 as an individual;

(5) the agent designated in the license application of a corporate bail bond surety under Chapter 1704; or

(6) a full-time employee of:

(A) a bail bond surety who holds a license under Chapter 1704 as an individual; or

(B) the agent designated in the license application of a corporate bail bond surety under Chapter 1704.

(b) An offense under Subsection (a) is a state jail felony.

SECTION \_\_\_\_\_. Article 17.19(e), Code of Criminal Procedure, is amended to read as follows:

(e) An arrest warrant issued under this article may be executed by:

(1) a peace officer;

(2) [;] a commissioned security officer employed by a guard company licensed under Chapter 1702, Occupations Code;

(3) an individual licensed under Chapter 1702, Occupations Code, as[;or] a private investigator or the manager of a licensed investigations company;

(4) a bail bond surety who holds a license under Chapter 1704, Occupations Code, as an individual;

(5) the agent that is designated in the license application of a corporate bail bond surety under Chapter 1704, Occupations Code; or

(6) a full-time employee of:

(A) a bail bond surety who holds a license under Chapter 1704, Occupations Code, as an individual; or

(B) the agent that is designated in the license application of a corporate bail bond surety under Chapter 1704, Occupations Code [licensed in this state].

SECTION \_\_\_\_\_. Article 23.05(b), Code of Criminal Procedure, is amended to read as follows:

(b) A capias issued under this article may be executed by:

(1) a peace officer;

(2) an individual licensed under Chapter 1702, Occupations Code, as [or by] a private investigator or the manager of a licensed investigations company;

(3) a commissioned security officer employed by a guard company licensed under Chapter 1702, Occupations Code;

(4) a bail bond surety who holds a license under Chapter 1704, Occupations Code, as an individual;

(5) the agent that is designated in the license application of a corporate bail bond surety under Chapter 1704, Occupations Code; or

(6) a full-time employee of:

(A) a bail bond surety who holds a license under Chapter 1704, Occupations Code, as an individual; or

(B) the agent that is designated in the license application of a corporate bail bond surety under Chapter 1704, Occupations Code [licensed under the Private Investigators and Private Security Agencies Act (Article 4413 (29bb), Vernon's Texas Civil Statutes)].

SECTION \_\_\_\_\_. To the extent of any conflict, Section 1702.3863, Occupations Code, as added by this Act, prevails over another Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes.

#### **Floor Amendment No. 4 on Third Reading**

Amend **SB 1224** on third reading by striking Section 1702.322, Occupations Code, as added by Amendment No. 5 on second reading, and correcting cross-references to existing sections of Chapter 1702 accordingly.

The amendments were read.

On motion of Senator Harris, the Senate concurred in the House amendments to **SB 1224** by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1472 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **SB 1472**. The Conference Committee Report was filed with the Senate on Tuesday, May 22, 2001.

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 139 WITH HOUSE AMENDMENTS**

Senator Carona called **SB 139** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Armbrister in Chair, laid the bill and the House amendments before the Senate.

**Committee Amendment No. 1**

Amend **SB 139**, as follows:

Amend Section 1. Section 42.07(a)(2) by inserting the words "or household" after the word "family" and before the comma on line 1-18.

Amend Section 1. Section 42.07(b)(2) by inserting the words "and "household"" after "Family" on line 2-19 and by striking "Section" and replacing with "Chapter" on line 2-19; further amended by striking ".003" immediately proceeding "71" on line 2-20.

**Floor Amendment No. 2**

Amend **SB 139** by adding the following appropriately numbered SECTION of the bill and renumbering the remaining SECTIONS of the bill as appropriate:

SECTION \_\_\_\_\_. Section 42.072(b), Penal Code, is amended to read as follows:

(b) An offense under this section is a felony of the third degree [~~Class A misdemeanor~~], except that the offense is a felony of the second [~~third~~] degree if the actor has previously been convicted under this section.

The amendments were read.

On motion of Senator Carona, the Senate concurred in the House amendments to **SB 139** by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE JOINT RESOLUTION 97 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HJR 97**. The Conference Committee Report was filed with the Senate on Tuesday, May 22, 2001.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 1100 WITH HOUSE AMENDMENT**

Senator Moncrief called **SB 1100** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1100** on page 1, line 11 by striking "shall" and inserting "may".

The amendment was read.

Senator Moncrief moved to concur in the House amendment to **SB 1100**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 1778 WITH HOUSE AMENDMENTS**

Senator Lucio called **SB 1778** 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 1778** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the collection of costs in criminal cases.

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

SECTION 1. Article 103.003, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) This article does not limit the authority of a commissioners court to contract with a private attorney or private vendor for the provision of collection services under Article 103.0031.

SECTION 2. Article 103.0031, Code of Criminal Procedure, is amended to read as follows:

Art. 103.0031. COLLECTION CONTRACTS. (a) The commissioners court of a county or the governing body of a municipality may enter into a contract with a private attorney or a public or private vendor for the provision of collection services for debts and accounts receivable such as fines, fees, restitution, and other debts or costs, other than forfeited bonds, ordered to be paid by a court serving the county or a court serving the municipality, as appropriate.

(b) A commissioners court or governing body of a municipality that enters into a contract with a private attorney or private vendor under this article may authorize the addition of collection fees in the amount of 30 percent on each debt or account receivable that is more than 60 days past due and has been referred to the attorney or vendor for collection.

(c) A defendant is not liable for the collection fees authorized under Subsection (b) if the court of original jurisdiction has determined the defendant is indigent, or has insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs.

(d) If a private attorney or private vendor collects from a person owing costs ordered paid by the court an amount that is less than the total costs owed by the person, including collection costs permitted under the attorney's or vendor's contract with the commissioners court or governing body, the amount of costs collected otherwise required to be sent to the comptroller of public accounts and the amount permitted to be retained by the county or municipality are reduced by an equal percentage in order to fully compensate the attorney or vendor, not to exceed the percentage specified as allowable collection costs in the vendor's contract with the county or municipality.

SECTION 3. Article 6701d-28, Revised Statutes, is repealed.

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, 2001.

**Floor Amendment No. 1**

Amend **CSSB 1778** (House Committee Printing) as follows:

- (1) Everywhere it appears in the bill, strike "or private vendor".
- (2) Everywhere it appears in the bill, strike "or vendor".
- (3) Everywhere it appears in the bill, strike "collection fees" and substitute "attorney's fees".
- (4) In SECTION 1, in added Article 103.0031(d), Code of Criminal Procedure (page 2, line 9), strike "collection costs" and substitute "attorney's fees".
- (5) In SECTION 1, in added Article 103.0031(d), Code of Criminal Procedure (page 2, line 10), strike "or vendor's".
- (6) In SECTION 1, in added Article 103.0031(d), Code of Criminal Procedure (page 2, line 16), strike "vendor's" and substitute "attorney's".

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

Amend **CSSB 1778** on third reading as follows:

- (1) In SECTION 1, in amended Article 103.003(c), Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike "private attorney" and substituting "private vendor or private attorney".
- (2) In SECTION 2, in amended Article 103.0031, Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike Subsection (a) and substitute "(a) The commissioners court of a county or the governing body of a municipality may enter into a contract with a private attorney or a public or private vendor for the provision of collection services for debts and accounts receivable such as fines, fees, restitution, and other debts or costs, other than forfeited bonds, ordered to be paid by a court serving the county or a court serving the municipality, as appropriate."
- (3) In SECTION 2, in amended Article 103.0031(b), Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike "private attorney" and substitute "private attorney or private vendor".
- (4) In SECTION 2, in amended Article 103.0031(b), Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike "attorney's fees" and substitute "collection fees".
- (5) In SECTION 2, in amended Article 103.0031(b), Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike "referred to the attorney for collection" and substitute "referred to the attorney or vendor for collection".
- (6) In SECTION 2, in amended Article 103.0031(c), Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike "attorney's fees" and substitute "collection fees".
- (7) In SECTION 2, in amended Article 103.0031(d), Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike "private attorney" and substitute "private attorney or private vendor".
- (8) In SECTION 2, in added Article 103.0031(d), Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike "attorney's fees" and substitute "collection costs".
- (9) In SECTION 2, in added Article 103.0031(d), Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike "attorney's contract" in both places it occurs and substitute "attorney's or vendor's contract".

(10) In SECTION 2, in added Article 103.0031(d), Code of Criminal Procedure, as amended by 2nd Reading Floor Amendment No. (1) (Hinojosa), strike "compensate the attorney" and substitute "compensate the attorney or vendor".

The amendments were read.

Senator Lucio moved to concur in the House amendments to **SB 1778**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### **SENATE BILL 467 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 467** 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.

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

Amend **SB 467**, on page 1, SECTION 1, lines 11 through 18, by striking all language after "grades".

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

Amend **SB 467** as follows:

(1) In SECTION 1 of the bill, in added Section 28.005(c), Education Code (House committee report, page 1, line 11), between "grades" and the period, insert "as provided by Section 28.0051".

(2) Between SECTIONS 1 and 2 of the bill (House committee report, page 1, between lines 18 and 19), insert the following appropriately numbered SECTIONS and renumber the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter A, Chapter 28, Education Code, is amended by adding Section 28.0051 to read as follows:

Sec. 28.0051. DUAL LANGUAGE IMMERSION PROGRAM. (a) A dual language immersion program should be designed to produce students with a demonstrated mastery, in both English and one other language, of the required curriculum under Section 28.002(a).

(b) The commissioner by rule shall adopt:

(1) minimum requirements for a dual language immersion program implemented by a school district;

(2) standards for evaluating:

(A) the success of a dual language immersion program; and

(B) the performance of schools that implement a dual language immersion program; and

(3) standards for recognizing:

(A) schools that offer an exceptional dual language immersion program; and

(B) students who successfully complete a dual language immersion program.

(c) A school district may implement a dual language immersion program in a manner and at elementary grade levels consistent with rules adopted by the commissioner under this section.

SECTION \_\_\_\_\_. The rules adopted by the commissioner of education under Section 28.0051, Education Code, as added by this Act, must first address the implementation of dual language immersion programs in prekindergarten through second grade classes before addressing dual language immersion programs in grade levels three and above.

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

Amend **SB 467** on third reading by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 28.002, Education Code, is amended by adding an appropriately numbered subsection to read as follows and by relettering existing subsections accordingly:

( ) Section 2001.039, Government Code, as added by Chapter 1499, Acts of the 76th Legislature, Regular Session, 1999, does not apply to a rule adopted by the State Board of Education under Subsection (c) or (d).

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **SB 467**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### **SENATE RESOLUTION 1244**

Senator Zaffirini offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 77th Legislature, Regular Session, 2001, 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 No. 1156, relating to the state Medicaid program, to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add a new SECTION to the bill to read as follows:

SECTION 25. Notwithstanding S.B. No. 1, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), the annual salary of the executive director of the Interagency Council on Early Childhood Intervention during the state fiscal biennium beginning September 1, 2001, is \$72,000.

Explanation: This change is necessary to specify the annual salary of the executive director of the Interagency Council on Early Childhood Intervention.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**SENATE BILL 712 WITH HOUSE AMENDMENTS**

Senator Sibley called **SB 712** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Armbrister in Chair, laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 712** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the privacy of certain information provided by consumers to insurers and other related entities; providing a civil penalty.

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

SECTION 1. Title 1, Insurance Code, is amended by adding Chapter 28A to read as follows:

CHAPTER 28A. PRIVACY  
SUBCHAPTER A. GENERAL PROVISIONS

Art. 28A.01. DEFINITIONS. In this chapter:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) "Authorization" has the meaning assigned by Section 82.001 of this code.

(3) "Covered entity" means an individual or entity who receives an authorization from the department. The term includes any individual or entity described by Section 82.002 of this code.

(4) "Nonaffiliated third party" means an entity that is not an affiliate of, or related to by common ownership or affiliated by corporate control with, the covered entity. The term does not include a joint employee of the entity.

Art. 28A.02. COMPLIANCE WITH FEDERAL LAW REQUIRED. (a) A covered entity shall comply with 15 U.S.C. Sections 6802 and 6803, as amended, in the same manner as a financial institution under those sections.

(b) An entity that is a nonaffiliated third party in relation to a covered entity shall comply with 15 U.S.C. Section 6802(c), as amended.

Art. 28A.03. EXCEPTION. Article 28A.02(a) of this code does not apply to a covered entity to the extent that the entity is acting solely as the insurance agent or other authorized representative for another covered entity.

Art. 28A.04. HEALTH INFORMATION. This chapter does not affect the authority of the department or another state agency to adopt stricter rules governing the treatment of health information by a covered entity, if another law gives the department or agency that authority, including any laws or rules of this state related to the privacy of individually identifiable health information under the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), as amended.

[Articles 28A.05-28A.50 reserved for expansion]

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

Art. 28A.51. RULEMAKING AUTHORITY. (a) The commissioner shall adopt rules to implement this chapter.

(b) The commissioner shall adopt any other rules necessary to carry out 15 U.S.C. Subchapter I, Chapter 94 (15 U.S.C. Section 6801 et seq.), as amended, to make this state eligible to override federal regulations, as described by 15 U.S.C. Section 6805(c), as amended.

(c) In adopting rules under this chapter, the commissioner shall ensure that state privacy requirements are consistent with and not more strict than federal regulations adopted under 15 U.S.C. Subchapter I, Chapter 94 (15 U.S.C. Section 6801 et seq.), as amended.

Art. 28A.52. STANDARDS. The department shall implement standards as required by 15 U.S.C. Section 6805(b), as amended.

[Articles 28A.53-28A.100 reserved for expansion]

#### SUBCHAPTER C. ENFORCEMENT

Art. 28A.101. DUTY TO ENFORCE. The department shall enforce 15 U.S.C. Sections 6801-6805, as amended, to the extent required by 15 U.S.C. Section 6805, as amended, and this chapter.

Art. 28A.102. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive or declaratory relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a) of this article, the attorney general may institute an action for civil penalties against a covered entity or a nonaffiliated third party for a violation of this chapter. A civil penalty assessed under this article may not exceed \$3,000 for each violation.

(c) If the court in which an action under Subsection (b) of this article is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$250,000.

(d) If the attorney general substantially prevails in an action for injunctive relief or a civil penalty under this article, the attorney general may recover reasonable attorney's fees, costs, and expenses incurred obtaining the relief or penalty, including court costs and witness fees.

SECTION 2. Not later than 30 days after the effective date of this Act, the commissioner of insurance shall adopt the rules required by Article 28A.51, Insurance Code, as added by this Act. The commissioner may adopt these initial rules on an emergency basis.

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, 2001.

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

Amend **CSSB 712** as follows:

(1) On page 1, line 12, between "company" and ".", add "; and the term "control", including the terms "controls", "controlled by" and "under common control" has the meaning assigned that term by Section 2(d), Article 21.49-1 of the Texas Insurance Code."

(2) On page 2, line 7, between "agent" and "or", insert ", employee".

(3) On page 2, line 20, strike "chapter" and substitute "title".

(4) On page 3, line 12 and line 15, between "general" and "may", insert ", after conferring with the commissioner,"

**Floor Amendment No. 2**

Amend **CSSB 712**, in SECTION 1 of the bill, in proposed Article 28A.51, Insurance Code, by striking Subsection (c) of that article (house committee printing page 2, line 26, through page 3, line 3).

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

Amend **CSSB 712** on third reading as follows:

(1) In SECTION 1 of the bill, in added Article 28A.51(a), Insurance Code, (as amended on 2nd Reading by Amendment No. 1, by Averitt) strike "rules to implement this title" and substitute "rules to implement this chapter".

(2) In SECTION 1 of the bill, in added Article 28A.51, Insurance Code, (as amended on 2nd Reading by Amendment No. 2, by Averitt), add a new Subsection (c) to read as follows:

(c) In adopting rules under this chapter, the commissioner shall attempt to keep state privacy requirements consistent with federal regulations adopted under 15 U.S.C. Subchapter I, Chapter 94 (15 U.S.C. Section 6801 et seq., as amended).

The amendments were read.

Senator Sibley moved to concur in the House amendments to **SB 712**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

**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 706, HB 1449, HB 1845, HB 1890, HB 1981, HB 2287, HB 2510, HB 2873, HB 3006, HB 3433, HCR 235, HCR 317.**

**SENATE BILL 19 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 19** from the President's table for consideration of the House amendments to the bill.

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

**Floor Amendment No. 1**

Amend **SB 19** (house committee report) as follows:

(1) In SECTION 1 of the bill, in added Subsection (1), Section 28.002, Education Code (page 1, line 8), between "State Board of Education" and "by", insert ", after consulting with educators, parents, and medical professionals.".

(2) In SECTION 1 of the bill, in added Subsection (1), Section 28.002, Education Code (page 1, line 12), between "curriculum" and the period, insert "or through structured activity during a school campus's daily recess, except that the board may not require more than 30 minutes of daily physical activity.".

**Floor Amendment No. 2**

Amend **SB 19** as follows:

(1) In SECTION 2 of the bill (House Committee Report, page 1, line 17), strike "Section 38.013" and substitute "Sections 38.013 and 38.014".

(2) Immediately following SECTION 2 of the bill (House Committee Report, page 2, between lines 3 and 4), insert the following:

Sec. 38.014. IMPLEMENTATION OF COORDINATED HEALTH PROGRAM FOR ELEMENTARY SCHOOL STUDENTS. (a) Each school district shall:

(1) participate in appropriate training for the implementation of the program approved by the agency under Section 38.013; and

(2) implement the program in each elementary school in the district.

(b) The agency, in cooperation with the Texas Department of Health, shall adopt a schedule for regional education service centers to provide necessary training under this section.

(3) Between SECTIONS 3 and 4 of the bill, insert the following new SECTION, appropriately numbered, and renumber the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Not later than September 1, 2007, each school district must participate in the training required by Section 38.014, Education Code, as added by this Act.

**Floor Amendment No. 4**

Amend **SB 19**, house committee report, as follows:

(1) Between existing SECTIONS 1 and 2 of the bill (page 1, between lines 15 and 16), insert the following new SECTION:

SECTION 2. Section 28.004, Education Code, is amended to read as follows:

Sec. 28.004. LOCAL SCHOOL HEALTH EDUCATION ADVISORY COUNCIL AND HEALTH EDUCATION [HUMAN SEXUALITY] INSTRUCTION.

(a) The board of trustees of each school district shall establish a local school health education advisory council to assist the district in ensuring that local community values are reflected in the district's health education instruction.

(b) A school district must consider the recommendations of the local school health education advisory council before changing the district's health education curriculum or instruction.

(c) The local school health education advisory council's duties include recommending:

(1) the number of hours of instruction to be provided in health education;

(2) health education curriculum appropriate for specific grade levels that may include a coordinated health education program designed to prevent obesity, cardiovascular disease, and Type II diabetes through coordination of:

(A) health education;

(B) physical education;

(C) nutritional services;

(D) parental involvement; and

(E) instruction to prevent the use of tobacco; and

(3) appropriate grade levels and methods of instruction for human sexuality instruction.

(d) The board of trustees shall appoint members to the local school health education 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. 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.

(e) Any course materials and instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus or acquired immune deficiency syndrome shall be selected by the board of trustees [of a school district] with the advice of the local school health education advisory council [established under Subsection (e)] and must:

(1) present abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;

(2) devote more attention to abstinence from sexual activity than to any other behavior;

(3) emphasize that abstinence from sexual activity, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus or acquired immune deficiency syndrome, and the emotional trauma associated with adolescent sexual activity;

(4) direct adolescents to a standard of behavior in which abstinence from sexual activity before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with human immunodeficiency virus or acquired immune deficiency syndrome; and

(5) teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruction on contraception and condoms is included in curriculum content.

(f) [(b)] A school district may not distribute condoms in connection with instruction relating to human sexuality.

(g) [(e)] A school district that provides human sexuality instruction may separate students according to sex for instructional purposes.

(h) [(d)] The board of trustees [of a school district] shall determine the specific content of the district's instruction in human sexuality, in accordance with Subsections (e) [(a)], (f) [(b)], and (g) [(e)].

(i) [A change in health curriculum content or instruction may not be made before considering the recommendations of the local health education advisory council.]

[(e) A school district shall establish a local health education advisory council to assist the district in ensuring that local community values and health issues are reflected in the district's human sexuality instruction.]

[(f) The council's duties include:

[(1) recommending appropriate grade levels for human sexuality instruction;

~~[(2) recommending the methods of instruction to be used by a teacher in human sexuality instruction education; and~~

~~[(3) recommending the number of hours of instruction to be provided in health education.~~

~~[(g) The council:~~

~~[(1) must include persons who represent diverse views in the community about human sexuality instruction;~~

~~[(2) must include parents of students enrolled in the district as a majority of the council; and~~

~~[(3) may include teachers, school administrators, students, health care professionals, members of the business community, law enforcement representatives, senior citizens, clergy, or other interested persons.~~

~~[(h) A school district shall notify a parent of each student enrolled in the district of:~~

~~(1) the basic content of the district's human sexuality instruction to be provided to the student; and~~

~~(2) the parent's right to remove the student from any part of the district's human sexuality instruction.~~

~~[(i) [(h)] A school district shall make all curriculum materials used in the district's human sexuality instruction available for reasonable public inspection.~~

~~(2) In existing SECTION 2 of the bill (page 1, line 16), strike "SECTION 2" and substitute "SECTION 3".~~

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 19**.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

### **VOTE RECONSIDERED ON SENATE BILL 1815**

On motion of Senator Truan and by unanimous consent, the vote by which the Senate refused to concur in the House amendment to **SB 1815** was reconsidered:

**SB 1815**, Relating to establishing a loan program to assist communities that may be affected by federal military base closures.

Question—Shall the Senate concur in the House amendment to **SB 1815**?

Senator Truan moved to concur in the House amendment to **SB 1815**.

### **POINT OF ORDER**

Senator Bivins again raised a point of order that the House amendment to **SB 1815** was not germane to the body of the bill.

### **POINT OF ORDER RULING**

The Presiding Officer, Senator Armbrister in Chair, ruled that the point of order was well-taken and sustained and ordered **SB 1815** returned to the House of Representatives for further consideration.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 26, 2001

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

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

**SB 1656**

House Conferees: Keffer - Chair/Homer/McClendon/Seaman/Solis, Jim

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 757**

Senator Bernsen submitted the following Conference Committee Report:

Austin, Texas  
May 22, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 757** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BERNSEN  
SHAPLEIGH  
NELSON

COLEMAN  
URESTI  
GRAY  
GLAZE

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1432**

Senator West submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1432** 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	A. REYNA
ZAFFIRINI	P. KING
VAN DE PUTTE	MORRISON
OGDEN	RANGEL
SHAPIRO	TILLERY
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to truancy, high school equivalency programs, and the authority of justice, municipal, and certain juvenile courts in relation to children; providing criminal penalties.

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

SECTION 1. Section 25.002(f), Education Code, is amended to read as follows:

(f) Except as otherwise provided by this subsection, for a child to be enrolled in a public school, the child must be enrolled by the child's parent or by the child's guardian or other person with legal control of the child under a court order. A school district shall record the name, address, and date of birth of the person enrolling a child.

SECTION 2. Section 25.091, Education Code, is amended to read as follows:

Sec. 25.091. POWERS AND DUTIES OF PEACE OFFICERS AND OTHER ATTENDANCE OFFICERS [OFFICER]. (a) A peace officer serving as an attendance officer has the following powers and duties concerning enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of compulsory school attendance requirements referred to the peace officer;

(2) to enforce compulsory school attendance requirements by:

(A) referring a student to a juvenile court or filing a complaint against a student in a justice or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; and

(B) filing a complaint in a justice or municipal court against a parent who violates Section 25.093;

(3) to serve court-ordered legal process;

(4) to review school attendance records for compliance by each student investigated by the officer;

(5) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(6) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer may not enter a residence without the permission of the parent of a student required under this subchapter to attend school or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent; and

(7) to take a student into custody with the permission of the student's parent or in obedience to a court-ordered legal process.

(b) An attendance officer employed by a school district who is not commissioned as a peace officer has the following powers and duties with respect to enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of the compulsory school attendance requirements referred to the attendance officer;

(2) to enforce compulsory school attendance requirements by:

(A) referring a student to a juvenile court or filing a complaint against a student in a justice or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; and

(B) filing a complaint in a justice or municipal court against a parent who violates Section 25.093;

(3) to monitor school attendance compliance by each student investigated by the officer;

(4) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(5) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that the attendance officer may not enter a residence without permission of the parent or of the owner or tenant of the residence;

(6) at the request of a parent, to escort a student from any location to a school campus to ensure the student's compliance with compulsory school attendance requirements; and

(7) if the attendance officer has or is informed of a court-ordered legal process directing that a student be taken into custody and the school district employing the officer does not employ its own police department, to contact the sheriff, constable, or any peace officer to request that the student be taken into custody and processed according to the legal process.

(c) In this section:

(1) "Parent" includes a person standing in parental relation.

(2) "Peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure. [A school attendance officer has the following powers and duties:

~~[(1) to investigate each case of unexcused absence from school;~~  
~~[(2) to administer oaths and to serve legal process;~~  
~~[(3) to enforce the compulsory school attendance law;~~  
~~[(4) to keep a record of each case of any kind investigated by the officer in the discharge of the officer's duties;~~  
~~[(5) to make any report required by the commissioner concerning the discharge of the officer's duties; and~~  
~~[(6) to refer to a juvenile court or to a justice court if the juvenile court has waived jurisdiction as provided by Section 54.021(a), Family Code, any student who has unexcused voluntary absences for the amount of time specified under Section 51.03(b)(2), Family Code, or to file a complaint against any person standing in parental relation who violates Section 25.093 or to file a complaint against a student who violates Section 25.094.~~

~~[(b) A school attendance officer may not enter a private residence or any part of a private residence without the permission of the owner or tenant except to serve lawful process on a parent, guardian, or other person standing in parental relation to a child to whom the compulsory school attendance law applies.~~

~~[(c) A school attendance officer may not forcibly take corporal custody of any child anywhere without permission of the parent, guardian, or other person standing in parental relation to the child except in obedience to a valid process issued by a court of competent jurisdiction.]~~

SECTION 3. Section 25.093, Education Code, SECTION amended to read as follows:

Sec. 25.093. PARENT CONTRIBUTING TO TRUANCY [THWARTING COMPULSORY ATTENDANCE LAW]. (a) ~~[If any parent of a child required to attend school fails to require the child to attend school as required by law, the school attendance officer shall warn the parent in writing that attendance is immediately required:~~

~~[(b)] If [after] a warning is issued as required by Section 25.095(a) [under Subsection (a)], the parent with criminal negligence fails to require the child to attend school as required by law, and the child has [unexcused voluntary] absences for the amount of time specified under Section 25.094 [51.03(b)(2), Family Code], the parent commits an offense.~~

~~[(b) [(e)] The attendance officer or other appropriate school official shall file a complaint against the parent [in the county court,] in a justice court of any precinct in the county in which the parent resides or in which the school is located~~;~~] or in a municipal court of the municipality in which the parent resides or in which the school is located.~~

~~[(c) [The attendance officer shall file a complaint under this section in the court to which the parent's child has been referred for engaging in conduct described in Section 51.03(b)(2), Family Code, if a referral has been made for the child. If a referral has not been made, the attendance officer shall refer the child to the county juvenile probation department for action as engaging in conduct indicating a need for supervision under that section.~~

~~[(d) A court in which a complaint is filed under this section shall give preference to a hearing on the complaint over other cases before the court.~~

~~[(e)] An offense under Subsection (a) [this section] is a Class C misdemeanor. Each day the child remains out of school [after the warning has been given or the child has been ordered to attend school by the juvenile court] may constitute a separate~~

offense. Two or more offenses under Subsection (a) [this section] may be consolidated and prosecuted in a single action. If the court orders deferred disposition under Article 45.051, Code of Criminal Procedure [probates the sentence], the court may require the defendant to provide [render] personal services to a charitable or educational institution as a condition of the deferral [probation].

(d) [(f)] A fine collected under this section shall be deposited as follows:

(1) one-half shall be deposited to the credit of the operating fund of the school district in which the child attends school or of the juvenile justice alternative education program that the child has been ordered to attend, as applicable; and

(2) one-half shall be deposited to the credit of:

(A) the general fund of the county, if the complaint is filed in the [county court or] justice court; or

(B) the general fund of the municipality, if the complaint is filed in municipal court.

(e) [(g)] At the trial of any person charged with violating Subsection (a) [this section], the attendance records of the child may be presented in court by any authorized employee of the school district.

(f) [(h)] The court in which a conviction, deferred adjudication, or deferred disposition for an offense under Subsection (a) [this section] occurs may order the defendant to attend a program [class] for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the students' unexcused absences and in developing strategies for resolving those problems if a program is available [the school district in which the person resides offers such a class].

(g) If a parent refuses to obey a court order entered under this section, the court may punish the parent for contempt of court under Section 21.002, Government Code.

(h) It is an affirmative defense to prosecution for an offense under Subsection (a) that one or more of the absences required to be proven under Subsection (a) was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(i) In this section, "parent" includes a person standing in parental relation.

SECTION 4. Section 25.094, Education Code, is amended to read as follows:

Sec. 25.094. FAILURE TO ATTEND SCHOOL. (a) An individual [A child] commits an offense if the individual [child]:

(1) is required to attend school under Section 25.085; and

(2) fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period [for the amount of time specified under Section 51.03(b)(2), Family Code, and is not excused under Section 25.087].

(b) An offense under this section may be prosecuted in a justice court of any precinct in the county in which the individual [child] resides or in which the school is located or in a municipal court in the municipality in which the individual [child] resides or in which the school is located.

(c) On a finding by the justice or municipal court that the individual [child] has committed an offense under Subsection (a) or on a finding by a juvenile court in a

county with a population of less than 100,000 that the individual has engaged in conduct that violates Subsection (a), the court may enter an order that includes one or more of the requirements listed in Article 45.054, Code of Criminal Procedure [Section 54.021(d), Family Code].

~~(d) [If the justice or municipal court finds that a child has violated an order issued under Subsection (c), the court shall transfer the complaint against the child, together with all pleadings and orders, to a juvenile court for the county in which the child resides. The juvenile court shall conduct an adjudication hearing as provided by Section 54.03, Family Code. The adjudication hearing shall be de novo.~~

~~[(e)] Pursuant to an order of the justice or municipal court based on an affidavit showing probable cause to believe that an individual has committed an offense under this section, a peace officer may take the individual [a child] into custody [if there are reasonable grounds to believe that the child has committed an offense under this section]. A peace officer taking an individual [a child] into custody under this subsection shall:~~

~~(1) promptly notify the individual's [child's] parent, guardian, or custodian of the officer's action and the reason for that action; and~~

~~(2) without unnecessary delay:~~

~~(A) release the individual [child] to the individual's [child's] parent, guardian, or custodian or to another responsible adult, if the person promises to bring the individual [child] to the justice or municipal court as requested by the court; or~~

~~(B) bring the individual [child] to a justice or municipal court with venue over the offense [the justice of the peace of the court having jurisdiction over the child].~~

~~(e) [(f)] An offense under this section is a Class C misdemeanor.~~

~~(f) It is an affirmative defense to prosecution under this section that one or more of the absences required to be proven under Subsection (a) was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.~~

~~(g) It is an affirmative defense to prosecution under this section that one or more of the absences required to be proven under Subsection (a) was involuntary. The burden is on the defendant to show by a preponderance of the evidence that the absence was involuntary.~~

~~[(g) Any person convicted of not more than one violation under this section while a minor, on attaining the age of 18 years, may apply to the court in which the person was convicted to have the conviction expunged.~~

~~[(h) The application must contain the applicant's sworn statement that the person was not convicted of any violation of this section while a minor other than the one the person seeks to have expunged.~~

~~[(i) If the court finds that the applicant was not convicted of any other violation of this section while the person was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.]~~

SECTION 5. Section 25.095, Education Code, is amended to read as follows:

Sec. 25.095. WARNING NOTICES [NOTICE]. (a) A school district shall notify a student's parent in writing at the beginning of the school year ~~[if, in a six-month period, the student has been absent without an excuse five times for any part of the day. The notice must state]~~ that if the student is absent from school on [without an excuse for] 10 or more days or parts of days within [in] a six-month period in the same school year or on three or more days or parts of days within a four-week period:

(1) the student's parent is subject to prosecution under Section 25.093; and

(2) the student is subject to prosecution under Section 25.094 or to referral to a juvenile court in a county with a population of less than 100,000 for conduct that violates that section.

(b) A school district shall notify a student's parent if the student has been absent from school, without excuse under Section 25.087, on three days or parts of days within a four-week period. The notice must:

(1) inform the parent that:

(A) it is the parent's duty to monitor the student's school attendance and require the student to attend school; and

(B) the parent is subject to prosecution under Section 25.093; and

(2) request a conference between school officials and the parent to discuss the absences. ~~[Notice is not required under this section if the student is a party to a juvenile court proceeding for conduct described by Section 51.03(b)(2), Family Code.]~~

(c) The fact that a parent did not receive a notice under Subsection (a) or (b) [this section] does not create a defense to prosecution under Section 25.093 or 25.094.

(d) In this section, "parent" includes a person standing in parental relation.

SECTION 6. Subchapter C, Chapter 25, Education Code, is amended by adding Sections 25.0951 and 25.0952 to read as follows:

Sec. 25.0951. SCHOOL DISTRICT COMPLAINT OR REFERRAL FOR FAILURE TO ATTEND SCHOOL. (a) If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district shall:

(1) file a complaint against the student or the student's parent or both in a justice or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

(2) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code.

(b) If a student fails to attend school without excuse on three or more days or parts of days within a four-week period but does not fail to attend school for the time described by Subsection (a), the school district may:

(1) file a complaint against the student or the student's parent or both in a justice or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

(2) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code.

(c) In this section, "parent" includes a person standing in parental relation.

Sec. 25.0952. PROCEDURES APPLICABLE TO TRUANCY-RELATED OFFENSES. In a proceeding in a justice or municipal court based on a complaint under Section 25.093 or 25.094, the court shall, except as otherwise provided by this chapter, use the procedures and exercise the powers authorized by Chapter 45, Code of Criminal Procedure.

SECTION 7. Subchapter C, Chapter 29, Education Code, is amended by adding Section 29.087 to read as follows:

Sec. 29.087. HIGH SCHOOL EQUIVALENCY PROGRAMS. (a) The agency shall develop a process by which a school district or open-enrollment charter school may apply to the commissioner for authority to operate a program to prepare eligible students to take a high school equivalency examination.

(b) A school district or open-enrollment charter school may not apply for authorization to operate a program under this section unless on May 1, 2001, the district or school was operating a similar program as authorized by the agency. As part of the application process, the commissioner shall require a district or school to provide information regarding the operation of that similar program during the preceding five years.

(c) A school district or open-enrollment charter school may not increase enrollment of students in a program authorized by this section by more than five percent of the number of students enrolled in the similar program operated by the district or school during the 2000-2001 school year.

(d) A student is eligible to participate in a program authorized by this section if:

(1) the student has been ordered by a court under Article 45.054, Code of Criminal Procedure, to:

(A) participate in a preparatory class for the high school equivalency examination; or

(B) take the high school equivalency examination administered under Section 7.111; or

(2) the following conditions are satisfied:

(A) the student is at least 16 years of age at the beginning of the school year or semester;

(B) the student is a student at risk of dropping out of school, as defined by Section 29.081;

(C) the student and the student's parent or guardian agree in writing to the student's participation;

(D) at least two school years have elapsed since the student first enrolled in ninth grade and the student has accumulated less than one quarter of the credits required to graduate under the minimum graduation requirements of the district or school; and

(E) any other conditions specified by the commissioner.

(e) A school district or open-enrollment charter school shall inform each student who has completed a program authorized by this section of the time and place at which the student may take the high school equivalency examination. Notwithstanding any provision of this section, a student may not take the high school equivalency examination except as authorized by Section 7.111.

(f) Except as otherwise provided by this subsection, a student participating in a program authorized by this section must have taken the exit-level assessment instruments specified by Section 39.025(a) before entering the program or must take

those assessment instruments during the first year in which the student is enrolled in the program. The commissioner may authorize a student to take the assessment instruments required by Section 39.023(a) to be administered to students in grade 10 instead of the exit-level assessment instruments. A student participating in the program may not take the high school equivalency examination unless the student has taken the assessment instruments required by this subsection.

(g) A student enrolled in a program authorized by this section may not participate in a competition or other activity sanctioned or conducted by the University Interscholastic League.

(h) A student who has received a high school equivalency certificate is entitled to enroll in a public school as authorized by Section 25.001 and is entitled to the benefits of the Foundation School Program under Section 42.003 in the same manner as any other student who has not received a high school diploma.

(i) The agency shall request permission from the General Educational Development Testing Service to administer the service's high school equivalency examination to students enrolled in high school who participate in a program authorized by this section. From funds appropriated to the agency that may be used for the purpose, the agency may pay a fee imposed by the service for granting permission to the agency necessary to allow operation of programs authorized by this section.

(j) For purposes of funding under Chapters 41, 42, and 46, a student attending a program authorized by this section may be counted in attendance only for the actual number of hours each school day the student attends the program, in accordance with Sections 25.081 and 25.082.

(k) The board of trustees of a school district or the governing board of an open-enrollment charter school shall:

(1) hold a public hearing concerning the proposed application of the district or school before applying to operate a program authorized by this section; and

(2) subsequently hold a public hearing annually to review the performance of the program.

(l) The commissioner may revoke a school district's or open-enrollment charter school's authorization under this section after consideration of relevant factors, including performance of students participating in the district's or school's program on assessment instruments required under Chapter 39, the percentage of students participating in the district's or school's program who complete the program and perform successfully on the high school equivalency examination, and other criteria adopted by the commissioner. A decision by the commissioner under this subsection is final and may not be appealed.

(m) Not later than December 1, 2002, the commissioner shall report to the legislature regarding the implementation of this section and make appropriate recommendations regarding the continuation of the commissioner's authority to approve programs under this section. The report must include:

(1) the number of students enrolled in programs authorized by this section, disaggregated by ethnicity, age, gender, and socioeconomic status;

(2) the number of students enrolled in programs authorized by this section who performed satisfactorily on the high school equivalency examination, disaggregated by ethnicity, age, gender, and socioeconomic status; and

(3) to the extent practicable, information regarding the attendance of students enrolled in programs authorized by this section at institutions of higher education or trade schools or at other postsecondary educational programs.

(n) The commissioner may adopt rules to implement this section.

(o) This section expires September 1, 2003.

SECTION 8. Article 45.050, Code of Criminal Procedure, is amended to read as follows:

Art. 45.050. FAILURE TO PAY FINE; CONTEMPT: JUVENILES. (a) In this article, "child" has the meaning assigned by Article 45.058(h).

(b) A justice [court] or municipal court may not order the confinement of a [person who is a] child [for the purposes of Title 3, Family Code,] for:

(1) the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only; or

(2) contempt of another order of a justice or municipal court.

(c) [(b)] If a [person who is a] child [under Section 51.02, Family Code,] fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court [has jurisdiction to]:

(1) has jurisdiction to [hold the child in contempt of the justice or municipal court order as provided by Section 52.027(h), Family Code; or

[(2)] refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order; or

(2) may retain jurisdiction of the case and:

(A) hold the child in contempt of the justice or municipal court order and impose a fine not to exceed \$500; or

(B) order the Department of Public Safety to suspend the child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child until the child fully complies with the orders of the court.

(d) A court that orders suspension or denial of a driver's license or permit under Subsection (c)(2)(B) shall notify the Department of Public Safety on receiving proof that the child has fully complied with the orders of the court.

SECTION 9. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Articles 45.054-45.059 to read as follows:

Art. 45.054. FAILURE TO ATTEND SCHOOL PROCEEDINGS. (a) On a finding by a justice or municipal court that an individual has committed an offense under Section 25.094, Education Code, the court has jurisdiction to enter an order that includes one or more of the following provisions requiring that:

(1) the individual:

(A) attend school without unexcused absences;

(B) attend a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, if the court determines that the individual is too old to do well in a formal classroom environment; or

(C) if the individual is at least 16 years of age, take the high school equivalency examination administered under Section 7.111, Education Code;

(2) the individual attend a special program that the court determines to be in the best interest of the individual, including:

(A) an alcohol and drug abuse program;

(B) a rehabilitation program;

(C) a counseling program, including self-improvement counseling;

(D) a program that provides training in self-esteem and leadership;

(E) a work and job skills training program;  
(F) a program that provides training in parenting, including parental responsibility;

(G) a program that provides training in manners;

(H) a program that provides training in violence avoidance;

(I) a program that provides sensitivity training; and

(J) a program that provides training in advocacy and mentoring;

(3) the individual and the individual's parent attend a class for students at risk of dropping out of school designed for both the individual and the individual's parent;

(4) the individual complete reasonable community service requirements; or

(5) for the total number of hours ordered by the court, the individual participate in a tutorial program covering the academic subjects in which the student is enrolled provided by the school the individual attends,

(b) An order under Subsection (a)(3) that requires the parent of an individual to attend a class for students at risk of dropping out of school is enforceable in the justice or municipal court by contempt.

(c) A court having jurisdiction under this article shall endorse on the summons issued to the parent of the individual who is the subject of the hearing an order directing the parent to appear personally at the hearing and directing the person having custody of the individual to bring the individual to the hearing.

(d) An individual commits an offense if the individual is a parent who fails to attend a hearing under this article after receiving notice under Subsection (c) that the individual's attendance is required. An offense under this subsection is a Class C misdemeanor.

(e) On the commencement of proceedings under this article, the court shall inform the individual who is the subject of the hearing and the individual's parent in open court of the individual's expunction rights and provide the individual and the individual's parent with a written copy of Article 45.055.

(f) In addition to any other order authorized by this article, the court may order the Department of Public Safety to suspend the driver's license or permit of the individual who is the subject of the hearing or, if the individual does not have a license or permit, to deny the issuance of a license or permit to the individual for a period specified by the court not to exceed 365 days.

(g) A dispositional order under this article is effective for the period specified by the court in the order but may not extend beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

(h) In this article, "parent" includes a person standing in parental relation.

Art. 45.055. EXPUNCTION OF CONVICTION AND RECORDS IN FAILURE TO ATTEND SCHOOL CASES. (a) An individual convicted of not more than one violation of Section 25.094, Education Code, may, on or after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged.

(b) To apply for an expunction, the applicant must submit a written request that:

(1) is made under oath;

(2) states that the applicant has not been convicted of more than one violation of Section 25.094, Education Code; and

(3) is in the form determined by the applicant.

(c) The court may expunge the conviction and records relating to the conviction without a hearing or, if facts are in doubt, may order a hearing on the application. If the court finds that the applicant has not been convicted of more than one violation of Section 25.094, Education Code, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the applicant's record. After entry of the order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose. The court shall inform the applicant of the court's decision on the application.

(d) The justice or municipal court may not require an individual who files an application under this article to pay any fee or court costs for seeking expunction.

Art. 45.056. AUTHORITY TO EMPLOY TRUANCY CASE MANAGERS; REIMBURSEMENT. (a) On approval of the commissioner's court, city council, school district board of trustees, juvenile board, or other appropriate authority, a justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a case manager to provide services in truancy cases; or

(2) agree in accordance with Chapter 791, Government Code, to jointly employ a case manager to provide services in truancy cases.

(b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the governor's office for reimbursement of all or part of the costs of employing one or more truancy case managers from funds appropriated to the governor's office or otherwise available for that purpose. To be eligible for reimbursement, the entity applying must present to the governor's office a comprehensive plan to reduce truancy in the entity's jurisdiction that addresses the role of the case manager in that effort.

Art. 45.057. OFFENSES COMMITTED BY JUVENILES. (a) In this article, "child" has the meaning assigned by Article 45.058(h).

(b) On a finding by a justice or municipal court that a child committed an offense that the court has jurisdiction of under Article 4.11 or 4.14, other than a traffic offense, the court has jurisdiction to enter an order:

(1) referring the child or the child's parent, managing conservator, or guardian for services under Section 264.302, Family Code;

(2) requiring that the child attend a special program that the court determines to be in the best interest of the child and, if the program involves the expenditure of county funds, that is approved by the county commissioner's court, including a rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy, or mentoring program; or

(3) if the court finds the parent, managing conservator, or guardian, by act or omission, contributed to, caused, or encouraged the child's conduct, requiring that the child's parent, managing conservator, or guardian do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:

(A) attend a parenting class or parental responsibility program; and

(B) attend the child's school classes or functions.

(c) The justice or municipal court may order the parent, managing conservator, or guardian of a child required to attend a program under Subsection (b) to pay an amount not greater than \$100 to pay for the costs of the program.

(d) A justice or municipal court may require a child, parent, managing conservator, or guardian required to attend a program, class, or function under this article to submit proof of attendance to the court.

(e) A justice or municipal court shall endorse on the summons issued to a parent, managing conservator, or guardian an order to appear personally at the hearing with the child. The summons must include a warning that the failure of the parent, managing conservator, or guardian to appear may be punishable as a Class C misdemeanor.

(f) An order under this article involving a child is enforceable under Article 45.050.

(g) A person commits an offense if the person is a parent, managing conservator, or guardian who fails to attend a hearing under this article after receiving an order under Subsection (e). An offense under this subsection is a Class C misdemeanor.

(h) Any other order under this article is enforceable by the justice or municipal court by contempt.

Art. 45.058. CHILDREN TAKEN INTO CUSTODY. (a) A child may be released to the child's parent, guardian, custodian, or other responsible adult as provided by Section 52.02(a)(1), Family Code, if the child is taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, other than public intoxication.

(b) A child described by Subsection (a) must be taken only to a place previously designated by the head of the law enforcement agency with custody of the child as an appropriate place of nonsecure custody for children unless the child:

(1) is released under Section 52.02(a)(1), Family Code; or

(2) is taken before a justice or municipal court.

(c) A place of nonsecure custody for children must be an unlocked, multipurpose area. A lobby, office, or interrogation room is suitable if the area is not designated, set aside, or used as a secure detention area and is not part of a secure detention area. A place of nonsecure custody may be a juvenile processing office designated under Section 52.025, Family Code, if the area is not locked when it is used as a place of nonsecure custody.

(d) The following procedures shall be followed in a place of nonsecure custody for children:

(1) a child may not be secured physically to a cuffing rail, chair, desk, or other stationary object;

(2) the child may be held in the nonsecure facility only long enough to accomplish the purpose of identification, investigation, processing, release to parents, or the arranging of transportation to the appropriate juvenile court, juvenile detention facility, secure detention facility, justice court, or municipal court;

(3) residential use of the area is prohibited; and

(4) the child shall be under continuous visual supervision by a law enforcement officer or facility staff person during the time the child is in nonsecure custody.

(e) Notwithstanding any other provision of this article, a child may not, under any circumstances, be detained in a place of nonsecure custody for more than six hours.

(f) A child taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, other than public intoxication, may be presented or detained in a detention facility designated by the juvenile court under Section 52.02(a)(3), Family Code, only if:

(1) the child's non-traffic case is transferred to the juvenile court by a justice or municipal court under Section 51.08(b), Family Code; or

(2) the child is referred to the juvenile court by a justice or municipal court for contempt of court under Article 45.050.

(g) A law enforcement officer may issue a field release citation as provided by Article 14.06 in place of taking a child into custody for a traffic offense or an offense, other than public intoxication, punishable by fine only.

(h) In this article, "child" means a person who is:

(1) at least 10 years of age and younger than 17 years of age; and

(2) charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14.

Art. 45.059. CHILDREN TAKEN INTO CUSTODY FOR VIOLATION OF JUVENILE CURFEW OR ORDER. (a) A peace officer taking into custody a person younger than 17 years of age for violation of a juvenile curfew ordinance of a municipality or order of the commissioners court of a county shall, without unnecessary delay:

(1) release the person to the person's parent, guardian, or custodian;

(2) take the person before a justice or municipal court to answer the charge; or

(3) take the person to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person.

(b) A juvenile curfew processing office must observe the following procedures:

(1) the office must be an unlocked, multipurpose area that is not designated, set aside, or used as a secure detention area or part of a secure detention area;

(2) the person may not be secured physically to a cuffing rail, chair, desk, or stationary object;

(3) the person may not be held longer than necessary to accomplish the purposes of identification, investigation, processing, release to a parent, guardian, or custodian, or arrangement of transportation to school or court;

(4) a juvenile curfew processing office may not be designated or intended for residential purposes;

(5) the person must be under continuous visual supervision by a peace officer or other person during the time the person is in the juvenile curfew processing office; and

(6) a person may not be held in a juvenile curfew processing office for more than six hours.

(c) A place designated under this article as a juvenile curfew processing office is not subject to the approval of the juvenile board having jurisdiction where the governmental entity is located.

SECTION 10. Article 102.014(d), Code of Criminal Procedure, is amended to read as follows:

(d) A person convicted of an offense under Section 25.093 or 25.094, Education Code, [or a child convicted of an offense under Section 25.094, Education Code,] shall pay as taxable court costs \$20 in addition to other taxable court costs. The additional

court costs under this subsection shall be collected in the same manner that other fines and taxable court costs in the case are collected.

SECTION 11. Section 51.03, Family Code, is amended by amending Subsections (b), (d), (e), and (f) and adding Subsection (g) to read as follows:

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f) [~~of this section~~], conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the [~~unexcused voluntary~~] absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school [~~without the consent of his parents~~];

(3) the voluntary absence of a child from the child's [~~his~~] home without the consent of the child's [~~his~~] parent or guardian for a substantial length of time or without intent to return;

(4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 484.002, Health and Safety Code;

(5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code; or

(6) conduct that violates a reasonable and lawful order of a court entered under Section 264.305.

(d) It is an affirmative defense to an allegation of conduct under Subsection (b)(2) that one or more of the absences required to be proven under that subsection have been excused by a school official or should be excused by the court or that one of the absences was involuntary. The burden is on the respondent to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose. [For the purpose of Subsection (b)(2) of this section an absence is excused when the absence results from:

~~[(1) illness of the child;~~

~~[(2) illness or death in the family of the child;~~

~~[(3) quarantine of the child and family;~~

~~[(4) weather or road conditions making travel dangerous;~~

~~[(5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or~~

~~[(6) circumstances found reasonable and proper.]~~

(e) For the purposes of [~~Subdivisions (2) and (3) of~~] Subsection (b)(3) [~~(b) of this section~~], "child" does not include a person who is married, divorced, or widowed.

(f) Except as provided by Subsection (g), conduct [~~Conduct~~] described under Subsection (b)(1) [~~of this section~~], other than conduct that violates Section 49.02, Penal Code, prohibiting public intoxication, does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b) [~~of this code~~].

(g) In a county with a population of less than 100,000, conduct described by Subsection (b)(1)(A) that violates Section 25.094, Education Code, is conduct indicating a need for supervision.

SECTION 12. Section 51.04, Family Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time the person [he] engaged in the conduct, and, except as provided by Subsection (h), the juvenile court has exclusive original jurisdiction over proceedings under this title.

(h) In a county with a population of less than 100,000, the juvenile court has concurrent jurisdiction with the justice and municipal courts over conduct engaged in by a child that violates Section 25.094, Education Code.

SECTION 13. Section 51.12(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (h), a child may be detained only in a:

(1) juvenile processing office in compliance with Section 52.025;  
(2) place of nonsecure custody in compliance with Article 45.058, Code of Criminal Procedure [Section 52.027];

(3) certified juvenile detention facility that complies with the requirements of Subsection (f);

(4) secure detention facility as provided by Subsection (j); or

(5) county jail or other facility as provided by Subsection (l).

SECTION 14. Section 54.021(b), Family Code, is amended to read as follows:

(b) A justice or municipal court may exercise jurisdiction over a person alleged to have engaged in conduct indicating a need for supervision by engaging in conduct described in Section 51.03(b)(2) in a case where:

(1) the juvenile court has waived its original jurisdiction under this section; and

(2) a complaint is filed by the appropriate authority in the justice or municipal court charging an offense under Section 25.094, Education Code.

(c) A proceeding in a justice or municipal court on a complaint charging an offense under Section 25.094, Education Code, is governed by Chapter 45, Code of Criminal Procedure. [A justice or municipal court may exercise jurisdiction under this section without regard to whether the justice of the peace or municipal judge for the court is a licensed attorney or the hearing for a case is before a jury consisting of six persons.]

SECTION 15. Section 54.041(f), Family Code, is amended to read as follows:

(f) If a child is found to have engaged in conduct indicating a need for supervision described under Section 51.03(b)(2) or (g) [of this code], the court may order the child's parents or guardians to attend a program [class] described by Section 25.093(f) [25.093(h)], Education Code, if a program is available [the school district in which the child's parents or guardians reside offers a class under that section].

SECTION 16. Section 264.302(e), Family Code, is amended to read as follows:

(e) The department shall provide services for a child and the child's family if a contract to provide services under this section is available in the county and the child is referred to the department as an at-risk child by:

- (1) a court under Section 264.304;
- (2) a juvenile court or probation department as part of a progressive sanctions program under Chapter 59;
- (3) a law enforcement officer or agency under Section 52.03; or
- (4) a justice or municipal court under Article 45.057, Code of Criminal Procedure [Section 54.022].

SECTION 17. Section 7.111(a), Education Code, as amended by Chapters 76 and 1282, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(a) The board shall provide for the administration of high school equivalency examinations. A person who does not have a high school diploma may take the examination in accordance with rules adopted by the board if the person is:

- (1) over 17 years of age; ~~or~~
- (2) 16 years of age or older and:
  - (A) is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) [Job Training Partnership Act (29 U.S.C. Section 1501 et seq.)], and its subsequent amendments; or
  - (B) a public agency providing supervision of the person or having custody of the person under a court order recommends that the person take the examination; or
- (3) required to take the examination under a justice or municipal court order issued under Article 45.054(a)(1)(C), Code of Criminal Procedure [Section 54.021(d)(1)(B), Family Code].

SECTION 18. Section 351.903(b), Local Government Code, is amended to read as follows:

- (b) This authority includes the authority to:
- (1) establish the hours of the curfew, including different hours for different days of the week;
  - (2) apply different curfew hours to different age groups of juveniles;
  - (3) describe the kinds of conduct subject to the curfew;
  - (4) determine the locations to which the curfew applies;
  - (5) determine which persons incur liability if a violation of the curfew occurs;
  - (6) prescribe procedures, in compliance with Article 45.059, Code of Criminal Procedure [Section 52.028, Family Code], a police officer must follow in enforcing the curfew; and
  - (7) establish exemptions to the curfew, including but not limited to exemptions for times when there are no classes being conducted, for holidays, and for persons going to or from work.

SECTION 19. (a) Section 25.096, Education Code, is repealed.

(b) Sections 52.027, 52.028, 54.021(c)-(h), and 54.022, Family Code, are repealed.

SECTION 20. The change in law made by this Act applies only to a defendant charged with an offense committed or, for the purposes of Title 3, Family Code, a child alleged to have engaged in conduct that occurs on or after the effective date of this Act.

An offense committed or conduct that occurs before the effective date of this Act is covered by the law in effect when the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if every element of the offense occurred before that date, and conduct violating a penal law of this state occurred before the effective date of this Act if every element of the violation occurred before that date.

SECTION 21. For purposes of Sections 25.093 and 25.094, Education Code, and Section 51.03, Family Code, as amended by this Act, and Section 25.0951, Education Code, as added by this Act, an absence that occurs during the 2001-2002 school year is included in determining the number of a student's absences, regardless of whether the absence occurred before the effective date of this Act.

SECTION 22. Section 29.087, Education Code, as added by this Act, applies to each student enrolled in a high school equivalency examination program operated by a school district or an open-enrollment charter school on or after the effective date of this Act.

SECTION 23. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2001.

(b) Section 29.087, Education Code, as added by Section 7 of this Act, takes effect January 1, 2002.

The Conference Committee Report was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 393

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 393** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS  
MONCRIEF  
CARONA  
WEST  
ZAFFIRINI

On the part of the Senate

MAXEY  
LONGORIA  
KITCHEN  
CORTE  
GRAY

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 981**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 981** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER  
BROWN  
BERNSEN  
BIVINS

T. KING  
HAWLEY  
R. LEWIS  
KITCHEN  
CRABB

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 312**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 312** 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  
BROWN  
BARRIENTOS  
BERNSEN  
HAYWOOD

CHISUM  
WALKER  
COUNTS  
BOSSE  
GEREN

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 and the improvement of certain water delivery infrastructure.

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

SECTION 1. The legislature finds that:

(1) economically distressed subdivisions commonly called colonias are found throughout those counties located within 50 miles of the international border of this state;

(2) a substantial number of homes in the economically distressed subdivisions lack an adequate potable water supply and sewer services, creating a serious and unacceptable health hazard from contagious and other serious illnesses and posing a clear and substantial threat not only to the environment of the border region but also to the environment of the entire state;

(3) although significant improvement has been made by this state and the political subdivisions of the border area in addressing the public health hazard created in those economically distressed subdivisions, many of those economically distressed subdivisions are located in isolated rural areas far from water or wastewater providers or are otherwise situated so as to make the provision of water or wastewater services by political subdivisions to those areas difficult or impossible using conventional capital improvement strategies;

(4) the lack of an adequate potable water supply and wastewater services, coupled with the location of those subdivisions, erodes the economic stability of the counties that contain those subdivisions and that depend on a healthy and safe environment for the residents of the subdivisions and counties;

(5) the economic stability of those counties is necessary for the mutual development of trade, transportation, and commerce in the border region and affects not only the border region, but all regions of the state involved in those reciprocal economic activities;

(6) alternative capital improvement mechanisms are necessary to ensure that the maximum number of economically distressed subdivisions obtain adequate water or wastewater services to eliminate public health problems and encourage the development and diversification of the economy in those counties and the entire state;

(7) nonprofit organizations have succeeded in planning, platting, engineering, designing, and constructing water and wastewater projects to serve those inaccessible, economically distressed subdivisions using assistance from the residents immediately benefiting from the water or wastewater services, thus creating an alternative capital improvement mechanism with a proven record of success that deserves state support;

(8) many residents of colonias are motivated to improve their situation and have worked with nonprofit organizations on self-help projects to build their own infrastructure, ultimately saving on the total cost of water and wastewater projects; and

(9) creating a program to provide public funds to those nonprofit organizations for self-help projects will assist in the reduction of the public health problems created by the lack of adequate water and wastewater services and will encourage the development and diversification of the economy of the counties in which those subdivisions are located as well as throughout the entire state.

SECTION 2. 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 2013 [~~2004~~] and every 12th year after 2013 [~~2004~~] are reviewed.

SECTION 3. Subsection (c), Section 6.052, Water Code, is amended to read as follows:

(c) Appointments to the board shall be made without regard to the race, color, disability [~~handicap~~], sex, religion, age, or national origin of the appointees.

SECTION 4. Sections 6.054, 6.057, and 6.058, Water Code, are amended to read as follows:

Sec. 6.054. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board that [~~if~~] a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required for appointment to the board;

(2) does not maintain during [~~the~~] service on the board the qualifications required for appointment to the board;

(3) is ineligible for membership under [~~violates a prohibition established by~~] Sections 6.053, 6.057, and 6.058 [~~of this code~~];

(4) cannot, because of illness or disability, [is unable to] discharge the member's [~~his~~] duties for a substantial part [~~portion~~] of the member's term [~~for which he was appointed because of illness or disability~~]; or

(5) is absent from more than half [~~one-half~~] of the regularly scheduled board meetings that the member is eligible to attend during a [~~each~~] calendar year without an excuse approved [~~except when the absence is excused~~] by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is [~~was~~] taken when a ground for removal of a board member exists [~~of the board existed~~].

(c) If the executive administrator [~~a board member~~] has knowledge that a potential ground for removal exists, the executive administrator [~~he~~] shall notify the chairman of the board of the potential [~~that~~] ground. The chairman of the board shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal includes the chairman of the board, the executive administrator shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 6.057. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined 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) A person may not be a member of the board and may not be a board 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 water planning or water financing; or

(2) the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of water planning or water financing. [An officer, employee, or paid consultant of a trade association in an industry regulated by the board may not be a member or employee of the board, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association in an industry regulated by the board be a member of the board or an employee of the board grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.]

Sec. 6.058. LOBBYIST PROHIBITION. A person may not be a member of the board or act as the general counsel to the board if the person [who] is required to register as a lobbyist under Chapter 305, Government Code, because of the person's [by virtue of his] activities for compensation [in or] on behalf of a profession related to the operation of the board [may not serve as a member of the board or act as the general counsel to the board].

SECTION 5. Section 6.060, Water Code, is amended by adding Subsection (d) to read as follows:

(d) The board shall meet annually with the board of the Texas Department of Housing and Community Affairs, or the successor agency that administers the portion of the federal community development block grant nonentitlement program that addresses the infrastructure needs of colonias, to assess the agencies' progress in meeting the needs of colonia residents and to receive an update and recommendations from the Colonia Initiatives Advisory Committee, as provided by Section 2306.590, Government Code. For purposes of this subsection, "colonia" has the meaning assigned by Section 2306.581, Government Code.

SECTION 6. Subchapter C, Chapter 6, Water Code, is amended by adding Section 6.062 to read as follows:

Sec. 6.062. REQUIRED TRAINING FOR BOARD MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the board 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 that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the board;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of:
  - (A) the open meetings law, Chapter 551, Government Code;
  - (B) the public information law, Chapter 552, Government Code;
  - (C) the administrative procedure law, Chapter 2001, Government Code; and
  - (D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board 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 7. Section 6.106, Water Code, is amended to read as follows:

Sec. 6.106. STANDARDS OF CONDUCT. The executive administrator or the executive administrator's designee [~~board~~] shall provide to [~~its~~] members of the board and to agency [~~-, appointees, and~~] employees, as often as is necessary, information regarding the requirements for office or employment [~~their qualifications~~] under this code, including information regarding a person's [~~and their~~] responsibilities under applicable laws relating to standards of conduct for state officers or [~~and~~] employees.

SECTION 8. Subchapter D, Chapter 6, Water Code, is amended by adding Sections 6.110 and 6.111 to read as follows:

Sec. 6.110. CAPITAL SPENDING PLAN. (a) Each biennium, the executive administrator shall develop and submit to the board for its approval a capital spending plan for state-funded programs, including the Texas water development fund II, the agricultural water conservation fund, and the water assistance fund.

(b) The plan must:

(1) identify water funding needs in the state and set forth a basis for allocating state-supported funding to address those needs; and

(2) if applicable, provide details about:

(A) the reasons state-supported funding was not allocated according to the methodologies identified in prior plans; and

(B) any adjustments to the plan from prior plans in response to changing water priorities.

(c) In developing the plan, the executive administrator shall consider:

(1) any commission compliance issues;

(2) information derived from facility needs assessments or other water and wastewater needs assessments;

(3) regional planning group plans required under Section 16.053; and

(4) any other appropriate information.

(d) The board shall consider the plan at a regularly scheduled meeting and, on approval, submit it to the legislature and the Legislative Budget Board before January 1 of each odd-numbered year. The board may include the plan as part of its legislative appropriations request.

Sec. 6.111. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive administrator and the staff of the board.

SECTION 9. Sections 6.154, 6.155, and 6.188, Water Code, are amended to read as follows:

Sec. 6.154. COMPLAINT FILE. (a) The board shall maintain a file on each written complaint filed with the board. The 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

(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 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 relating to complaint investigation and resolution [keep an information file about each complaint filed with the board relating to an entity regulated by the board].

Sec. 6.155. NOTICE OF COMPLAINT. ~~The~~ [If a written complaint is filed with the board relating to an entity regulated by the board, the] board, at least [as frequently as] quarterly [and] until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of ~~[parties to]~~ the complaint of the status of the investigation ~~[complaint]~~ unless the notice would jeopardize an undercover investigation.

Sec. 6.188. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive administrator or the executive administrator's ~~[his]~~ designee shall prepare and maintain a written policy statement that implements ~~[to assure implementation of]~~ a program of equal employment opportunity to ensure that all personnel decisions ~~[whereby all personnel transactions]~~ are made without regard to race, color, disability ~~[handicap]~~, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, [appointment,] training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an [a comprehensive] analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office [work force that meets federal and state guidelines;

~~[(3) procedures by which a determination can be made of significant underutilization in the board's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and~~

~~[(4) reasonable methods to address appropriately areas of significant underutilization in the board's work force of all persons for whom federal or state guidelines encourage a more equitable balance.~~

~~[(b) The policy statement shall be filed with the governor's office before November 1, 1985, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. This report may be made individually or as a part of other biennial reports made to the legislature].~~

SECTION 10. Subchapter F, Chapter 6, Water Code, is amended by adding Section 6.196 to read as follows:

Sec. 6.196. TRAINING ON STATE EMPLOYEE INCENTIVE PROGRAM. The executive administrator or the executive administrator's designee shall provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

SECTION 11. Section 11.002, Water Code, is amended by adding Subdivision (11) to read as follows:

(11) "River basin" means a river or coastal basin designated by the board as a river basin under Section 16.051. The term does not include waters originating in the bays or arms of the Gulf of Mexico.

SECTION 12. Subsection (p), Section 11.085, Water Code, is amended to read as follows:

~~(p) [For the purposes of this section, a basin is designated as provided in accordance with Section 16.051 of this code.] A river basin may not be redesignated in order to allow a transfer or diversion of water otherwise in violation of this section.~~

SECTION 13. Section 15.008, Water Code, is amended to read as follows:

Sec. 15.008. GRANT STANDARDS. The law regarding uniform grants and contract management, Chapter 783, Government Code, [Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes)] does not apply to a contract under Subchapter F, H, [or] K, or P [of this chapter].

SECTION 14. Subsection (b), Section 15.011, Water Code, is amended to read as follows:

(b) After notice and hearing and subject to any limitations established by the General Appropriations Act, the board may transfer money from the fund to the loan fund created under Subchapter C of this chapter, the storage acquisition fund created under Subchapter E of this chapter, the research and planning fund created under Subchapter F of this chapter, the hydrographic survey account created under Subchapter M of this chapter, provided the hydrographic survey account transfer does not exceed \$425,000, [and] the aquatic vegetation management fund created under Subchapter N of this chapter, the rural community water and wastewater loan fund created under Subchapter O of this chapter, and the colonia self-help account created under Subchapter P of this chapter.

SECTION 15. Subsection (c), Section 15.012, Water Code, is amended to read as follows:

(c) Money appropriated to the fund by the legislature for a specific purpose stated in Subchapter C, E, F, M, [or] N, O, or P of this chapter shall be placed in the appropriate fund or account created by that subchapter.

SECTION 16. Subsection (b), Section 15.102, Water Code, is amended to read as follows:

(b) The loan fund may also be used by the board to provide grants for:

(1) projects that include supplying water and wastewater services in economically distressed areas, including projects involving retail distribution of those services;

(2) projects for which federal grant funds are placed in the loan fund;

(3) projects, on specific legislative appropriation for those projects; or

(4) desalination, brush control, weather modification, regionalization, and projects providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

SECTION 17. Section 15.104, Water Code, is amended to read as follows:

Sec. 15.104. FINDINGS REGARDING PERMITS. (a) The board shall not release funds for the construction of that portion of a project that proposes surface water or groundwater development [~~deliver funds pursuant to an application for financial assistance from the loan fund~~] until the executive administrator makes a written finding:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water that the project will provide; or

(2) that an applicant proposing groundwater [~~underground water~~] development has the right to use water that the project will provide.

(b) The board may release funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs before making the finding required under Subsection (a) if the executive administrator determines that a reasonable expectation exists that the finding will be made before the release of funds for construction.

(c) If an applicant includes a proposal for a waste water treatment plant, the board may not deliver funds for the waste water treatment plant until the applicant has received a permit for construction and operation of the waste water treatment plant and approval of the plans and specifications from the commission. If the applicant proposes a waste water treatment plant that is located outside of the jurisdiction of this state and that is not subject to the permitting authority of the commission, the board must review the plans and specifications in coordination with the commission and find that the waste water treatment plant is capable of producing effluent that will meet federal and state-approved water quality standards.

SECTION 18. Section 15.434, Water Code, is amended to read as follows:

Sec. 15.434. USE OF MONEY IN FUND. Money deposited to the credit of the agricultural soil and water conservation fund, on appropriation by the legislature to the board, the Department of Agriculture, the State Soil and Water Conservation Board, the Texas Agricultural Experiment Station, the Texas Agricultural Extension Service, public colleges and universities, and other state agencies shall be used for the following purposes:

(1) agricultural water conservation technical assistance programs;

(2) agricultural water conservation, education, and demonstration programs;

(3) purchase of equipment, including demonstration and educational equipment;

(4) grants made to groundwater [~~underground water~~] conservation districts and political subdivisions for the purchase of equipment under programs established by Subchapter H of this chapter;

(5) research in water utilization and conservation including artificial recharge and secondary recovery of groundwater [~~underground water~~];

(6) desalination [~~desalinization~~];

(7) weather modification;

(8) technical assistance programs for developing on-farm soil and water conservation plans developed jointly by landowners and operators and local soil and water conservation districts, as provided by Subchapter H, Chapter 201, Agriculture Code;

(9) research and demonstration relating to the production of native and low-water-use plants and water-efficient crops;

(10) a pilot program for low-interest loans for the purchase of agricultural water conservation systems established by Subchapter I of this chapter; and

(11) research, demonstration, and education relating to brush control.

SECTION 19. Subsection (a), Section 15.601, Water Code, is amended to read as follows:

(a) The state water pollution control revolving fund shall be administered by the board under this subchapter and rules adopted by the board. The fund shall be used to provide financial assistance to political subdivisions for construction of treatment works and to persons for nonpoint source pollution control and abatement projects under Section 15.603(h), in accordance with the capitalization grant program established under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

SECTION 20. Section 15.603, Water Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) The revolving fund is held separately from other funds by the board outside the State Treasury to provide financial assistance to political subdivisions for construction of treatment works and to persons for nonpoint source pollution control and abatement projects under Subsection (h).

(h) The board may establish a separate account in the revolving fund to be used solely for providing financial assistance to persons for nonpoint source pollution control and abatement projects. The account shall be composed solely of funds appropriated by the legislature, funds provided as gifts or grants by the United States, interest earnings on amounts credited to the account, and repayments of loans made from the account. The board shall adopt rules establishing the criteria for eligibility and the terms of assistance for persons that receive financial assistance from the account.

SECTION 21. Subsection (a), Section 15.804, Water Code, is amended to read as follows:

(a) On the request of a political subdivision or agency of this state or a neighboring state or a federal agency, the board may perform [for the political subdivision] a hydrographic survey in this state or outside of this state if the information collected will benefit this state. The board may perform a survey under this section:

(1) to determine:

- (A) reservoir storage capacity;
- (B) sedimentation levels;
- (C) rates of sedimentation;
- (D) projected water supply availability; or ~~[and]~~
- (E) potential mitigative measures; ~~[and]~~

(2) to conduct [for] other bathymetric studies; or

(3) to collect information relating to water-bearing formations.

SECTION 22. Chapter 15, Water Code, is amended by adding Subchapter O to read as follows:

**SUBCHAPTER O. PILOT PROGRAM FOR WATER AND WASTEWATER  
LOANS FOR RURAL COMMUNITIES**

**Sec. 15.901. DEFINITIONS. In this subchapter:**

(1) "Fund" means the rural community water and wastewater loan fund.

(2) "Political subdivision" means a municipality, a county, or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(3) "Rural community" means:

(A) a municipality or county with a population of less than 5,000; or

(B) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, with a population of less than 5,000 that is located outside the boundaries or extraterritorial jurisdiction of a municipality.

Sec. 15.902. RURAL COMMUNITY WATER AND WASTEWATER LOAN FUND. (a) The rural community water and wastewater loan fund is an account in the water assistance fund.

(b) The fund consists of:

(1) money transferred to the fund from the water assistance fund under Section 15.011(b);

(2) proceeds from the sale of political subdivision bonds by the board to the Texas Water Resources Finance Authority as provided by Section 17.0871; and

(3) repayments of loans made from the fund.

Sec. 15.903. FINANCIAL ASSISTANCE. (a) The fund may be used by the board to provide loans of financial assistance to rural communities for the construction, acquisition, or improvement of water and wastewater projects.

(b) The board may make financial assistance available to a rural community by entering into a loan agreement and promissory note with the rural community, as provided by this subchapter. A rural community may apply for and accept the financial assistance.

(c) The loan agreement must provide for the payment of principal and interest on the debt incurred for the project at a rate to be determined by the board.

(d) The loan agreement must provide for the issuance of a promissory note payable to the board to evidence the obligation of the rural community to repay the loan made in accordance with the terms of the loan agreement.

(e) A loan provided under this subchapter may not exceed \$250,000 for each project, and the term of a loan may not exceed 20 years.

Sec. 15.904. USE OF SALES TAX AS LOAN SECURITY. (a) A rural community that is a municipality or county may pledge a percentage of the sales and use tax revenue received under Chapter 321 or 323, Tax Code, as applicable, to the payment of debt incurred under a loan agreement entered into with the board under this subchapter if a majority of the voters voting at an election called and held for that purpose authorize the municipality or county to pledge a portion of that revenue for that purpose.

(b) Sections 321.506, 321.507, and 323.505, Tax Code, do not apply to taxes pledged under this subchapter.

Sec. 15.905. REVIEW AND APPROVAL OF LOAN AGREEMENT BY ATTORNEY GENERAL. (a) Before a loan agreement may become effective, a record of the proceedings of the board and the rural community authorizing the execution of the loan agreement, the loan agreement, the promissory note, and any contract providing revenue or security to pay the promissory note must be submitted to the attorney general for review and approval.

(b) If the attorney general finds that the loan agreement and the promissory note are valid and binding obligations of the rural community, the attorney general shall approve the documents and deliver them to the comptroller, the board, and the rural community, together with a copy of the attorney general's legal opinion stating that approval.

Sec. 15.906. REGISTRATION. On receipt of the documents required by Section 15.905(b), the comptroller shall register the record of the proceedings relating to the execution of a loan agreement.

Sec. 15.907. VALIDITY AND INCONTESTABILITY. On approval by the attorney general and registration by the comptroller, the loan agreement, the promissory note, a contract providing revenue or security, and any other obligation evidencing the debt are incontestable in a court and are valid, binding, and enforceable according to their terms.

Sec. 15.908. ENFORCEMENT BY MANDAMUS. Payment of obligations incurred under a loan agreement and other requirements of this subchapter may be enforced in a court by mandamus or other appropriate proceedings.

Sec. 15.909. RULES. The board shall adopt necessary rules to administer this subchapter, including rules establishing procedures for application for and award of loans.

Sec. 15.910. APPLICATION FOR ASSISTANCE. (a) In an application to the board for financial assistance from the fund, the rural community must include:

- (1) the name of the rural community and its principal officers;
- (2) a citation of the law under which the rural community operates and was created;
- (3) a description of the water or wastewater project for which the financial assistance will be used;
- (4) the total cost of the project;
- (5) the amount of state financial assistance requested;
- (6) the plan for repaying the total cost of the project; and
- (7) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for a loan of financial assistance from the fund unless it is submitted in affidavit form by the officials of the rural community. The board shall prescribe the affidavit form in its rules.

(c) If a rural community has a program of water conservation, the rural community shall state in the application that the rural community has such a program.

Sec. 15.911. FINDINGS REGARDING PERMITS. (a) The board may not release funds for the construction phase of that portion of a project that proposes surface water or groundwater development until the executive administrator makes a written finding:

(1) that a rural community proposing surface water development has the necessary water right authorizing it to appropriate and use the water that the project will provide; or

(2) that a rural community proposing groundwater development has the right to use water that the project will provide.

(b) If a rural community includes a proposal for a wastewater treatment project, the board may not release funds for the project construction until the rural community has received a permit for the construction and operation of the project and approval of the plans and specifications for the project in a manner that will satisfy commission requirements for design criteria and permit conditions that apply to construction activities.

Sec. 15.912. CONSIDERATIONS IN ACTING ON APPLICATION. In acting on an application for financial assistance, the board shall consider:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the rural community from all sources for the ultimate repayment of the cost of the project, including all interest;

(3) the relationship of the project to overall statewide needs; and

(4) any other factors that the board considers relevant.

Sec. 15.913. APPROVAL OF APPLICATION. The board by resolution may approve an application for a loan if, after considering the factors listed in Section 15.912 and any other relevant factors, the board finds that:

(1) the public interest requires state participation in the project; and

(2) the revenue or taxes pledged by the rural community will be sufficient to meet all the obligations assumed by the rural community during the succeeding period of not more than 20 years.

Sec. 15.914. CONSTRUCTION CONTRACT REQUIREMENTS. The governing body of each rural community receiving financial assistance from the board under this subchapter shall require in all contracts for the construction of a project that:

(1) each bidder furnish a bid guarantee equivalent to five percent of the bid price;

(2) each contractor awarded a construction contract furnish performance and payment bonds as follows:

(A) the performance bond must include guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices; and

(B) the performance and payment bonds must be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year after the date of approval by the engineer of the political subdivision;

(3) payment be made in partial payments as the work progresses;

(4) each partial payment not exceed 95 percent of the amount due at the time of the payment as shown by the engineer of the project, but, if the project is substantially complete, a partial release of the five percent retainage may be made by the rural community with approval of the executive administrator;

(5) payment of the retainage remaining due on completion of the contract be made only after:

(A) approval by the engineer for the rural community as required under the bond proceedings;

(B) approval by the governing body of the rural community by a resolution or other formal action; and

(C) certification by the executive administrator in accordance with the rules of the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices;

(6) no valid approval be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications; and

(7) labor from inside the rural community be used to the extent possible.

Sec. 15.915. FILING CONSTRUCTION CONTRACT. The rural community shall file with the board a certified copy of each construction contract it enters into for

the construction of all or part of a project. Each contract must contain or have attached to it the specifications, plans, and details of all work included in the contract.

Sec. 15.916. INSPECTION OF PROJECTS. (a) The board may inspect the construction of a project at any time to assure that:

(1) the contractor is substantially complying with the approved engineering plans of the project; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board does not subject the state to any civil liability.

Sec. 15.917. ALTERATION OF PLANS. After the executive administrator approves the engineering plans, a rural community may not make any substantial or material alteration in the plans unless the executive administrator authorizes the alteration. The board shall review and approve or disapprove plans and specifications for all sewage collection, treatment, and disposal systems for which financial assistance is provided from the fund in a manner that will satisfy commission requirements for design criteria and permit conditions that apply to construction activities.

Sec. 15.918. CERTIFICATE OF APPROVAL. The executive administrator may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to the approved plans;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

Sec. 15.919. REPORT TO LEGISLATURE. (a) Not later than January 1, 2005, the board shall report to the legislature on the program established under this subchapter.

(b) The report must include:

(1) the number of applications received;

(2) the number of loans funded;

(3) the types of projects funded;

(4) the total funds allocated;

(5) available performance measures; and

(6) the expected feasibility of and demand for an expanded rural community water and wastewater loan program.

Sec. 15.920. AUTHORITY OF RURAL COMMUNITIES. Rural communities that receive financial assistance from the fund are granted all necessary authority to enter into loan agreements and issue promissory notes in connection with the financial assistance granted under this subchapter.

SECTION 23. Chapter 15, Water Code, is amended by adding Subchapter P to read as follows:

#### SUBCHAPTER P. COLONIA SELF-HELP PROGRAM

Sec. 15.951. DEFINITIONS. In this subchapter:

(1) "Account" means the colonia self-help account.

(2) "Colonia" means a geographic area that:

(A) is an economically distressed area as defined by Section 17.921; and

(B) is located in a county any part of which is within 50 miles of an international border.

(3) "Program" means the colonia self-help program established under this subchapter.

(4) "Retail public utility" has the meaning assigned by Section 13.002.

(5) "Self-help project" means a project in which the people who will benefit from the project actively participate.

Sec. 15.952. CREATION OF ACCOUNT. (a) The colonia self-help account is an account in the general revenue fund that may be appropriated only for the purposes of this subchapter.

(b) The account consists of:

(1) money transferred by the legislature directly to the account;

(2) money transferred at the board's discretion from the fund;

(3) gifts, grants, or donations to the account; and

(4) interest earned on money credited to the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Sec. 15.953. USE OF ACCOUNT. (a) The board may use funds in the account only to reimburse nonprofit organizations eligible under Section 15.954 for expenses incurred in a self-help project that results in the provision of adequate water or wastewater services to a colonia. Expenses that may be reimbursed include:

(1) construction expenses;

(2) facility planning expenses;

(3) platting expenses;

(4) surveying expenses;

(5) engineering expenses;

(6) equipment expenses; and

(7) other expenses necessary to provide water or wastewater services to the colonia, as determined appropriate by the board.

(b) The board may award a grant under the program directly to a nonprofit organization to reimburse the organization for expenses incurred in a self-help project described by Subsection (a).

Sec. 15.954. ELIGIBLE NONPROFIT ORGANIZATIONS. To be eligible to receive a grant under the program, an organization must:

(1) apply for the grant;

(2) qualify for an exemption from federal income taxes under Section 501(c)(3), Internal Revenue Code of 1986, as amended; and

(3) as of January 1, 2001, have a demonstrated record of completing in coordination with a retail public utility construction of self-help projects described by Section 15.953(a).

Sec. 15.955. GRANT APPLICATION. An eligible nonprofit organization must apply to the board for a grant under the program before incurring any expense associated with a self-help project described by Section 15.953(a). The application must include:

(1) the name of the nonprofit organization, the names of the organization's principal officers, and verification of the organization's 501(c)(3) status;

(2) a description of the project area, the anticipated number of water and wastewater connections to be made, and the anticipated number of colonia residents to be served;

(3) a description of the existing water and wastewater facilities in the colonia;

(4) a description of the project and the aspect of the project for which the grant will be used;

(5) a description of the anticipated participation in the project by residents of the colonia;

(6) the estimated total cost of both the project and the aspect of the project for which the grant will be used;

(7) the amount of the grant that is requested from the account and the sources of funding for the entire project;

(8) from a retail public utility authorized to provide water or wastewater services to the colonia, a resolution in which the retail public utility:

(A) agrees to inspect the project during and after construction to ensure the adequacy of the project; and

(B) commits to provide the water or wastewater services that the project intends to use; and

(9) any other information required by the board.

Sec. 15.956. BOARD CONSIDERATIONS IN EVALUATING GRANT APPLICATION. In evaluating an application for a grant under the program, the board shall consider:

(1) the number, quality, and character of projects previously completed by the applicant; and

(2) the capability of the retail public utility to provide water or wastewater services to the colonia on completion of the project.

Sec. 15.957. ACTION ON GRANT APPLICATION. (a) Not later than the 60th day after the date the board receives a complete application for a grant under the program, the board by written resolution shall:

(1) approve the application; or

(2) disapprove the application.

(b) On approval of an application, the board shall authorize the executive administrator of the board to execute a contract with the applicant for a grant to reimburse eligible expenses. The contract may provide a budget, schedule, terms for payment of funds, and any other terms the board or its executive administrator considers appropriate.

Sec. 15.958. RULES. The board shall adopt rules necessary to administer the program established under this subchapter.

Sec. 15.959. CO-ADMINISTRATION. The program shall be co-administered by the office of the secretary of state until the second anniversary of the date on which the program begins operations under this subchapter.

SECTION 24. Subchapter B, Chapter 16, Water Code, is amended by amending Section 16.021 and adding Section 16.022 to read as follows:

Sec. 16.021. TEXAS NATURAL RESOURCES INFORMATION SYSTEM. (a) The executive administrator shall establish the Texas Natural Resources Information System (TNRIS) to serve Texas agencies and citizens as a centralized clearinghouse and referral center for natural resource, census, and other socioeconomic data.

(b) The executive administrator may, on behalf of TNRIS, enter into partnerships with private entities to provide additional funding for improved access to TNRIS

information. The board shall adopt administrative rules to describe the process of establishing partnerships, define the types of partnerships that may be formed, establish the fee collection process, and define the nondiscriminatory methods used to determine which private entities may enter into partnerships. Any process developed by the board must comply with all applicable laws regarding ethics, purchasing, and contracts.

(c) 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 [his] 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) 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 September 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 plan that inventories known state agency geographic information systems projects and recommends initiatives to improve the state's geographic information systems programs.

(e) ~~(e)~~ 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) [(d) of this section]~~;

(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.

~~(f) [(d)]~~ A recommendation may not be made under ~~[Subdivision (3) of]~~ Subsection ~~(e)(3) [(e) of this section]~~ for:

(1) a feature previously named under statutory authority or recognized by an agency of the federal government, the state, or a political subdivision of the state;

(2) a feature located on private property for which consent of the property owner cannot be obtained; or

(3) naming a natural or cultural feature for a living person.

Sec. 16.022. WATER CONSERVATION STUDY. (a) The board and the State Soil and Water Conservation Board shall jointly conduct a study of the ways to improve or expand water conservation efforts and report to the legislature.

(b) The report must include:

(1) an assessment of both agricultural and municipal water conservation issues;

(2) information on existing conservation efforts by the board and the State Soil and Water Conservation Board;

(3) information on existing conservation efforts by municipalities receiving funding from the board, as specified in water conservation plans submitted by the municipalities as part of their applications for assistance;

(4) a discussion of future conservation needs;

(5) an analysis of programmatic approaches and funding for additional conservation efforts;

(6) an assessment of existing statutory authority and whether changes are needed to more effectively promote and fund conservation projects; and

(7) an assessment of the board's agricultural water conservation program.

(c) The report shall be issued as part of, or as a supplement to, the state water plan.

SECTION 25. Subsection (j), Section 16.053, Water Code, is amended to read as follows:

(j) The board may provide financial assistance to political subdivisions under Subchapters E and F of this chapter, Subchapters C, D, E, F, ~~and~~ J, and O, Chapter 15, and Subchapters D, I, K, and L, Chapter 17, for water supply projects only if:

(1) the board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan; and

(2) beginning January 5, 2002, the board:

(A) has approved a regional water plan as provided by Subsection (i), and any required updates of the plan, for the region of the state that includes the area benefiting from the proposed project; and

(B) determines that the needs to be addressed by the project will be addressed in a manner that is consistent with that regional water plan.

SECTION 26. Section 16.136, Water Code, is amended to read as follows:

Sec. 16.136. FACILITIES WANTED BY POLITICAL SUBDIVISION. The board may acquire all or part ~~[up to 50 percent]~~ of any authorized facility to the extent that the board finds that the political subdivision:

(1) is willing and reasonably able to finance that portion ~~[at least 50 percent]~~ of the cost of the facility that the board does not acquire;

(2) has obtained all necessary permits;

(3) has proposals that are consistent with the objectives of the state water plan; and

(4) has a program of water conservation for the more efficient use of water as required by Section 15.106 of this code.

SECTION 27. Subsection (g), Section 16.343, Water Code, is amended to read as follows:

(g) Before ~~[filing]~~ an application for funds ~~[for facility engineering]~~ under Section 15.407 or Subchapter P, Chapter 15, ~~[of this code]~~ or ~~[financial assistance under]~~ Subchapter K, Chapter 17, may be considered by the board ~~[of this code]~~, a political subdivision must adopt the model rules pursuant to this section. If the applicant is ~~[or, in the case of]~~ a district, ~~[or]~~ 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 ~~[An affected county may not receive funds under either Section 15.407 of this code or Subchapter K, Chapter 17, of this code unless the county]~~ adopts and enforces the model rules.

SECTION 28. Subsection (g), Section 17.0871, Water Code, is amended to read as follows:

(g) The accrued interest portion of proceeds from the sale of political subdivision bonds shall be disposed of as otherwise provided by this chapter. Money not applied to discharges, payments, or redemptions shall be deposited in the development fund, the administrative fund, the water assistance fund, or the agricultural water conservation fund, as appropriate, to be used for the purposes provided by law.

SECTION 29. Section 17.123, Water Code, is amended to read as follows:

Sec. 17.123. FINDINGS REGARDING PERMITS. (a) The board shall not release funds for the construction of that portion of a project that proposes surface water or groundwater development ~~[deliver funds pursuant to an application for financial assistance]~~ until the executive administrator makes a written finding:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water which the water supply project will provide; or

(2) that an applicant proposing groundwater ~~[underground water]~~ development has the right to use water that the water supply project will provide.

(b) The board may release funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs before making the finding required under Subsection (a) if the executive administrator determines that a reasonable expectation exists that the finding will be made before the release of funds for construction.

SECTION 30. Subdivision (7), Section 17.871, Water Code, is amended to read as follows:

(7) "Loan" means a loan from the board to a lender district under this subchapter, except as provided by Section 17.894(b).

SECTION 31. Section 17.894, Water Code, is amended to read as follows:

Sec. 17.894. USE OF FUND. (a) The board may use money in the fund to make conservation loans directly to borrower districts, to make loans to lender districts, and to pay the cost of bond issuance.

(b) The board may use money in the fund:

(1) to make loans to political subdivisions other than lender districts for agricultural water conservation projects;

(2) to make grants to political subdivisions for agricultural water conservation projects as provided by legislative appropriation; or

(3) to make grants to a state agency for the funding of any agricultural water conservation program of that agency, including a program in which the state agency

provides funding to a political subdivision or a person for agricultural water conservation, as provided by legislative appropriation.

SECTION 32. Section 17.903, Water Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The board by rule may establish:

(1) procedures for applying for a loan or grant under Section 17.894(b);

(2) procedures for considering and approving applications and for making loans or grants under Section 17.894(b); and

(3) the rate of interest the board charges, if any, for loans under Section 17.894(b).

(c) The board shall have the power to enter into any contracts to carry out the provisions of this subchapter.

SECTION 33. Section 17.928, Water Code, is amended to read as follows:

Sec. 17.928. FINDINGS REGARDING PERMITS. (a) The board ~~shall~~ [may] ~~not release funds for the construction of that portion of a project that proposes surface water or groundwater development [deliver funds pursuant to an application for financial assistance]~~ until the executive administrator makes a written finding:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water that the water supply project will provide; or

(2) that an applicant proposing groundwater ~~[underground water]~~ development has the right to use water that the water supply project will provide.

(b) The board may release funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs before making the finding required under Subsection (a) if the executive administrator determines that a reasonable expectation exists that the finding will be made before the release of funds for construction.

(c) If an applicant includes a proposal for treatment works, the board may not deliver funds for the treatment works until the applicant has received a permit for construction and operation of the treatment works and approval of the plans and specifications from the commission or unless such a permit is not required by the commission.

SECTION 34. Section 36.001, Water Code, is amended by adding Subdivision (18) to read as follows:

(18) "Public water supply well" means, for purposes of a district governed by this chapter, a well that produces the majority of its water for use by a public water system.

SECTION 35. The heading to Subchapter Z, Chapter 2306, Government Code, is amended to read as follows:

SUBCHAPTER Z. COLONIAS ~~[COLONIA SELF-HELP CENTERS]~~

SECTION 36. Sections 2306.584 and 2306.585, Government Code, are amended to read as follows:

Sec. 2306.584. COLONIA RESIDENT ADVISORY COMMITTEE. (a) The department shall appoint not fewer than five persons who are residents of colonias to serve on the Colonia Resident Advisory Committee ~~[an advisory committee]~~. The members of the advisory committee shall be selected from lists of candidates submitted to the department by local nonprofit organizations and the commissioners court of a county in which a self-help center is located.

(b) The department shall appoint one committee member to represent each of the counties in which self-help centers are located. Each committee member:

- (1) must be a resident of a colonia in the county the member represents; and
- (2) may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract under this subchapter.

Sec. 2306.585. DUTIES OF COLONIA RESIDENT ADVISORY COMMITTEE.

(a) The Colonia Resident Advisory Committee [committee] shall advise the department regarding:

- (1) the needs of colonia residents;
- (2) appropriate and effective programs that are proposed or are operated through the self-help centers; and
- (3) activities that may be undertaken through the self-help centers to better serve the needs of colonia residents.

(b) The advisory committee shall meet before the 30th day preceding the date on which a contract is scheduled to be awarded for the operation of a self-help center and may meet at other times.

SECTION 37. Subchapter Z, Chapter 2306, Government Code, is amended by adding Section 2306.590 to read as follows:

Sec. 2306.590. COLONIA INITIATIVES ADVISORY COMMITTEE. (a) The Colonia Initiatives Advisory Committee is composed of seven members appointed by the governor as follows:

- (1) one colonia resident;
- (2) one representative of a nonprofit organization that serves colonia residents;
- (3) one representative of a political subdivision that contains all or part of a colonia;
- (4) one person to represent private interests in banking or land development;
- (5) one representative of a nonprofit utility;
- (6) one representative of an engineering consultant firm involved in economically distressed areas program projects under Subchapter K, Chapter 17, Water Code; and
- (7) one public member.

(b) Each committee member, except the public member, must reside within 150 miles of the Texas-Mexico border.

(c) The secretary of state is an ex officio member of the committee.

(d) The committee shall:

(1) review the progress of colonia water and wastewater infrastructure projects managed by the Texas Water Development Board and the state agency responsible for administering the portion of the federal community development block grant nonentitlement program that addresses the infrastructure needs of colonias;

(2) present an update and make recommendations to the board and the Texas Water Development Board annually at the joint meeting required by Section 6.060(d), Water Code, regarding:

(A) efforts to ensure that colonia residents are connected to the infrastructure funded by state agencies;

(B) the financial, managerial, and technical capabilities of project owners and operators;

(C) the agencies' management of their colonia programs and the effectiveness of their policies regarding underperforming projects; and

(D) any other issues related to the effect of state-managed infrastructure programs on colonia residents;

(3) review public comments regarding the colonia needs assessment incorporated into the state low income housing plan under Section 2306.0721; and

(4) based on the public comments reviewed under Subdivision (3), recommend to the board new colonia programs or improvements to existing colonia programs.

SECTION 38. Section 11.32, Tax Code, is amended to read as follows:

Sec. 11.32. CERTAIN WATER CONSERVATION INITIATIVES. The governing body of a taxing unit by official action of the governing body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of property on which approved water conservation initiatives, desalination projects, or brush control initiatives have been implemented. For purposes of this section, approved water conservation, desalination, and brush control initiatives shall be designated pursuant to an ordinance or other law adopted by the governing unit.

SECTION 39. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.355 to read as follows:

Sec. 151.355. WATER-RELATED EXEMPTIONS. The following are exempted from taxes imposed by this chapter:

(1) rainwater harvesting equipment or supplies, water recycling and reuse equipment or supplies, or other equipment, services, or supplies used to reduce or eliminate water use;

(2) equipment, services, or supplies used for desalination of surface water or groundwater;

(3) equipment, services, or supplies used for brush control designed to enhance the availability of water;

(4) equipment, services, or supplies used for precipitation enhancement;

(5) equipment, services, or supplies used to construct or operate a water or wastewater system certified by the Texas Natural Resource Conservation Commission as a regional system; and

(6) equipment, services, or supplies used to construct or operate a water supply or wastewater system by a private entity as a public-private partnership as certified by the political subdivision that is a party to the project.

SECTION 40. (a) The Texas Water Development Board shall adopt, not later than March 1, 2002, necessary rules to administer the pilot program for water and wastewater loans for rural communities created by Subchapter O, Chapter 15, Water Code, as added by this Act.

(b) The Texas Water Development Board shall begin, not later than September 1, 2002, to provide loans under Subchapter O, Chapter 15, Water Code, as added by this Act.

SECTION 41. The Texas Water Development Board is required to implement the colonia self-help program under Subchapter P, Chapter 15, Water Code, as added by this Act, only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Texas Water Development Board may, but is not required to, implement the colonia self-help program using other appropriations available for that purpose.

SECTION 42. The changes in law made by this Act in the prohibitions and qualifications applying to members of the Texas Water Development Board do not affect the entitlement of a member serving on the board immediately before September 1, 2001, to continue to serve and function as a member of the board for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 2001.

SECTION 43. If Senate Bill No. 322, 77th Legislature, Regular Session, 2001, becomes law and if that bill provides for the creation of a Colonia Resident Advisory Committee, a Colonia Initiatives Advisory Committee, or a committee having another name that has functions similar to those of the Colonia Resident Advisory Committee or the Colonia Initiatives Advisory Committee created by this Act, it is the intent of the legislature that this Act govern all matters relating to the committees and that the provisions of Senate Bill No. 322 relating to the committees have no effect.

SECTION 44. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 730**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 730** 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.

HARRIS  
ARMBRISTER  
OGDEN  
WEST

THOMPSON  
DESHOTEL  
HINOJOSA

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the issuance of citations to persons arrested for certain misdemeanors and to the suspension of sentence and the deferral of adjudication in cases involving certain misdemeanor traffic offenses.

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

SECTION 1. Section 543.004, Transportation Code, is amended to read as follows:

Sec. 543.004. NOTICE TO APPEAR REQUIRED[~~—CERTAIN OFFENSES~~].

(a) Except as provided by Subsection (c), the issuance of a written notice to appear as

provided by Section 543.003 is mandatory and an ~~An~~ officer shall issue a written notice to appear if:

(1) the offense charged is a misdemeanor punishable by fine only [~~speeding or a violation of the open container law, Section 49.03, Penal Code~~]; [~~and~~]

(2) the person displays an unexpired driver's license or permit issued to the person by the department or by another state or country; and

(3) the person makes a written promise to appear in court as provided by Section 543.005.

(b) If the person is a resident of or is operating a vehicle licensed in a state or country other than this state, Subsection (a) applies only as provided by Chapter 703.

(c) Subsection (a) does not require an officer to issue a written notice to appear if:

(1) the arresting officer believes that taking the person before a magistrate is necessary to prevent imminent bodily injury to the person or another;

(2) the offense was committed in the presence of the arresting officer and the officer believes that because of the commission of the offense a substantial risk of harm to the person or another exists and will continue to exist unless the person is taken before a magistrate;

(3) the arresting officer believes that the person has insufficient ties to the jurisdiction to assure that the person will comply with a written notice to appear in court issued under Section 543.003 and that there is a substantial likelihood that the person would fail or refuse to comply with a written notice to appear in court; or

(4) the arresting officer believes that the person has failed to appear without just cause in response to a written notice to appear, a citation, a summons, or other legal process issued in connection with an offense committed by the person, other than an offense involving the parking of a motor vehicle. [The offenses specified by Subsection (a) are the only offenses for which issuance of a written notice to appear is mandatory.]

SECTION 2. Article 14.06, Code of Criminal Procedure, is amended to read as follows:

Art. 14.06. MUST TAKE OFFENDER BEFORE MAGISTRATE. (a) Except as provided by Subsections [~~Subsection~~] (b), (c), (d), and (e), in each case enumerated in this Code, the person making the arrest shall take the person arrested or have the person [~~him~~] taken without unnecessary delay before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in a county bordering the county in which the arrest was made. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

(b) A peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, or a traffic offense, may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

(c) A peace officer who is charging a person, including a child, with committing a traffic offense that is a Class C misdemeanor, including an offense under Section 49.03, Penal Code, shall, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person

must appear before a magistrate, the name and address of the person charged, and the offense charged, if the person displays:

(1) an unexpired driver's license or permit issued to the person by the Department of Public Safety or by another state or country; or

(2) an unexpired personal identification certificate issued to the person by the department.

(d) If a person charged as described by Subsection (c) is a resident of or is operating a vehicle licensed in a state or country other than this state, Subsection (c) applies only as provided by Chapter 703, Transportation Code.

(e) Subsection (c) does not require a peace officer to issue a citation if:

(1) the peace officer making the arrest believes that taking the arrested person before a magistrate is necessary to prevent imminent bodily injury to the arrested person or another;

(2) the offense was committed in the presence of the peace officer making the arrest and the officer believes that because of the commission of the offense a substantial risk of harm to the arrested person or another exists and will continue; or

(3) the peace officer making the arrest believes that the arrested person has insufficient ties to the jurisdiction to assure that the arrested person will comply with a citation that contains a written notice to appear before a magistrate issued under Subsection (a) and that there is a substantial likelihood that the arrested person would fail or refuse to comply with the written notice to appear before the magistrate; or

(4) the peace officer making the arrest believes that the arrested person has failed to appear without just cause in response to a written notice to appear, a citation, a summons, or other legal process issued in connection with an offense committed by the arrested person, other than an offense involving the parking of a motor vehicle.

SECTION 3. Article 45.051, Code of Criminal Procedure (formerly Article 45.54, Code of Criminal Procedure, redesignated as Article 45.051 by Chapter 1545, Acts of the 76th Legislature, Regular Session, 1999), as amended by Chapters 532, 1387, and 1545, Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

Art. 45.051. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the judge [justice] may, at the judge's discretion, defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days.

(b) During the deferral period, the judge [justice] may, at the judge's discretion, require the defendant to:

(1) post a bond in the amount of the fine assessed to secure payment of the fine;

(2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(3) submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) participate in an alcohol or drug abuse treatment or education program;

(7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; ~~and~~

(8) complete a driving safety course approved under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) or another course as directed by the judge; and

(9) comply with any other reasonable condition.

(c) ~~The [At the conclusion of the deferral period, if the] defendant must present to the court [presents] satisfactory evidence that the defendant [he] has complied with the requirements imposed by[-] the judge under this article before the conclusion of the deferral period. If satisfactory evidence is timely presented to the court, the judge [justice] shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. [Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed, less any portion of the assessed fine that has been paid.]~~ If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.

(d) If ~~by~~ at the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the ~~judge [justice]~~ may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant.

(e) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 ~~[of this code]~~. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

(f) This article does not apply to an offense to which Section 542.404 or 729.004(b), Transportation Code, applies.

(g) This article does not apply to a person who holds a commercial driver's license and commits:

(1) a serious traffic violation involving the operation of a motor vehicle or a commercial motor vehicle; or

(2) a drug or alcohol offense involving the operation of any motor vehicle.

(h) In this article, "serious traffic violation" means a traffic violation arising from the driving of a motor vehicle, other than a parking, vehicle weight, or vehicle defect violation, that involves:

(1) excessive speeding, involving a single charge of driving 15 miles per hour or more above the posted speed limit;

(2) reckless driving, as defined by state or local law;

(3) a violation of a state or local law related to motor vehicle traffic control, including a law regulating the operation of vehicles on highways, arising in connection with a fatal accident;

(4) improper or erratic traffic lane change; or

(5) following the vehicle ahead too closely.

SECTION 4. Article 45.0511, Code of Criminal Procedure, as added by Chapter 1545, Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

Art. 45.0511. DRIVING SAFETY COURSE OR MOTORCYCLE OPERATOR COURSE DISMISSAL [DEFERRED DISPOSITION] PROCEDURES [APPLICABLE TO TRAFFIC OFFENSES]. (a) This article applies only to an alleged offense that:

(1) is within the jurisdiction of a justice court or a municipal court;  
 (2) involves [involving] the operation of a motor vehicle; and  
 (3) is [other than a commercial motor vehicle, as] defined by:  
     (A) Section 472.022 [522.003], Transportation Code;  
     (B) Subtitle C, Title 7, Transportation Code; or  
     (C) Section 729.001(a)(3), Transportation Code[; and supplements  
Article 45.051].

(b) ~~The judge [During the deferral period under Article 45.051, the justice:~~  
 [(+) shall require the defendant to successfully complete a driving safety course approved by the Texas Education Agency or a course under the motorcycle operator training and safety program approved by the designated state agency under Chapter 662, Transportation Code, if:

(1) the defendant elects driving safety course or motorcycle operator training course dismissal under this article;

(2) ~~[deferred disposition and]~~ the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the ~~[preceding]~~ 12 months preceding the date of the offense;

(3) ~~and~~

~~[(2) may require the defendant to successfully complete a driving safety course approved by the Texas Education Agency if the defendant has completed an approved driving safety course within the preceding 12 months.~~

~~[(c) Subsection (b)(1) applies only if:~~

~~[(+) the defendant [person] enters a plea under Article 45.021 [in person or in writing] of no contest or guilty on or [and,] before the answer date on the notice to appear and:~~

~~(A) presents in person or by counsel to the court a [an oral or written] request to take a course; or~~

~~(B) sends to the court by certified mail, return receipt requested, postmarked on or before the answer date on the notice to appear, a written request to take a course;~~

~~(4) [(2) the court enters judgment on the person's plea of no contest or guilty at the time the plea is made but defers imposition of the judgment for 180 days;~~

~~[(3) the defendant [person] has a valid Texas driver's license or permit;~~

~~(5) [(4) the defendant [person] is charged with an offense to which this article applies, other than speeding 25 miles per hour or more over the posted speed limit; and~~

~~(6) [(5) the defendant [person] provides evidence of financial responsibility as required by Chapter 601, Transportation Code[;~~

~~[(6) the defendant's driving record as maintained by the Texas Department of Public Safety shows the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense; and~~

~~[(7) the defendant files an affidavit with the court stating that the person is not taking a course under this section and has not completed a course that is not shown on the person's driving record within the 12 months preceding the date of the offense].~~

(c) The court shall enter judgment on the defendant's plea of no contest or guilty at the time the plea is made, defer imposition of the judgment, and allow the defendant:

(1) 90 days to successfully complete the approved driving safety course or motorcycle operator training course; and

(2) 30 additional days to present to the court:

(A) a uniform certificate of completion of the driving safety course or a verification of completion of the motorcycle operator training course;

(B) the defendant's driving record as maintained by the Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense; and

(C) an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course, as applicable, under this article on the date the request to take the course was made and had not completed such a course that is not shown on the defendant's driving record within the 12 months preceding the date of the offense.

(d) Notwithstanding Subsections (b)(2) and (3), [Subsection (c)(1), on a written motion submitted to the court] before the final disposition of the case, the court may grant a request to take a driving safety course or a motorcycle operator training course under this article.

(e) A request to take a driving safety course made at or before the time and at the place at which a defendant [person] is required to appear in court is an appearance in compliance with the defendant's [person's] promise to appear.

(f) In addition to court costs and fees authorized or imposed by a law of this state and applicable to the offense, the [The] court may:

(1) require a defendant [person] requesting a [driving safety] course under Subsection (b) to pay an administrative [a] fee set by the court to cover the cost of administering this article at an amount of not more than \$10; or

(2) require a defendant requesting a course under Subsection (d) to pay a fee set by the court at an amount not to exceed the maximum amount of the fine for the offense committed by the defendant[, including any other fee authorized by statute or municipal ordinance, to cover the cost of administering this article].

(g) A defendant [person] who requests but does not take a course is not entitled to a refund of the fee.

(h) Fees collected by a municipal court shall be deposited in the municipal treasury. Fees collected by another court shall be deposited in the county treasury of the county in which the court is located.

(i) If a defendant [person] requesting a [driving safety] course under this article fails to comply with Subsection (c)(1) or (2) [furnish evidence of the successful completion of the course to the court], the court shall:

(1) notify the defendant [person] in writing, mailed to the address on file with the court or appearing on the notice to appear, of that failure; and

(2) require the defendant [person] to appear at the time and place stated in the notice to show cause why the evidence was not timely submitted to the court.

(j) If the defendant [A person who] fails to appear at the time and place stated in the notice under Subsection (i), or appears at the time and place stated in the notice but does not show good cause for the defendant's failure to comply with Subsection (c)(1) or (2), the court shall enter an adjudication of guilt and impose sentence [commits a misdemeanor punishable as provided by Section 543.009, Transportation Code].

(k) On a defendant's [person's] showing of good cause for failure to furnish evidence to the court, the court may allow an extension of time during which the defendant [person] may present:

(1) a uniform certificate of course completion as evidence that the defendant [person] successfully completed the driving safety course; or

(2) a verification of course completion as evidence that the defendant successfully completed the motorcycle operator training course.

(l) When a defendant [person] complies with Subsections (c)(1) and (2) [Subsection (b) and a uniform certificate of course completion is accepted by the court], the court shall:

(1) remove the judgment and dismiss the charge;

(2) report the fact that the defendant [person] successfully completed a driving safety course or a motorcycle operator training course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record; and

(3) state in that [this] report whether the course was taken under [the procedure provided by] this article to provide information necessary to determine eligibility to take a subsequent course under Subsection (b).

(m) The court may dismiss only one charge for each completion of a course.

(n) A charge that is dismissed under this article may not be part of a person's driving record or used for any purpose.

(o) An insurer delivering or issuing for delivery a motor vehicle insurance policy in this state may not cancel or increase the premium charged an insured under the policy because the insured completed a driving safety course or a motorcycle operator training course, or had a charge dismissed under this article.

(p) The court shall advise a defendant [person] charged with a misdemeanor under Section 472.022, Transportation Code, Subtitle C, Title 7, Transportation Code, or Section 729.001(a)(3), Transportation Code, committed while operating a motor vehicle of the defendant's [person's] right under this article to successfully complete a driving safety course or, if the offense was committed while operating a motorcycle, a motorcycle operator training course. The right to complete a course does not apply to a defendant [person] charged with:

(1) a violation of Section 545.066, ~~[545.401, 545.421,]~~ 550.022, or 550.023, Transportation Code;

(2) a ~~;~~ or serious traffic violation; or

(3) an offense to which Section 542.404 or 729.004(b), Transportation Code, applies ~~[as defined by Section 522.003, Transportation Code].~~

(q) A notice to appear issued for an offense to which this article applies must inform a defendant charged with an offense under Section 472.022, Transportation Code, an offense under Subtitle C, Title 7, Transportation Code, or an offense under Section 729.001(a)(3), Transportation Code, committed while operating a motor vehicle of the defendant's right to complete a driving safety course or, if the offense was committed while operating a motorcycle, of the defendant's right to complete a

motorcycle operator training course. The notice required by this subsection must read substantially as follows:

"You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course."

(r) If the notice required by Subsection (q) is not provided to the defendant charged with the offense, the defendant may continue to exercise the defendant's right to take a driving safety course or a motorcycle operator training course until the notice required by Subsection (q) is provided to the defendant or there is a final disposition of the case.

(s) This article does not apply to a person who holds a commercial driver's license and commits:

(1) a serious traffic violation involving the operation of a motor vehicle or a commercial motor vehicle; or

(2) a drug or alcohol offense involving the operation of any motor vehicle.

(t) In this article, "serious traffic violation" means a traffic violation arising from the driving of a motor vehicle, other than a parking, vehicle weight, or vehicle defect violation, that involves:

(1) excessive speeding, involving a single charge of driving 15 miles per hour or more above the posted speed limit;

(2) reckless driving, as defined by state or local law;

(3) a violation of a state or local law related to motor vehicle traffic control, including a law regulating the operation of vehicles on highways, arising in connection with a fatal accident;

(4) improper or erratic traffic lane change; or

(5) following the vehicle ahead too closely.

SECTION 5. Subsection (f), Section 472.022, Transportation Code, is amended to read as follows:

(f) Articles 45.051 and 45.0511 [~~Article 45.54~~], Code of Criminal Procedure, do [~~does~~] not apply to an offense under this section committed in a construction or maintenance work zone when workers are present.

SECTION 6. The following laws are repealed:

(1) Article 45.541, Code of Criminal Procedure, as added by Chapter 1387, Acts of the 76th Legislature, Regular Session, 1999;

(2) Section 543.101, Transportation Code; and

(3) Section 543.117, Transportation Code.

SECTION 7. (a) This Act takes effect September 1, 2001.

(b) The change in law made by this Act applies only to an offense committed on or after September 1, 2001.

(c) An offense committed before September 1, 2001, 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 September 1, 2001, if any element of the offense was committed before that date.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3343**

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 3343** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIVINS	SADLER
ELLIS	HOCHBERG
STAPLES	MARCHANT
VAN DE PUTTE	PITTS
ZAFFIRINI	TILLERY
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 310**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 310** 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.

HARRIS	CHISUM
SIBLEY	MERRITT
LUCIO	R. LEWIS
DUNCAN	BOSSE
BROWN	
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 Railroad Commission of Texas.

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

SECTION 1. Articles 6445a, 6447, 6447b, 6447c, and 6447h, Revised Statutes, are amended to read as follows:

Art. 6445a. 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 [~~2004~~].

Art. 6447. THE COMMISSION. Election.—The Railroad Commission of Texas shall be composed of three members, one of whom shall be elected biennially at each general election for a term of six years.

Qualifications.—The members shall be resident citizens of this State, and qualified voters under the Constitution and laws, and not less than twenty-five years of age. The members are subject to the provisions of Chapter 572, Government Code, that apply to elected officers, including the requirements governing personal financial statements, standards of conduct, and conflicts of interest. [~~No member shall be directly or indirectly interested in any railroad, or in any stock, bond, mortgage, security, or earnings of any railroad, and should a member voluntarily become so interested his office shall become vacant, or should he become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest, failing to do this, his office shall become vacant.~~

[~~Shall hold no other office, etc.—No commissioner shall hold any other office of any character, while such commissioner, nor engage in any occupation or business inconsistent with his duties as such commissioner.~~]

Oath, etc.—Before entering upon the duties of his office, each commissioner shall take and subscribe to the official oath and shall in addition thereto[;] swear that he [~~is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts, or earnings of any railroad, and that he~~] will to the best of his ability faithfully and justly execute and enforce the provisions of this title[;] and all laws of this State concerning railroads, which oath shall be filed with the Secretary of State.

Organization.—The commissioners shall elect one of their number chairman. They may make all rules necessary for their government and proceedings. They shall be known collectively as the "Railroad Commission of Texas," and shall have a seal, a star of five points with the words "Railroad Commission of Texas" engraved thereon. They shall be furnished necessary furniture, stationery, supplies and all necessary expenses, to be paid for on the order of the Governor.

Expenses.—The Commissioners shall receive from the State their necessary traveling expenses while traveling on the business of the Commission, which shall include the cost only of transportation while traveling on business for the Commission, upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the Commission. Employees of the Commission are entitled to reimbursement for expenses incurred in traveling on the business of the Commission as provided by the General Appropriations Act.

Sessions.—The Commission may hold its sessions at any place in this State when deemed necessary.

Art. 6447b. EQUAL EMPLOYMENT OPPORTUNITY [~~EMPLOYEE PERFORMANCE~~]. (a) The commission [~~or its designee shall develop an intra-agency~~

career ladder program, one part of which shall be the intra-agency posting of all nonentry level positions for at least 10 days before any public posting.

~~[(b) The commission or its designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.~~

~~[(c) The commission] shall prepare and maintain a written policy statement that implements [plan to assure implementation of] a program of equal employment opportunity to ensure that [whereby] all personnel decisions [transactions] are made without regard to race, color, disability, sex, religion, age, or national origin.~~

~~(b) The policy statement must [plan shall] include:~~

~~(1) personnel policies, including policies relating to [plans for] recruitment, evaluation, selection, [appointment,] training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and~~

~~(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.~~

~~(c) The policy statement must:~~

~~(1) be updated annually;~~

~~(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b) of this article; and~~

~~(3) be filed with the governor's office[, and other personnel practices. The plan shall also include steps reasonably designed to overcome any identified under-utilization of minorities and women in the commission's work force and shall include objectives and goals, timetables for achieving those objectives and goals, and assignments of responsibility for their completion. The plan shall be filed with the governor's office within 60 days after the effective date of this section, cover an annual period, and be updated at least annually. Progress reports shall be submitted to the governor's office within 30 days of November 1 and April 1 of each year and shall include the steps the commission has taken within the reporting period to comply with this requirement of this section].~~

Art. 6447c. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined 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) A person may not be an employee of the commission 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 a business or industry regulated by the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas [An employee of the commission may not be an officer, employee, or paid consultant of a] trade association in a business or industry regulated by the commission.

(c) [(b)] A person who is required to register as a lobbyist under Chapter 305, Government Code, may not act as the general counsel to the commission.

(d) [(e)] The commission[; as often as necessary;] shall provide to members of the commission and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's [employees'] responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Art. 6447h. COMPLAINTS. (a) The commission shall maintain a [keep an information] file on [about] each written complaint filed with the commission. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the commission;
- (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

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The [relating to a person who has a license, permit, or certificate of public convenience and necessity from the commission:

[(b) If a written complaint is filed with the commission relating to a person who has a license, permit, or certificate of public convenience and necessity from the] commission, at least [as frequently as] quarterly [and] until final disposition of the complaint, [the commission] shall notify the person filing [parties to] the complaint and each person who is a subject of the complaint of the status of the investigation [complaint] unless the notice would jeopardize an undercover investigation. [This section does not apply to complaints under Chapter 91, Natural Resources Code.]

SECTION 2. Title 112, Revised Statutes, is amended by adding Articles 6447k, 6447l, 6447m, and 6447n to read as follows:

Art. 6447k. SEPARATION OF POLICY-MAKING AND MANAGEMENT RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the members of the commission and the management responsibilities of the staff of the commission.

Art. 6447l. PUBLIC PARTICIPATION. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Art. 6447m. EMPLOYEE INCENTIVE PROGRAM. The commission shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program.

Art. 6447n. METHOD OF MAKING PAYMENTS TO COMMISSION. (a) The commission may authorize payment, as prescribed by the commission, of regulatory fees, fines, penalties, and charges for goods and services by means of an electronic payment method or a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the commission. A payment by the authorized method may be made in person, by telephone, or through the Internet.

(b) The commission may require a person who makes a payment to the commission by means of an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and necessary to reimburse the commission for the costs involved in processing the payment.

(c) The commission may adopt rules as necessary to implement this article.

SECTION 3. Section 81.0521, Natural Resources Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) With each application for an exception to any commission rule contained in Chapter 3 of Part I of Title 16 of the Texas Administrative Code, the applicant shall submit to the commission a fee of \$150 [~~\$50~~].

(c) Two-thirds of the proceeds from this fee, including any penalties collected in connection with the fee, shall be deposited to the oil-field cleanup fund as provided by Section 91.111.

SECTION 4. Subsection (a), Section 81.0522, Natural Resources Code, is amended to read as follows:

(a) With each Natural Gas Policy Act (15 U.S.C. Sections 3301-3432) application, the applicant shall submit to the commission a fee [~~of \$50~~]. The commission shall set the application fee in an amount necessary to cover the cost of the commission's well category determination program but not to exceed \$150.

SECTION 5. Section 81.0531, Natural Resources Code, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

(c) In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. In determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety, the commission shall consider the guidelines adopted under Subsection (d).

(d) The commission by rule shall adopt guidelines to be used in determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the permittee's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the commission considers relevant.

(e) A penalty collected under this section shall be deposited to the credit of the oil-field cleanup fund.

SECTION 6. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.055 and 81.056 to read as follows:

Sec. 81.055. PIPELINE SYSTEM FINANCIAL RESPONSIBILITY REQUIREMENTS. (a) Not later than March 1, 2002, the legislature may:

(1) study the desirability of requiring an owner, operator, or manager of a pipeline system to obtain liability insurance coverage, a bond, or other evidence of financial responsibility in order to protect the public from the costs resulting from a discharge from the pipeline system; and

(2) report its findings to the legislature and make the report available to the public.

(b) If the legislature finds that adoption of such a requirement is desirable, the commission by rule may require an owner, operator, or manager of a pipeline system to obtain evidence of financial responsibility. The rules must specify the appropriate form and amount of that evidence and may require evidence of financial responsibility in different amounts for different pipeline systems, taking into consideration whether the pipeline system:

(1) has a history of discharges or other violations of regulatory requirements; or

(2) is located over a public drinking water supply, a natural resource, or a critical groundwater resource or near a school or populated area.

Sec. 81.056. PIPELINE CONSTRUCTION AND OPERATION PUBLIC NOTIFICATION REQUIREMENTS. (a) This section applies only to a new pipeline system, or the extension of an existing pipeline system, that crosses more than three counties and for which construction began after September 1, 2001.

(b) A pipeline operator must publish notice in a newspaper of general circulation in each county with a population greater than 10,000 that contains part of the proposed route of the pipeline system. The notice shall be published in the form prescribed by the commission and include the location of the beginning and end points of the proposed part of the system and a listing of each state or federal highway that will be crossed by the proposed part of the system. The notice must be published at least thirty days but no more than one year before the start of construction.

(c) Before approving any permit for the operation of a pipeline required by this chapter or the rules adopted under it, the commission must:

(1) certify that at least ninety days but no more than one year before the date the commission approves the permit the person requesting the permit has provided a copy of the application to:

(A) the county judge and commissioners of each county that contains part of the proposed route;

(B) the county fire marshal in each county that contains part of the proposed route, if such office has been established by that county; and

(C) the regional water planning group established by Section 16.053, Water Code, in each regional water planning area that contains part of the proposed route; and

(2) review and consider comments from members of the public regarding the project for which the permit is being requested.

(d) The duty to consider comments under Subsection (c)(2) is not intended to unreasonably delay action on the permit application or to require the commission to consider factors other than those criteria provided by law or commission rule for determining whether to award the permit.

SECTION 7. Subsection (a), Section 81.116, Natural Resources Code, is amended to read as follows:

(a) An oil-field cleanup regulatory fee is imposed on crude petroleum produced in this state in the amount of five-eighths [~~five-sixteenths~~] of one cent on each barrel of 42 standard gallons.

SECTION 8. Subsection (a), Section 81.117, Natural Resources Code, is amended to read as follows:

(a) An oil-field cleanup regulatory fee is imposed on gas initially produced and saved in this state in the amount of one-fifteenth [~~one-thirtieth~~] of one cent for each thousand cubic feet.

SECTION 9. Sections 85.161 and 85.2021, Natural Resources Code, are amended to read as follows:

Sec. 85.161. WELL OWNERS AND OPERATORS CERTIFICATES. The owner or operator of any [~~an oil or gas~~] well subject to the jurisdiction of the commission [~~before connecting with any oil or gas pipeline,~~] shall secure from the commission a certificate showing compliance with the oil or gas conservation laws of the state and conservation rules and orders of the commission.

Sec. 85.2021. DRILLING PERMIT FEE. (a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the commission a nonrefundable fee of:

- (1) \$200 [~~\$100~~] if the total depth of the well is 2,000 feet or less;
- (2) \$225 [~~\$125~~] if the total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;
- (3) \$250 [~~\$150~~] if the total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet;
- (4) \$300 [~~\$200~~] if the total depth of the well is greater than 9,000 feet.

(b) An applicant shall submit an additional nonrefundable fee of \$200 when a Rule 37 spacing or a Rule 38 density exception review is required.

(c) An applicant shall submit an additional nonrefundable fee of \$150 [~~\$50~~] when requesting that the commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

(d) [~~(e)~~] With each application for an extension of time to plug a well pursuant to commission rules, an applicant shall submit to the commission a nonrefundable fee of \$300 [~~\$100~~], unless the applicant has filed a bond, letter of credit, or cash deposit under Section 91.104(b)(1), (2), or (3) [~~under Section 91.1041 or Section 91.1042 of this code~~].

(e) [~~(d)~~] All fees collected under this section shall be deposited in the state oil-field cleanup fund.

SECTION 10. Effective September 1, 2004, Section 85.2021, Natural Resources Code, is amended to read as follows:

Sec. 85.2021. DRILLING PERMIT FEE. (a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the commission a nonrefundable fee of:

- (1) \$200 [~~\$100~~] if the total depth of the well is 2,000 feet or less;
- (2) \$225 [~~\$125~~] if the total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;
- (3) \$250 [~~\$150~~] if the total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet;
- (4) \$300 [~~\$200~~] if the total depth of the well is greater than 9,000 feet.

(b) An applicant shall submit an additional nonrefundable fee of \$200 when a Rule 37 spacing or a Rule 38 density exception review is requested.

(c) An applicant shall submit an additional nonrefundable fee of \$150 [\$50] when requesting that the commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

~~[(c) With each application for an extension of time to plug a well pursuant to commission rules, an applicant shall submit to the commission a nonrefundable fee of \$100, unless the applicant has filed a bond under Section 91.1041 or Section 91.1042 of this code.]~~

(d) All fees collected under this section shall be deposited in the state oil-field cleanup fund.

SECTION 11. Effective September 1, 2004, Subdivision (2), Subsection (a), Section 89.002, Natural Resources Code, is amended to read as follows:

(2) "Operator" means a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves. The commission may not require a person to assume responsibility for a well as a condition to being permitted to assume responsibility for another well. In the event of a sale or conveyance of an unplugged well or the right to operate an unplugged well, a person ceases being the operator for the purpose of Section 89.011 only if the well was in compliance with commission rules relating to safety or the prevention or control of pollution at the time of sale or conveyance and once the person who acquires the well or right to operate the well:

(A) specifically identifies the well as a well for which the person assumes plugging responsibility on forms required and approved by the commission;

(B) has a commission-approved organization report as required by Section 91.142;

(C) has a commission-approved bond, ~~letter of credit, or cash deposit [or other form of financial security]~~ under Sections 91.103-91.107 covering the well; and

(D) places the well in compliance with commission rules.

SECTION 12. Section 89.011, Natural Resources Code, is amended to read as follows:

Sec. 89.011. DUTY OF OPERATOR. (a) The operator of a well shall properly plug the well when required and in accordance with the commission's rules that are in effect at the time of the plugging.

(b) If useable quality water zones are present, the operator shall verify the placement of the plug at the base of the deepest fresh water zone required to be protected. The well is considered to have been properly plugged only when the verification is satisfactory and meets commission requirements.

(c) If, for the use of the surface owner, the operator of the well plugs the well back to produced fresh water, the duty of the operator to properly plug the well ends only when:

(1) the well has been properly plugged in accordance with commission requirements; and

(2) the surface owner has obtained a permit for the well from the groundwater conservation district, if applicable.

(d) Subsections (b) and (c) apply only to wells plugged on or after the effective date of this Act.

(e) The duty of a person to plug an unplugged well that has ceased operation ends only if the person's interest in the well is sold or conveyed while the well is in compliance with rules of the commission relating to safety or the prevention or control of pollution and the provisions of Sections 89.002(a)(2)(A)-(D) have been met. The person acquiring the seller's interest through such a sale or conveyance succeeds the seller as the operator of the well for the purpose of plugging responsibility once the provisions of Sections 89.002(a)(2)(A)-(D) have been met.

SECTION 13. Subsection (c), Section 89.043, Natural Resources Code, is amended to read as follows:

(c) ~~Not later than~~ ~~[On or before]~~ the 30th day before the date the commission enters into a contract to plug a delinquent inactive well, the commission shall send a notice by certified mail to the operator of the well at the address last reported to the commission as required by Section 91.142 and commission rules. The notice shall direct the operator to plug the well and shall state that:

(1) the commission may plug the well and foreclose its statutory lien under Section 89.083 unless the operator requests a hearing not later than the 10th day after the date the operator receives the notice;

(2) if the commission forecloses its statutory lien under Section 89.083 ~~[plugs the well]~~, all well-site equipment will be presumed to have been abandoned and the commission may dispose of the equipment and hydrocarbons from the well as provided by Section 89.085;

(3) if the commission plugs the well, the commission:

(A) by order may require the operator to reimburse the commission for the plugging costs; or

(B) may request the attorney general to file suit against the operator to recover those costs; ~~and~~

(4) the commission has a statutory lien on all well-site equipment under Section 89.083; and

(5) the lien described by Subdivision (4) is foreclosed by operation of law if the commission does not receive a valid and timely request for a hearing before the 15th day after the date the notice is mailed.

SECTION 14. Subsection (c), Section 89.083, Natural Resources Code, is amended to read as follows:

(c) The lien may be foreclosed by judicial action or commission order at any time after notice and an opportunity for a hearing. If notice is mailed under Section 89.043 and if the lien is not previously foreclosed, the lien is foreclosed by operation of law on the 15th day after the date the notice is mailed unless the commission has received a valid and timely request for a hearing before that date. ~~[The commission may foreclose on the lien by entering into a plugging contract.]~~ The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders or nonoperators before foreclosing the lien ~~[entering into a plugging contract]~~.

SECTION 15. Subsections (a), (g), and (h), Section 89.085, Natural Resources Code, are amended to read as follows:

(a) When the commission forecloses its lien under Section 89.083 on ~~[enters into a contract to plug]~~ a delinquent inactive well, well-site equipment and any amount of hydrocarbons from the well that is stored on the lease are presumed to have been abandoned and may be disposed of by the commission in a commercially reasonable manner by either or both of the following methods:

(1) entering into a plugging contract that provides [~~may provide~~] that the person plugging or cleaning up pollution, or both, will take title to well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation in exchange for a sum of money deducted as a credit from the contract price; or

(2) selling the well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation [~~may be sold~~] at a public auction or a public or private sale.

(g) The notice required by Subsection (f) of this section must include [~~shall state~~]:

(1) the lease name;

(2) the well number;

(3) the county in which the well is located;

(4) the abstract number of the property on which the lease is situated;

(5) the commission lease or gas well identification number or drilling permit number;

(6) a list of the property disposed of under this section; and

(7) a statement that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission foreclosed its statutory lien [~~entered into a contract to plug or clean up the well~~] may file a claim with the commission.

(h) Not later than the 180th day after the date the well-site equipment or hydrocarbons are disposed of under this section, the commission shall publish a notice that states:

(1) the lease name;

(2) the well number;

(3) the county in which the well is located;

(4) the commission lease or gas well identification number or drilling permit number; and

(5) that equipment or hydrocarbons if applicable from the well and lease were disposed of under this section and that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission foreclosed its statutory lien [~~entered into a contract to plug or clean up the well~~] may file a claim with the commission.

SECTION 16. Subsections (a) and (c), 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-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 [~~enters into a plugging contract~~].

(c) A claimant must identify the well-site equipment or hydrocarbons in which the claimant has an interest and state the amount of the property interest as of the date the commission foreclosed its statutory lien under Section 89.083 [~~entered into the plugging contract~~].

SECTION 17. Subsections (a) and (b), Section 91.1013, Natural Resources Code, are amended to read as follows:

(a) With each application for a fluid injection well permit, the applicant shall submit to the commission a nonrefundable fee of \$200 [~~\$100~~]. In this section, "fluid

injection well" means any well used to inject fluid or gas into the ground in connection with the exploration or production of oil or gas other than an oil and gas waste disposal well regulated by the commission pursuant to Chapter 27, Water Code.

(b) With each application for a permit to discharge to surface water under this chapter and commission rules, other than a permit for a discharge that meets National Pollutant Discharge Elimination System requirements for agricultural or wildlife use, the applicant shall submit to the commission a nonrefundable fee of \$300 [~~\$200~~].

SECTION 18. Effective September 1, 2004, Section 91.103, Natural Resources Code, is amended to read as follows:

Sec. 91.103. PERSONS REQUIRED TO EXECUTE BOND, LETTER OF CREDIT, OR CASH DEPOSIT [~~OR ALTERNATE FORM OF FINANCIAL SECURITY~~]. Any person, including any firm, partnership, joint stock association, corporation, or other organization, required to file an organization report under Section 91.142 of this code shall execute and file with the commission a bond, letter of credit, or cash deposit [~~or alternate form of financial security~~].

SECTION 19. Subsections (b) and (c), Section 91.104, Natural Resources Code, are amended to read as follows:

(b) A person required to file a bond or alternate form of financial security under Section 91.103 may choose to file:

(1) an individual bond as provided under Section 91.1041;

(2) a blanket bond as provided under Section 91.1042;

(3) a letter of credit or cash deposit in the same amount as required for an individual bond under Section 91.1041 or a blanket bond under Section 91.1042;

(4) a nonrefundable annual fee of \$1,000 [~~\$100~~], if:

(A) the commission determines that individual and blanket bonds as specified by Subdivisions (1) and (2) are not obtainable at reasonable prices; and

(B) the person can demonstrate to the commission an acceptable record of compliance with all commission rules, orders, licenses, permits, or certificates that relate to safety or the prevention or control of pollution for the previous 48 months and the person and, if a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25 percent ownership interest or any trustee:

(i) [(A)] has no outstanding violations of such commission rules, orders, licenses, permits, or certificates;

(ii) [(B)] has paid all administrative, civil, and criminal penalties, if any, relating to any violation of such commission rules, orders, licenses, permits, or certificates; and

(iii) [(C)] has paid all reimbursements of any costs and expenses incurred by the commission in relation to any violation of such commission rules, orders, licenses, permits, or certificates; or

(5) [(4)] a nonrefundable annual fee equal to 12-1/2 [~~three~~] percent of the bond that otherwise would be required[~~;~~ or

[(5) to give a first lien on tangible personal property associated with oil and gas production whose salvage value equals the value of an individual bond under Section 91.1041 or the value of a blanket bond under Section 91.1042 that otherwise would be required].

(c) A person who chooses to file a form of financial security other than a bond, letter of credit, or cash deposit shall also submit a fee of \$300 [~~\$100~~] for each

application to extend the time to plug a well in accordance with Section 85.2021 [~~of this code~~].

SECTION 20. Effective September 1, 2004, Section 91.104, Natural Resources Code, is amended to read as follows:

Sec. 91.104. BONDS, LETTERS OF CREDIT, AND CASH DEPOSITS [~~AND ALTERNATE FORMS OF FINANCIAL SECURITY~~]. (a) The commission shall require a bond, letter of credit, or cash deposit [~~or an alternate form of financial security~~] to be filed with the commission as provided by Subsection (b) of this section.

(b) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who is an inactive operator or who operates one or more wells and is not involved in any other activities that require the filing of a bond, letter of credit, or cash deposit must, at the time of filing or renewing an organization report required by Section 91.142, [~~may choose to~~] file:

(1) an individual bond as provided under Section 91.1041;

(2) a blanket bond as provided under Section 91.1042; or

(3) a letter of credit or cash deposit in the same amount as required for an individual bond under Section 91.1041 or a blanket bond under Section 91.1042 [~~nonrefundable annual fee of \$100, if the person can demonstrate to the commission an acceptable record of compliance with all commission rules, orders, licenses, permits, or certificates that relate to safety or the prevention or control of pollution for the previous 48 months and the person and, if a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25 percent ownership interest or any trustee:~~

~~[(A) has no outstanding violations of such commission rules, orders, licenses, permits, or certificates;~~

~~[(B) has paid all administrative, civil, and criminal penalties, if any, relating to any violation of such commission rules, orders, licenses, permits, or certificates; and~~

~~[(C) has paid all reimbursements of any costs and expenses incurred by the commission in relation to any violation of such commission rules, orders, licenses, permits, or certificates;~~

~~[(4) a nonrefundable annual fee equal to three percent of the bond that otherwise would be required; or~~

~~[(5) to give a first lien on tangible personal property associated with oil and gas production whose salvage value equals the value of an individual bond under Section 91.1041 or the value of a blanket bond under Section 91.1042 that otherwise would be required].~~

~~[(c) A person who chooses to file a form of financial security other than a bond shall also submit a fee of \$100 for each application to extend the time to plug a well in accordance with Section 85.2021 of this code.]~~

SECTION 21. Section 91.1041, Natural Resources Code, is amended to read as follows:

Sec. 91.1041. INDIVIDUAL BOND. (a) A person required to file a bond or alternate form of financial security under Section 91.103 who operates one or more wells may file a bond in an amount equal to \$2 for each foot of well depth for each well.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of one or more bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a).

SECTION 22. Effective September 1, 2004, Section 91.1041, Natural Resources Code, is amended to read as follows:

Sec. 91.1041. INDIVIDUAL BOND. (a) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who operates one or more wells may file a bond in an amount equal to \$2 for each foot of well depth for each well.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of one or more bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a).

SECTION 23. Section 91.1042, Natural Resources Code, is amended to read as follows:

Sec. 91.1042. BLANKET BOND. (a) A person required to file a bond or alternate form of financial security under Section 91.103 may file a blanket bond to cover all wells and operations for which a bond or alternate form of financial security is required as follows:

(1) a person who operates 10 or fewer wells or performs other operations shall file a \$25,000 blanket bond;

(2) a person who operates more than 10 but fewer than 100 wells shall file a \$50,000 blanket bond; and

(3) a person who operates 100 or more wells shall file a \$250,000 blanket bond.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a)(1), (2), or (3), as applicable.

SECTION 24. Effective September 1, 2004, Section 91.1042, Natural Resources Code, is amended to read as follows:

Sec. 91.1042. BLANKET BOND. (a) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 may file a blanket bond to cover all wells [and operations] for which a bond, letter of credit, or cash deposit is required as follows:

(1) a person who operates 10 or fewer wells [or performs other operations] shall file a \$25,000 blanket bond;

(2) a person who operates more than 10 but fewer than 100 wells shall file a \$50,000 blanket bond; and

(3) a person who operates 100 or more wells shall file a \$250,000 blanket bond.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a)(1), (2), or (3), as applicable.

SECTION 25. Effective immediately, Section 91.107, Natural Resources Code, is amended to read as follows:

Sec. 91.107. NEW BOND [~~OR ALTERNATE FORM OF FINANCIAL SECURITY~~]. Notwithstanding Section 91.104, if an active or inactive [H-a] well [covered by a bond or alternate form of financial security] is transferred, sold, or assigned by its operator, the commission shall require the party acquiring the well to file a new bond [or alternate form of financial security] as provided by Section 91.104(b)(1) or (2) [this subchapter], and the [bond or alternate form of] financial security of the prior operator shall continue to be required and to remain in effect, and the commission may not approve the transfer of operatorship, until the new

bond [~~or alternate form of financial security~~] is provided or the commission determines that the bond [financial security] previously submitted to the commission by the person acquiring the well complies with this subchapter. A transfer of a well from one entity to another entity under common ownership is a transfer for purposes of this section.

SECTION 26. Effective September 1, 2001, Section 91.107, Natural Resources Code, is amended to read as follows:

Sec. 91.107. NEW BOND, LETTER OF CREDIT, OR CASH DEPOSIT [OR ALTERNATE FORM OF FINANCIAL SECURITY]. Notwithstanding Section 91.104, if an active or inactive [If a] well [covered by a bond or alternate form of financial security] is transferred, sold, or assigned by its operator, the commission shall require the party acquiring the well to file a new bond, letter of credit, or cash deposit [or alternate form of financial security] as provided by Section 91.104(b)(1), (2), or (3) [this subchapter], and the [bond or alternate form of] financial security of the prior operator shall continue to be required and to remain in effect, and the commission may not approve the transfer of operationship, until the new bond, letter of credit, or cash deposit [or alternate form of financial security] is provided or the commission determines that the bond, letter of credit, or cash deposit [financial security] previously submitted to the commission by the person acquiring the well complies with this subchapter. A transfer of a well from one entity to another entity under common ownership is a transfer for purposes of this section.

SECTION 27. Effective September 1, 2004, Section 91.107, Natural Resources Code, is amended to read as follows:

Sec. 91.107. NEW BOND, LETTER OF CREDIT, OR CASH DEPOSIT [OR ALTERNATE FORM OF FINANCIAL SECURITY]. If an active or inactive [a] well [covered by a bond or alternate form of financial security] is transferred, sold, or assigned by its operator, the commission shall require the party acquiring the well to file a new bond, letter of credit, or cash deposit [or alternate form of financial security] as provided by Section 91.104(b) [this subchapter], and the [bond or alternate form of] financial security of the prior operator shall continue to be required and to remain in effect, and the commission may not approve the transfer of operatorship, until the new bond, letter of credit, or cash deposit [or alternate form of financial security] is provided or the commission determines that the bond, letter of credit, or cash deposit [financial security] previously submitted to the commission by the person acquiring the well complies with this subchapter. A transfer of a well from one entity to another entity under common ownership is a transfer for purposes of this section.

SECTION 28. 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 [of this code], proceeds from bonds and other financial security required pursuant to this chapter shall be deposited in the oil-field cleanup fund and, notwithstanding Sections 91.112 and 91.113, may be used only for actual well plugging and surface remediation.

SECTION 29. Effective September 1, 2004, Section 91.109, Natural Resources Code, is amended to read as follows:

Sec. 91.109. FINANCIAL SECURITY FOR PERSONS INVOLVED IN ACTIVITIES OTHER THAN OPERATION OF WELLS [DISPOSAL SITE BOND].  
(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-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.

(b) In addition to the financial security requirements of Subsection (a) and Section 91.104(b), a person required to file a bond, letter of credit, or cash deposit under Section 91.103 who is involved in activities other than the operation of wells must file the bond, letter of credit, or cash deposit at the time of filing or renewing an organization report required by Section 91.142 in an amount equal to:

(1) \$250,000; or

(2) a lesser amount determined by the commission if the person is able to demonstrate that the risk associated with an operation or group of operations warrants a lesser amount.

SECTION 30. Section 91.111, Natural Resources Code, is amended by amending Subsections (b) and (c) and adding Subsection (e) to read as follows:

(b) The commission shall certify to the comptroller the date on which the balance in the fund equals or exceeds \$20 [~~\$10~~] 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 [~~\$6~~] 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) penalties imposed under Section 85.381 for violation of a law, order, or rule relating to well plugging requirements;

(2) proceeds from bonds and other financial assurances required by this chapter, subject to the refund provisions of Section 91.1091;

(3) private contributions, including contributions made under Section 89.084;

(4) expenses collected under Section 89.083;

(5) fees imposed under Section 85.2021;

(6) civil penalties collected for violations of Chapter 89 or of rules or orders relating to plugging that are adopted under this code;

(7) proceeds collected under Sections 89.085 and 91.115;

(8) interest earned on the funds deposited in the fund;

(9) fees collected under Section 91.104;

(10) civil penalties or costs recovered under Section 91.457 or 91.459;

(11) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;

- (12) costs recovered under Section 91.113(f);
- (13) hazardous oil and gas waste generation fees collected under Section 91.605;
- (14) oil-field cleanup regulatory fees on oil collected under Section 81.116;
- (15) oil-field cleanup regulatory fees on gas collected under Section 81.117;
- (16) fees for a reissued certificate collected under Section 85.167;
- (17) fees collected under Section 91.1013;
- (18) fees collected under Section 89.088;
- (19) penalties collected under Section 81.0531; [~~and~~]
- (20) fees collected under Section 91.142;
- (21) fees collected under Section 91.654;
- (22) costs recovered under Sections 91.656 and 91.657;
- (23) two-thirds of the fees collected under Section 81.0521; and
- (24) legislative appropriations.

(e) The commission, through the legislative appropriations request process, shall establish specific performance goals for the oil-field cleanup fund for the next biennium, including goals for the number of:

- (1) site investigations and environmental assessments to be conducted;
- (2) abandoned wells to be plugged; and
- (3) surface locations to be remediated.

SECTION 31. Section 91.112, Natural Resources Code, is amended to read as follows:

Sec. 91.112. PURPOSE OF THE FUND. (a) Money in the fund may be used by the commission or its employees or agents for:

(1) conducting a site investigation or environmental assessment to determine:

(A) the nature and extent of contamination caused by oil and gas wastes or other substances or materials regulated by the commission under Section 91.101; and

(B) the measures that should be taken to control or clean up the wastes, substances, or materials described in Paragraph (A);

(2) controlling or cleaning up oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 that are causing or are likely to cause the pollution of surface or subsurface water, consistent with Section 91.113;

(3) plugging abandoned wells and administering or enforcing permits, orders, and rules relating to the commission's authority to prevent pollution under this chapter, Chapter 89, or any other law administered or enforced by the commission under Title 3;

(4) implementing Subchapter N and enforcing rules, orders, and permits adopted or issued under that subchapter; [~~and~~]

(5) implementing the voluntary cleanup program under Subchapter O; and

(6) preparing the report required under Subsection (b).

(b) 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 91.111 has enabled the commission to better protect the environment and enhance the income of the oil-field cleanup fund. The report shall include:

- (1) the number of wells plugged, by region;
- (2) the number of wells abandoned, by region;

(3) the number of inactive wells not currently in compliance with commission rules, by region;

(4) the status of enforcement proceedings for all wells in violation of commission rules and the time period during which the wells have been in violation, by region in which the wells are located;

(5) the number of surface locations remediated, by region;

(6) a detailed accounting of expenditures of money in the fund, including expenditures for site investigations and environmental assessments, plugging of abandoned wells, remediation of surface locations, and staff salaries and other administrative expenses;

(7) the method by which the commission sets priorities by which it determines the order in which abandoned wells are plugged;

(8) [~~(6)~~] a projection of the amount of money needed for the next biennium for conducting site investigations and environmental assessments, plugging abandoned wells, and remediating surface locations; [~~and~~]

(9) [~~(7)~~] the status of implementation of the provisions of Section 89.085 relating to possession and sale of equipment to recover plugging costs; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O, by region.

SECTION 32. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Sections 91.1131, 91.1132, and 91.1135 to read as follows:

Sec. 91.1131. RISK ASSESSMENT STANDARDS. (a) The commission by rule may establish risk assessment as the guide for:

(1) conducting site investigations and environmental assessments; and

(2) controlling and cleaning up oil and gas wastes and other substances and materials.

(b) Rules adopted under this section must provide for:

(1) determining whether an actual or potential risk exists at a site;

(2) screening contaminants at the site to identify those that pose a risk;

(3) developing cleanup standards based on contamination levels that are protective of human health and the environment; and

(4) establishing a reporting mechanism for informing the commission regarding specific remediation activities.

Sec. 91.1132. PRIORITIZATION OF HIGH-RISK WELLS. The commission by rule shall develop a system for:

(1) identifying abandoned wells that pose a high risk of contaminating surface water or groundwater;

(2) periodically testing high-risk wells by conducting a fluid level test or, if necessary, a pressure test; and

(3) giving priority to plugging high-risk wells with compromised casings.

Sec. 91.1135. OIL-FIELD CLEANUP FUND ADVISORY COMMITTEE. (a) In this section, "committee" means the Oil-Field Cleanup Fund Advisory Committee.

(b) The committee is composed of 10 members as follows:

(1) the presiding officer of the senate committee with primary jurisdiction over matters affecting natural resources;

(2) the presiding officer of the house committee with primary jurisdiction over matters affecting energy resources;

- (3) one public member appointed by the governor;
- (4) one member appointed by the lieutenant governor from the academic field of geology or economics;
- (5) one member appointed by the speaker of the house of representatives from the academic field of geology or economics; and
- (6) the executive officer, or a person designated by the executive officer, of each of the following organizations:
  - (A) the Texas Oil and Gas Association;
  - (B) the Texas Independent Producers and Royalty Owners Association;
  - (C) the Panhandle Producers and Royalty Owners Association;
  - (D) the Permian Basin Petroleum Association; and
  - (E) the Alliance of Energy Producers.
- (c) An appointed member of the committee serves at the will of the authority that appointed the member.
- (d) The committee shall:
  - (1) meet at least quarterly with the commission;
  - (2) receive information about rules proposed by the commission relating to the oil-field cleanup fund;
  - (3) review recommendations for legislation proposed by the commission; and
  - (4) monitor the effectiveness of the oil-field cleanup fund.
- (e) The commission shall provide quarterly reports to the committee and the Legislative Budget Board that include:
  - (1) the following information with respect to the period since the last report was provided as well as cumulatively:
    - (A) the amount of money deposited in the oil-field cleanup fund;
    - (B) the amount of money spent from the fund;
    - (C) the balance of the fund;
    - (D) the number of wells plugged with money from the fund;
    - (E) the number of sites remediated with money from the fund; and
    - (F) the number of wells abandoned; and
  - (2) any additional information or data requested in writing by the committee.
- (f) The committee may:
  - (1) submit to the commission comments of the committee regarding proposed rules relating to the oil-field cleanup fund; and
  - (2) request reports and other information from the commission as necessary to implement this section.
- (g) Not later than November 15 of each even-numbered year, the committee shall report to the governor, lieutenant governor, and speaker of the house of representatives on the committee's activities. The report must include:
  - (1) an analysis of any problems with the administration of the oil-field cleanup fund; and
  - (2) recommendations for any legislation needed to address any problems identified with the administration of the fund or otherwise needed to further the purposes of the fund.

SECTION 33. Section 91.142, Natural Resources Code, is amended by adding Subsection (g) to read as follows:

(g) An organization report filed under this section must be accompanied by the following fee:

(1) for an operator of not more than 25 wells, \$300;

(2) for an operator of more than 25 but not more than 100 wells, \$500;

(3) for an operator of more than 100 wells, \$1,000;

(4) for an operator of one or more natural gas pipelines as classified by the commission, \$100;

(5) for an operator of one or more service activities or facilities, including liquids pipelines as classified by the commission, who does not operate any wells, an amount determined by the commission but not less than \$300 or more than \$500;

(6) for an operator of one or more service activities or facilities, including liquids pipelines as classified by the commission, who also operates one or more wells, an amount determined by the commission based on the sum of the amounts provided by the applicable subdivisions of this subsection but not less than \$300 or more than \$1,000; and

(7) for an entity not currently performing operations under the jurisdiction of the commission, \$300.

SECTION 34. Chapter 91, Natural Resources Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. RAILROAD COMMISSION  
VOLUNTARY CLEANUP PROGRAM

Sec. 91.651. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes a waste, pollutant, or substance regulated by, or that results from an activity under the jurisdiction of, the commission under this chapter, Chapter 141 of this code, or Chapter 27, Water Code.

(2) "Environmental assessment" means the assessment described by Section 91.654.

(3) "Response action" means the cleanup or removal of a contaminant from the environment.

(4) "Voluntary cleanup" means a response action taken under and in compliance with this subchapter.

Sec. 91.652. PURPOSE. The purpose of the voluntary cleanup program is to provide an incentive to remediate property by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to contamination released at the site covered by the certificate. The program does not replace other voluntary actions and is restricted to voluntary actions.

Sec. 91.653. ELIGIBILITY FOR VOLUNTARY CLEANUP PROGRAM. (a) Any site that is contaminated with a contaminant is eligible for participation in the voluntary cleanup program except the portion of a site that may be subject to a commission order.

(b) A person electing to participate in the voluntary cleanup program must:

(1) enter into a voluntary cleanup agreement as provided by Section 91.656; and

(2) pay all costs of commission oversight of the voluntary cleanup.

Sec. 91.654. APPLICATION TO PARTICIPATE IN VOLUNTARY CLEANUP PROGRAM. (a) A person who desires to participate in the voluntary cleanup program under this subchapter must submit to the commission an application and an application fee as prescribed by this section.

- (b) An application submitted under this section must:
- (1) be on a form provided by the commission;
  - (2) contain:
    - (A) general information concerning:
      - (i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup;
      - (ii) the site; and
      - (iii) the name, address, and telephone number of all surface and mineral owners;
    - (B) other background information requested by the commission;
    - (C) an environmental assessment of the actual or threatened release of the contaminant at the site; and
    - (D) if the person applying is not the surface owner, written authorization from the surface owner agreeing to the applicant's participation in the program;
  - (3) be accompanied by an application fee of \$1,000; and
  - (4) be submitted according to schedules set by the commission.
- (c) The environmental assessment required by Subsection (b) must include:
- (1) a legal description of the site;
  - (2) a description of the physical characteristics of the site;
  - (3) the operational history of the site to the extent that history is known by the applicant;
  - (4) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, or wherever the contamination came to be located; and
  - (5) relevant information of which the applicant is aware concerning the potential for human exposure to contamination at the site.
- (d) An application shall be processed in the order in which it is received.
- (e) Fees collected under this section shall be deposited to the credit of the oil-field cleanup fund under Section 91.111.
- Sec. 91.655. REJECTION OF APPLICATION. (a) The commission may reject an application submitted under Section 91.654 if:
- (1) a state or federal enforcement action is pending that concerns the remediation of the contaminant described in the application;
  - (2) a federal grant requires an enforcement action at the site;
  - (3) the application is incomplete or inaccurate; or
  - (4) the site is ineligible under Section 91.653.
- (b) If an application is rejected because it is incomplete or inaccurate, the commission, not later than the 45th day after receipt of the application, shall provide the person with a list of all information needed to make the application complete or accurate. A person may resubmit an application once without submitting an additional application fee if the person resubmits the application not later than the 45th day after the date the commission issues notice that the application has been rejected.
- (c) If the commission rejects the application, the commission shall:
- (1) notify the person that the application has been rejected;
  - (2) explain the reasons for rejection of the application; and
  - (3) inform the person that the commission will refund half the person's application fee unless the person indicates a desire to resubmit the application.

Sec. 91.656. VOLUNTARY CLEANUP AGREEMENT. (a) Before the commission evaluates any plan or report detailing the remediation goals and proposed methods of remediation, the person desiring to participate in the voluntary cleanup program must enter into a voluntary cleanup agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans.

(b) A voluntary cleanup agreement must provide for:

(1) recovery by the commission of all reasonable costs:

(A) incurred by the commission in review and oversight of the person's work plan and reports and as a result of the commission's field activities;

(B) attributable to the voluntary cleanup agreement; and

(C) in excess of the amount of fees submitted by the applicant under Section 91.654;

(2) a schedule of payments to the commission to be made by the person for recovery of all commission costs fairly attributable to the voluntary cleanup program, including direct and indirect costs of overhead, salaries, equipment, and utilities, and legal, management, and support costs; and

(3) appropriate tasks, deliverables, and schedules.

(c) The voluntary cleanup agreement shall:

(1) identify all statutes and rules with which the person must comply;

(2) describe any work plan or report to be submitted for review by the commission, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(3) include a schedule for submitting the information required by Subdivision (2); and

(4) state the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved.

(d) If an agreement is not reached between a person desiring to participate in the voluntary cleanup program and the commission on or before the 30th day after good faith negotiations have begun:

(1) the person or the commission may withdraw from the negotiations; and

(2) the commission retains the person's application fee.

(e) The commission may not initiate an enforcement action against a person who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for activity that resulted in the contamination or release.

Sec. 91.657. TERMINATION OF AGREEMENT; COST RECOVERY. (a) The commission or the person in its sole discretion may terminate the agreement by giving 15 days' advance written notice to the other. Only those costs incurred or obligated by the commission before notice of termination of the agreement are recoverable under the agreement if the agreement is terminated.

(b) Termination of the agreement does not affect any right the commission has under other law to recover costs.

(c) If the person does not pay to the commission the state's costs associated with the voluntary cleanup before the 31st day after the date the person receives notice that the costs are due and owing, the attorney general, at the request of the commission, shall bring an action in the name of the state in Travis County to recover the amount owed and reasonable legal expenses, including attorney's fees, witness costs, court costs, and deposition costs.

Sec. 91.658. VOLUNTARY CLEANUP WORK PLANS AND REPORTS. (a) After signing a voluntary cleanup agreement, the person shall prepare and submit the appropriate work plans and reports to the commission.

(b) The commission shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The commission may approve a voluntary cleanup work plan or report or, if a work plan or report is not approved, notify the person concerning additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the commission may request the person to submit additional or corrected information.

(d) After considering future land use, the commission may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be removed or remedied under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases, or threatened releases.

Sec. 91.659. CERTIFICATE OF COMPLETION. (a) If the commission determines that a person has successfully completed a voluntary cleanup approved under this subchapter, the commission shall certify that the action has been completed by issuing the person a certificate of completion.

(b) The certificate of completion must:

(1) acknowledge the protection from liability provided by Section 91.660;

(2) indicate the proposed future land use; and

(3) include a legal description of the site and the name of the site's surface and mineral owner and mineral operator at the time the application to participate in the voluntary cleanup program was filed.

(c) If the commission determines that the person has not successfully completed a voluntary cleanup approved under this subchapter, the commission shall notify of this determination the person who undertook the voluntary cleanup and the current surface and mineral owner and mineral operator of the site that is the subject of the cleanup.

Sec. 91.660. PERSONS RELEASED FROM LIABILITY. (a) A person who is not a responsible person under Section 91.113 at the time the person applies to perform a voluntary cleanup:

(1) does not become a responsible person solely because the person signs the application; and

(2) is released, on certification under Section 91.659, from all liability to the state for cleanup of areas of the site covered by the certification, except for releases and consequences that the person causes.

(b) A person who is not a responsible person under Section 91.113 at the time the commission issues a certificate of completion under Section 91.659 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(c) The release from liability provided by this section does not apply to a person who:

(1) caused or contributed to the contamination at the site covered by the certificate;

(2) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(3) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired in a manner provided by Subdivision (2); or

(4) changes land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Sec. 91.661. PERMIT NOT REQUIRED. (a) A state or local permit is not required for removal or remedial action conducted on a site as part of a voluntary cleanup under this subchapter. A person shall coordinate a voluntary cleanup with ongoing federal and state waste programs.

(b) The commission by rule shall require that the person conducting the voluntary cleanup comply with any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be subject if a permit were required.

SECTION 35. Sections 113.011, 113.014, 113.015, 113.0511, and 113.082, Natural Resources Code, are amended to read as follows:

Sec. 113.011. REGULATION OF LIQUEFIED PETROLEUM GAS ACTIVITIES. The commission shall administer and enforce the laws of this state and the rules and standards of the commission relating to liquefied petroleum gas ~~[DIVISION. There is created and organized a separate and distinct division of the commission known as the liquefied petroleum gas division or the LPG division].~~

Sec. 113.014. EMPLOYEES. Sufficient employees shall be provided ~~[to the LPG division]~~ for the enforcement of this chapter.

Sec. 113.015. FUNDS FOR FINANCING REGULATION OF LPG ACTIVITIES ~~[DIVISION].~~ The commission shall look only to the revenue derived from the operation of this chapter and appropriated by the legislature for expenses of regulating ~~[conducting the]~~ liquefied petroleum gas activities ~~[division]~~ and administering this chapter. ~~[The LPG examination fund is established in the state treasury to be used to pay the costs of training, including examinations, seminars, and continuing education programs, administered or sponsored by the commission pursuant to Sections 113.087 and 113.088 of this code. All fees collected pursuant to Sections 113.088 and 113.090(c) of this code relating to training or registration for qualification to perform LPG-related activities shall be credited to this fund. There is hereby appropriated from the fund to the commission all such fees collected.]~~

Sec. 113.0511. LIMITATIONS ON RULEMAKING AUTHORITY. (a) The commission may not adopt rules restricting advertising or competitive bidding ~~[or advertising]~~ by a licensee ~~[person regulated by the commission]~~ except to prohibit false, misleading, or deceptive practices ~~[by the person].~~

(b) In its ~~[The commission may not include in any]~~ rules to prohibit false, misleading, or deceptive practices, the commission may not include ~~[by a person regulated by the commission]~~ a rule that:

(1) restricts the ~~[person's]~~ use of any medium for advertising;

(2) restricts the use of a licensee's ~~[person's]~~ personal appearance or ~~[use of his]~~ voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee ~~[person]; or~~

(4) restricts the licensee's ~~[person's]~~ advertisement under a trade name.

Sec. 113.082. CATEGORIES OF LPG ACTIVITIES [~~LICENSEE~~]; FEES. (a) A prospective licensee in LPG may apply to the commission [~~LPG division~~] for a license to engage in any one or more of the following categories of LPG activities:

(1) [~~A~~] container manufacturers/fabricators: the manufacture, fabrication, assembly, repair, installation, subframing, testing, and sale of LPG containers, including LPG motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems[; ~~and the category "A" application and original license fee is an amount not to exceed \$1,000 as determined by the commission; the annual renewal license fee is an amount not to exceed \$600 as determined by the commission~~];

(2) [~~B~~] transport outfitters: the subframing, testing, and sale of LPG transport containers, the testing of LPG storage containers, the installation, testing, and sale of LPG motor or mobile fuel containers and systems, and the installation and repair of transport systems, and motor or mobile fuel systems[; ~~the category "B" application and original license fee is an amount not to exceed \$400 as determined by the commission; the annual renewal license fee is an amount not to exceed \$200 as determined by the commission~~];

(3) [~~C~~] carriers: the transportation of LPG by transport, including the loading and unloading of LPG, and the installation and repair of transport systems[; ~~the category "C" application and original license fee is an amount not to exceed \$1,000 as determined by the commission; the annual renewal license fee is an amount not to exceed \$300 as determined by the commission~~];

(4) [~~D~~] general installers and repairmen: the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, excluding recreational vehicle appliances and LPG systems, excluding motor fuel and recreational vehicle systems[; ~~the category "D" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$70 as determined by the commission~~];

(5) [~~E~~] retail and wholesale dealers: the storage, sale, transportation, and distribution of LPG at retail and wholesale, and all other activities included in this section except the manufacture, fabrication, assembly, repair, subframing, and testing of LPG containers, and except the sale and installation of LPG motor or mobile fuel systems that have an engine with a rating of more than 25 horsepower[; ~~the category "E" application and original license fee is an amount not to exceed \$750 as determined by the commission; the annual renewal license fee is an amount not to exceed \$300 as determined by the commission~~];

(6) [~~F~~] cylinder filling: the operation of a cylinder-filling facility, including cylinder filling, the sale of LPG in cylinders, and the replacement of a cylinder valve[; ~~the category "F" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$50 as determined by the commission~~];

(7) [~~G~~] service station: the operation of an LPG service station filling ASME containers designed for motor and mobile fuel[; ~~the category "G" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$50 as determined by the commission~~];

(8) [~~H~~] cylinder dealers: the transportation and sale of LPG in cylinders[; the category "H" application and original license fee is an amount not to exceed \$1,000 as determined by the commission; the annual renewal license fee is an amount not to exceed \$300 as determined by the commission];

(9) [~~F~~] service station and cylinder filling: any service station and cylinder activity set out in Subdivisions (6) and (7) [~~categories "F" and "G" of this section; the category "F" application and original license fee is an amount not to exceed \$150 as determined by the commission; the annual renewal license fee is an amount not to exceed \$70 as determined by the commission];~~

(10) [~~G~~] service station and cylinder facilities: the operation of a cylinder-filling facility, including cylinder filling and the sale, transportation, installation, and connection of LPG in cylinders, the replacement of cylinder valves, and the operation of an LPG service station as set out in Subdivision (7) [~~category "G"; the category "J" application and original license fee is an amount not to exceed \$1,000 as determined by the commission; the annual renewal license fee is an amount not to exceed \$300 as determined by the commission];~~

(11) [~~K~~] distribution system: the sale and distribution of LPG through mains or pipes and the installation and repair of LPG systems[; ~~the category "K" application and original license fee is an amount not to exceed \$1,000 as determined by the commission; the annual renewal license fee is an amount not to exceed \$300 as determined by the commission];~~

(12) [~~L~~] engine fuel: the sale and installation of LPG motor or mobile fuel containers, and the sale and installation of LPG motor or mobile fuel systems[; ~~the category "L" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$50 as determined by the commission];~~

(13) [~~M~~] recreational vehicle installers and repairmen: the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LPG systems, including recreational vehicle motor or mobile fuel systems and containers[; ~~the category "M" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$70 as determined by the commission];~~

(14) [~~N~~] manufactured housing installers and repairmen: the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing[; ~~the category "N" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$70 as determined by the commission];~~

(15) [~~O~~] testing laboratory: the testing of an LP-gas container, LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the container or systems for LP-gas service, including the necessary installation, disconnection, reconnecting, testing, and repair of LPG motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers; [~~the category "O" application and original license fee is an amount not to exceed \$400 as determined by the commission; the annual renewal license fee is an amount not to exceed \$100 as determined by the commission;] or~~

(16) ~~(P)~~ portable cylinder exchange: the operation of a portable cylinder exchange service, where the sale of LP-gas is within a portable cylinder with an LP-gas capacity not to exceed 21 pounds; the portable cylinders are not filled on site, and no other LP-gas activity requiring a license is conducted~~;~~ ~~the category "P" application and original license fee is an amount not to exceed \$100 as determined by the commission; the annual renewal license fee is an amount not to exceed \$50 as determined by the commission].~~

(b) The commission by rule shall establish reasonable application and original license fees and renewal fees for each type of license listed in this section.

SECTION 36. Subsections (b) and (c), Section 113.084, Natural Resources Code, are amended to read as follows:

(b) A prospective licensee shall submit the required application together with the original nonrefundable license fee established by the commission under [required by] Section 113.082 ~~[of this code]~~ for each type of license [category] for which an an [a license] application is made. The applicant shall submit additional information and data with each application as the commission may reasonably require.

(c) A licensee shall submit the nonrefundable renewal fee for each type of [category for which] license ~~[is]~~ sought along with information and data the commission may reasonably require.

SECTION 37. Section 113.087, Natural Resources Code, is amended by amending Subsections (b), (c), and (i) through (m) and adding Subsections (n) and (o) to read as follows:

(b) Before license issuance, the commission shall require the individual designated as the licensee's representative to the commission to provide good and sufficient proof through examination prepared and administered by the commission of working knowledge of this chapter and rules of the commission which affect the type [category] of license for which application is made. Thereafter, each licensee shall maintain a qualified representative at all times.

(c) Each individual who will be actively supervising those operations requiring any license under this chapter at any outlet or location, as designated by the commission, shall be required to provide good and sufficient proof through examination prepared and administered by the commission that the supervisor has a working knowledge of the safety requirements and penalties in this chapter and the rules of the commission which apply to that type [category] of license.

(i) Not later than the 30th day after the date a person takes a licensing [on which an] examination ~~[is administered]~~ under this chapter [section], the commission shall notify the person [each examinee] of the results of the examination.

(j) If the examination is graded or reviewed by a testing service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person [examinee] of the reason for the delay before the 90th day.

(k) The commission may require a testing service to notify a person of the results of the person's examination.

(l) ~~(f)~~ If requested in writing by a person who fails a [the] licensing examination administered under this chapter [section], the commission shall furnish the person with an analysis of the person's performance on the examination.

(m) [(k)] The commission, by appropriate rule, shall [may] require, in addition to examination requirements as set out in Subsections (b), (c), and (d) of this section:

(1) an examination for technical competence that is validated by a recognized educational testing organization or similar organization; or

(2) attendance at approved academic, trade, professional, or commission-sponsored seminars, other continuing education programs, and periodic reexaminations.

(n) [(t)] Prior to qualifying an individual to perform LP-gas work, the commission may establish by rule an initial course of instruction for any person who has not yet passed the [category of] examination for the LPG activity for which the person seeks qualification; for any person who has not maintained qualified status, as defined by rule; and for any person whose certification has been revoked pursuant to Subchapter F of this code. If an initial course of instruction is established by the commission, it shall be available at least once every 180 [90] days.

(o) [(m)] The commission by rule may exempt from any provision of this section:

(1) a journeyman or master plumber licensed by the Texas State Board of Plumbing Examiners;

(2) a person licensed under the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes); or

(3) company representatives, operations supervisors, or employees of a testing laboratory that was registered under Section 113.135 prior to the effective date of this subsection.

SECTION 38. Subsections (a) and (c), Section 113.089, Natural Resources Code, are amended to read as follows:

(a) If application is made for a license under [category "E" of] Section 113.082(a)(5) [~~113.082 of this code~~] or for any other type of license [category] specified by commission rule, the commission, in addition to other requirements, shall have an actual inspection conducted of any and all facilities, bulk storage equipment, transportation equipment, and dispensing equipment of the applicant to verify satisfactory compliance with all current safety laws, rules, and practices. The inspection may be waived by the commission on an application resulting solely from a change in legal entities under which a current licensee operates.

(c) A [category "E"] license under Section 113.082(a)(5) and any other type of license specified by commission rule shall not be issued until the inspection under Subsection (a) of this section verifies the applicant to be in satisfactory compliance with all current safety laws, rules, and practices.

SECTION 39. Subsections (a) and (b), Section 113.090, Natural Resources Code, are amended to read as follows:

(a) The commission by rule may establish reasonable fees for the review of site applications [~~examination of plans and specifications~~] related to the installation of containers when site applications [~~plans and specifications~~] are reviewed by the commission before such installation is placed into LP-gas service.

(b) The commission by rule may establish reasonable fees for recording the location of containers at public buildings and commercial installations when prior approval of site applications [~~plans and specifications~~] is not required.

SECTION 40. Subsections (b), (c), and (d), Section 113.091, Natural Resources Code, are amended to read as follows:

(b) Within 30 days of the notice of denial, an applicant for license under this chapter who is denied a license may request a hearing to determine whether or not the applicant has complied in all respects with the licensing procedure applicable to each type [the category or categories] of license sought. The applicant's request for hearing must be in writing and delivered to the commission [director of the LP-gas division].

(c) A hearing to determine an applicant's compliance with the licensing procedure applicable to each type [the category or categories] of license sought must be scheduled within 30 days following receipt of a request under Subsection (b) of this section.

(d) If the record made at the hearing supports the applicant's claim, the commission shall enter an order in its records to that effect, noting each type of license to [the category or categories for] which the applicant is found entitled [to be licensed], and the commission shall have the license or licenses issued. If the applicant is found unqualified, the commission shall likewise enter an order in its records to that effect, and no license may be issued to the applicant.

SECTION 41. Section 113.093, Natural Resources Code, is amended to read as follows:

Sec. 113.093. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required [issued pursuant to this chapter is renewable on the timely payment or tender of the] renewal [license] fee to the commission before the expiration date of the license [each year]. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose [If a person's] license has been expired for [not longer than] 90 days or less[-, the person] may renew the license by paying to the commission a [the required] renewal fee that is equal to 1-1/2 times the normally required [and a fee that is one-half of the amount of the] renewal fee [for the license].

(c) A person whose [If a person's] license has been expired for more [longer] than 90 days but less than one year [two years, the person] may renew the license by paying to the commission a [all unpaid] renewal [fees and a] fee that is equal to two times the normally required [the amount of the unpaid] renewal fee [fees for the license].

(d) A person whose [If a person's] license has been expired for one year [two years] or more [longer, the person] may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the commission shall send written notice of the impending expiration to the person at the person's last known address according to the records of the commission.

(g) A renewal license will be issued to a licensee as soon as is practicable after compliance with this section, and fulfillment of insurance, examination, and seminar requirements established by this chapter, and submission of any information and data the commission may reasonably require.

(h) [f)] Renewal [license] fees shall be nonrefundable.

~~[(g) At least 15 days before the expiration of a person's license the commission shall notify the person in writing of the impending license expiration and shall attempt to obtain from the person a signed receipt confirming receipt of the notice.]~~

SECTION 42. Subchapter D, Chapter 113, Natural Resources Code, is amended by adding Section 113.096 to read as follows:

Sec. 113.096. PROVISIONAL LICENSE. (a) The commission may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the activities regulated under this chapter; and

(3) is sponsored by a person licensed by the commission under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the commission approves or denies the provisional license holder's application for a license. The commission shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 113.095; or

(2) the provisional license holder:

(A) passes the part of the examination under Section 113.087 that relates to the applicant's knowledge and understanding of the laws and rules relating to the activities regulated under this chapter in this state;

(B) meets the academic and experience requirements for a license under this chapter; and

(C) satisfies any other licensing requirements under this chapter.

(d) The commission must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The commission may extend the 180-day period if the results of an examination have not been received by the commission before the end of that period.

(e) The commission may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

SECTION 43. Subsections (d) and (h), Section 113.097, Natural Resources Code, are amended to read as follows:

(d) Each [category "C," "E," "H," or "J"] licensee under Section 113.082(a)(3), (5), (8), or (10) must carry motor vehicle bodily injury and property damage liability coverage on each motor vehicle, including trailers and semitrailers, used to transport LP-gas. The commission shall establish by rule a reasonable amount of coverage to be maintained, except that coverage shall not be less than the amounts required as evidence of financial responsibility under Chapter 601, Transportation Code.

(h) As required by commission rule, a [category "A," "B," "C," "E," or "O"] licensee under Section 113.082(a)(1), (2), (3), (5), or (15) must carry completed

operations or products liability insurance, or both, in a reasonable amount, based on the type or types of licensed activities.

SECTION 44. Subsections (a) and (c), Section 113.098, Natural Resources Code, are amended to read as follows:

(a) As evidence that required insurance has been secured and is in force, certificates of insurance which are approved by the commission [~~division~~] shall be filed with the commission [~~division~~] before licensing, license renewal, and during the entire period that the license is in effect. Any document filed with the commission [~~division~~] in a timely manner which is not completed in accordance with the instructions indicated on the insurance certificate forms supplied by the commission [~~division~~], but which complies with the substantive requirements of this section and with the rules adopted under this section may be considered by the commission [~~division~~] to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with the commission [~~division~~] an amended certificate of insurance which complies with all procedural and substantive requirements of this section and the rules adopted hereunder.

(c) Cancellation of a certificate of insurance becomes effective on the occurrence of any of the following events and not before:

(1) commission [~~division~~] receipt of written notice stating the insurer's intent to cancel a policy of insurance and the passage of time equivalent to the notice period required by law to be given the insured before the insurance cancellation;

(2) receipt by the commission [~~division~~] of an acceptable replacement insurance certificate;

(3) voluntary surrender of a license and the rights and privileges conferred by the license;

(4) commission [~~division~~] receipt of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the commission [~~division~~]; or

(5) written order of commission.

SECTION 45. Subsections (a)-(d), Section 113.099, Natural Resources Code, are amended to read as follows:

(a) A [category "C," "E," "H," or "J"] licensee or an applicant for a license under Section 113.082(a)(3), (5), (8), or (10) that does not operate or contemplate the operation of a motor vehicle equipped with an LP-gas cargo container and does not transport or contemplate the transportation of LP-gas by vehicle in any manner, may make and file with the commission [~~division~~] a statement to that effect in lieu of filing a certificate of motor vehicle bodily injury and property damage insurance.

(b) A licensee or an applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may make and file with the commission [~~division~~] a statement to that effect in lieu of filing a certificate of general liability insurance.

(c) A licensee or an applicant for a license that does not employ or contemplate the hiring of an employee or employees to be engaged in LPG-related activities in this state may make and file with the commission [~~division~~] a statement to that effect in lieu of filing evidence of coverage of workers' compensation or other alternative form of coverage as provided in this subchapter.

(d) A [category "A," "B," "C," "E," or "O"] licensee or an applicant for a license under Section 113.082(a)(1), (2), (3), (5), or (15) that does not engage in or contemplate engaging in any LP-gas operations which would be covered by completed operations or products liability insurance, or both, for a period of time may make and file with the commission [~~division~~] a statement to that effect in lieu of filing a certificate of insurance.

SECTION 46. The heading to Subchapter F, Chapter 113, Natural Resources Code, is amended to read as follows:

SUBCHAPTER F. DISCIPLINARY ACTION [SUSPENSION AND  
REVOCATION OF LICENSES AND REGISTRATIONS]

SECTION 47. Subsection (e), Section 113.161, Natural Resources Code, is amended to read as follows:

(e) If the commission [~~or division~~] determines that the probable violation or noncompliance constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate cessation of the probable violation or noncompliance and proceed with a hearing as provided in Section 113.162 [~~of this code~~].

SECTION 48. Section 113.163, Natural Resources Code, is amended to read as follows:

Sec. 113.163. FINDINGS AND JUDGMENT. (a) The [If the] commission shall revoke, suspend, or refuse to renew a license or registration or shall reprimand a licensee or registrant if the commission finds that the licensee or registrant has violated or failed to comply with or is violating or failing to comply with this chapter or a rule or standard promulgated and adopted under this chapter[, or both, the commission may suspend the license or registration for a definite period not to exceed 90 days or may revoke the license or registration. If the commission determines that no violation has occurred or is occurring, its order shall so state. Whenever a license or registration is revoked by order of the commission, a new license or registration shall not be issued for at least 90 days from the effective date of the order. Such time period shall be stated in the order].

(b) The commission may place on probation a person whose license or registration is [~~has been~~] suspended. If a license or registration suspension is probated, the commission may require the person:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis of the [under Subsection (a) of this section for a definite period not to exceed one year, but if the commission does place the licensee or registrant on probation and does allow him to continue to operate, the fact that the license or registration has been suspended and the licensee or registrant has been put on probation shall appear in the records of the commission relating to the suspension and] probation.

SECTION 49. Subsection (b), Section 113.233, Natural Resources Code, is amended to read as follows:

(b) Any authorized representative of the commission [~~LP-Gas Division~~] may enter any buildings or premises where an accident has occurred in which LP-gas was a probable cause for purposes of investigating the cause, origin, and circumstances of

such accident. The commission [~~LP-Gas Division~~] may request that any state or local authority having jurisdiction take appropriate action, to the extent permitted by law, as may be necessary for preservation of property and premises.

SECTION 50. Subsection (b), Section 113.243, Natural Resources Code, as amended by Section 2, Chapter 496, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

- (b) The fund consists of money from:
- (1) fees charged under this subchapter;
  - (2) the penalties for the late payment of the fee charged under this subchapter;
  - (3) gifts, grants, or other assistance received by the commission from any source for the purposes of this subchapter;
  - (4) interest earned on amounts in the fund;
  - (5) amounts collected by the commission under an agreement with another state in accordance with Section 113.246(e); ~~and~~
  - (6) assessments, rebates on assessments, and other money collected by the commission under the Propane Education and Research Act of 1996 (15 U.S.C. Section 6401 et seq.) or other applicable federal law; and
  - (7) fees, royalties, or other things of value received from the items described by Subsections (f)(1)(A)-(D).

SECTION 51. Section 113.243, Natural Resources Code, is amended by amending Subsections (c) and (d) and adding Subsections (f) and (g) to read as follows:

(c) The fund may be used only by the commission to pay for activities relating to the specific fuel from which the fee, royalty, or other thing of value was derived or the specific fuel, if any, for which the gift, grant, or other assistance is given, including direct and indirect costs relating to:

- (1) researching all possible uses of LPG and other environmentally beneficial alternative fuels to enhance air quality;
- (2) researching, developing, and implementing marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers;
- (3) developing and implementing conservation and distribution plans to minimize the frequency and severity of disruptions in the supply of alternative fuels;
- (4) developing a public information plan that will provide advisory services relating to alternative fuels to consumers;
- (5) developing voluntary participation plans to promote the use of alternative fuels by federal, state, and local agencies;
- (6) implementing consumer incentive or rebate programs developed pursuant to Section 113.2435 of this subchapter;
- (7) other functions the commission determines are necessary to add a program established by the commission for the purpose of promoting the use of LPG or other environmentally beneficial alternative fuels; and
- (8) the administrative costs incurred by the commission under this subchapter.

(d) If a specific fee, royalty, gift, grant, other thing of value, or other assistance is designated for or collected from discrete components of the alternative fuels industry, the fee, royalty, gift, grant, other thing of value, or other assistance shall be deposited in a separate account in the fund.

(f) The commission may:

(1) apply for, register, secure, hold, and protect under the laws of a state, the United States, or a foreign country a patent, copyright, trademark, or other evidence of protection or exclusivity issued for an idea, publication, or other original innovation fixed in a tangible medium, including:

(A) a logo;

(B) a service mark;

(C) a study;

(D) an engineering, architectural, or graphic design;

(E) a manual;

(F) automated systems software;

(G) an audiovisual work; or

(H) a sound recording;

(2) enter into a license agreement with a third party in return for a fee, royalty, or other thing of value; and

(3) waive or reduce the amount of a fee, royalty, or other thing of value to be assessed if the commission determines that the waiver will:

(A) further the goals and missions of the commission's division responsible for alternative fuels research and education; and

(B) result in a net benefit to the state.

(g) Money received under Subsection (f) shall be deposited in a separate account in the fund as provided by Subsection (d), except that any money received by the commission from the items described by Subsections (f)(1)(E)-(H) shall be deposited in the general revenue fund.

SECTION 52. Subchapter J, Chapter 113, Natural Resources Code, as added by Chapter 80, Acts of the 73rd Legislature, Regular Session, 1993, is redesignated as Subchapter K, and the heading to that subchapter is amended to read as follows:

#### SUBCHAPTER K [J]. LIABILITY OF LICENSE HOLDER

SECTION 53. Chapter 113, Natural Resources Code, is amended by adding Subchapter L to read as follows:

#### SUBCHAPTER L. TESTING OF LP-GAS SYSTEMS IN SCHOOL FACILITIES

Sec. 113.351. DEFINITIONS. In this subchapter:

(1) "School district" means:

(A) an entity created under the laws of this state and accredited by the Texas Education Agency under Subchapter D, Chapter 39, Education Code;

(B) a private elementary or secondary school, other than a school in a residence; or

(C) a state or regional school for the blind and visually impaired or the deaf under Chapter 30, Education Code.

(2) "Supplier" means an individual or company that sells and delivers liquefied petroleum gas to a school district facility. If more than one individual or company sells and delivers LP-gas to a facility of a school district, each individual or company is a supplier for purposes of this subchapter.

Sec. 113.352. DUTY TO TEST FOR LEAKAGE. (a) Each school district shall perform pressure tests for leakage on the LP-gas piping system in each school district facility at least biennially. The tests must be performed before the beginning of the school year.

(b) The school district may perform the pressure tests on a two-year cycle under which the tests are performed for the LP-gas piping systems of approximately one-half of the facilities each year.

(c) If a school district operates one or more school district facilities on a year-round calendar, the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the test is performed.

(d) A test performed under a municipal code satisfies the pressure testing requirements prescribed by this section.

Sec. 113.353. REQUIREMENTS OF TEST. (a) The school district shall perform the pressure test to determine whether the LP-gas piping system holds at least the amount of pressure specified by the National Fire Protection Association 54, National Fuel Gas Code.

(b) The pressure test must be conducted in accordance with National Fire Protection Association 54.

(c) At the request of a school district, the commission shall assist the district in providing for the certification of an employee of the school district or school, as applicable, to conduct the test and in developing a procedure for conducting the test.

Sec. 113.354. NOTICE OF TEST. (a) A school district shall provide written notice to the commission specifying the date and the result of each pressure test or other inspection of the LP-gas piping system.

(b) Before the introduction of any LP-gas into the LP-gas piping system, the school district shall provide verification to the district's supplier that the piping has been tested in accordance with this subchapter.

(c) The commission shall maintain a copy of the notice provided under Subsection (a) until at least the first anniversary of the date the commission received the notice.

Sec. 113.355. TERMINATION OF SERVICE. A supplier shall terminate service to a school district facility if:

(1) the supplier receives official notification from the firm or individual conducting the test of a hazardous leakage in the facility LP-gas piping system; or

(2) a test at the facility is not performed as required by this subchapter.

Sec. 113.356. REPORT TO BOARD OF TRUSTEES. An identified LP-gas leakage in a school district facility shall be reported to the board of trustees of the district in which the facility is located.

Sec. 113.357. ENFORCEMENT. The commission shall enforce this subchapter. SECTION 54. Subchapter B, Chapter 116, Natural Resources Code, is amended by adding Section 116.016 to read as follows:

Sec. 116.016. LIMITATIONS ON RULEMAKING AUTHORITY. (a) The commission may not adopt rules restricting advertising or competitive bidding by a licensee or registrant except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a licensee or registrant's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee or registrant; or

(4) restricts the licensee or registrant's advertisement under a trade name.

SECTION 55. Subsection (b), Section 116.032, Natural Resources Code, is amended to read as follows:

(b) The commission by rule may establish reasonable fees for each category of license. ~~[A license fee may not exceed \$1,000.]~~

SECTION 56. Section 116.033, Natural Resources Code, is amended to read as follows:

Sec. 116.033. APPLICATION AND RENEWAL PROCEDURES. (a) The commission shall adopt rules establishing procedures for submitting and processing applications for issuance and renewal of licenses and for registration.

(b) A person who is otherwise eligible to renew a license or registration may renew an unexpired license or registration by paying the required renewal fee to the commission before the expiration date of the license or registration. A person whose license or registration has expired may not engage in activities that require a license or registration until the license or registration has been renewed.

(c) A person whose license or registration has been expired for 90 days or less may renew the license or registration by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(d) A person whose license or registration has been expired for more than 90 days but less than one year may renew the license or registration by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(e) A person whose license or registration has been expired for one year or more may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original license or registration.

(f) A person who was licensed or registered in this state, moved to another state, and is currently licensed or registered and has been in practice in the other state for the two years preceding the date of application may obtain a new license or registration without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license or registration.

(g) Not later than the 30th day before the date a person's license or registration is scheduled to expire, the commission shall send written notice of the impending expiration to the person at the person's last known address according to the records of the commission.

SECTION 57. Section 116.034, Natural Resources Code, is amended by adding Subsections (d)-(h) to read as follows:

(d) Not later than the 30th day after the date a person takes a licensing or registration examination under this chapter, the commission shall notify the person of the results of the examination.

(e) If the examination is graded or reviewed by a testing service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.

(f) The commission may require a testing service to notify a person of the results of the person's examination.

(g) If requested in writing by a person who fails a licensing or registration examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

(h) The commission shall recognize, prepare, or administer continuing education programs for its licensees and registrants. A licensee or registrant must participate in the programs to the extent required by the commission to keep the person's license.

SECTION 58. Subchapter C, Chapter 116, Natural Resources Code, is amended by adding Sections 116.0345 and 116.0346 to read as follows:

Sec. 116.0345. LICENSE OR REGISTRATION BY ENDORSEMENT. The commission may waive any prerequisite to obtaining a license or registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license or registration issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

Sec. 116.0346. PROVISIONAL LICENSE OR REGISTRATION. (a) The commission may issue a provisional license or registration to an applicant currently licensed or registered in another jurisdiction who seeks a license or registration in this state and who:

(1) has been licensed or registered in good standing for at least two years in another jurisdiction, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the activities regulated under this chapter; and

(3) is sponsored by a person licensed or registered by the commission under this chapter with whom the provisional license or registration holder will practice during the time the person holds a provisional license or registration.

(b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license or registration is valid until the date the commission approves or denies the provisional license or registration holder's application for a license or registration. The commission shall issue a license or registration under this chapter to the provisional license or registration holder if:

(1) the provisional license or registration holder is eligible to be licensed or registered under Section 116.0345; or

(2) the provisional license or registration holder:

(A) passes the part of the examination under Section 116.034 that relates to the applicant's knowledge and understanding of the laws and rules relating to the activities regulated under this chapter in this state;

(B) meets the academic and experience requirements for a license or registration under this chapter; and

(C) satisfies any other licensing or registration requirements under this chapter.

(d) The commission must approve or deny a provisional license or registration holder's application for a license or registration not later than the 180th day after the date the provisional license or registration is issued. The commission may extend the 180-day period if the results of an examination have not been received by the commission before the end of that period.

(e) The commission may establish a fee for provisional licenses or registrations in an amount reasonable and necessary to cover the cost of issuing the license or registration.

SECTION 59. The heading to Section 116.037, Natural Resources Code, is amended to read as follows:

Sec. 116.037. DISCIPLINARY ACTION [SUSPENSION AND REVOCATION OF LICENSE].

SECTION 60. Section 116.037, Natural Resources Code, is amended by amending Subsections (f) and (g) and adding Subsection (h) to read as follows:

(f) The [If the] commission shall revoke, suspend, or refuse to renew a license or registration or shall reprimand the licensee or registrant if the commission finds that the licensee or registrant has violated or failed to comply with or is violating or failing to comply with this chapter or a rule adopted under this chapter[-the commission may suspend the license or registration for a definite period not to exceed 90 days or may revoke the license].

(g) The commission may place on probation a person whose license or registration is suspended. If a license or registration suspension is probated, the commission may require the person:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(h) Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

SECTION 61. Section 117.012, Natural Resources Code, is amended by adding Subsections (h)-(k) to read as follows:

(h) The commission shall require operators or their designated representatives to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (i) only if the operator or the operator's representative has made the following efforts to conduct a community liaison meeting in person with the officials:

(1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; and

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(i) If the operator or operator's representative cannot arrange a meeting in person after complying with Subsection (h), the operator or the operator's representative shall make the following efforts to conduct community liaison activities by means of a telephone conference call with the officials:

(1) mailing a written request for a telephone conference to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a telephone conference to the appropriate officials by facsimile transmission; and

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a telephone conference.

(j) If the operator or the operator's representative has made the efforts required by Subsections (h) and (i) but has not successfully arranged a meeting in person or a telephone conference, the community liaison information required to be conveyed may be delivered by mailing the information by certified mail, return receipt requested.

(k) The commission by rule shall require the owner or operator of each interstate or intrastate hazardous liquid or carbon dioxide pipeline facility any part of which is located within 1,000 feet of a public school to:

(1) develop an emergency response plan in consultation with the fire department in whose jurisdiction the school is located or another local emergency response entity; and

(2) present the plan:

(A) at the first annual budget meeting of the board of trustees of the school district in which the school is located after the plan is developed; and

(B) at subsequent annual budget meetings of the board of trustees of the school district on the request of the board.

SECTION 62. Subtitle D, Title 3, Natural Resources Code, is amended by adding Chapter 118 to read as follows:

#### CHAPTER 118. PIPELINE ASSESSMENT AND TESTING

Sec. 118.001. AUTHORITY TO REQUIRE PLAN FOR PIPELINE ASSESSMENT OR TESTING. (a) The Railroad Commission of Texas by rule may require an operator to file for commission approval a plan for assessment or testing of a pipeline if the commission finds that:

(1) there is reason to believe that the pipeline may present a hazard to public health or safety;

(2) the commission lacks adequate information to assess the risk to public health or safety presented by the pipeline; or

(3) a plan is necessary for the commission to initiate or complete a pipeline safety investigation.

(b) The Railroad Commission of Texas may take enforcement action against a person who fails to:

(1) submit a required plan; or

(2) participate in a pipeline safety investigation.

Sec. 118.002. PIPELINES FOR WHICH PLAN MAY BE REQUIRED. The rules adopted under this chapter may apply to interstate pipelines, intrastate pipelines, portions of pipeline systems the regulation of which the federal government has temporarily delegated to the Railroad Commission of Texas, or gathering lines, and to pipelines for the transportation of any substance or material under the jurisdiction of the commission, as specified by the commission.

Sec. 118.003. CONTENTS OF PLAN. The rules adopted under this chapter may require that a plan include:

(1) an identification of risk factors associated with a pipeline system, including population density;

(2) information about previous inspections and maintenance;  
(3) information about pressure tests;  
(4) information about leaks;  
(5) information about operating characteristics;  
(6) information about corrosion protection methods; and  
(7) other information that may assist the Railroad Commission of Texas in assessing the risk to public health or safety presented by the pipeline.

Sec. 118.004. APPROVAL OF PLAN. The Railroad Commission of Texas may approve a plan that complies with rules adopted under this chapter.

Sec. 118.005. CONSEQUENCES OF PLAN APPROVAL. The approval of a plan by the Railroad Commission of Texas does not constitute a certification or representation that the pipeline is in compliance with or exempt from applicable safety standards.

SECTION 63. Section 102.001, Utilities Code, is amended to read as follows:

Sec. 102.001. RAILROAD COMMISSION JURISDICTION. (a) The railroad commission has exclusive original jurisdiction over the rates and services of a gas utility:

(1) that distributes [distributing] natural gas or synthetic natural gas in:  
(A) areas outside a municipality; and  
(B) areas inside a municipality that surrenders its jurisdiction to the railroad commission under Section 103.003; and

(2) [~~The railroad commission also has exclusive original jurisdiction over the rates and services of a gas utility~~] that transmits, transports, delivers, or sells natural gas or synthetic natural gas to a gas utility that distributes the gas to the public.

(b) The railroad commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction as provided by this subtitle.

SECTION 64. Subchapter A, Chapter 102, Utilities Code, is amended by adding Section 102.006 to read as follows:

Sec. 102.006. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The utility division of the State Office of Administrative Hearings shall conduct each hearing in a contested case that is not conducted by one or more members of the railroad commission. A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission.

(b) The railroad commission may delegate to the utility division of the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b).

(d) For purposes of judicial review, an administrative law judge's final decision under Subsection (b) has the same effect as a final decision of the railroad commission unless a member of the commission requests formal review of the decision.

SECTION 65. Section 103.001, Utilities Code, is amended to read as follows:

Sec. 103.001. MUNICIPAL JURISDICTION. To provide fair, just, and reasonable rates and adequate and efficient services, the governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services

of a gas utility within the municipality, subject to the limitations imposed by this subtitle, unless the municipality surrenders its jurisdiction to the railroad commission under Section 103.003.

SECTION 66. Subchapter A, Chapter 103, Utilities Code, is amended by adding Section 103.003 to read as follows:

Sec. 103.003. SURRENDER OF MUNICIPAL JURISDICTION TO RAILROAD COMMISSION; REINSTATEMENT OF JURISDICTION. (a) A municipality may elect to have the railroad commission exercise exclusive original jurisdiction over gas utility rates, operations, and services in the municipality by ordinance or by submitting the question of the surrender of its jurisdiction to the voters at a municipal election.

(b) The governing body of a municipality shall submit at a municipal election the question of surrendering its jurisdiction to the railroad commission if the governing body receives a petition signed by a number of qualified voters of the municipality equal to at least the lesser of 20,000 or 10 percent of the number of voters voting in the last preceding general election in the municipality.

(c) A municipality may not elect to surrender its jurisdiction while a case involving the municipality is pending.

(d) A municipality that surrenders its jurisdiction to the railroad commission may reinstate its jurisdiction. The provisions of this section governing the surrender of jurisdiction apply to the reinstatement of jurisdiction.

SECTION 67. Section 104.107, Utilities Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The 150-day period prescribed by Subsection (a)(2) shall be extended for two days for each day the actual hearing on the merits of the case exceeds 15 days.

(c) If the regulatory authority does not make a final determination concerning a schedule of rates before expiration of the applicable suspension period, the regulatory authority is considered to have approved the schedule. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress.

SECTION 68. Subchapter F, Chapter 104, Utilities Code, is amended by adding Section 104.2551 to read as follows:

Sec. 104.2551. ELECTRONIC BILLING. A gas utility or municipally owned utility may transmit the utility's bill for services through the Internet or by other electronic means instead of through the United States mail on the request of a customer of the gas utility or municipally owned utility.

SECTION 69. Section 121.103, Utilities Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) A gas utility that provides gas to a customer does not have an obligation to serve the customer or to maintain the gas supply or physical capacity to serve the customer if the customer:

(1) is a transportation, industrial, commercial, or other similar large-volume contract customer;

(2) is an end-use customer of the gas utility;

(3) reduces or ceases the purchase of natural gas or natural gas service from the gas utility; and

(4) purchases natural gas or natural gas service from another supplier or purchases an alternate form of energy.

(d) Notwithstanding Subsection (a), a gas utility that has provided gas to a commercial customer is obligated to serve that customer if the gas utility has a

sufficient gas supply and physical capacity to do so without reducing service to its other customers.

SECTION 70. Section 121.2015, Utilities Code, is amended to read as follows:

Sec. 121.2015. REQUIRED SAFETY RULES. (a) The railroad commission shall adopt rules regarding:

(1) public education and awareness relating to gas pipeline facilities; and  
(2) community liaison for responding to an emergency relating to a gas pipeline facility.

(b) The railroad commission shall require operators or their designated representatives to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (c) only if the operator or the operator's representative has made an effort to conduct a community liaison meeting in person with the officials by one of the following methods:

(1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; or

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(c) If the operator or operator's representative cannot arrange a meeting in person after complying with Subsection (b), the operator or the operator's representative shall make an effort to conduct community liaison activities by means of a telephone conference call with the officials by one of the following methods:

(1) mailing a written request for a telephone conference to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a telephone conference to the appropriate officials by facsimile transmission; or

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a telephone conference.

(d) If the operator or the operator's representative has made the efforts required by Subsections (b) and (c) but has not successfully arranged a meeting in person or a telephone conference, the community liaison information required to be conveyed may be delivered by mailing the information by certified mail, return receipt requested.

SECTION 71. Section 121.206, Utilities Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) In determining the amount of the penalty, the railroad commission shall consider the guidelines adopted under Subsection (d).

(d) The railroad commission by rule shall adopt guidelines to be used in determining the amount of a penalty under this subchapter. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the person's history of previous violations of Section 121.201 or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under that section, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation; ~~[and]~~

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the commission considers relevant.

SECTION 72. The heading to Subchapter J, Chapter 121, Utilities Code, is amended to read as follows:

SUBCHAPTER J. TESTING OF NATURAL GAS PIPING SYSTEMS  
IN SCHOOL ~~[DISTRICT]~~ FACILITIES

SECTION 73. Subchapter J, Chapter 121, Utilities Code, is amended by adding Section 121.5005 to read as follows:

Sec. 121.5005. APPLICABILITY. This subchapter applies to a facility of a public elementary or secondary school, including a charter school, or a private elementary or secondary school, but does not apply to a home school.

SECTION 74. Sections 121.501-121.506, Utilities Code, are amended to read as follows:

Sec. 121.501. DEFINITION. In this subchapter, "supplier" means an individual or company that sells and delivers natural gas to a school ~~[district]~~ facility. If more than one individual or company sells and delivers natural gas to a school facility ~~[of a school district]~~, each individual or company is a supplier for purposes of this subchapter.

Sec. 121.502. DUTY TO PRESSURE TEST. (a) A person responsible for a school facility ~~[Each school district]~~ shall perform biennial pressure tests on the natural gas piping system in the [each] school ~~[district]~~ facility. The ~~[school district shall perform the]~~ tests must be performed before the beginning of the school year.

(b) A person responsible for more than one school facility ~~[The school district]~~ may perform the tests on a two-year cycle under which the person ~~[district]~~ pressure tests the natural gas piping system in approximately one-half of the facilities each year.

(c) If the person responsible for [a school district operates] one or more school facilities operates the [district] facilities on a year-round calendar, the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the pressure test is performed.

(d) A natural gas piping pressure test performed under a municipal code satisfies the pressure testing requirements prescribed by this section.

Sec. 121.503. REQUIREMENTS OF TEST. (a) The person responsible for a school facility ~~[school district]~~ shall perform the pressure test to determine whether the natural gas piping downstream of the school facility's ~~[district's]~~ meter holds at least normal operating pressure over a specified period determined by the railroad commission.

(b) During the pressure test, each system supply inlet and outlet in the school facility must be closed.

(c) At the request of a person responsible for a school facility ~~[school district]~~, the railroad commission shall assist the person ~~[district]~~ in developing a procedure for conducting the test.

Sec. 121.504. NOTICE OF TEST. (a) A person responsible for a school facility [school district] shall provide written notice to the school's [district's natural gas] supplier specifying the date and result of each pressure test or other inspection.

(b) The supplier shall maintain a copy of the notice until at least the first anniversary of the date on which the supplier received the notice.

Sec. 121.505. TERMINATION OF SERVICE. (a) A supplier shall terminate service to a school [district] facility if:

(1) the supplier receives official notification from the firm or individual conducting the test of a hazardous natural gas leakage in the facility piping system; or

(2) [the district fails to perform] a test or other inspection at the facility is not performed as required by this subchapter.

(b) A supplier is not liable for any damages that result from a failure to terminate service as required by Subsection (a)(2) for a facility other than a school district facility.

Sec. 121.506. REPORT OF LEAKAGE [~~TO BOARD OF TRUSTEES~~]. An identified natural gas leakage in a school district facility must be reported to the board of trustees of the district in which the facility is located. An identified natural gas leakage in another school facility must be reported to the person responsible for the school facility.

SECTION 75. Subchapter C, Chapter 2003, Government Code, is amended by adding Section 2003.0491 to read as follows:

Sec. 2003.0491. RAILROAD COMMISSION HEARINGS. The utility division shall conduct contested case hearings and may make final decisions and issue findings of fact, conclusions of law, and other necessary orders in other proceedings on behalf of the Railroad Commission of Texas as provided by Section 102.006, Utilities Code. Section 2003.049 applies to a proceeding under this section except as otherwise provided by Section 102.006, Utilities Code.

SECTION 76. The following laws are repealed:

(1) Chapter 93, Natural Resources Code;

(2) Subdivision (2), Section 113.002, and Sections 113.012 and 113.013, Natural Resources Code;

(3) Subsection (b), Section 113.243, Natural Resources Code, as amended by Section 1, Chapter 496, Acts of the 75th Legislature, Regular Session, 1997; and

(4) Section 113.246, Natural Resources Code, as amended by Section 6, Chapter 496, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 77. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 2001.

(b) The changes in law made by this Act relating to the statutory lien on wells apply only to liens on wells for which the Railroad Commission of Texas sends a notice under Section 89.043, Natural Resources Code, as amended by this Act, on or after the effective date of this Act. Liens on wells for which notice is sent before the effective date of this Act are covered by the law as it existed when the notice was sent, and that law is continued in effect for that purpose.

(c) Section 25 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, that section does not take effect.

(d) The changes in law made by Sections 91.104, 91.107, and 91.109, Natural Resources Code, as amended by this Act, apply only to a person required on or after the effective date of the applicable amendment to file a bond or alternate form of financial security. A person required to file a bond or alternate form of financial security before that date is governed by the law in effect on the date the bond or other security is required to be filed, and the former law is continued in effect for that purpose.

(e) This Act prevails over any conflicting or inconsistent provision of H.B. No. 1317, 77th Legislature, Regular Session, 2001, if that bill is enacted and becomes law.

(f) As soon as practicable on or after the effective date of this Act, the governor, lieutenant governor, and speaker of the house of representatives shall appoint members to the Oil-Field Cleanup Fund Advisory Committee as provided by Section 91.1135, Natural Resources Code, as added by this Act.

(g) Subchapter L, Chapter 113, Natural Resources Code, as added by this Act, applies beginning with the 2002-2003 school year, and each school district that uses liquefied petroleum gas shall perform pressure tests as required by that subchapter.

(h) Section 102.006, Utilities Code, as added by this Act, and Section 2003.0491, Government Code, as added by this Act, apply only to a contested case filed at the Railroad Commission of Texas on or after the effective date of this Act. A contested case filed at the commission before that date is governed by the law in effect at the time the case is filed, and the former law is continued in effect for that purpose.

The Conference Committee Report was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 342

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 342** 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  
SHAPLEIGH  
BARRIENTOS  
MADLA  
ARMBRISTER  
On the part of the Senate

ALEXANDER  
BOSSE  
BRIMER  
Y. DAVIS  
HAWLEY  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the participation of the Texas Department of Transportation in the acquisition, construction, maintenance, and operation of toll facilities.

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

SECTION 1. Section 222.103, Transportation Code, is amended to read as follows:

Sec. 222.103. COST PARTICIPATION. (a) The department may participate, by spending money from any available source, in the cost of the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission. The commission:

(1) may require the repayment of any money spent by the department for the cost of a toll facility of a public entity; and

(2) shall require the repayment of any money spent by the department for the cost of a toll facility of a private entity~~[, including requirements for repayment].~~

(b) Money repaid as required by the commission shall be deposited to the credit of the fund from which the expenditure was made. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

(c) A bond or other debt obligation issued by a public or private entity to finance the cost of a toll facility in which the department participates is an obligation of the issuing entity and is not an obligation of this state.

~~(d) [An entity receiving cost participation from the department under this section is a successor agency to the Texas Turnpike Authority for the purposes of Section 52-b, Article III, Texas Constitution.~~

~~(e)~~ On the request of a member of the legislature, the department shall provide the member a status report on all highway construction projects, by legislative district, that are under contract or awaiting funding. The report shall include projects that would be funded in any manner by state, federal, or toll funds.

~~(e)~~ ~~(f)~~ On the request of a member of the legislature, not later than the 90th day before the date a loan is granted or an expenditure is made by the department for a project under this section, the department shall notify each member of the legislature that represents any part of the area affected by the project of the status of the project and how any other project in any other district would be affected.

(f) This section applies to any participation by the department in the cost of a project under Chapter 284, 361, or 366.

(g) The commission shall adopt rules to implement Subsection (a).

(h) Money granted by the department each federal fiscal year under this section may not exceed 30 percent of the obligation authority under the federal-aid highway program that is distributed to this state in that year.

(i) Any project that uses money that is granted or loaned from constitutionally dedicated funds for the construction or maintenance of a project must be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder.

(j) Notwithstanding Subsection (i), the Texas Turnpike Authority division of the department, or a successor agency, may enter into exclusive development agreements on four projects before March 1, 2004. This subsection expires March 1, 2004.

SECTION 2. Subchapter A, Chapter 361, Transportation Code, is amended by adding Sections 361.003 and 361.005 to read as follows:

Sec. 361.003. REGIONAL MOBILITY AUTHORITY. (a) The commission by order may authorize the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating a turnpike project in a region of this state.

(b) The governing body of a regional mobility authority is a board of directors consisting of representatives of political subdivisions in each county in which a turnpike project is proposed to be located. The commissioners court of each county of the authority shall appoint two directors to the board. The governor shall appoint one director to the board who shall serve as the presiding officer of the board.

(c) The commissioners court of each county of the authority that contains an operating turnpike project shall appoint additional directors, as follows:

(1) if only one county of the authority contains an operating turnpike project, the commissioners court of that county shall appoint two additional directors;

(2) if two counties of the authority contain an operating turnpike project, the commissioners court of each county shall each appoint one additional director; and

(3) if more than two counties of the authority contain an operating turnpike project, the commissioners court of each county shall each appoint two additional directors.

(d) A regional mobility authority may not construct, maintain, or operate a turnpike project in a county that, on November 6, 2001:

(1) was part of a regional tollway authority; or

(2) operated a project under Chapter 284.

(e) A regional mobility authority:

(1) is a political subdivision of this state for purposes of Chapter 101, Civil Practice and Remedies Code;

(2) is subject to Chapter 552, Government Code;

(3) is a state governmental body for purposes of Chapter 551, Government Code;

(4) has the powers and duties of a county under Subchapter C, Chapter 262, Local Government Code, other than Section 262.029 of that subchapter and excepting contracts subject to Section 361.231; and

(5) is a local government for purposes of Subchapters D and F, Chapter 271, Local Government Code.

(f) The commission may grant or loan funds for the construction, maintenance, or operation of a turnpike project under this section in accordance with the provisions of this chapter or other law.

(g) Each year, if a regional mobility authority determines that it has surplus revenue from turnpike projects, it shall reduce tolls, spend the surplus revenue on other transportation projects in the region in accordance with Subsection (h), or deposit the surplus revenue to the credit of the Texas mobility fund.

(h) Consistent with other law and commission rule, and in accordance with Subsection (g), a regional mobility authority may spend surplus revenue on other transportation projects by:

(1) assisting in the financing of a toll or toll-free transportation project of a governmental entity; or

(2) with the approval of the commission, constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to a governmental entity if:

(A) the governmental entity authorizes the regional mobility authority to construct the project and agrees to assume all liability and responsibility for the maintenance and operation of the project upon its transfer; and

(B) the project is constructed in compliance with all laws applicable to the governmental entity.

(i) The commission by order may convert a segment of the free state highway system to a turnpike project and transfer that segment to a regional mobility authority if:

(1) the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region; and

(2) the regional mobility authority agrees to assume all liability and responsibility for the maintenance and operation of the turnpike project on its transfer.

(j) To the extent of a conflict between this section and Section 361.189, this section prevails.

(k) In this section:

(1) "Governmental entity" includes a municipality, county, the department, or other public entity authorized to construct, maintain, and operate a transportation project within the region of a regional mobility authority.

(2) "Surplus revenue" means toll revenue that exceeds the regional mobility authority's debt service requirements, coverage requirements of any bond indenture, costs of operation and maintenance, cost of repair, expansion or improvement of a turnpike project, and reserves and reserve funds maintained by the regional mobility authority.

(3) "Transportation project" includes a project or type of project described by commission rule.

(l) The commission shall adopt rules to implement this section.

Sec. 361.005. TRANSFER OF BOARD'S POWERS AND DUTIES. (a) The powers and duties of the board under this chapter or other law are transferred to the commission.

(b) A reference in law to the board is a reference to the commission.

SECTION 3. Subsection (b), Section 361.184, Transportation Code, is amended to read as follows:

(b) The board may transfer, or direct the authority to transfer, into the project revolving fund money from any permissible source, including:

(1) money from a surplus fund established for a turnpike project if the remainder of the surplus fund is not less than any minimum amount required by the trust agreement to be retained for that project;

(2) money received under Subchapter I or from a transfer of a turnpike project under Subchapter H;

(3) money received [advances] from the state highway fund [if the advances are repaid as required by Section 52-b, Article III, Texas Constitution]; and

(4) contributions or assistance from the United States, another state, a political subdivision of this state, the United Mexican States, or a political subdivision of the United Mexican States.

SECTION 4. Section 361.191, Transportation Code, is amended to read as follows:

Sec. 361.191. EXPENDITURE OF MONEY AUTHORIZED BY DEPARTMENT OF TRANSPORTATION. (a) The Texas Department of Transportation may provide for the expenditure of money for the cost of the acquisition, construction, maintenance, or operation of a turnpike project by the

authority. The department may require the authority to repay money provided under this section from toll revenue or other sources on terms established by the commission.

(b) Money repaid as required by the department shall be deposited to the credit of the fund from which the money was provided. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code. [If money from the state highway fund is spent under this section, the fund shall be repaid from tolls or other turnpike revenue.]

SECTION 5. Subsection (b), Section 366.174, Transportation Code, is amended to read as follows:

(b) An authority may transfer into its revolving fund money from any permissible source, including:

(1) money from a turnpike project if the transfer does not diminish the money available for the project or the system, if any, of which it is a part to less than an amount required to be retained by the bond proceedings pertaining to the project or system;

(2) money received by the authority from any source and not otherwise committed, including money from the transfer of a turnpike project or system or sale of authority assets;

(3) money received from the state highway fund [advances authorized under Section 52-b, Article III, Texas Constitution]; and

(4) contributions, loans, grants, or assistance from the United States, another state, a political subdivision of this state, a foreign governmental entity, including the United Mexican States or a state of the United Mexican States, a local governmental entity, any private enterprise, or any person.

SECTION 6. Subsection (c), Section 366.301, Transportation Code, is amended to read as follows:

(c) An obligation or expense incurred by the commission or department under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. The commission or department may require money contributed by the commission or department [Money from the state highway fund spent] under this section to [must] be repaid from tolls or other revenue of the turnpike project or system on which the money [from the state highway fund] was spent [expended]. Money repaid as required by the commission or department shall be deposited to the credit of the fund from which the contribution was made. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

SECTION 7. The following sections of the Transportation Code are repealed:

- (1) Sections 361.031(b)-(e);
- (2) Section 361.031(g);
- (3) Sections 361.032-361.037; and
- (4) Sections 362.004 and 362.005.

SECTION 8. (a) Section 222.103, Transportation Code, as amended by this Act, applies only to cost participation by the Texas Department of Transportation in the acquisition, construction, maintenance, or operation of a toll facility that occurs on or after the effective date of this Act. Cost participation by the Texas Department of Transportation in the acquisition, construction, maintenance, or operation of a toll facility under Section 222.103, Transportation Code, that occurred before the effective date of this Act is governed by Section 222.103 of that code, including any

requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Subsection (b), Section 361.184, Transportation Code, as amended by this Act, applies only to a transfer of money from the state highway fund by or at the direction of the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation under Section 361.184, Transportation Code, that occurs on or after the effective date of this Act. A transfer of money from the state highway fund under Section 361.184, Transportation Code, that occurred before the effective date of this Act is governed by Section 361.184 of that code, including any requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c) Section 361.191, Transportation Code, as amended by this Act, applies only to an expenditure of money for the acquisition, construction, maintenance, or operation of a turnpike project that is provided by the Texas Department of Transportation under that section on or after the effective date of this Act. An expenditure of money by the Texas Department of Transportation under Section 361.191, Transportation Code, that was provided before the effective date of this Act is governed by Section 361.191 of that code, including any requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) Subsection (b), Section 366.174, Transportation Code, as amended by this Act, applies only to the transfer of money received from the state highway fund by a regional tollway authority to the authority's revolving fund under Section 366.174 of that code on or after the effective date of this Act. A transfer of money to the revolving fund of the authority under Section 366.174, Transportation Code, that occurred before the effective date of this Act is governed by Section 366.174 of that code, including any requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) Subsection (c), Section 366.301, Transportation Code, as amended by this Act, applies only to an obligation or expense incurred by the Texas Transportation Commission or the Texas Department of Transportation under Section 366.301 of that code on or after the effective date of this Act. An obligation or expense incurred by the Texas Transportation Commission or the Texas Department of Transportation under Section 366.301, Transportation Code, imposed before the effective date of this Act is governed by Section 366.301 of that code, including any requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 9. (a) This Act takes effect:

(1) on the date on which the constitutional amendment proposed by S.J.R. No. 16, 77th Legislature, Regular Session, 2001, takes effect; and

(2) only if S.B. No. 4, 77th Legislature, Regular Session, 2001, is enacted and becomes law.

(b) If the constitutional amendment proposed by S.J.R. No. 16 is not approved by the voters, or if S.B. No. 4 does not become law, this Act has no effect.

SECTION 10. (a) On the effective date of this Act, the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation is abolished. On that date, all powers, duties, obligations, rights, contracts, leases, records, employees, and real or personal property of the board are transferred to the Texas Transportation Commission. Unspent and unobligated appropriations and other funds under the control of the board shall be transferred to the Texas

Transportation Commission. Before that date, the board with the agreement of the commission may transfer any records, employees, or real or personal property of the board to the commission in preparation for the transfer provided for in this section.

(b) The abolishment of the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation does not affect the validity of a right, privilege, or obligation accrued, a contract or acquisition made, any liability incurred, a permit or license issued, a penalty, forfeiture, or punishment assessed, a rule adopted, a proceeding, investigation, or remedy begun, a decision made, or other action taken by or in connection with the board.

(c) All rules, policies, procedures, and decisions of the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation are continued in effect as rules, policies, procedures, and decisions of the Texas Transportation Commission until superseded by a rule or other appropriate action of the commission.

(d) Any action or proceeding before the board of directors of the Texas Turnpike Authority division of the Texas Department of Transportation is transferred without change in status to the Texas Transportation Commission, and the commission assumes, without a change in status, the position of the board in any action or proceeding to which the board is a party.

(e) If S.B. No. 4, 77th Legislature, Regular Session, 2001, is enacted and becomes law, all unspent and unobligated appropriations and other funds transferred to the Texas Transportation Commission under Subsection (a) of this section shall be transferred to the Texas Mobility Fund on the effective date of S.B. No. 4.

The Conference Committee Report was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1831

Senator Harris submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1831** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS  
SHAPIRO  
LUCIO

PICKETT  
HAMRIC  
SWINFORD  
HAWLEY  
HILL

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2572**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2572** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

STAPLES

MCREYNOLDS

LUCIO

CHRISTIAN

HAYWOOD

R. LEWIS

BIVINS

WALKER

BERNSEN

COOK

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3572**

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 3572** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LINDSAY

GEORGE

FRASER

E. JONES

MONCRIEF

GRAY

NELSON

COLEMAN

ZAFFIRINI

PUENTE

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 915**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 915** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONCRIEF

GRAY

NELSON

JUNELL

CARONA

F. BROWN

HARRIS

EILAND

SIBLEY

MAXEY

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1094**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1094** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONCRIEF

GRAY

SHAPLEIGH

KEFFER

SIBLEY

JUNELL

HARRIS

COLEMAN

ELLIS

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 527**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 527** 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.

MONCRIEF	NAISHTAT
CARONA	MADDEN
BERNSEN	NORIEGA
SHAPLEIGH	CHAVEZ
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to taking regulatory action against assisted living facilities, including the imposition of administrative penalties.

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

SECTION 1. Section 247.002, Health and Safety Code, is amended by adding Subdivision (7) to read as follows:

(7) "Commissioner" means the commissioner of human services.

SECTION 2. Subchapter A, Chapter 247, Health and Safety Code, is amended by adding Section 247.0025 to read as follows:

Sec. 247.0025. IMMEDIATE THREAT OF HARM. For purposes of this chapter, there is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

SECTION 3. The section heading to Section 247.0272, Health and Safety Code, is amended to read as follows:

Sec. 247.0272. INSPECTOR TRAINING; REQUIRED EXAMINATION.

SECTION 4. Section 247.0272, Health and Safety Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The department shall examine department employees who inspect or otherwise survey assisted living facilities under this chapter. In developing the examination, the department shall consult with operators of assisted living facilities or their representatives and with consumers of personal care services provided by assisted living facilities or representatives of consumers.

(d) A department employee may not independently inspect, survey, or take administrative action against an assisted living facility unless the employee has passed the examination administered under Subsection (c).

SECTION 5. Section 247.041, Health and Safety Code, is amended to read as follows:

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, license holder, or a controlling person has:

(1) violated [for a violation of] this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner; or

(2) committed any act described by Sections 247.0451(a)(2)-(6).

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The status of a person as an applicant for a license or as a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

SECTION 6. Section 247.042, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) If the department finds an assisted living facility operating in violation of the standards prescribed by [under] this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department may [shall] suspend the license or order immediate closing of all or part of the facility.

(e) The department and the State Office of Administrative Hearings shall expedite any hearing or decision involving an emergency suspension or closing order issued under this section.

SECTION 7. Section 247.0455, Health and Safety Code, is redesignated as Section 247.0459, Health and Safety Code, and amended to read as follows:

Sec. 247.0459 [247.0455]. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against an assisted living [a personal care] facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

SECTION 8. Subchapter C, Chapter 247, Health and Safety Code, is amended by adding Sections 247.0451 through 247.0457 to read as follows:

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

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

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

(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 assisted living facility; or

(B) any portion of the premises of an assisted living 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 or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter; or

(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.

(b) Except as provided by Section 247.0452(c), the penalty may not exceed \$1,000 for each violation.

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

(d) In determining the amount of a penalty, the department shall consider any matter that justice may require, but must consider each of the following and make a record of the extent to which each of the following was considered:

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

(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) deterrence of future violations;

(5) efforts to correct the violation; and

(6) the size of the facility and of the business entity that owns the facility.

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

(f) The department may not assess a penalty under this section against a resident of an assisted living facility unless the resident is also an employee of the facility or a controlling person.

Sec. 247.0452. RIGHT TO CORRECT. (a) The department may not collect an administrative penalty from an assisted living facility under Section 247.0451 if, not later than the 45th day after the date the facility receives notice under Section 247.0453(c), the facility corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines results in serious harm to or death of a resident;

(2) to a violation described by Sections 247.0451(a)(2)-(6);

(3) to a second or subsequent violation of:

(A) a right of the same resident under Section 247.064; or

(B) the same right of all residents under Section 247.064; or

(4) to a violation described by Section 247.066, which contains its own right to correct provisions.

(c) An assisted living facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary of 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. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY.

(a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or 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 247.0451 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 247.0452 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the assisted living facility must file with the department a plan of correction to be approved by the department; 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 consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 247.0452, the assisted living 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 247.0452, 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 may:

(1) give to the department written consent to the department's report, including 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 commissioner or the commissioner's designee shall assess the penalty recommended by the department.

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

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged with a violation under Section 247.0451 timely 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 and promptly issue to the commissioner or the commissioner's designee a written decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

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

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

(2) find that a violation has not occurred.

(e) If the commissioner or the commissioner's designee finds that a violation has not occurred, the commissioner or the commissioner's designee shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and

(2) the administrative law judge's findings of fact.

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

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The commissioner or the commissioner's designee shall give notice of the findings made under Section 247.0454(d) to the person charged. 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;

(4) whether action under Section 247.0457 is required in lieu of payment of all or part of the penalty; and

(5) 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 commissioner or the commissioner's designee is final, the person charged with 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, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(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 commissioner 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 amounts remitted by the commissioner 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.

Sec. 247.0456. APPLICATION OF OTHER LAW. The department may not assess a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Sec. 247.0457. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 247.0451, the commissioner in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a resident of the assisted living facility.

(c) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of the recommended assessment of an administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 247.0454.

(d) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 247.0454 if the department approves the plan.

(e) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the assisted living facility that will improve services to or quality of care of residents of the assisted living facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the assisted living facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a time line for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(f) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 247.0453.

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

SECTION 9. Subsection (b), Section 247.049, Health and Safety Code, is amended to read as follows:

(b) Subsection (a) does not:

(1) bar the admission into evidence of department reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 247.044;

(B) an action seeking imposition of a civil penalty under Section 247.045; ~~and~~

(C) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter; and

(D) an action seeking imposition of an administrative penalty under this subchapter;

(2) bar the admission into evidence of department reports or other documents that are offered:

(A) to establish warning or notice to an assisted living facility of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that an assisted living facility violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

SECTION 10. Section 247.051, Health and Safety Code, is transferred to Subchapter A, Chapter 247, Health and Safety Code, renumbered as Section 247.006, Health and Safety Code, and amended to read as follows:

Sec. 247.006 [247.051]. ADVISORY COMMITTEE. (a) The Advisory Committee on Assisted Living Facilities consists of nine members appointed by the board. The commissioner of human services shall appoint two staff members from the department to serve as nonvoting advisory members. In appointing staff members under this subsection, the commissioner shall appoint one member as a representative of long-term care policy and one member as a representative of long-term care regulation.

(b) The board shall appoint the advisory committee to provide for a balanced representation of assisted living [~~personal care~~] providers and consumers and shall appoint one member who has expertise in life safety code regulations. At least one of the provider members must be representative of a nonprofit facility, and at least one member must be a family member of a resident of a facility.

(c) The committee shall elect the presiding officer from among its members.

(d) The committee shall advise the department on standards for licensing assisted living facilities and on the implementation of this chapter.

SECTION 11. The subchapter heading to Subchapter D, Chapter 247, Health and Safety Code, is repealed.

SECTION 12. Subchapter E, Chapter 247, Health and Safety Code, is redesignated as Subchapter D, Chapter 247, Health and Safety Code, and the subchapter heading is amended to read as follows:

#### SUBCHAPTER D [E]. MISCELLANEOUS PROVISIONS

SECTION 13. Subchapter C, Chapter 247, Health and Safety Code, is amended by adding Section 247.051 to read as follows:

Sec. 247.051. INFORMAL DISPUTE RESOLUTION. (a) The Health and Human Services Commission by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding under this chapter. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the department of the violation of a standard or standards;

(2) the Health and Human Services Commission to complete the process not later than the 30th day after the date of receipt of a request from the assisted living facility for informal dispute resolution; and

(3) any individual representing an assisted living facility in an informal dispute resolution process to register with the Health and Human Services Commission and disclose the following:

(A) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(B) ownership, including the identity of the controlling person or persons, of the assisted living facility the individual is representing before the Health and Human Services Commission; and

(C) the identity of other entities the individual represents or has represented before the Health and Human Services Commission during the preceding 24 months.

(b) The Health and Human Services Commission shall adopt rules to adjudicate claims in contested cases.

(c) The Health and Human Services Commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SECTION 14. Section 247.066, Health and Safety Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) If a department inspector determines that a resident is inappropriately placed at a facility, the facility is not required to move the resident if, not later than the 10th business day after the date that the facility is informed of the specific basis of the inspector's determination, the facility:

(1) obtains a written assessment from a physician that the resident is appropriately placed;

(2) obtains a written statement:

(A) from the resident that the resident wishes to remain in the facility; or

(B) from a family member of the resident that the family member wishes for the resident to remain in the facility, if the resident lacks capacity to give a statement under this subsection;

(3) states in writing that the facility wishes for the resident to remain in the facility; and

(4) applies for and obtains a waiver from the department of all applicable requirements for evacuation that the facility does not meet with respect to the resident, if the facility does not meet all requirements for the evacuation of residents with respect to the resident.

(d) If a department inspector determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or does not obtain the written statements prescribed by Subsection (c) that would allow the resident to remain in the facility notwithstanding the determination of the inspector, the department may not assess an administrative penalty against the facility because of the inappropriate placement. However, the facility shall discharge the resident. The resident is allowed 30 days after the date of discharge to move from the facility. A discharge required under this subsection must be made notwithstanding:

(1) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(2) the terms of any contract.

(e) To facilitate obtaining the written statements required under Subsections (c)(1)-(3), the department shall develop standard forms that must be used under Subsections (c)(1)-(3). The department shall develop criteria under which the

department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (c)(4).

SECTION 15. Subchapter D, Chapter 242, Health and Safety Code, is amended by adding Sections 242.0965 and 242.0975 to read as follows:

Sec. 242.0965. ASSISTED LIVING FACILITY TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The assisted living facility trust fund is a trust fund with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to an assisted living facility.

(b) A trustee of an assisted living facility may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

(1) food;

(2) medication;

(3) sanitation services;

(4) minor repairs;

(5) supplies necessary for personal hygiene; or

(6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to an assisted living facility if the court finds that:

(1) the assisted living facility has inadequate funds accessible to the trustee for the operation of the assisted living facility;

(2) an emergency exists that presents an immediate threat to the health and safety of the residents; and

(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the assisted living facility trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the assisted living facility trust fund in excess of \$500,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing Chapter 247.

Sec. 242.0975. ADDITIONAL LICENSE FEE—ASSISTED LIVING FACILITIES. (a) In addition to the license fee provided by Section 247.024, the department shall adopt an annual fee to be charged and collected if the amount of the assisted living facility trust fund is less than \$500,000. The fee shall be deposited to the credit of the assisted living facility trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Section 242.0965. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the Legislative Budget Board.

(c) The department shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than \$500,000 in the fund.

SECTION 16. The section heading of Section 242.097, Health and Safety Code, is amended to read as follows:

Sec. 242.097. ADDITIONAL LICENSE FEE—NURSING AND CONVALESCENT HOMES.

SECTION 17. Subsection (d), Section 247.0271, Health and Safety Code, is repealed.

SECTION 18. The Texas Department of Human Services shall adopt rules to implement Section 247.0452, Health and Safety Code, as added by this Act, and Section 247.066, Health and Safety Code, as amended by this Act, not later than January 1, 2002.

SECTION 19. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2204**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2204** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONCRIEF	GUTIERREZ
CARONA	MCREYNOLDS
TRUAN	ALEXANDER
SHAPIRO	WALKER
SHAPLEIGH	HARDCASTLE
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1128**

Senator Bernsen submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1128** 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.

BERNSEN

COLEMAN

CAIN

Y. DAVIS

SHAPIRO

SWINFORD

WHITMIRE

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to billboards and scenery along highways; imposing a civil penalty.

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

SECTION 1. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.614 to read as follows:

Sec. 201.614. DESIGN CONSIDERATIONS. (a) The department shall consider the following factors when developing transportation projects that involve the construction, reconstruction, rehabilitation, or resurfacing of a highway, other than a maintenance resurfacing project:

(1) the extent to which the project promotes safety;

(2) the durability of the project;

(3) the economy of maintenance of the project;

(4) the impact of the project on:

(A) the natural and artificial environment;

(B) the scenic and aesthetic character of the area in which the project is

located;

(C) preservation efforts; and

(D) each affected local community and its economy; and

(5) the access for other modes of transportation, including those that promote physically active communities.

(b) The commission shall adopt rules to implement this section.

SECTION 2. The heading to Chapter 391, Transportation Code, is amended to read as follows:

CHAPTER 391. HIGHWAY BEAUTIFICATION ON INTERSTATE  
AND PRIMARY SYSTEMS AND CERTAIN ROADS

SECTION 3. Chapter 391, Transportation Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. PROHIBITION OF SIGNS  
ON CERTAIN HIGHWAYS

Sec. 391.251. DEFINITIONS. In this subchapter:

(1) "Off-premise sign" means an outdoor sign displaying advertising that pertains to a business, person, organization, activity, event, place, service, or product not principally located or primarily manufactured or sold on the premises on which the sign is located.

(2) "Advertising" means a message seeking to attract the public or to direct the attention of the public to any goods, services, or merchandise.

Sec. 391.252. OFF-PREMISE SIGNS PROHIBITED. (a) Subsequent to the effective date of this subchapter, a person may not erect an off-premise sign that is adjacent to and visible from:

(1) U.S. Highway 290 between the western city limits of the city of Austin and the eastern city limits of the city of Fredericksburg;

(2) State Highway 317 between the northern city limits of the city of Belton to the southern city limits of the city of Valley Mills;

(3) State Highway 16 between the northern city limits of the city of Kerrville and Interstate Highway 20;

(4) U.S. Highway 77 between State Highway 186 and State Highway 44;

(5) U.S. Highway 281 between State Highway 186 and Interstate Highway 37;

(6) State Highway 17 between State Highway 118 and U.S. Highway 90;

(7) State Highway 67 between U.S. Highway 90 and Farm-to-Market Road 170;

(8) Farm-to-Market Road 170 between State Highway 67 and State Highway 118;

(9) State Highway 118 between Farm-to-Market Road 170 and State Highway 17;

(10) State Highway 105 between the western city limits of the city of Sour Lake to the eastern city limits of the city of Cleveland;

(11) State Highway 73 between the eastern city limits of the city of Winnie to the western city limits of the city of Port Arthur;

(12) State Highway 21 between the southern city limits of the city of College Station and U.S. Highway 290; or

(13) a highway located in:

(A) the Sabine National Forest;

(B) the Davy Crockett National Forest; or

(C) the Sam Houston National Forest.

(b) This section does not affect the ability of a municipality to regulate a sign located on the portion of a roadway listed in Subsection (a) that is within the corporate limits or extraterritorial jurisdiction of the municipality in accordance with Chapter 216, Local Government Code.

(c) This section does not prohibit a person from erecting an off-premise sign permitted by other law, rule, or regulation that is adjacent to and visible from a roadway not listed in this section and is visible from a roadway listed under this section if the intended purpose of the sign is to be visible only from the roadway not listed under this section.

Sec. 391.253. REERECTION, RECONSTRUCTION, REPAIR, OR REBUILDING OF OFF-PREMISE SIGNS. (a) An off-premise sign that is adjacent to and visible from a highway listed in Section 391.252 that is blown down, destroyed, taken down, or removed for a purpose other than maintenance or to change a letter, symbol, or other matter on the sign may be reerected, reconstructed, repaired, or rebuilt only if the cost of reerecting, reconstructing, repairing, or rebuilding the sign is not more than 60 percent of the cost of erecting a new off-premise sign of the same size, type, and construction at the same location.

(b) The department shall permit the relocation of an off-premise sign adjacent to and visible from a highway listed in Section 391.252 to another location that is adjacent to and visible from the same highway if:

(1) the construction, reconstruction, or expansion of a highway requires the removal of the sign;

(2) the sign is not modified to increase the above-grade height, the area of each sign face, the dimensions of the sign face, the number of sign faces, or the illumination of the sign; and

(3) the department identifies an alternate site for the relocation of the sign adjacent to and visible from the highway listed in Section 391.252.

(c) For purposes of this section, the department shall specify, within 30 days of receipt of a request for a relocation site, a minimum of three alternate sites that meet permitting requirements for an off-premise sign to be reerected, reconstructed, repaired, or rebuilt adjacent to and visible from a highway listed in Section 391.252.

(d) The owner of an off-premise sign that is reerected, reconstructed, repaired, or rebuilt according to Subsection (a) or relocated according to Subsection (b) may alter the materials and design of the sign to reduce the number of upright supports, subject to other restrictions in this section, in a manner that meets or exceeds the pre-existing structural specifications of the sign.

Sec. 391.254. CIVIL PENALTY. (a) A person who violates Section 391.252 is liable to the state for a civil penalty of not less than \$500 or more than \$1,000 for each violation, depending on the seriousness of the violation. A separate penalty may be imposed for each day a continuing violation occurs.

(b) The attorney general, the district or county attorney for the county, or the municipal attorney of the municipality in which the violation is alleged to have occurred may bring suit to collect the penalty.

(c) A civil penalty collected by the attorney general under this section shall be deposited to the credit of the state highway fund.

(d) Before a suit may be brought for a violation of Section 391.252, the attorney general, the district or county attorney for the county, or the municipal attorney of the municipality in which the violation is alleged to have occurred shall give the owner of the off-premise sign a written notice that:

(1) describes the violation and specific location of the sign found to be in violation;

(2) states the amount of the proposed penalty for the violation; and

(3) gives the owner 30 days from receipt to remove the sign and cure the violation to avoid the penalty unless the sign owner was given notice and opportunity to cure a similar violation within the preceding 12 months.

Sec. 391.255. APPLICABILITY OF SUBCHAPTER. The restrictions imposed by this subchapter are in addition to those imposed by the remainder of this chapter.

Sec. 391.256. SCENIC BYWAYS PROGRAM. The department shall study current regulations affecting billboards in this state, including vegetation control regulations, and the feasibility of adopting a scenic byways program in accordance with 23 U.S.C. Section 162. The department shall report the findings of the study to the legislature not later than January 1, 2003. This section expires January 2, 2003.

SECTION 4. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2404**

Senator Brown submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2404** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BROWN	R. LEWIS
BIVINS	CORTE
LUCIO	HOPE
WENTWORTH	COOK
	T. KING

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1148**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1148** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER	COOK
LUCIO	RITTER
JACKSON	RAMSAY
	HARDCASTLE

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 317**

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 317** 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.

SIBLEY	MCCALL
BIVINS	AVERITT
CARONA	BOSSE
MADLA	CHISUM
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to continuation and functions of the Office of Consumer Credit Commissioner and the regulation of certain financial businesses; providing a penalty.

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

SECTION 1. Section 14.056, Finance Code, is amended to read as follows:

Sec. 14.056. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined 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) A person may not be an employee of the office 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 an industry regulated by the office; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the office.

(c) A person may not act as the general counsel to the office 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 commissioner or an assistant commissioner, examiner, or other employee of the office may not be an officer, employee, or paid consultant of a trade association in an industry regulated by] the office.

SECTION 2. Section 14.058, Finance Code, is amended to read as follows:

Sec. 14.058. EQUAL EMPLOYMENT OPPORTUNITY. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the office to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the office's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office [plan to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plan must include:

[(1) a comprehensive analysis of the office's workforce by race, sex, ethnic origin, class of position, and salary or wage;

[(2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;

[(3) steps reasonably designed to overcome any identified underutilization of minorities and women in the office's workforce; and

[(4) objectives and goals, timetables for achieving those objectives and goals, and assignment of responsibility for their achievement.

[(b) The plan must cover an annual period and the commissioner shall update it at least annually.

[(c) The office shall submit a plan progress report to the governor's office not later than the 30th day after November 1 and April 1 of each year and shall include in the report steps the office has taken during the reporting period to comply with requirements of this section].

SECTION 3. Section 14.062, Finance Code, is amended to read as follows:

Sec. 14.062. CONSUMER INFORMATION AND COMPLAINTS. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the office;

(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

(6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(b) The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation [commissioner shall keep an information file about each complaint filed with the office relating to a license holder or other lender regulated by the office under this chapter or Title 4 or 5.

~~[(b) At least quarterly until final disposition of any written complaint filed with the office relating to a license holder or other lender regulated by the office, the commissioner shall notify the parties to the complaint of the status of the complaint] unless the notice would jeopardize an undercover investigation.~~

SECTION 4. 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, 2013 ~~[2004]~~.

SECTION 5. Subchapter B, Chapter 14, Finance Code, is amended by adding Section 14.067 to read as follows:

Sec. 14.067. EMPLOYEE INCENTIVE PROGRAM. The commissioner or the commissioner's designee shall provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 6. Section 14.106, Finance Code, is amended to read as follows:

Sec. 14.106. INFORMATION [PROCEDURES] REGARDING EMPLOYMENT REQUIREMENTS [STANDARDS OF CONDUCT]. The commissioner or the commissioner's designee shall provide to agency employees, as often as necessary, information regarding the requirements for employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees [shall develop a procedure to ensure that a person holding the position of commissioner and each assistant commissioner, examiner, and other employee of the office is informed of the standards of conduct required by law for a state official or employee].

SECTION 7. Section 14.107, Finance Code, is amended to read as follows:

Sec. 14.107. FEES. (a) The finance commission [commissioner] shall establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, and Chapters 371, 392, and 394 and under Chapters 38-41, Business & Commerce Code.

(b) The finance commission by rule shall set the fees for licensing and examination under Chapter 342, 348, or 371 at amounts or rates necessary to recover the costs of administering those chapters. The rules may provide that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors. The commissioner may provide for collection of a single annual fee from a person licensed under Chapter 342, 348, or 371 to include amounts due for both licensing and examination.

SECTION 8. Section 14.302, Finance Code, is amended to read as follows:

Sec. 14.302. APPEAL OF LICENSE WITHHOLDING OR REVOCATION. An appeal of a decision of the commissioner refusing to grant a license to an applicant or revoking the license of a license holder shall be under the substantial evidence rule as provided by Chapter 2001, Government Code [by trial de novo].

SECTION 9. Section 341.001, Finance Code, is amended to read as follows:

Sec. 341.001. DEFINITIONS. In this subtitle:

(1) "Authorized lender" means a person who holds a license issued under Chapter 342, a bank, or a savings association.

(2) "Bank" means a person:

(A) organized as a state bank under Subtitle A, Title 3, or under similar laws of another state if the deposits of a bank from another state are insured by the Federal Deposit Insurance Corporation; or

(B) organized as a national bank under 12 U.S.C. Section 21 et seq., as subsequently amended.

(3) "Cash advance" means the total of the amount of cash or its equivalent that the borrower receives and the amount that is paid at the borrower's direction or request, on the borrower's behalf, or for the borrower's benefit.

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

(5) "Credit union" means a person:

(A) doing business under Subtitle D, Title 3; or

(B) organized under the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.), as subsequently amended.

(6) "Deferred presentment transaction" means a transaction in which:

(A) a cash advance in whole or part is made in exchange for a personal check or authorization to debit a deposit account;

(B) the amount of the check or authorized debit equals the amount of the advance plus a fee; and

(C) the person making the advance agrees that the check will not be cashed or deposited or the authorized debit will not be made until a designated future date.

(7) "Finance commission" means the Finance Commission of Texas or a subcommittee created by rule of the Finance Commission of Texas.

(8) ~~(7)~~ "Interest" has the meaning assigned by Section 301.002 ~~[301.001]~~.

(9) "Loan" has the meaning assigned by Section 301.002 and includes a sale-leaseback transaction and a deferred presentment transaction.

(10) "Sale-leaseback transaction" means a transaction in which a person sells personal property used primarily for personal, family, or household use and the buyer of the property agrees to lease the property back to the seller. In a sale-leaseback transaction:

(A) the buyer is a creditor and the seller is an obligor;

(B) an agreement to defer payment of a debt and an obligation to pay the debt are established; and

(C) any amount received by the buyer in excess of the price paid for the property by the buyer is interest subject to this subtitle.

(11) ~~(8)~~ "Savings association" means a person:

(A) organized as a state savings and loan association or savings bank under Subtitle B or C, Title 3, or under similar laws of another state if the deposits of the savings association from another state are insured by the Federal Deposit Insurance Corporation; or

(B) organized as a federal savings and loan association or savings bank under the Home Owners' Loan Act (12 U.S.C. Section 1461 et seq.), as subsequently amended.

SECTION 10. Section 341.403, Finance Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The finance commission may not adopt rules restricting advertising or competitive bidding by a license holder regulated by the Office of Consumer Credit Commissioner except to prohibit false, misleading, or deceptive practices.

(d) In its rules to prohibit false, misleading, or deceptive practices, the finance commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name, unless the trade name is deceptive.

SECTION 11. Chapter 341, Finance Code, is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. LICENSING AND REGULATION IN GENERAL

Sec. 341.501. STAGGERED RENEWAL. The finance commission by rule may adopt a system under which licenses under this subtitle expire on various dates during the year. For the year in which the license expiration date is changed, the Office of Consumer Credit Commissioner shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 341.502. FORM OF LOAN CONTRACT. (a) A contract for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner, whether in English or Spanish, must be written in plain language designed to be easily understood by the average consumer. The contract must be printed in an easily readable font and type size.

(b) The finance commission shall adopt rules governing the form of contracts to which this section applies. The rules must include model contracts complying with the rules and this section.

(c) A person governed by this section is not required to use a model contract. The person, however, may not use a contract other than a model contract unless the person has submitted the contract to the commissioner. The commissioner shall issue an order disapproving the contract if the commissioner determines that the contract does not comply with this section or rules adopted under this section.

(d) The person may begin using a contract submitted under Subsection (c) on the date it is submitted for review. If the commissioner issues an order disapproving the contract, the person may not use the contract after the order takes effect.

(e) A person may not represent that the commissioner's failure to disapprove a contract constitutes an approval of the contract by the commissioner, the Office of Consumer Credit Commissioner, or the finance commission.

SECTION 12. Section 342.005, Finance Code, is amended to read as follows:

Sec. 342.005. APPLICABILITY OF CHAPTER. A loan is subject to this chapter if the loan:

- (1) provides for interest in excess of 10 percent a year;
- (2) is extended primarily for personal, family, or household use;
- (3) is made by a person engaged in the business of making, arranging, or negotiating those types of loans; and
- (4) either:
  - (A) is not secured by a lien on real property; or
  - (B) is described by Section 342.001(4) [~~342.001(3)~~], 342.301, or 342.456 and is predominantly payable in monthly installments.

SECTION 13. Subchapter A, Chapter 342, Finance Code, is amended by adding Sections 342.007, 342.008, and 342.009 to read as follows:

Sec. 342.007. DEFERRED PRESENTMENT TRANSACTION. The finance commission shall adopt rules providing for the regulation of deferred presentment transactions.

Sec. 342.008. ATTEMPT TO EVADE LAW. A person who is a party to a deferred presentment transaction may not evade the application of this subtitle or a rule adopted under this section by use of any device, subterfuge, or pretense. Characterization of a required fee as a purchase of a good or service in connection with a deferred presentment transaction is a device, subterfuge, or pretense for the purposes of this section.

Sec. 342.009. RETURN OF PROPERTY IN SALE-LEASEBACK TRANSACTION. The seller in a sale-leaseback agreement may terminate the agreement at any time by returning the property to the buyer in substantially the same condition as when the agreement was entered, less reasonable wear. On return of the property the seller is liable only for rental and other allowed charges under the agreement accruing before the date of the return.

SECTION 14. Subsection (c), Section 342.101, Finance Code, is amended to read as follows:

(c) On the filing of each license application, the applicant shall pay to the commissioner for the license's year of issuance a license fee in an amount determined as provided by Section 14.107 ~~of:~~

~~[(1) \$100 if the license is granted not later than June 30; or~~

~~[(2) \$50 if the license is granted after June 30].~~

SECTION 15. Section 342.154, Finance Code, is amended to read as follows:

Sec. 342.154. ANNUAL LICENSE FEE. ~~[(a)]~~ Not later than December 1, a license holder shall pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107.

~~[(b) The annual fee for a license under this chapter is \$200 except that if, on September 30 preceding the date on which the annual fee is due, the gross unpaid balance of loans regulated under this chapter in the office for which the license is issued is \$100,000 or less, the annual fee is \$100.]~~

SECTION 16. Subsection (b), Section 346.204, Finance Code, is amended to read as follows:

(b) A change made under Subsection (a) that relates to an existing or future balance of a revolving credit account and that is adverse to the customer may not take effect before the first billing cycle that begins after the 90th day after the date of written notice of the change to the customer unless the amendment is made under Section 303.103 [~~303.403~~].

SECTION 17. Subchapter A, Chapter 348, Finance Code, is amended to clarify and confirm existing law by adding Section 348.012 to read as follows:

Sec. 348.012. APPLICABILITY OF INSURANCE PREMIUM FINANCING PROVISIONS. Chapter 24, Insurance Code, does not apply to a retail installment transaction.

SECTION 18. Chapter 348, Finance Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. LICENSING;  
ADMINISTRATION OF CHAPTER

Sec. 348.501. LICENSE REQUIRED. (a) A person may not act as a holder under this chapter unless the person:

- (1) is an authorized lender or a credit union; or
- (2) holds a license issued under this chapter.

(b) A person may not use any device, subterfuge, or pretense to evade the application of this section.

Sec. 348.502. APPLICATION REQUIREMENTS. (a) The application for a license under this chapter must:

- (1) be under oath;
- (2) identify the applicant's principal parties in interest; and
- (3) contain other relevant information that the commissioner requires.

(b) On the filing of a license application, the applicant shall pay to the commissioner:

- (1) an investigation fee not to exceed \$200; and
- (2) for the license's year of issuance, a license fee in an amount determined as provided by Section 14.107.

Sec. 348.503. INVESTIGATION OF APPLICATION. On the filing of an application and payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Sec. 348.504. APPROVAL OR DENIAL OF APPLICATION. (a) The commissioner shall approve the application and issue to the applicant a license under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the forms and contracts to be used by the applicant are appropriate and adequate to protect the interests of retail buyers.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Sec. 348.505. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Sec. 348.506. ANNUAL LICENSE FEE. Not later than December 1, a license holder shall pay to the commissioner for each license held an annual fee for the year beginning the next January 1, in an amount determined as provided by Section 14.107.

Sec. 348.507. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. If the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of:

(1) that day; or

(2) December 31 of the last year for which an annual fee was paid.

Sec. 348.508. LICENSE SUSPENSION OR REVOCATION. After notice and a hearing the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the annual license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

Sec. 348.509. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Sec. 348.510. SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by delivering to the commissioner:

(1) the license; and

(2) a written notice of the license's surrender.

Sec. 348.511. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Sec. 348.512. TRANSFER OR ASSIGNMENT OF LICENSE. A license may be transferred or assigned only with the approval of the commissioner.

Sec. 348.513. ADOPTION OF RULES. (a) The finance commission may adopt rules to enforce this chapter.

(b) The commissioner shall recommend proposed rules to the finance commission.

Sec. 348.514. EXAMINATION; ACCESS TO RECORDS. (a) At the times the commissioner considers necessary, the commissioner or the commissioner's representative shall:

(1) examine each place of business of each license holder; and  
(2) investigate the license holder's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.

(b) The license holder shall:

(1) give the commissioner or the commissioner's representative free access to the license holder's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the commissioner's representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) Information obtained under this section is confidential.

(e) A license holder's violation of Subsection (b) is a ground for the suspension or revocation of the license.

(f) An examination of a license holder's place of business may be made only:

(1) after advance notice; and

(2) during normal business hours.

Sec. 348.515. GENERAL INVESTIGATION. To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including a license holder, who the commissioner has reasonable cause to believe is violating this chapter, regardless of whether the person claims to not be subject to this chapter.

Sec. 348.516. PAYMENT OF EXAMINATION COSTS AND ADMINISTRATION EXPENSES. A license holder shall pay to the commissioner an amount determined as provided by Section 14.107 and assessed by the commissioner to cover the direct and indirect costs of an examination and a proportionate share of general administrative expenses.

Sec. 348.517. LICENSE HOLDER'S RECORDS. (a) A license holder shall maintain a record of each retail installment transaction made under this chapter as is necessary to enable the commissioner to determine whether the license holder is complying with this chapter.

(b) A license holder shall keep the record until the later of:

(1) the third anniversary of the date the last payment was made on the retail installment transaction; or

(2) the second anniversary of the date on which the final entry is made in the record.

(c) A record described by Subsection (a) must be prepared in accordance with accepted accounting practices.

(d) The commissioner shall accept a license holder's system of records if the system discloses the information reasonably required under Subsection (a).

(e) A license holder shall keep each obligation signed by a retail buyer at an office in this state designated by the license holder unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

Sec. 348.518. SHARING OF INFORMATION. To ensure consistent enforcement of law and minimization of regulatory burdens, the commissioner and the Texas Department of Transportation may share information, including criminal history information, relating to a person licensed under this chapter. Information otherwise confidential remains confidential after it is shared under this section.

SECTION 19. Subchapter F, Chapter 349, Finance Code, is amended by adding Section 349.503 to read as follows:

Sec. 349.503. CERTAIN PROCEEDINGS IN CONNECTION WITH SALE-LEASEBACK TRANSACTION. (a) If a buyer in a sale-leaseback transaction requires the seller to provide a check as security for the transaction, the buyer may not file or threaten to file a charge, complaint, or criminal prosecution under Section 31.03, 31.04, or 32.41, Penal Code, based on nonpayment of the check.

(b) A buyer who violates Subsection (a) commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than \$1,000.

SECTION 20. Section 371.055, Finance Code, is amended to read as follows:

Sec. 371.055. FEES; PROOF OF INSURANCE. An applicant must submit with the application:

(1) an investigation fee of:

(A) \$500 if the applicant does not hold a license; or

(B) \$250 if the application:

(i) is for an additional license for a separate location; or

(ii) involves substantially identical principals and owners of a licensed pawnshop at a separate location;

(2) an annual fee in an amount determined as provided by Section 14.107 [~~of \$100~~]; and

(3) proof of general liability and fire insurance in a reasonable amount and form required by the commissioner.

SECTION 21. Subsection (a), Section 371.064, Finance Code, is amended to read as follows:

(a) Not later than December 1, a pawnbroker shall pay to the commissioner for each license held an annual fee in an amount determined as provided by Section 14.107 [~~of \$125~~] for the year beginning the next January 1.

SECTION 22. Subsection (c), Section 371.159, Finance Code, is amended to read as follows:

(c) A pawn service charge may not exceed an amount equal to:

(1) 20 percent of the total amount financed for one month if that amount is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of \$30;

(2) 15 percent of the total amount financed for one month if that amount is more than the amount computed for Subdivision (1) but less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of \$200 [~~\$100~~];

(3) 2 1/2 percent of the total amount financed for one month if that amount is more than the amount computed for Subdivision (2) but less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of \$300; or

(4) 1 percent of the total amount financed for one month if that amount is more than the amount computed for Subdivision (3).

SECTION 23. Section 371.169, Finance Code, is amended to read as follows:

Sec. 371.169. UNREDEEMED PLEDGED GOODS; FORFEITURE. (a) A pawnbroker shall hold pledged goods not redeemed by the pledgor on or before the maturity date stated in the pawn ticket issued in connection with a pawn transaction for at least 30 ~~[60]~~ days after that date.

(b) On or before the 30th ~~[60th]~~ day after the original maturity date, the pledgor may redeem the pledged goods by paying:

(1) the originally agreed redemption price; and

(2) an additional pawn service charge equal to one-thirtieth of the original monthly pawn service charge for each day after the original maturity date, including the day on which the pledged goods are finally redeemed.

(c) Pledged goods not redeemed on or before the 30th ~~[60th]~~ day after the original maturity date may, at the option of the pawnbroker, be forfeited to the pawnbroker.

SECTION 24. Subsection (a), Section 411.095, Government Code, is amended to read as follows:

(a) The consumer credit commissioner is entitled to obtain from the department criminal history record information that relates to a person who is[-

~~[(+)]~~ an applicant for or holder of a license under Chapter 342, 348, or 371, Finance Code~~[-or~~

~~[(2) the holder of a license under that Act].~~

SECTION 25. Section 371.065, Finance Code, is repealed.

SECTION 26. Sections 348.401 and 348.402, Finance Code, are repealed.

SECTION 27. The Finance Commission of Texas and the consumer credit commissioner shall conduct a study of mortgage lending practices with emphasis on identifying possible predatory and discriminatory lending patterns or practices. In conducting the study, the agencies shall collect data from entities making mortgage loans about mortgage loans using the data formats of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. Section 2801 et seq.) and other data fields necessary to identify possible predatory practices. In conducting the study, the agencies shall also study and consider parameters that could be used to consistently classify credit risk among mortgage loans for the purpose of assessing possible predatory or discriminatory lending practices. The agencies shall prepare a report detailing the findings and recommendations resulting from the study and deliver the report to the lieutenant governor, the speaker of the house of representatives, and legislative committees dealing with lending entities before December 1, 2002.

SECTION 28. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2001.

(b) Section 17 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 17 of this Act takes effect September 1, 2001.

(c) Section 26 of this Act takes effect September 1, 2002.

(d) The requirement that a person hold a license under Subchapter F, Chapter 348, Finance Code, as added by this Act, applies only on and after September 1, 2002.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1573**

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1573** 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.

LINDSAY BERNSEN BROWN JACKSON TRUAN On the part of the Senate	HAWLEY CAPELO KUEMPEL LUNA SEAMAN On the part of the House
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A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of floating cabins; providing penalties.

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

SECTION 1. Title 4, Parks and Wildlife Code, is amended by adding Chapter 32 to read as follows:

CHAPTER 32. FLOATING CABINS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. DEFINITIONS. In this chapter:

(1) "Coastal water" means those waters east and south of the coastal waters boundary established in 31 T.A.C. Section 65.3(10).

(2) "Floating cabin" means a structure securely moored in the coastal water of this state used for habitation or shelter and not routinely used for transportation. The term includes all mooring lines, anchors, anchor lines, spuds, and pilings and any other tethering devices. The term does not include a structure permitted by the General Land Office under Chapter 33, Natural Resources Code.

Sec. 32.002. APPLICABILITY TO COASTAL WATER. This chapter applies only to floating cabins moored in coastal water.

Sec. 32.003. APPLICABILITY OF OTHER LAW. Chapter 33, Natural Resources Code, does not apply to a floating cabin regulated under this chapter.

Sec. 32.004. EXEMPTION. Subchapter B does not apply to a floating cabin owned by a state agency.

Sec. 32.005. RULES. The commission may adopt rules to implement this chapter.

Sec. 32.006. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT CODE. The contested case provisions of the Administrative Procedure Act (Sections 2001.051-2001.178, Government Code) do not apply to this chapter.

[Sections 32.007-32.050 reserved for expansion]

SUBCHAPTER B. PERMITS FOR FLOATING CABINS

Sec. 32.051. PERMIT REQUIRED. A person may not own, maintain, or use a floating cabin in the public coastal water of this state unless a permit has been issued under this chapter for the floating cabin.

Sec. 32.052. ELIGIBILITY FOR PERMIT. A person may apply for a floating cabin permit if:

- (1) the person owns the floating cabin;
- (2) the floating cabin floats at high tide; and
- (3) the owner owned and moored the floating cabin before August 31, 2001.

Sec. 32.053. APPLICATION FOR PERMIT; REFUND. (a) An applicant must apply for a permit on a form prescribed by the department. The department shall issue a floating cabin permit to an applicant who:

- (1) meets the eligibility requirements of Section 32.052;
- (2) provides the name, mailing address, and telephone number of the applicant;

(3) describes the exact location of the floating cabin in terms of longitude, latitude, degrees, minutes, and seconds as determined by the global positioning system;

- (4) describes the height, length, and width of the floating cabin;
- (5) provides the department with a color photograph with a full view of the floating cabin;

(6) not later than August 31, 2001, pays a fee of \$1,500 or a lesser amount set by the commission; and

(7) provides the department with any other information that the department reasonably requires.

(b) The applicant and each owner of the floating cabin must sign the application under penalty of perjury.

(c) The department shall remit all fees collected under this section to the comptroller for deposit to the credit of the floating cabins cleanup account in the general revenue fund. Money in the account may be used only for the cleanup of illegal or abandoned floating cabins and related debris in the coastal water.

(d) If the permit holder elects to retire the permit, the department shall refund the fee under this section on confirmation of proper removal of the floating cabin.

Sec. 32.054. TERM OF PERMIT. A floating cabin permit issued under this chapter has a term of one year.

Sec. 32.055. ORIGINAL PERMIT AND PERMIT RENEWAL FEE. (a) An original application for permit under Section 32.053 must be accompanied by a permit application fee of \$300.

(b) To renew a floating cabin permit, a permit holder must apply in the manner prescribed by commission rule and pay a permit renewal fee of \$300.

(c) The department may refuse to issue or transfer an original or renewal license, permit, or tag if the permittee has:

- (1) been finally convicted of a violation of Section 32.154;
- (2) failed to comply with a notice issued under Section 32.154; or
- (3) failed to pay a civil penalty assessed under Section 32.154.

(d) The department shall remit all fees collected under this section to the comptroller for deposit to the credit of the game, fish, and water safety account in the general revenue fund.

Sec. 32.056. LOCATION OF PERMIT; INSPECTION ALLOWED. A permit holder shall keep a copy of the permit in the floating cabin and available for inspection by the department on request.

Sec. 32.057. TRANSFER OF PERMIT. (a) A permit holder may in writing transfer the permit to a new owner of the floating cabin.

(b) Not later than the 60th day after the date of transfer, the new permit holder shall provide to the department:

(1) the name, mailing address, and telephone number of the new permit holder;

(2) any other information the department reasonably requires; and

(3) a \$300 transfer fee.

(c) In the event that the permit holder consists of more than one person, the withdrawal of persons from ownership shall not, on renewal, be considered a transfer to the remaining owner or owners for purpose of payment of the transfer fee.

(d) The new permit holder must sign the information provided to the department under Subsection (b) under penalty of perjury.

Sec. 32.058. PURCHASE PROGRAM; PERMIT EXPIRES. (a) The commission by rule may establish a program to purchase a floating cabin for which a permit has been issued.

(b) On transfer of ownership under this section, the permit issued for the floating cabin expires.

(c) The owner of a floating cabin is not required to sell the cabin to the department under this section.

(d) The floating cabin purchase account is created as a separate account in the general revenue fund. The account consists of money deposited to the account under this section, including interest on that money. The department may accept grants and gifts of money or materials from private or public sources to be applied to the floating cabin purchase account. Money in the floating cabin purchase account may be used only for the purposes of this section. Section 403.095, Government Code, does not apply to the account.

(e) Money from the game, fish, and water safety account may not be used to purchase a floating cabin under this section.

[Sections 32.059-32.100 reserved for expansion]

#### SUBCHAPTER C. REQUIREMENTS AND PROHIBITED CONDUCT

Sec. 32.101. IDENTIFICATION OF FLOATING CABIN. (a) A floating cabin must be marked and identified by numbers, reflective tape, paint, or other means as the commission may by rule require.

(b) From sunset to sunrise, a floating cabin shall exhibit at least one white light that is visible from a 360-degree angle.

(c) This section applies to each owner of a floating cabin.

Sec. 32.102. RELOCATION OF FLOATING CABIN. A permit holder may relocate the floating cabin, subject to department approval, and the commission shall by rule specify criteria for allowing relocation.

Sec. 32.103. REPLACEMENT OF FLOATING CABIN. The permit holder may replace the floating cabin if:

(1) the replacement cabin does not exceed the height, length, or width of the original cabin; and

(2) the department approves the replacement.

Sec. 32.104. INCREASE IN SIZE OF CABIN PROHIBITED. A person may not increase the height, length, or width of a floating cabin.

Sec. 32.105. SANITATION DEVICE. (a) A floating cabin shall be equipped with a portable marine sanitation device capable of holding and retaining human body waste.

(b) Each owner of a floating cabin is liable for a violation of this section.

Sec. 32.106. SEWAGE DISCHARGE PROHIBITED. A person may not discharge human body waste, treated or untreated, from a floating cabin into or adjacent to coastal water or state land.

Sec. 32.107. LOCATION OF FLOATING CABIN IN CERTAIN SITES PROHIBITED. (a) A floating cabin may not be located in a state park, state wildlife refuge, state wildlife sanctuary, or state coastal preserve.

(b) Each owner of a floating cabin is liable for a violation of this section.

Sec. 32.108. OTHER PROHIBITED CONDUCT. An owner of a floating cabin may not allow the cabin to:

(1) obstruct navigation;

(2) damage an oyster reef, serpulid reef, or seagrass bed; or

(3) rest on a bottom or shoreline at high tide.

[Sections 32.109-32.150 reserved for expansion]

#### SUBCHAPTER D. ENFORCEMENT AND PENALTIES

Sec. 32.151. DISCIPLINARY ACTION. The department may suspend or revoke a person's floating cabin permit or place the permit holder on probation for a violation of this chapter.

Sec. 32.152. CIVIL ACTIONS ALLOWED; CIVIL PENALTY. (a) The department may bring an action for damages, injunctive relief, and any other appropriate civil relief for a violation of this chapter, except for Section 32.106.

(b) A court shall award the department attorney's fees if the department prevails in a suit filed under this section.

(c) Each owner of the floating cabin is jointly and severally liable for a violation under this section.

Sec. 32.153. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates:

(1) Section 32.051;

(2) Section 32.053(b);

(3) Section 32.056;

(4) Section 32.057(d);

(5) Section 32.101;

(6) Section 32.104;

(7) Section 32.105;

(8) Section 32.106;

(9) Section 32.107; or

(10) Section 32.108.

(b) Except as provided by Subsection (c), an offense under Subsection (a) is a Class C Parks and Wildlife Code misdemeanor.

(c) Except for a violation of Section 32.101(b), if it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under this section, the offense is a Class B Parks and Wildlife Code misdemeanor, except that the offense is not punishable by confinement in jail.

(d) Each day of a violation under this section is a separate offense.

Sec. 32.154. REMOVAL OF FLOATING CABIN; CRIMINAL PENALTY; CIVIL PENALTY; HEARING. (a) If a person owns a floating cabin that does not meet the criteria for issuance of an original permit under this chapter or if an owner violates a provision of Section 32.104, 32.107, or 32.108, the department may by written notice require the removal of the floating cabin from the coastal water not later than the 90th day after the date of notice. The owner may, not later than 30 days after receipt of notice of removal, object to the revocation and show good cause why the permit should not be revoked. Good cause includes:

(1) force majeure, including a hurricane or tropical storm;

(2) circumstances resulting in a change of criteria for reasons not attributable to the actions of the owner; or

(3) any other reasons that the department adopts by rule.

(b) A person commits an offense if the person does not remove the floating cabin during the period provided by Subsection (a) or such extended period as may be prescribed by department rule. An offense under this subsection is a Class B Parks and Wildlife Code misdemeanor, except that the offense is not punishable by confinement in jail.

(c) The department may assess a civil penalty for a violation of Subsection (a) of not more than \$1,000 for each day after the notice period that the owner fails to remove the floating cabin. Each owner is jointly and severally liable for the civil penalty and the reasonable costs of removal and cleanup of the floating cabin and related materials at that location.

(d) If a person does not remove the floating cabin during the period provided by Subsection (a), the department or a person or entity authorized by the department may remove and dispose of the floating cabin and any associated personal property in any manner without further notice.

(e) Notice under this section is valid if:

(1) a person who owns a floating cabin has held a permit issued under this chapter and the notice is sent by certified letter from the department to the owner at the last address supplied to the department under this chapter; or

(2) as to a floating cabin that has not been identified and for which the owner has not been issued a permit, the notice is affixed to the floating cabin.

(f) The department is not liable to a person for the value of a floating cabin, or any personal property associated with the cabin, removed under this section.

Sec. 32.155. VENUE. The department may file any suit under this chapter in Travis County or the county in which the floating cabin that is the subject of the suit is located.

SECTION 2. (a) Not later than February 1, 2002, the Parks and Wildlife Commission shall adopt rules necessary to implement Chapter 32, Parks and Wildlife Code, as added by this Act. The Parks and Wildlife Department shall begin to issue the permit required by Section 32.051, Parks and Wildlife Code, not later than March 1, 2002.

(b) The Parks and Wildlife Department may not enforce a prohibition or other requirement imposed by Chapter 32, Parks and Wildlife Code, as added by this Act, before February 1, 2002.

(c) Section 32.153, Parks and Wildlife Code, as added by this Act, applies only to an offense committed on or after February 1, 2002.

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, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1458**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1458** 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.

ARMBRISTER  
ELLIS  
HARRIS  
OGDEN  
DUNCAN

HUNTER  
RANGEL  
TELFORD  
MCCALL

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the management of state agency and local government electronic projects, equipment, and contracts, to the purchase and use of certain advanced technological equipment, and to the use of outside personnel by the comptroller of public accounts.

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

ARTICLE 1. ELECTRONIC GOVERNMENT  
PROGRAM MANAGEMENT

SECTION 1.01. CREATION OF OFFICE. Subtitle B, Title 10, Government Code, is amended by adding Chapter 2055 to read as follows:

CHAPTER 2055. ELECTRONIC GOVERNMENT  
PROGRAM MANAGEMENT  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2055.001. DEFINITIONS. In this chapter:

(1) "Board," "department," "electronic government project," "local government," and "TexasOnline" have the meanings assigned by Section 2054.003.

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(3) "Office" means the Electronic Government Program Management Office of the department.

(4) "State agency" has the meaning assigned by Section 2054.003, except that the term does not include a university system or institution of higher education.

Sec. 2055.002. APPLICABILITY TO INSTITUTIONS OF HIGHER EDUCATION. (a) Except as provided by Subsection (b), the requirements of this chapter regarding electronic government projects do not apply to institutions of higher education.

(b) Subject to approval by the office, an institution of higher education may elect to participate regarding an electronic government project of that institution in the same manner as a state agency under this chapter. If the institution makes this election and the office approves the election, the institution:

(1) shall comply with this chapter regarding that electronic government project in the same manner as a state agency; and

(2) may not withdraw the project from management by the office unless the office approves the withdrawal.

Sec. 2055.003. SUNSET PROVISION. The office is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2005.

[Sections 2055.004-2055.050 reserved for expansion]

#### SUBCHAPTER B. PROGRAM MANAGEMENT OFFICE

Sec. 2055.051. CREATION. The department shall create an Electronic Government Program Management Office to direct and facilitate the implementation of electronic government projects selected under this chapter.

Sec. 2055.052. GENERAL POWERS AND DUTIES. The office shall:

(1) establish and support standard business practices for electronic government projects;

(2) coordinate and establish standards for implementation of electronic government projects;

(3) identify and incorporate best practices for electronic government projects in such areas as:

(A) the procurement of hardware, software, and technology services;

(B) project support;

(C) implementation strategies;

(D) project planning and scheduling;

(E) quality assurance;

(F) overall team coordination;

(G) status reporting; and

(H) technical standards; and

(4) provide risk management and quality assurance services for electronic government projects.

Sec. 2055.053. LOCAL GOVERNMENT AND FEDERAL PROJECTS. The office may coordinate electronic government projects involving:

(1) local government; or

(2) the federal government.

Sec. 2055.054. COORDINATION AMONG STATE AGENCIES; APPROVAL OF SPENDING. (a) In coordination with the Legislative Budget Board and the comptroller, the office shall:

(1) identify the resources necessary for projects and opportunities among multiple state agencies for the coordination of electronic government projects; and

(2) approve spending of money for electronic government projects by affected state agencies under Section 2055.101.

(b) The office shall create state agency coordination teams, as appropriate, to reduce information technology expenditures and eliminate unnecessary duplication.

Sec. 2055.055. COOPERATION; STANDARDS. (a) A state agency shall:

(1) cooperate with the department and the office regarding electronic government projects; and

(2) provide to the department, as often as may be required and in the format required by the department, all information required by the department under this chapter that has not already been submitted to the department.

(b) In requesting cooperation from a state agency under this section, the department shall consider the necessity of the request as well as the cost to the agency in time and resources.

(c) The office shall establish standards for state agencies to follow in implementing selected electronic government projects to ensure maximum savings through cooperation among agencies.

Sec. 2055.056. QUALITY ASSURANCE. In coordination with the state auditor, the Legislative Budget Board, and the affected state agency, the office shall provide quality assurance services to monitor electronic government projects selected under Section 2055.101.

Sec. 2055.057. FUNDING FOR PROGRAM MANAGEMENT OFFICE. (a) In coordination with the comptroller, Governor's Office of Budget and Planning, state auditor, and Legislative Budget Board, the office shall develop a model for funding the office from a portion of the money appropriated for projects selected under Section 2055.101, including staff necessary for the office.

(b) The department may include in its appropriations request a proposal for funding projects selected under Section 2055.101.

Sec. 2055.058. TEXASONLINE. (a) The division of the department with responsibility for TexasOnline shall coordinate the ongoing development of TexasOnline with the office.

(b) The office shall promote the use of TexasOnline by state agencies.

Sec. 2055.059. USE OF WEST TEXAS DISASTER RECOVERY AND OPERATIONS CENTER. (a) In this section, "center" means the West Texas Disaster Recovery and Operations Center.

(b) The office shall use the center for the consolidation of data operations and recovery to the extent that using the center provides the best value to the state.

(c) The office shall serve as the state's primary contact with the center regarding the consolidation of data operations and recovery.

(d) The office shall encourage increased use of the center by state agencies.

[Sections 2055.060-2055.100 reserved for expansion]

SUBCHAPTER C. MANAGEMENT OF  
ELECTRONIC GOVERNMENT PROJECTS

Sec. 2055.101. SELECTION OF ELECTRONIC GOVERNMENT PROJECTS.

(a) The office, in coordination with the governor, state auditor, and Legislative Budget

Board, shall develop selection criteria for the type of electronic government projects that require direct oversight by the office. The criteria must include:

- (1) issues related to interagency cooperation and implementation;
- (2) costs, including reimbursement strategies;
- (3) requirements for authentication and security implications; and
- (4) the state's strategic vision regarding electronic government projects.

(b) The office shall submit the criteria developed under Subsection (a) to the department. The department shall adopt the criteria by rule.

(c) Based on any selection criteria adopted under Subsection (b) and in coordination with the governor, state auditor, and Legislative Budget Board, the office may select proposed or existing electronic government projects.

Sec. 2055.102. APPEAL OF SELECTION. (a) A state agency that disagrees with the selection of an electronic government project under Section 2055.101 may appeal to the executive director of the department. If the agency disagrees with the executive director's decision, the agency may then appeal to the board. If the agency disagrees with the board's decision, the agency may then appeal to the governor. The governor's decision regarding selection is final.

(b) The department by rule shall adopt appeal procedures.

Sec. 2055.103. USE OF TEXASONLINE. (a) To the extent possible, the office shall use TexasOnline for electronic government projects that it manages.

(b) The office shall evaluate current and potential electronic government projects to determine whether they are suitable for TexasOnline.

Sec. 2055.104. ENTERPRISE RESOURCE PLANNING; USE OF OFFICE REQUIRED. (a) As used in this section, "enterprise resource planning" includes the administration of an entity's:

- (1) general ledger;
- (2) accounts payable;
- (3) accounts receivable;
- (4) budgeting;
- (5) inventory;
- (6) asset management;
- (7) billing;
- (8) payroll;
- (9) projects;
- (10) grants; and
- (11) human resources, including performance measures, time spent on tasks, and other personnel and labor issues.

(b) In coordination with the Health and Human Services Commission and the comptroller, the office shall establish standards for implementing an electronic government project for enterprise resource planning systems in this state. The standards must build on the models developed by the commission.

(c) A state agency that chooses to implement or modify an electronic government project for an enterprise resource planning system must comply with the standards developed by the office under this section.

Sec. 2055.105. ONLINE SERVICE FOR NEW BUSINESSES. (a) The office, with assistance from the business permit office of the Texas Department of Economic Development and any other affected state agencies, shall develop and implement a plan for the creation of an electronic government project to provide new businesses in this state a single source for information and permitting.

(b) The project must:

(1) be integrated with TexasOnline; and

(2) provide comprehensive and relevant information for a new business, including:

(A) steps and information necessary to start a new business;

(B) general business regulations;

(C) information on licensing and permitting; and

(D) relevant telephone numbers and Internet addresses for seeking further information.

(c) The Texas Department of Economic Development, secretary of state, Texas Natural Resource Conservation Commission, Texas Department of Licensing and Regulation, Texas Department of Transportation, comptroller, and any other state agency involved in issuing permits to new businesses shall assist the office in the development and operation of the project.

(d) State agencies shall cooperate with the office to structure their procedures to facilitate participation in the project.

Sec. 2055.106. LEGISLATIVE OVERSIGHT COMMITTEE. (a) The Legislative Oversight Committee for Electronic Government Projects is created to oversee the establishment of electronic government projects by the office and state agencies.

(b) The speaker of the house of representatives and the lieutenant governor shall appoint the members of the committee and assign duties as appropriate.

(c) The committee is abolished and this section expires December 31, 2004.

[Sections 2055.107-2055.150 reserved for expansion]

SUBCHAPTER D. ADDITIONAL PLANNING,  
OVERSIGHT, AND REPORTS

Sec. 2055.151. ELECTRONIC GOVERNMENT PROGRAM MANAGEMENT OFFICE ADVISORY COMMITTEE. (a) The board shall create an Electronic Government Program Management Office Advisory Committee under Section 2054.033 to provide ongoing direction for the operation of the office.

(b) The board shall appoint not more than 15 members to the committee. The committee must include:

(1) one member from a large state agency;

(2) one member from a small state agency;

(3) one member from a state agency not described by Subdivision (1) or (2);

(4) one member from a local government;

(5) one member from an institution of higher education;

(6) one member from the comptroller's office;

(7) one member from the governor's office;

(8) one member from the state auditor's office;

(9) one member from the Legislative Budget Board; and

(10) at least two public members, including one member who represents a business.

(c) The committee shall assist the office to:

(1) establish:

(A) procedures;

(B) project priorities; and

(C) reporting requirements; and

(2) provide:

(A) guidance, direction, and perspective about the office's operations; and

(B) recommendations for implementing electronic government projects in this state.

(d) A governmental member of the committee may be reimbursed for expenses only from money available to the governmental entity the member represents.

Sec. 2055.152. STRATEGIC AND BIENNIAL OPERATING PLANS. The office shall review state agency plans prepared under Sections 2054.095 and 2054.100 to:

(1) identify electronic government projects that should be selected by the office for management; and

(2) recommend any changes to those plans or the instructions for those plans to ensure that electronic government projects are consistent with the state strategic plan.

Sec. 2055.153. REPORTS ON ELECTRONIC GOVERNMENT PROJECTS. (a) In coordination with the quality assurance team of the Legislative Budget Board and the state auditor, the office shall establish a state agency reporting system that requires state agencies to report to the office on:

(1) electronic government projects selected under Section 2055.101 so that the office may effectively monitor those projects; and

(2) all other electronic government projects for that agency.

(b) The reports established under Subsection (a)(1) must include an analysis of:

(1) efficiencies achieved by the project;

(2) costs and benefits; and

(3) the scope of the project, including persons affected by the project.

SECTION 1.02. REPORT ON ELECTRONIC GOVERNMENT PROJECTS. Subsection (b), Section 2054.055, Government Code, is amended to read as follows:

(b) The report must:

(1) assess the progress made toward meeting the goals and objectives of the state strategic plan for information resources management;

(2) describe major accomplishments of the state or a specific state agency in information resources management;

(3) describe major problems in information resources management confronting the state or a specific state agency;

(4) provide a summary of the total expenditures for information resources and information resources technologies by the state; ~~and~~

(5) make recommendations for improving the effectiveness and cost-efficiency of the state's use of information resources; and

(6) include a list compiled by the department's program management office from the information gathered under Sections 2055.152 and 2055.153 of the electronic government projects:

(A) that are managed by the office under Chapter 2055; and

(B) that are not yet managed by the office under Chapter 2055, but have been selected for management under Chapter 2055.

SECTION 1.03. REPORT ON STRATEGIC AND BIENNIAL OPERATING PLANS. Not later than November 1, 2001, the Electronic Government Program Management Office shall complete its recommendations on modifying instructions

based on the initial review conducted under Section 2055.152, Government Code, as added by this article.

SECTION 1.04. APPOINTMENT OF LEGISLATIVE OVERSIGHT COMMITTEE. Not later than November 15, 2001, the members of the Legislative Oversight Committee for Electronic Government Projects created under Section 2055.106, Government Code, as added by this article, must be designated under that section.

SECTION 1.05. APPOINTMENT OF ELECTRONIC GOVERNMENT PROGRAM MANAGEMENT OFFICE ADVISORY COMMITTEE. Not later than January 15, 2002, the governing board of the Department of Information Resources shall appoint the members of the Electronic Government Program Management Office Advisory Committee, as provided by Section 2055.151, Government Code, as added by this article.

SECTION 1.06. ADOPTION OF RULES. Not later than May 31, 2002, the Department of Information Resources shall adopt the rules required by Sections 2055.101 and 2055.102, Government Code, as added by this article.

SECTION 1.07. PLAN. (a) Not later than September 1, 2002, the Electronic Government Program Management Office shall complete the plan required under Section 2055.105, Government Code, as added by this article. The plan must outline the recommendations and resources necessary to further develop and implement the Internet services provided under that section.

(b) The business permit office of the Texas Department of Economic Development and any other affected state agencies shall assist the Electronic Government Program Management Office in developing the plan.

SECTION 1.08. FUNDING DATE. Section 2055.101(c), Government Code, as added by this article, applies only to projects to be funded after September 1, 2003.

## ARTICLE 2. TEXASONLINE

SECTION 2.01. AMENDMENT OF DEFINITIONS. Section 2054.003, Government Code, is amended to read as follows:

Sec. 2054.003. DEFINITIONS. In this chapter:

(1) "Application" means a separately identifiable and interrelated set of information resources technologies that allows a state agency to manipulate information resources to support specifically defined objectives.

(2) "Board" means the governing board of the Department of Information Resources.

(3) "Data processing" means information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic or mechanical means. The term includes:

(A) central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters, and equipment and systems for computer networks;

(B) all related services, including feasibility studies, systems design, software development, and time-sharing services, provided by state employees or others; and

(C) the programs and routines used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(4) "Department" means the Department of Information Resources.

(5) "Electronic government project" means the use of information technology to improve the access to and delivery of a government service, including a project that uses the Internet as a primary tool for the delivery of a government service or performance of a governmental function.

(6) "Executive director" means the executive director of the Department of Information Resources.

(7) [~~6~~] "Information resources" means the procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

(8) [~~7~~] "Information resources technologies" means data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.

(9) "Local government" means a county, municipality, special district, school district, junior college district, or other political subdivision of the state.

(10) "Program management office" means the Electronic Government Program Management Office created by the department under Chapter 2055 to manage projects.

(11) [~~8~~] "Project" means a program to provide information resources technologies support to functions within or among elements of a state agency, that ideally is characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.

(12) [~~9~~] "State agency" means a department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

(13) [~~10~~] "Telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, or sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems. The term includes all facilities and equipment performing those functions that are owned, leased, or used by state agencies and branches of state government.

(14) "TexasOnline" means the electronic government project or its successor project implemented under Section 2054.062 or its successor statute.

SECTION 2.02. USE OF TEXASONLINE. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.113 to read as follows:

Sec. 2054.113. DUPLICATION WITH TEXASONLINE. (a) This section does not apply to a state agency that is a university system or institution of higher education as defined by Section 61.003, Education Code.

(b) A state agency may not duplicate an infrastructure component of TexasOnline unless the program management office approves the duplication. In this subsection, "infrastructure" does not include the development of applications, and the supporting platform, for electronic government projects.

SECTION 2.03. TEXASONLINE GRANT PROGRAM. Chapter 2054, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. TEXASONLINE GRANT PROGRAM

Sec. 2054.301. CREATION. The TexasOnline grant program is created to enable counties, municipalities, and school districts to provide electronic government services through TexasOnline.

Sec. 2054.302. MANAGEMENT. The program management office shall:

- (1) manage the TexasOnline grant program;
- (2) establish specific criteria and processes for selecting counties, municipalities, and school districts to participate in the grant program;
- (3) develop a cost methodology to minimize the amount smaller governmental entities must pay for maintenance of services through TexasOnline; and
- (4) explore opportunities with the Telecommunications Infrastructure Fund Board to develop automatic eligibility or a streamlined grant application process for applicants for collaborative community networking grants.

Sec. 2054.303. PREFERENCE FOR DISTRIBUTION OF GRANT MONEY. In determining the distribution of grant money under this subchapter, the department shall prefer counties, municipalities, and school districts located in a strategic investment area, as defined by Section 171.721, Tax Code.

Sec. 2054.304. CONDITIONS. As a condition of receiving a grant under this subchapter, a grant recipient must agree to maintain online services after the grant period terminates. The department and the grant recipient must negotiate and agree on the conditions of the grant, including the length of time required for maintenance of online services after the grant period ends.

Sec. 2054.305. USE OF GRANT MONEY. (a) Grant money may be used only to:

- (1) pay start-up costs incurred by the use of TexasOnline;
- (2) pay for the design and maintenance of websites and other online services with program offerings designed to benefit counties, municipalities, and school districts through TexasOnline; or
- (3) develop, deploy, and maintain information technology systems to provide governmental services through TexasOnline.

(b) Grant money may not be used to pay for communications links to public or private telecommunication systems, such as the state's public telecommunications network or for Internet service provider costs.

Sec. 2054.306. EXPIRATION. This subchapter expires September 1, 2003.

SECTION 2.04. FUNDING CONTINGENCY. The provisions in Article 2 of this Act apply to the extent that funds are specifically appropriated for the purpose of Article 2 of this Act.

ARTICLE 3. PROCUREMENT

SECTION 3.01. Chapter 2177, Government Code, is amended by adding Section 2177.0001 to read as follows:

Sec. 2177.0001. DEFINITIONS. In this chapter:

(1) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(2) "Political subdivision" includes a school district.

(3) "State agency" has the meaning assigned by Section 2054.003, except that the term does not include a university system or institution of higher education.

SECTION 3.02. Chapter 2177, Government Code, is amended by adding Section 2177.005 to read as follows:

Sec. 2177.005. APPLICABILITY TO INSTITUTIONS OF HIGHER EDUCATION. An institution of higher education may, but is not required to, participate in any electronic system established under this chapter.

ARTICLE 4. MISCELLANEOUS  
INFORMATION RESOURCES ISSUES

SECTION 4.01. CHIEF INFORMATION OFFICER. Subchapter B, Chapter 2054, Government Code, is amended by adding Section 2054.0285 and amending Section 2054.029 to read as follows:

Sec. 2054.0285. EXECUTIVE DIRECTOR: CHIEF INFORMATION OFFICER: POWERS AND DUTIES. (a) The board shall employ an executive director. The executive director is the chief information officer for Texas state government.

(b) The executive director has authority for all aspects of information technology for state agencies, including:

- (1) the use of technology to support state goals;
- (2) functional support to state agencies;
- (3) technology purchases;
- (4) deployment of new technology;
- (5) delivery of technology services; and
- (6) provision of leadership on technology issues.

Sec. 2054.029. [~~EXECUTIVE DIRECTOR;~~] STAFF: SEPARATION OF RESPONSIBILITIES. (a) The board shall employ [~~an executive director and other~~] employees necessary to implement its duties.

(b) The executive director or the executive director's designee shall provide to members of the board and to the department's employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the department.

SECTION 4.02. VENDOR INCENTIVES. Subchapter C, Chapter 2054, Government Code, is amended by adding Section 2054.058 to read as follows:

Sec. 2054.058. CONSIDERATION OF VENDOR INCENTIVES. When contracting with a vendor to perform a task related to an electronic government project, the department shall consider methods of payments, including considering whether a percentage of money to be saved could be used to provide an incentive to the vendor to complete the project on time and under budget.

SECTION 4.03. PUBLIC INFORMATION EXCEPTION. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.136 to read as follows:

Sec. 552.136. EXCEPTION: GOVERNMENT INFORMATION RELATED TO SECURITY ISSUES FOR COMPUTERS. (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

SECTION 4.04. TEXASONLINE DIVISION. Subchapter I, Chapter 2054, Government Code, as added by Senate Bill 187, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Section 2054.2645 to read as follows:

Sec. 2054.2645. SUNSET PROVISION. The division is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the division is abolished September 1, 2005.

SECTION 4.05. ELECTRONIC GRANTS MANAGEMENT SYSTEM. (a) The Department of Information Resources shall study the costs and benefits of establishing an electronic grants management system for state grant programs.

(b) The Department of Information Resources may develop a plan for, and implement, an electronic grants management system for programs that would receive the greatest benefit from the system.

SECTION 4.06. SPECIFICATIONS FOR ELECTRONIC DATA CLEARINGHOUSE. Not later than January 1, 2003, the Department of Information Resources, in coordination with the comptroller of public accounts and other state agencies, local governments, federal agencies, the Texas Conference of Urban Counties, the Texas Association of Counties, and the Texas Municipal League, shall develop specifications, including procedures and implementation methods, for a statewide electronic data clearinghouse. The Department of Information Resources shall identify ways to streamline and reduce reporting requirements on counties and municipalities, when practical, through implementation of the clearinghouse.

#### ARTICLE 5. COMPTROLLER PROVISIONS

##### ON USE OF ADVANCED EQUIPMENT, DATABASES, AND DELEGATION OF TASKS TO OUTSIDE PERSONNEL

SECTION 5.01. ADVANCED DATABASE FOR AUDITS. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.0034 to read as follows:

Sec. 111.0034. ADVANCED DATABASE SYSTEM FOR AUDITS. (a) The comptroller shall develop an advanced electronic audit database system for use by the comptroller's audit division. The system must:

(1) centralize management of audit transaction data;

(2) enhance the quality control of data; and

(3) be compatible with other data systems of the state.

(b) The comptroller may contract with a vendor to develop or implement the system.

(c) If the comptroller contracts with a vendor to develop or implement the system, the comptroller must protect any confidential information provided to the vendor. A

person who receives confidential information under this section and each employee or agent of that person is subject to the same prohibitions against disclosure of the information, and the same penalties and sanctions for improper disclosure, that apply to the comptroller.

SECTION 5.02. ADVANCED DATABASE FOR TAX COLLECTIONS. The heading for Section 111.0035, Tax Code, is amended to read as follows:

Sec. 111.0035. ADVANCED DATABASE SYSTEM FOR TAX COLLECTIONS.

SECTION 5.03. OUTSIDE PERSONNEL. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.0045 to read as follows:

Sec. 111.0045. USE OF OUTSIDE PERSONNEL; DELEGATION OF POWERS. (a) As necessary to enhance productivity, the comptroller may employ or contract for the services of accountants, assistants, auditors, clerks, information technology specialists, and investigators to:

- (1) provide or use the equipment acquired under Subchapter G; and
- (2) assist with the administration of this code.

(b) The comptroller may delegate to persons employed or contracted under this section the power to perform duties as required.

SECTION 5.04. ADVANCED EQUIPMENT. Chapter 111, Tax Code, is amended by adding Subchapter G to read as follows:

#### SUBCHAPTER G. ADVANCED TECHNOLOGY EQUIPMENT

Sec. 111.351. WIRELESS EQUIPMENT FOR AUDITORS. The comptroller shall acquire wireless communication equipment for use by its auditors, including wireless modems for laptop computers for high-speed, wireless access to comptroller systems.

Sec. 111.352. COMPUTER AND WIRELESS EQUIPMENT FOR ENFORCEMENT STAFF. (a) The comptroller shall acquire portable computers with remote or wireless communications equipment for use by its enforcement staff.

(b) The portable computers acquired under this section must be integrated with an electronic signature capturing system and portable printing capabilities to enhance the security of collections made under this chapter.

(c) The equipment must enable enforcement staff to:

- (1) verify taxpayer claims;
- (2) update taxpayer information from the field; and
- (3) facilitate account updates.

Sec. 111.353. ADVANCED SCANNERS FOR FIELD OFFICES. The comptroller shall acquire advanced scanners for its field offices. The scanners must enable enforcement officers to scan enforcement data directly into comptroller databases without requiring later manual entry.

### ARTICLE 6. TRANSFER OF DATA PROCESSING EQUIPMENT TO STUDENTS

SECTION 6.01. Chapter 32, Education Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. TRANSFER OF DATA PROCESSING  
EQUIPMENT TO STUDENTS

Sec. 32.101. DEFINITION. In this subchapter, "data processing" has the meaning assigned by Section 2054.003, Government Code.

Sec. 32.102. AUTHORITY. (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 2175.126, 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.

(b) A school district or open-enrollment charter school may accept:

(1) donations of data processing equipment for transfer under this subchapter; and

(2) any gifts, grants, or donations of money or services to purchase, refurbish, or repair data processing equipment under this subchapter.

Sec. 32.103. ELIGIBILITY; PREFERENCE. (a) A student is eligible to receive data processing equipment under this subchapter only if the student does not otherwise have home access to data processing equipment, as determined by the student's school district or open-enrollment charter school.

(b) In transferring data processing equipment to students, a school district or open-enrollment charter school shall give preference to educationally disadvantaged students.

Sec. 32.104. REQUIREMENTS FOR TRANSFER. Before transferring data processing equipment to a student, a school district or open-enrollment charter school must:

(1) adopt rules governing transfers under this subchapter, including provisions for technical assistance to the student by the district or school;

(2) determine that the transfer serves a public purpose and benefits the district or school; and

(3) remove from the equipment any offensive, confidential, or proprietary information, as determined by the district or school.

Sec. 32.105. EXPENDITURE OF PUBLIC FUNDS. A school district or open-enrollment charter school may spend public funds to:

(1) purchase, refurbish, or repair any data processing equipment transferred to a student under this subchapter; and

(2) store, transport, or transfer data processing equipment under this subchapter.

Sec. 32.106. RETURN OF EQUIPMENT. (a) Except as provided by Subsection (b), a student who receives data processing equipment from a school district or open-enrollment charter school under this subchapter shall return the equipment to the district or school not later than the earliest of:

(1) five years after the date the student receives the equipment;

(2) the date the student graduates;

(3) the date the student transfers to another school district or open-enrollment charter school; or

(4) the date the student withdraws from school.

(b) Subsection (a) does not apply if, at the time the student is required to return the data processing equipment under that subsection, the district or school determines that the equipment has no marketable value.

SECTION 6.02. Section 2175.126, Government Code, is amended to read as follows:

Sec. 2175.126. DISPOSITION OF DATA PROCESSING EQUIPMENT. (a) If a disposition of a state agency's surplus or salvage data processing equipment is not made under this subchapter, the state agency shall transfer the equipment to a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code, or to the Texas Department of Criminal Justice. The state agency may not collect a fee or other reimbursement from the district, the school, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

(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 a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code, or to the Texas Department of Criminal Justice. The institution or agency may not collect a fee or other reimbursement from the district, the school, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

#### ARTICLE 7. EXCEPTIONS TO PUBLIC INFORMATION ACT

SECTION 7.01. Section 552.104, Government Code, is amended to read as follows:

Sec. 552.104. EXCEPTION: INFORMATION RELATED TO COMPETITION OR BIDDING. (a) Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

(b) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

SECTION 7.02. Section 552.131, Government Code, as added by Chapter 405, Acts of the 76th Legislature, Regular Session, 1999, is amended by adding Subsection (d) to read as follows:

(d) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

SECTION 7.03. The changes in law made in Sections 552.104 and 552.131, Government Code, by this article apply only to information in the possession of a governmental body or to which the governmental body has a right of access on or after the effective date of this Act, without regard to the date on which the governmental body first possessed or first obtained a right of access to the information.

#### ARTICLE 8. CONTRACT CLAIMS AGAINST THE STATE

SECTION 8.01. Section 2260.003(a), Government Code, is amended to read as follows:

(a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed an amount equal to the sum of:

(1) the balance due and owing on the contract price; and  
(2) the amount or fair market value of orders or requests~~[-including orders]~~  
for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed.

SECTION 8.02. Section 2260.005, Government Code, is amended to read as follows:

Sec. 2260.005. EXCLUSIVE PROCEDURE. Subject to Section 2260.007, the ~~[The]~~ procedures contained in this chapter are exclusive and required prerequisites to suit in accordance with Chapter 107, Civil Practice and Remedies Code.

SECTION 8.03. Subchapter A, Chapter 2260, Government Code, is amended by adding Section 2260.007 to read as follows:

Sec. 2260.007. LEGISLATIVE AUTHORITY RETAINED; INTERPRETATION OF CHAPTER. (a) The legislature retains the authority to deny or grant a waiver of immunity to suit against a unit of state government by statute, resolution, or any other means the legislature may determine appropriate.

(b) This chapter does not:

(1) divest the legislature of the authority to grant permission to sue a unit of state government under terms that the legislature may specify in the measure granting the permission;

(2) require that the legislature, in granting or denying permission to sue a unit of state government, comply with this chapter; or

(3) limit the effect of a legislative grant of permission to sue a unit of state government unless the grant itself provides that this chapter may have that effect.

SECTION 8.04. (a) Except as provided in Subsection (b), the changes in law made to Chapter 2260, Government Code, by this article apply only to a contract executed on or after the effective date of this Act. A contract executed before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) A waiver of sovereign immunity to a suit granted by a concurrent resolution passed by the 77th Legislature that applies to a contract entered into before the effective date of this Act is effective according to its terms.

#### ARTICLE 9. CONTRACTS FOR REMOVAL OF PROPERTY

SECTION 9.01. Subchapter B, Chapter 472, Transportation Code, is amended by adding Section 472.015 to read as follows:

Sec. 472.015. CONTRACTS FOR REMOVAL OF PROPERTY. In contracting with a private business or businesses for the removal of personal property from the right-of-way or roadway of the state highway system, the department may:

(1) use a purchasing method described in Chapter 2156, Government Code;

(2) include the removal work in a contract entered into under Chapter 223; or

(3) select a business or businesses based on an evaluation of the experience of the business and the price and quality of the business's equipment and services.

#### ARTICLE 10. EFFECTIVE DATE

SECTION 10.01. 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, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3507**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 3507** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONCRIEF	MAXEY
CARONA	WOHLGEMUTH
BROWN	GRAY
SIBLEY	THOMPSON
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1763**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1763** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARONA	CHISUM
FRASER	GALLEGO
SHAPLEIGH	HOCHBERG
LUCIO	MCCALL
SIBLEY	
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2879**

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2879** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIVINS

ELLIS

STAPLES

VAN DE PUTTE

ZAFFIRINI

On the part of the Senate

SADLER

HOCHBERG

MARCHANT

PITTS

TILLERY

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 732**

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 732** 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.

BARRIENTOS

CAIN

MADLA

LINDSAY

SHAPIRO

On the part of the Senate

FARABEE

HOMER

CHISUM

RAMSAY

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the certification and expenditure of certain revenue not included in a county budget.

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

SECTION 1. Subchapter A, Chapter 111, Local Government Code, is amended by adding Section 111.0108 to read as follows:

Sec. 111.0108. SPECIAL BUDGET FOR REVENUE RECEIVED AFTER START OF FISCAL YEAR. The county auditor or the county judge in a county that does not have a county auditor shall certify to the commissioners court the receipt of revenue from a new source not anticipated before the adoption of the budget and not included in the budget for that fiscal year. On certification, the court may adopt a special budget for the limited purpose of spending the revenue for general purposes or for any of its intended purposes.

SECTION 2. Subchapter B, Chapter 111, Local Government Code, is amended by adding Section 111.0432 to read as follows:

Sec. 111.0432. SPECIAL BUDGET FOR REVENUE RECEIVED AFTER START OF FISCAL YEAR. The county auditor shall certify to the commissioners court the receipt of revenue from a new source not anticipated before the adoption of the budget and not included in the budget for that fiscal year. On certification, the court may adopt a special budget for the limited purpose of spending the revenue for general purposes or for any of its intended purposes.

SECTION 3. Subchapter C, Chapter 111, Local Government Code, is amended by adding Section 111.0705 to read as follows:

Sec. 111.0705. SPECIAL BUDGET FOR REVENUE RECEIVED AFTER START OF FISCAL YEAR. The county auditor shall certify to the commissioners court the receipt of revenue from a new source not anticipated before the adoption of the budget and not included in the budget for that fiscal year. On certification, the court may adopt a special budget for the limited purpose of spending the revenue for general purposes or for any of its intended purposes.

SECTION 4. Subchapter D, Chapter 111, Local Government Code, is amended by adding Section 111.095 to read as follows:

Sec. 111.095. SPECIAL FUNDS. (a) This section shall apply to all funds maintained and controlled by a county tax assessor-collector that are not included in the county budget.

(b) At least 60 days before the first day of the county's fiscal year, the county tax assessor-collector shall prepare a budget for the expenditure of the funds during that fiscal year and file a copy of that budget with the county budget officer. The county budget officer shall make a copy of the budget filed with the budget officer available to the public at all reasonable times. The budget filed with the county budget officer is not subject to approval by the commissioners court of the county, but any member of the public is entitled to speak for or against the budget during the county's budget process. Funds in the accounts under this section may be spent only in compliance with the budget filed with the county budget officer under this subsection.

(c) Funds in the accounts under this section may not be used to supplement the salary or cover the personal expenses of the county tax assessor-collector.

(d) The provisions of this section are cumulative with the provisions of other statutes pertaining to county funds.

SECTION 5. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 152**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 152** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

OGDEN	F. BROWN
TRUAN	WEST
WEST	UHER
WENTWORTH	RANGEL
	MORRISON

On the part of the Senate                      On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3016**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 3016** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO	ALLEN
NELSON	HAGGERTY
VAN DE PUTTE	SOLOMONS
CARONA	
ZAFFIRINI	

On the part of the Senate                      On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 886**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 886** 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  
SHAPIRO  
HARRIS  
LUCIO  
FRASER

GALLEGO  
HAMRIC  
SWINFORD

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to motor vehicle size and weight limitations; providing penalties.

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

SECTION 1. Section 521.242, Transportation Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) A person may apply for an occupational license by filing a verified petition only with the clerk of the county court or district court in which the person was convicted if:

(1) the person's license has been automatically suspended or canceled under this chapter [~~or Chapter 522~~] for a conviction of an offense under the laws of this state; and

(2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of this state.

(f) A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies.

SECTION 2. Subdivisions (12), (23), and (25), Section 522.003, Transportation Code, are amended to read as follows:

(12) "Driver's license" has the meaning assigned by Section 521.001 [~~means a license issued by a state to an individual that authorizes the individual to drive a motor vehicle~~].

(23) "Out-of-service order" means:

(A) a temporary prohibition against driving a commercial motor vehicle issued under Section 522.101, the law of another state, or 49 C.F.R. Section 383.5; or

(B) a declaration by the Federal Motor Carrier Safety Administration [~~highway administration~~] or an authorized enforcement officer of a state or local jurisdiction that a driver, commercial motor vehicle, or motor carrier operation is out of service under 49 C.F.R. Section 383.5.

(25) "Serious traffic violation" means a conviction arising from the driving of a commercial motor vehicle, other than a parking, vehicle weight, or vehicle defect violation, for:

(A) excessive speeding, involving a single charge of driving 15 miles per hour or more above the posted speed limit;

(B) reckless driving, as defined by state or local law;

(C) a violation of a state or local law related to motor vehicle traffic control, including a law regulating the operation of vehicles on highways, arising in connection with a fatal accident;

(D) improper or erratic traffic lane change; [~~or~~]

(E) following the vehicle ahead too closely; or

(F) operating a commercial motor vehicle in violation of Section 522.011 or 522.015.

SECTION 3. Section 522.011, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) It is a defense to prosecution under Subsection (a)(1)(A) if the person charged produces in court a commercial driver's license that:

(1) was issued to the person;

(2) is appropriate for the class of vehicle being driven; and

(3) was valid when the offense was committed.

SECTION 4. Subsections (b), (c), and (d), Section 522.012, Transportation Code, are amended to read as follows:

(b) In granting a waiver under this section, the department is subject to any condition or requirement established for the waiver by the secretary or the Federal Motor Carrier Safety Administration [~~highway administration~~].

(c) In addition to any restriction or limitation imposed by this chapter or the department, a restricted commercial driver's license issued under this section is subject to any restriction or limitation imposed by the secretary or the Federal Motor Carrier Safety Administration [~~highway administration~~].

(d) In this section, "farm-related service industry" has the meaning assigned by the secretary or the Federal Motor Carrier Safety Administration [~~highway administration~~] under the federal act.

SECTION 5. Subsection (a), Section 522.021, Transportation Code, is amended to read as follows:

(a) An application for a commercial driver's license or commercial driver learner's permit must include:

(1) the full name and current residence and mailing address of the applicant;

(2) a physical description of the applicant, including sex, height, and eye color;

(3) the applicant's date of birth;

(4) the applicant's social security number, unless the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction;

(5) certifications, including those required by 49 C.F.R. Section 383.71(a); and

(6) any other information required by the department.

SECTION 6. Subsection (a), Section 522.042, Transportation Code, is amended to read as follows:

- (a) The department may issue a commercial driver's license with endorsements:
- (1) authorizing the driving of a vehicle transporting hazardous materials;
  - (2) authorizing the towing of a double or triple trailer or a trailer over a specified weight;
  - (3) authorizing the driving of a vehicle carrying passengers;
  - (4) authorizing the driving of a tank vehicle; [~~or~~]
  - (5) representing a combination of hazardous materials and tank vehicle endorsements; or
  - (6) authorizing the driving of a school bus, as defined by Section 541.201.

SECTION 7. Subsection (a), Section 522.062, Transportation Code, is amended to read as follows:

(a) ~~If [Not later than the 10th day after the date the department receives a report of a conviction of] a person holds a commercial driver's license issued by [who has a domicile in] another state and is finally convicted of [or in a foreign jurisdiction for] a violation of a state traffic law or local traffic ordinance [relating to motor vehicle traffic control, including a law regulating the operation of vehicles on highways,] that was committed in a commercial motor vehicle, the department shall notify the driver's licensing authority in the issuing [licensing] state of that [the] conviction, in the time and manner required by 49 U.S.C. Section 31311.~~

SECTION 8. The heading to Section 522.072, Transportation Code, is amended to read as follows:

Sec. 522.072. EMPLOYER RESPONSIBILITIES [PERMITTING UNAUTHORIZED DRIVING PROHIBITED].

SECTION 9. Subsection (b), Section 522.072, Transportation Code, is amended to read as follows:

(b) An employer may not knowingly require a driver to operate a commercial motor vehicle in violation of a federal, state, or local law that regulates the operation of a motor vehicle at a railroad grade crossing.

(c) In addition to any penalty imposed under this chapter, an employer who violates this section [~~Subsection (a) or an out-of-service order~~] may be penalized or disqualified under 49 C.F.R. Part 383.

SECTION 10. Subsections (a) and (b), Section 522.081, Transportation Code, are amended to read as follows:

(a) This subsection applies only to a violation committed while operating a commercial motor vehicle. A person is disqualified from driving a commercial motor vehicle for:

- (1) 60 days if convicted of:
  - (A) two serious traffic violations that occur within a three-year period; or
  - (B) one violation of a law that regulates the operation of a motor vehicle at a railroad grade crossing;
- (2) [~~or~~] 120 days if convicted of;

(A) three serious traffic violations[~~committed in a commercial motor vehicle~~] arising from separate incidents occurring within a three-year period; or

(B) two violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period; or

(3) one year if convicted of three violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period.

(b) A person is disqualified from driving a commercial motor vehicle for one year on first conviction of:

(1) driving a commercial motor vehicle under the influence of alcohol or a controlled substance, including a violation of Section 49.04 or 49.07, Penal Code;

(2) driving a commercial motor vehicle while the person's alcohol concentration was 0.04 or more;

(3) intentionally leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(4) using a commercial motor vehicle in the commission of a felony, other than a felony described by Subsection (d)(2); ~~[or]~~

(5) refusing to submit to a test to determine the person's alcohol concentration or the presence in the person's body of a controlled substance or drug while driving a commercial motor vehicle;

(6) causing the death of another person through the negligent or criminal operation of a commercial motor vehicle; or

(7) driving a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled, or while the person is disqualified from driving a commercial motor vehicle, for an action or conduct that occurred while operating a commercial motor vehicle.

SECTION 11. Subsections (a) and (b), Section 522.087, Transportation Code, are amended to read as follows:

(a) A person is automatically disqualified under Section 522.081(a)(1)(B), Section 522.081(b)(1), (3), ~~[or] (4), (6), or (7)~~, or Section 522.081(d)(2). An appeal may not be taken from the disqualification.

(b) Disqualifying a person under Section 522.081(a), other than under Subdivision (1)(B) of that subsection or Section 522.081(d)(1) is subject to the notice and hearing procedures of Sections 521.295-521.303. An appeal of the disqualification is subject to Section 521.308.

SECTION 12. Section 522.102, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) This section and Section 522.103 apply only to a person who is stopped or detained while driving a commercial motor vehicle.

SECTION 13. Section 522.103, Transportation Code, is amended to read as follows:

Sec. 522.103. WARNING BY PEACE OFFICER. (a) A peace officer requesting a person to submit a specimen under Section 522.102 shall warn the person that a refusal to submit a specimen will result in the person's being immediately placed out of service for 24 hours and being disqualified from driving a commercial motor vehicle for at least one year under Section 522.081.

(b) A peace officer requesting a person to submit a specimen under Section 522.102 is not required to comply with Section 724.015.

SECTION 14. Section 621.001, Transportation Code, is amended by adding Subdivisions (10) and (11) to read as follows:

(10) "Single axle weight" means the total weight transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(11) "Tandem axle weight" means the total weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

SECTION 15. Section 621.101, Transportation Code, is amended to read as follows:

Sec. 621.101. MAXIMUM WEIGHT OF VEHICLE OR COMBINATION [LOAD]. (a) A vehicle or combination of vehicles may not be operated over or on a public highway [outside the territory of a municipality, over or on a state-maintained public highway inside the territory of a municipality,] or at a port-of-entry between Texas and the United Mexican States if the vehicle or combination has:

(1) a single [an] axle weight [that carries a load] heavier than 20,000 pounds[:

~~[(A) 16,000 pounds on high-pressure tires; or~~

~~[(B) 20,000 pounds on low-pressure tires]~~, including all enforcement

tolerances;

(2) a tandem axle weight heavier than 34,000 pounds, including all enforcement tolerances;

(3) an overall gross weight on a group of two or more consecutive axles heavier than the weight computed using the following formula and rounding the result to the nearest 500 pounds:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

where:

"W" is maximum overall gross weight on the group;

"L" is distance in feet between the axles of the group that are the farthest apart; and

"N" is number of axles in the group; or

(4) tires that carry a weight heavier than the weight specified and marked on the sidewall of the tire, unless the vehicle is being operated under the terms of a special permit[:

~~[(A) 600 pounds for each inch of tire width concentrated on the surface of the highway on a wheel using high-pressure tires; or~~

~~[(B) 650 pounds for each inch of tire width concentrated on the surface of the highway on a wheel using low-pressure tires; or~~

~~[(5) a wheel that carries a load heavier than:~~

~~[(A) 8,000 pounds on high-pressure tires; or~~

~~[(B) 10,000 pounds on low-pressure tires].~~

(b) Notwithstanding Subsection (a)(3), two consecutive sets of tandem axles may carry a gross weight ~~[load]~~ of not more than 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets is 36 feet or more. The overall gross weight on a group of two or more consecutive axles may not be heavier than 80,000 pounds, including all enforcement tolerances, regardless of tire ratings, axle spacing (bridge), and number of axles.

(c) This section does not:

(1) authorize size or weight limits on the national system of interstate and defense highways in this state greater than those permitted under 23 U.S.C. Section 127, as amended; or

(2) prohibit the operation of a vehicle or combination of vehicles that could be lawfully operated on a highway or road of this state on December 16, 1974.

~~[(d) For the purposes of this section, the load carried on an axle is the total load transmitted to the road by all wheels the centers of which can be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.]~~

SECTION 16. Subsections (a) and (e), Section 621.102, Transportation Code, are amended to read as follows:

(a) The commission may set the maximum single axle weight, tandem axle weight, or gross weight of a vehicle ~~[and its load]~~, or maximum single axle weight, tandem axle weight, or gross weight of a combination of vehicles and loads, ~~[maximum axle load, or maximum wheel load]~~ that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge or culvert along the road. A maximum weight ~~[or load]~~ set under this subsection may not exceed the maximum set by statute for that weight ~~[or load]~~.

(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 commission has set a maximum weight under this section. ~~[This section does not affect a law that authorizes or provides for a special permit for a weight heavier than the maximum weight provided by law.]~~

SECTION 17. Subsections (a) and (b), Section 621.204, Transportation Code, are amended to read as follows:

(a) A semitrailer that is operated in a truck-tractor and semitrailer combination may not be longer than 59 feet, excluding the length of the towing device.

(b) A semitrailer or trailer that is operated in a truck-tractor, semitrailer, and trailer combination may not be longer than 28 1/2 feet, excluding the length of the towing device.

SECTION 18. Section 621.206, Transportation Code, is amended to read as follows:

Sec. 621.206. MAXIMUM EXTENDED LENGTH OF LOAD. (a) A vehicle or combination of vehicles may not carry a load that extends more than three feet beyond its front or, except as permitted by other law, more than four feet beyond its rear.

(b) ~~[(e)]~~ Subsection (a) does not apply to vehicles collecting garbage, rubbish, refuse, or recyclable materials which are equipped with front-end loading attachments and containers provided that the vehicle is actively engaged in the collection of garbage, rubbish, refuse, or recyclable materials.

SECTION 19. Subsection (e), Section 621.301, Transportation Code, is amended to read as follows:

(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 commissioners court has set a maximum weight under this section. ~~[This section does not affect a law that~~

authorizes or provides for special permits for a weight heavier than the maximum weight provided by law.]

SECTION 20. Section 621.402, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A weight enforcement officer who has reason to believe that the single axle weight, tandem axle weight, or gross weight [~~or axle load~~] of a loaded motor vehicle is unlawful may:

(1) weigh the vehicle using portable or stationary scales furnished or approved by the Department of Public Safety; or

(2) require the vehicle to be weighed by a public weigher.

(c) Prior to assessment of a penalty for weight which exceeds the maximum allowable axle weights, the owner or operator is authorized to shift the load to reduce or eliminate such excess axle weight penalties as long as no part of the shipment is removed.

SECTION 21. Section 621.404, Transportation Code, is amended to read as follows:

Sec. 621.404. UNLOADING VEHICLE IF AXLE WEIGHT [~~LOAD~~] EXCEEDED. (a) If the axle weight [~~load~~] of a motor vehicle weighed under Section 621.402 is heavier than the maximum axle weight [~~load~~] authorized by law for the vehicle plus a tolerance allowance equal to five percent of that maximum weight [~~load~~], the weight enforcement officer shall require the operator or owner of the vehicle to rearrange the vehicle's cargo, if possible, to bring the vehicle's axles within the maximum axle weight [~~load~~] allowed by law for that vehicle. If the requirement cannot be satisfied by rearrangement of cargo, a part of the vehicle's load shall be unloaded to decrease the axle weight [~~load~~] to a weight that is not heavier than the maximum axle weight [~~load~~] allowed by law for the vehicle plus the applicable tolerance allowance.

(b) The vehicle may not be operated further over the public highways or roads of the state until the axle weight [~~load~~] of the vehicle has been reduced as required by Subsection (a).

SECTION 22. Subsection (b), Section 621.405, Transportation Code, is amended to read as follows:

(b) The operator of a motor vehicle may proceed to the vehicle's destination without unloading the vehicle as required by Section 621.403 or 621.404 if[:

[~~(1)~~] the vehicle is loaded with livestock[; ~~and~~

[~~(2)~~ the vehicle's destination is in this state].

SECTION 23. Subsection (a), Section 621.409, Transportation Code, is amended to read as follows:

(a) A port-of-entry supervisor, an inspector employed by the Alcoholic Beverage Commission, or a weight enforcement officer who has reason to believe that the axle or gross weight [~~or axle load~~] of a loaded motor vehicle is unlawful may weigh the vehicle using portable or stationary scales furnished or approved by the Department of Public Safety.

SECTION 24. Subsection (a), Section 621.502, Transportation Code, is amended to read as follows:

(a) A person may not operate or move a vehicle on a highway if:

(1) the vehicle's size is larger than the applicable maximum size authorized for that vehicle by this subtitle;

(2) the vehicle's single axle weight, tandem axle weight, or gross weight [~~axle load, or wheel load~~] is greater than the applicable weight [~~or load~~] authorized for that vehicle by this subtitle; or

(3) the vehicle is not constructed or equipped as required by this subtitle [~~chapter~~].

SECTION 25. Subsection (b), Section 621.503, Transportation Code, is amended to read as follows:

(b) Intent to violate a limitation is presumed if the weight of the loaded vehicle is heavier than the applicable axle or gross [~~vehicular~~] weight limit [~~or axle load limit~~] by 15 percent or more.

SECTION 26. Subsections (a), (b), (c), and (g), Section 621.506, Transportation Code, are amended to read as follows:

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

(1) operates a vehicle or combination of vehicles in violation of Section 621.101, 622.012, 622.031, 622.133, 622.953, or 623.162; or

(2) loads a vehicle or causes a vehicle to be loaded in violation of Section 621.503.

(b) An offense under this section is a misdemeanor punishable:

(1) by a fine of not less than \$100 and not more than \$150;

(2) on conviction of an offense involving a vehicle having a single axle weight, tandem axle weight, or gross weight that is more than 5,000 but not more than 10,000 pounds heavier than the vehicle's allowable [~~gross~~] weight, by a fine of not less than \$300 or more than \$500;

(3) on conviction of an offense involving a vehicle having a single axle weight, tandem axle weight, or gross weight that is more than 10,000 pounds heavier than the vehicle's allowable [~~gross~~] weight, by a fine of not less than \$500 or more than \$1,000; or

(4) on conviction before the first anniversary of the date of a previous conviction under this section, by a fine in an amount that is twice the amount specified by Subdivision (1), (2), or (3).

(c) On conviction of a violation of an axle weight [~~load~~] limitation, the court may assess a fine less than the applicable minimum amount prescribed by Subsection (b) if the court finds that when the violation occurred:

(1) the vehicle was registered to carry the maximum gross weight authorized for that vehicle under Section 621.101; and

(2) the gross weight of the vehicle did not exceed that maximum gross weight.

(g) A governmental entity that collects a fine under this section for an offense involving a vehicle having a single axle weight, tandem axle weight, or gross weight that is more than 5,000 pounds heavier than the vehicle's allowable [~~gross~~] weight shall send an amount equal to 50 percent of the fine to the comptroller unless the offense occurred within 20 miles of an international border in which event the entire amount of the fine shall be deposited for the purposes of road maintenance in:

(1) the municipal treasury, if the fine was imposed by a municipal court; or

(2) the county treasury, if the fine was imposed by a justice court.

SECTION 27. Subsection (a), Section 621.507, Transportation Code, is amended to read as follows:

(a) A person commits an offense if the person violates a provision of this subtitle [subchapter] for which an offense is not specified by another section of this subtitle [subchapter].

SECTION 28. Section 621.508, Transportation Code, is amended to read as follows:

Sec. 621.508. AFFIRMATIVE DEFENSE FOR OPERATING VEHICLE OVER MAXIMUM ALLOWABLE AXLE WEIGHT [~~WITH HEAVY AXLE LOAD~~]. It is an affirmative defense to prosecution of, or an action under Subchapter F for, the offense of operating a vehicle with a single axle weight or tandem [~~an~~] axle weight [~~load~~] heavier than the axle weight [~~load~~] authorized by law that at the time of the offense the vehicle:

(1) had a single axle weight or tandem [~~an~~] axle weight that was not heavier than the axle weight [~~load~~] authorized by law plus 12 percent;

(2) was loaded with timber, pulp wood, wood chips, or cotton, livestock, or other agricultural products that are:

(A) in their natural state; and

(B) being transported from the place of production to the place of first marketing or first processing; and

(3) was not being operated on a portion of the national system of interstate and defense highways.

SECTION 29. Section 622.012, Transportation Code, is amended to read as follows:

Sec. 622.012. AXLE WEIGHT [~~AXLE-LOAD~~] RESTRICTIONS. (a) A ready-mixed concrete truck may be operated on a public highway of this state only if the tandem axle weight [~~load~~] is not heavier than 46,000 pounds and the single axle weight [~~load~~] is not heavier than 23,000 pounds.

(b) A truck may be operated at a weight that exceeds the maximum single axle or tandem axle weight [~~load~~] limitation by not more than 10 percent if the gross weight [~~load~~] is not heavier than 69,000 pounds.

SECTION 30. Subsection (a), Section 622.013, Transportation Code, is amended to read as follows:

(a) The owner of a ready-mixed concrete truck with a tandem axle weight [~~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 department in the principal amount set by the department not to exceed \$15,000 for each truck.

SECTION 31. Subsection (b), Section 622.014, Transportation Code, is amended to read as follows:

(b) The rules may include weight limitations on a truck with:

(1) a tandem axle weight [~~load~~] that is heavier than 36,000 pounds;

(2) a single axle weight [~~load~~] that is heavier than 12,000 pounds; or

(3) a gross weight [~~load~~] that is heavier than 48,000 pounds.

SECTION 32. Section 622.015, Transportation Code, is amended to read as follows:

Sec. 622.015. LOCAL SURETY BOND. The governing body of a county or municipality may require the owner of a ready-mixed concrete truck to file a surety bond in an amount not to exceed \$15,000 and conditioned that the owner of the truck will pay to the county or municipality any damage to a highway caused by the operation of the truck with a tandem axle weight [~~load~~] that is heavier than 34,000 pounds.

SECTION 33. Section 622.031, Transportation Code, is amended to read as follows:

Sec. 622.031. LENGTH AND AXLE WEIGHT [~~AXLE-LOAD~~] RESTRICTIONS. A vehicle used exclusively to transport milk may be operated on a public highway of this state only if:

(1) the distance between the front wheel of the forward tandem axle and the rear wheel of the rear tandem axle, measured longitudinally, is 28 feet or more; and

(2) the weight [~~load~~] carried on any group of axles is not heavier than 68,000 pounds.

SECTION 34. Subsection (b), Section 622.041, Transportation Code, is amended to read as follows:

(b) [~~The limitation in~~] Subsection (a)(1) does not apply to a truck-tractor or truck-tractor combination transporting poles, piling, or unrefined timber.

SECTION 35. Subsection (a), Section 622.0435, Transportation Code, is amended to read as follows:

(a) The width, height, and gross weight of a vehicle or combination of vehicles subject to this subchapter that is transporting raw wood products shall conform to Chapters 621 and 623, except that a vehicle or combination of vehicles transporting raw wood products that has an outer bridge of 39 feet or more may have a maximum gross weight of 80,000 pounds [~~when it is necessary to transport the load, the distance between axles on a vehicle may be shortened by not more than 12 feet for gross weight determinations~~].

SECTION 36. Subchapter D, Chapter 622, Transportation Code, is amended by adding Section 622.045 to read as follows:

Sec. 622.045. INTERSTATE AND DEFENSE HIGHWAYS. (a) This subchapter does not authorize the operation on the national system of interstate and defense highways in this state of a vehicle of a size or weight greater than those permitted under 23 U.S.C. Section 127, as amended.

(b) If the United States authorizes the operation on the national system of interstate and defense highways of a vehicle of a size or weight greater than those permitted under 23 U.S.C. Section 127 on August 29, 1997, the new limit automatically takes effect on the national system of interstate and defense highways in this state.

SECTION 37. Subsection (b), Section 622.051, Transportation Code, is amended to read as follows:

(b) [~~The limitation in~~] Subsection (a)(1) does not apply to a truck-tractor or truck-tractor combination transporting poles for the maintenance of electric power transmission or distribution lines.

SECTION 38. Subsection (b), Section 622.061, Transportation Code, is amended to read as follows:

(b) [~~The limitation in~~] Subsection (a) does not apply to a truck-tractor or truck-tractor combination transporting poles or pipe.

SECTION 39. Section 622.133, Transportation Code, is amended to read as follows:

Sec. 622.133. AXLE WEIGHT [~~AXLE-LOAD~~] RESTRICTIONS. A single motor vehicle used exclusively to transport recyclable materials may be operated on a public highway only if the tandem axle weight [~~load~~] is not heavier than 44,000 pounds, a single axle weight [~~load~~] is not heavier than 21,000 pounds, and the gross weight [~~load~~] is not heavier than 64,000 pounds.

SECTION 40. Subsection (a), Section 622.134, Transportation Code, is 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 [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 department in the principal amount set by the department not to exceed \$15,000 for each vehicle.

SECTION 41. Section 622.953, Transportation Code, is amended to read as follows:

Sec. 622.953. VEHICLE TRANSPORTING SEED COTTON MODULES.

(a) The weight limitations of Section 621.101 do not apply to a single motor vehicle [~~or combination of vehicles~~] used exclusively to transport seed cotton modules.

(b) The overall gross weight of a single motor vehicle [~~or combination~~] to which this section applies may not be heavier than 59,400 pounds.

(c) The owner of a single motor vehicle [~~or combination~~] to which this section applies that has a gross weight of more than 59,400 pounds is liable to the state, county, or municipality for any damage to a highway, street, road, or bridge caused by the weight of the load.

(d) A vehicle [~~or combination~~] to which this section applies may not be operated on the national system of interstate and defense highways if the vehicle exceeds the maximum weight authorized by 23 U.S.C. Section 127, as amended.

SECTION 42. Section 623.162, Transportation Code, is amended to read as follows:

Sec. 623.162. AXLE WEIGHT [AXLE-LOAD] RESTRICTIONS. A single vehicle used exclusively to transport solid waste may be operated on a public highway of this state only if the tandem axle weight [load] is not heavier than 44,000 pounds, the single axle weight [load] is not heavier than 21,000 pounds, and the gross weight [load] is not heavier than 64,000 pounds.

SECTION 43. Subdivision (20), Section 522.003, Transportation Code, is repealed.

SECTION 44. Sections 621.505, 622.017, 622.033, 622.081, 622.136, 622.951, and 623.165, Transportation Code, are repealed.

SECTION 45. (a) This Act takes effect September 1, 2001.

(b) Subsection (d), Section 522.011, Transportation Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(c) Subsection (a), Section 522.021, Transportation Code, as amended by this Act, applies only to an application for a commercial driver's license that is filed on or after the effective date of this Act. An application for a commercial driver's license that was filed before the effective date of this Act 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) Subsection (a), Section 522.062, Transportation 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 immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) Section 522.081, Transportation 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 immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(f) Section 522.087, Transportation Code, as amended by this Act, applies only to a disqualification that is issued under Chapter 522, Transportation Code, on or after the effective date of this Act. A disqualification that is issued under that chapter before the effective date of this Act is governed by the law in effect on the date the disqualification was issued, and the former law is continued in effect for that purpose.

(g) Sections 522.102 and 522.103, Transportation Code, as amended by this Act, apply 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 immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(h) The changes in law made by Section 44 of this Act and Sections 621.506 and 621.507, Transportation Code, as amended by this Act, apply only to an offense committed on or after September 1, 2001. An offense under Section 621.506 or 621.507, Transportation Code, or under a law repealed by Section 44 of this Act, that was committed before September 1, 2001, is covered by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 248**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 248** 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  
OGDEN  
LINDSAY  
FRASER  
ELLIS

On the part of the Senate

BRIMER  
JUNELL  
MCCALL  
Y. DAVIS  
OLIVEIRA

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the exemption from ad valorem taxation of motor vehicles leased for personal use.

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

SECTION 1. Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.252 to read as follows:

Sec. 11.252. MOTOR VEHICLES LEASED FOR PERSONAL USE. (a) The owner of a motor vehicle that is subject to a lease is entitled to an exemption from taxation of the vehicle if:

(1) the lessee does not hold the vehicle for the production of income; and

(2) the vehicle is used primarily for activities that do not involve the production of income.

(b) For purposes of this section, a motor vehicle is presumed to be used primarily for activities that do not involve the production of income if 50 percent or more of the miles the motor vehicle is driven in a year are for non-income producing purposes.

(c) The comptroller by rule shall establish exemption application requirements and appropriate procedures to determine whether a motor vehicle subject to a lease qualifies for an exemption under Subsection (a).

(d) In connection with the requirements and procedures under Subsection (c), the comptroller by rule shall adopt a form to be completed by the lessee of a motor vehicle for which the owner of the vehicle may apply for an exemption under Subsection (a). The form shall require the lessee to provide the lessee's name, address, and driver's license or personal identification certificate number and to certify under oath that the lessee does not hold the vehicle for the production of income and that the vehicle is used primarily for activities that do not involve the production of income. The comptroller shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making a false statement on the form.

(e) The owner of a motor vehicle that is subject to a lease shall maintain the form completed by the lessee of the vehicle and make the form available for inspection and copying by the chief appraiser of the applicable appraisal district at all reasonable times. If the owner does not maintain a completed form relating to the vehicle, the owner:

(1) must render the vehicle for taxation in the applicable rendition statement or property report filed by the owner under Chapter 22; and

(2) may not file an application for an exemption under Subsection (a) for the vehicle.

(f) The governing body of a municipality by ordinance adopted before January 1, 2002, may provide for the taxation of leased motor vehicles otherwise exempted under Subsection (a). If the governing body of a municipality provides for the taxation of leased motor vehicles under this subsection, the exemption provided by Subsection (a) does not apply to that municipality.

(g) If not continued in effect by the legislature, this section expires December 31, 2003.

(h) In this section:

(1) "Lease" has the meaning assigned by Section 152.001(6).

(2) "Motor vehicle" means a passenger car or truck with a shipping weight of not more than 9,000 pounds.

(i) In addition to the requirements of Subsections (c) and (d), the comptroller by rule shall prescribe a property report form to be completed by the lessor describing the leased motor vehicles that the lessor owns. The property report form shall require the lessor to list each leased vehicle the lessor owns on January 1, to provide the year,

make, model, and vehicle identification number of each leased vehicle, and to provide the name of the lessee, the address at which the vehicle is kept, and an indication of whether the lessee has designated the vehicle as not held for the production and not used for the production of income.

(j) The lessor shall provide the chief appraiser with the completed property report form adopted by the comptroller in the manner provided by Subchapter B, Chapter 22.

SECTION 2. This Act takes effect January 1, 2002, and applies only to ad valorem taxes imposed on a motor vehicle that is subject to a lease entered into on or after January 2, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 896**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 896** 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  
STAPLES  
BROWN  
MADLA  
CAIN

HAMRIC  
HARDCASTLE  
RAMSAY  
B. TURNER

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to funds and taxes for county roads.

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

SECTION 1. Chapter 445, Local Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. SPECIAL COUNTY ROAD  
ASSISTANCE PROGRAM

Sec. 445.101. SPECIAL COUNTY ROAD ASSISTANCE PROGRAM. On or before October 15 of each year, the comptroller shall distribute to counties money appropriated for the special county road assistance program under this subchapter.

Sec. 445.102. USE OF MONEY. Money appropriated to the program under this subchapter may be used only for the support of the county road system, including uses specified by Section 256.003, Transportation Code.

Sec. 445.103. ALLOCATION FORMULA. The comptroller shall distribute money appropriated to the program under this subchapter among the counties as follows:

(1) two-fifths according to total population, determined by the ratio of the total population of the county to the total population of the state;

(2) one-fifth according to population, determined by the ratio of the population in unincorporated areas of the county to the population in all unincorporated areas of the state;

(3) one-fifth according to lineal county road miles, determined by the ratio of lineal mileage of county roads in the county to the lineal mileage of county roads in the state, according to the most recent county road inventory compiled by the Texas Department of Transportation; and

(4) one-fifth according to paved and concrete county road miles, determined by the ratio of miles of lanes of paved and concrete county roads in the county to the miles of lanes of paved and concrete county roads in the state, according to the most recent county road inventory compiled by the Texas Department of Transportation.

SECTION 2. Section 256.002, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) Except as provided by Section 153.503(3)(A), Tax Code, the comptroller may not deposit tax receipts or other money to the credit of the county and road district highway fund.

SECTION 3. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3578**

Senator Shapleigh submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 3578** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPLEIGH  
LUCIO  
CARONA

VILLARREAL  
MAXEY  
NAISHTAT  
MARTINEZ FISCHER

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3305**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 3305** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE

MARTINEZ FISCHER

SHAPIRO

DANBURG

GALLEGOS

DENNY

LINDSAY

MADDEN

MADLA

GALLEGO

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 173**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 173** 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

HINOJOSA

MONCRIEF

SHIELDS

OGDEN

KEEL

SIBLEY

DUNCAN

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the refund of cash to a surety in a criminal case.

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

SECTION 1. Article 17.02, Code of Criminal Procedure, is amended to read as follows:

Art. 17.02. DEFINITION OF "BAIL BOND\_." A "bail bond" is a written undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; provided, however, that the defendant upon execution of such bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this Article shall be receipted for by the officer receiving the same and shall be refunded to the surety if there is a surety on the bond or to the defendant if there is no surety if and when the defendant complies with the conditions of his bond, and upon order of the court. The custodian of funds may deduct from the amount to be refunded any outstanding fines and court costs owed by the defendant that relate to the offense for which the defendant was released on bail.

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, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2890**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2890** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MADLA

ARMBRISTER

BARRIENTOS

SHAPIRO

On the part of the Senate

MCCLENDON

HINOJOSA

NAISHTAT

KITCHEN

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1156**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1156** 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  
HARRIS  
MONCRIEF  
DUNCAN  
OGDEN

COLEMAN  
GRAY  
EILAND  
JANEK  
KEFFER

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the state Medicaid program.

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

SECTION 1. Section 32.024, Human Resources Code, is amended by adding Subsections (x) and (y) to read as follows:

(x) In its rules and standards governing the vendor drug program, and in accordance with Section 531.02106, Government Code, the department shall provide for cost-sharing by recipients of prescription drug benefits under the medical assistance program in a manner that ensures that recipients with higher levels of income are required to pay progressively higher percentages of the costs of prescription drugs. In implementing cost-sharing provisions required by this subsection, the department may not require a pharmacy participating in the vendor drug program to collect copayments or other cost-sharing payments from recipients for remittance to the department, but shall allow the pharmacy to retain the payments as a component of the reimbursement provided to the pharmacy under the program.

(y) The department shall provide hyperbaric oxygen therapy to the extent permitted by federal law.

SECTION 2. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0247 to read as follows:

Sec. 32.0247. ELIGIBILITY OF CERTAIN ALIENS. (a) The department shall provide medical assistance in accordance with 8 U.S.C. Section 1612(b), as amended, to a person who:

(1) is a qualified alien, as defined by 8 U.S.C. Sections 1641(b) and (c), as amended;

(2) meets the eligibility requirements of the medical assistance program;  
(3) entered the United States on or after August 22, 1996; and  
(4) has resided in the United States for a period of five years after the date the person entered as a qualified alien.

(b) If authorized by federal law, the department shall provide pregnancy-related medical assistance to the maximum extent permitted by the federal law to a person who is pregnant and is a lawfully present alien as defined by 8 C.F.R. Section 103.12, as amended, including a battered alien under 8 U.S.C. Section 1641(c), as amended, regardless of the date on which the person entered the United States. The department shall comply with any prerequisite imposed under the federal law for providing medical assistance under this subsection.

SECTION 3. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0252 to read as follows:

Sec. 32.0252. CONTRACT TO PROVIDE ELIGIBILITY DETERMINATION SERVICES. (a) To the extent allowed by federal law, and except as otherwise provided by this section, the department may contract for the provision of medical assistance eligibility services with:

(1) a hospital district created under the authority of Sections 4-11, Article IX, Texas Constitution;

(2) a hospital authority created under the authority of Chapter 262 or 264, Health and Safety Code, that uses resources to provide health care services to indigent persons to some extent;

(3) a hospital owned and operated by a municipality or county or by a hospital authority created under Chapter 262 or 264, Health and Safety Code;

(4) a medical school operated by this state;

(5) a medical school that receives state money under Section 61.093, Education Code, or a chiropractic school that receives state money under the General Appropriations Act;

(6) a teaching hospital operated by The University of Texas System;

(7) a county that is required to provide health care assistance to eligible county residents under Subchapter B, Chapter 61, Health and Safety Code;

(8) a governmental entity that is required to provide money to a public hospital under Section 61.062, Health and Safety Code;

(9) a county with a population of more than 400,000 that provides money to a public hospital and that is not included in the boundaries of a hospital district;

(10) a hospital owned by a municipality and leased to and operated by a nonprofit hospital for a public purpose;

(11) a hospital that receives Medicaid disproportionate share payments;

(12) a community mental health and mental retardation center;

(13) a local mental health or mental retardation authority;

(14) a local health department or public health district;

(15) a school-based health center;

(16) a community health center; and

(17) a federally qualified health center.

(b) The department may contract with an entity described by Subsection (a) for the entity to designate one or more employees of the entity to process medical assistance application forms and conduct client interviews for eligibility determinations.

(c) Except as provided by Subsection (d), the contract must require each designated employee to submit completed application forms to the appropriate agency as determined by the department to finally determine eligibility and to enroll eligible persons in the program. A designated employee may not make a final determination of eligibility or enroll an eligible person in the program.

(d) Notwithstanding Subsection (c), the commissioner may apply for federal authorization to allow a designated employee of an entity described by Subsection (a) to make a final determination of eligibility or enroll an eligible person in the program.

(e) The department may:

(1) monitor the eligibility and application processing program used by an entity with which the department contracts; and

(2) provide on-site supervision of the program for quality control.

(f) The Health and Human Services Commission shall ensure that there are adequate protections to avoid a conflict of interest with an entity described by Subsection (a) that has a contract for eligibility services and also has a contract, either directly or through an affiliated entity, as a managed care organization for the Medicaid program or for the child health plan program under Chapter 62, Health and Safety Code. The commission shall ensure that there are adequate protections for recipients to freely choose a health plan without being inappropriately induced to join an entity's health plan.

SECTION 4. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0271 to read as follows:

Sec. 32.0271. SELECTION OF NURSE FIRST ASSISTANT. (a) In this section, "nurse first assistant" means a registered nurse who:

(1) is certified in perioperative nursing by an organization recognized by the Board of Nurse Examiners; and

(2) has completed a nurse first assistant educational program approved by an organization recognized by the Board of Nurse Examiners.

(b) The department shall ensure that a recipient of medical assistance may select a nurse first assistant to perform any health care service or procedure covered under the medical assistance program if:

(1) the selected nurse first assistant is authorized by law to perform the service or procedure; and

(2) the physician requests that the service or procedure be performed by the nurse first assistant.

(c) A managed care organization or a managed care plan, as those terms are defined by Section 533.001, Government Code, may not by contract or any other method require a physician to use the services of a nurse first assistant in providing care to a recipient of medical assistance.

(d) The Board of Nurse Examiners may adopt rules governing nurse first assistants for purposes of this section.

SECTION 5. Section 32.028, Human Resources Code, is amended by adding Subsection (g) to read as follows:

(g) The department in its adoption of reasonable rules and standards governing the allocation of any funds appropriated for rate increases for physician services and outpatient hospital services shall establish a provider reimbursement methodology that recognizes and rewards high volume providers, with an emphasis on providers located in areas of this state where medical assistance payments are particularly vital to the health care delivery system.

SECTION 6. Section 32.029, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department or its designee may implement demonstration projects designed to reduce medical assistance claims processing costs.

SECTION 7. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0422 to read as follows:

Sec. 32.0422. HEALTH INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAM FOR MEDICAL ASSISTANCE RECIPIENTS. (a) In this section:

(1) "Department" means the Texas Department of Health.

(2) "Group health benefit plan" has the meaning assigned by Article 21.52K, Insurance Code.

(3) "Spouse" means a husband, who is a male, or a wife, who is a female. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse.

(b) The department shall identify individuals, otherwise entitled to medical assistance, who are eligible to enroll in a group health benefit plan. The department must include individuals eligible for or receiving health care services under a Medicaid managed care delivery system.

(c) The department may require an individual requesting medical assistance to provide information as necessary relating to the availability of a group health benefit plan to the individual through an employer of the individual or an employer of the individual's spouse or parent. The department may not leave pending, consider incomplete, or otherwise delay an individual's application for medical assistance or request for recertification as a result of the requirement authorized by this subsection.

(d) For an individual identified under Subsection (b), the department shall determine whether it is cost-effective to enroll the individual in the group health benefit plan under this section.

(e) If the department determines that it is cost-effective to enroll the individual in the group health benefit plan, the department shall:

(1) require the individual to apply to enroll in the group health benefit plan as a condition for eligibility under the medical assistance program; and

(2) provide written notice to the issuer of the group health benefit plan in accordance with Article 21.52K, Insurance Code.

(f) The department shall provide for payment of:

(1) the employee's share of required premiums for coverage of an individual enrolled in the group health benefit plan; and

(2) any deductible, copayment, coinsurance, or other cost-sharing obligation imposed on the enrolled individual for an item or service otherwise covered under the medical assistance program.

(g) A payment made by the department under Subsection (f) is considered to be a payment for medical assistance.

(h) A payment of a premium for an individual who is a member of the family of an individual enrolled in a group health benefit plan under this section and who is not eligible for medical assistance is considered to be a payment for medical assistance for an eligible individual if:

(1) enrollment of the family members who are eligible for medical assistance is not possible under the plan without also enrolling members who are not eligible; and

(2) the department determines it to be cost-effective.

(i) A payment of any deductible, copayment, coinsurance, or other cost-sharing obligation of a family member who is enrolled in a group health benefit plan in accordance with Subsection (h) and who is not eligible for medical assistance:

(1) may not be paid under this chapter; and

(2) is not considered to be a payment for medical assistance for an eligible individual.

(j) The department shall treat coverage under the group health benefit plan as a third party liability to the program. Enrollment of an individual in a group health benefit plan under this section does not affect the individual's eligibility for medical assistance benefits, except that the state is entitled to payment under Sections 32.033 and 32.038.

(k) The department may not require or permit an individual who is enrolled in a group health benefit plan under this section to participate in the Medicaid managed care program under Chapter 533, Government Code, or a Medicaid managed care demonstration project under Section 32.041.

(l) The Texas Department of Human Services shall provide information and otherwise cooperate with the department as necessary to ensure the enrollment of eligible individuals in the group health benefit plan under this section.

(m) The department shall adopt rules as necessary to implement this section. In developing rules and related procedures, the department shall consult with providers and other interested persons to minimize the administrative complexity of the program.

(b) Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.52K to read as follows:

Art. 21.52K. ENROLLMENT OF MEDICAL ASSISTANCE RECIPIENTS

Sec. 1. DEFINITION OF GROUP HEALTH BENEFIT PLAN. (a) In this article, "group health benefit plan" means a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including a group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a group evidence of coverage or similar group coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 20 of this code;

(3) a fraternal benefit society operating under Chapter 10 of this code;

(4) a stipulated premium insurance company operating under Chapter 22 of this code;

(5) a reciprocal exchange operating under Chapter 19 of this code;

(6) a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(7) a multiple employer welfare arrangement that holds a certificate of authority under Article 3.95-2 of this code; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Article 21.52F of this code.

(b) The term "group health benefit plan" includes:

(1) a small employer health benefit plan written under Chapter 26 of this code; and

(2) a plan provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), the Texas State College

and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), the Texas Public School Employees Group Insurance Act (Article 3.50-4, Vernon's Texas Insurance Code), or a successor of any of those plans.

Sec. 2. ENROLLMENT REQUIRED. (a) The issuer of a group health benefit plan, on receipt of written notice from the Texas Department of Health or a designee of the Texas Department of Health that states that an individual who is otherwise eligible for enrollment in the plan is a recipient of medical assistance under the state Medicaid program and is a participant in the health insurance premium payment reimbursement program for medical assistance recipients under Section 32.0422, Human Resources Code, shall permit the individual to enroll in the plan without regard to any enrollment period restriction.

(b) If an individual described by Subsection (a) of this section is not eligible to enroll in the plan unless a family member of the individual is also enrolled in the plan, the issuer, on receipt of the written notice under Subsection (a) of this section, shall enroll both the individual and the family member in the plan.

(c) Unless enrollment occurs during an established enrollment period, enrollment under this article takes effect on the first day of the calendar month that begins at least 30 days after the date written notice is received by the issuer under Subsection (a) of this section.

(d) Notwithstanding any other requirement of the group health benefit plan, the issuer of the plan shall permit an individual who is enrolled in a group health benefit plan under Subsection (a) of this section, and any family member of the individual enrolled under Subsection (b) of this section, to terminate enrollment in the plan not later than the 60th day after the date on which the individual provides satisfactory proof to the issuer that the individual is no longer:

(1) a recipient of medical assistance under the state Medicaid program; or

(2) a participant in the health insurance premium payment reimbursement program for medical assistance recipients under Section 32.0422, Human Resources Code.

(c) Section 301.104, Labor Code, is amended to read as follows:

Sec. 301.104. ELIGIBILITY. A person is eligible for the refund for wages paid or incurred by the person, during each calendar year for which the refund is claimed, only if:

(1) the wages paid or incurred by the person are for services of an employee who is:

(A) a resident of this state; and

(B) a recipient of:

(i) financial assistance and services in accordance with Chapter 31, Human Resources Code; or

(ii) medical assistance in accordance with Chapter 32, Human Resources Code;

(2) the person satisfies the certification requirements under Section 301.105; and

(3) the person provides and pays for the benefit of the employee a part of the cost of coverage under:

(A) a health plan provided by a health maintenance organization established under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(B) a health benefit plan approved by the commissioner of insurance; [or]

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.); or

(D) a medical savings account authorized under the Health Insurance Portability and Accountability Act of 1996 (26 U.S.C. Section 220).

(d) Section 301.105, Labor Code, is amended to read as follows:

Sec. 301.105. CERTIFICATION. A person is not eligible for the refund for wages paid or incurred by the person unless the person has received a written certification from the commission that the employee is a recipient of financial assistance and services or medical assistance on or before the day the employee begins employment with the person.

(e) The changes in law made by this section take effect August 31, 2001, and apply only to a group health benefit plan that is delivered, issued for delivery, or renewed on or after that date. A group health benefit plan that is delivered, issued for delivery, or renewed before August 31, 2001, is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

(f) A person may claim a refund under Section 301.104, Labor Code, as amended by this Act, only for wages paid or incurred on or after the effective date of this Act.

SECTION 8. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0471 to read as follows:

Sec. 32.0471. FAMILY PLANNING COUNSELING SERVICES; PROVIDER QUALIFICATIONS. Notwithstanding Section 503.056, Occupations Code, the department shall require that anyone who provides counseling services related to family planning services provided under this chapter must be:

(1) a licensed health care provider or a licensed counseling professional; or

(2) under the supervision of a licensed health care professional or a licensed counseling professional.

SECTION 9. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Sections 32.053-32.056 to read as follows:

Sec. 32.053. DEMONSTRATION PROJECT FOR CERTAIN MEDICATIONS AND RELATED SERVICES. (a) The department shall establish a demonstration project to provide to a person through the medical assistance program psychotropic medications and related laboratory and medical services necessary to conform to a prescribed medical regime for those medications.

(b) A person is eligible to participate in the demonstration project if the person:

(1) has been diagnosed as having a mental impairment, including schizophrenia or bipolar disorder, that is expected to cause the person to become a disabled individual, as defined by Section 1614(a) of the federal Social Security Act (42 U.S.C. Section 1382c), as amended;

(2) is at least 19 years of age, but not more than 64 years of age;

(3) has a net family income that is at or below 200 percent of the federal poverty level;

(4) is not covered by a health benefits plan offering adequate coverage, as determined by the department; and

(5) is not otherwise eligible for medical assistance at the time the person's eligibility for participation in the demonstration project is determined.

(c) To the extent allowed by federal law, and except as otherwise provided by this section, the department may contract for the provision of eligibility services for the demonstration project with a local mental health authority.

(d) Notwithstanding any other provision of this section, the department shall provide each participant in the demonstration project with a 12-month period of continuous eligibility for participation in the project.

(e) Participation in the demonstration project does not entitle a participant to other services provided under the medical assistance program.

(f) The department shall establish an appropriate enrollment limit for the demonstration project and may not allow participation in the project to exceed that limit. Once the limit is reached, the department shall establish a waiting list for enrollment in the demonstration project.

(g) To the extent permitted by federal law, the department may require a participant in the demonstration project to make cost-sharing payments for services provided through the project.

(h) To the maximum extent possible, the department shall use existing resources to fund the demonstration project.

(i) Not later than December 1 of each even-numbered year, the department shall submit a biennial report to the legislature regarding the department's progress in establishing and operating the demonstration project.

(j) Not later than December 1, 2006, the department shall evaluate the cost-effectiveness of the demonstration project, including whether the preventive drug treatments and related services provided under the project offset future long-term care costs for project participants. If the results of the evaluation indicate that the project is cost-effective, the department shall incorporate a request for funding for the continuation of the program in the department's budget request for the next state fiscal biennium.

(k) This section expires September 1, 2012.

Sec. 32.054. DEMONSTRATION PROJECT FOR PERSONS WITH HIV INFECTION OR AIDS. (a) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.

(b) The department shall establish a demonstration project to provide a person with HIV infection or AIDS with the following services and medications through the medical assistance program:

(1) services provided by a physician, physician assistant, advanced practice nurse, or other health care provider specified by the department;

(2) medications not included in the formulary for the HIV medication program operated by the department, but determined to be necessary for treatment of a condition related to HIV infection or AIDS;

(3) vaccinations for hepatitis B and pneumonia;

(4) pap smears, colposcopy, and other diagnostic procedures necessary to monitor gynecologic complications resulting from HIV infection or AIDS in women;

(5) hospitalization;

(6) laboratory and other diagnostic services, including periodic testing for CD4+ T-cell counts, viral load determination, and phenotype or genotype testing if clinically indicated; and

(7) other laboratory and radiological testing necessary to monitor potential toxicity of therapy.

(c) The department shall establish the demonstration project in at least two counties with a high prevalence of HIV infection and AIDS. The department shall ensure that the demonstration project is financed using funds made available by the counties in which the department establishes the demonstration project. The manner in which a county makes funds available may include an option for the county to be able to certify the amount of funds considered available instead of sending the funds to the state.

(d) A person is eligible to participate in the demonstration project if the person:

(1) has been diagnosed with HIV infection or AIDS by a physician;

(2) is under 65 years of age;

(3) has a net family income that is at or below 200 percent of the federal poverty level;

(4) is a resident of a county included in the project or, subject to guidelines established by the department, is receiving medical care for HIV infection or AIDS through a facility located in a county included in the project;

(5) is not covered by a health benefits plan offering adequate coverage, as determined by the department; and

(6) is not otherwise eligible for medical assistance at the time the person's eligibility for participation in the demonstration project is determined.

(e) Participation in the demonstration project does not entitle a participant to other services provided under the medical assistance program.

(f) The department shall establish an appropriate enrollment limit for the demonstration project and may not allow participation in the project to exceed that limit. Once the limit is reached, the department:

(1) shall establish a waiting list for enrollment in the demonstration project; and

(2) may allow eligible persons on the waiting list to enroll solely in the HIV medication program operated by the department.

(g) The department shall ensure that a participant in the demonstration project is also enrolled in the HIV medication program operated by the department.

(h) Notwithstanding any other provision of this section, the department shall provide each participant in the project with a six-month period of continuous eligibility for participation in the project.

(i) Not later than December 1 of each even-numbered year, the department shall submit a biennial report to the legislature regarding the department's progress in establishing and operating the demonstration project.

(j) Not later than December 1, 2006, the department shall evaluate the cost-effectiveness of the demonstration project, including whether the services and medications provided offset future higher costs for project participants. If the results of the evaluation indicate that the project is cost-effective, the department shall incorporate a request for funding for the expansion of the project into additional counties or throughout the state, as appropriate, in the department's budget request for the next state fiscal biennium.

(k) This section expires September 1, 2012.

Sec. 32.055. DEMONSTRATION PROJECTS FOR PROVISION OF MEDICAL ASSISTANCE TO CERTAIN LOW-INCOME INDIVIDUALS. (a) The Health and Human Services Commission shall establish demonstration projects to provide medical assistance under this chapter to adult individuals who are not otherwise eligible for medical assistance and whose incomes are at or below 200 percent of the federal poverty level.

(b) The Health and Human Services Commission shall select one or more municipalities or counties in which to implement the demonstration projects.

(c) The Health and Human Services Commission, in conjunction with local governmental entities that make funds available to the commission in accordance with this section, shall design the components of the demonstration project and shall ensure that:

(1) each demonstration project is financed using funds made available by certain local governmental entities, through a certification process, to the commission for matching purposes to maximize federal funds for the medical assistance program; and

(2) a participant in a demonstration project is not subject to a limitation imposed on prescription drug benefits under the medical assistance program.

(d) The Health and Human Services Commission shall appoint regional advisory committees to assist the commission in establishing and implementing demonstration projects under this section. An advisory committee must include health care providers, employers, and local government officials.

Sec. 32.056. DEMONSTRATION PROJECT FOR WOMEN'S HEALTH CARE SERVICES. (a) The department shall establish a five-year demonstration project through the medical assistance program to expand access to preventive health and family planning services for women. A woman eligible under Subsection (b) to participate in the demonstration project may receive preventive health and family planning services, including:

(1) medical history;

(2) physical examinations;

(3) counseling and education on contraceptive methods that includes:

(A) promoting abstinence as the preferred choice of behavior related to all sexual activity for unmarried persons;

(B) emphasizing abstinence from sexual activity, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus or acquired immune deficiency syndrome, and the emotional trauma associated with adolescent sexual activity; and

(C) informing single and divorced adults that abstinence from sexual activity before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with human immunodeficiency virus or acquired immune deficiency syndrome;

(4) provision of contraceptives;

(5) health screenings, including screening for:

(A) diabetes;

(B) cervical cancer;

(C) breast cancer;

(D) sexually transmitted diseases;

(E) hypertension;

(F) cholesterol; and

(G) tuberculosis;

(6) risk assessment; and

(7) referral of medical problems to appropriate providers.

- (b) A woman is eligible to participate in the demonstration project if the woman:
- (1) is 18 years of age or older;
  - (2) has a net family income that is at or below 185 percent of the federal poverty level; and
  - (3) is not otherwise eligible for the medical assistance program.
- (c) The department shall develop procedures for determining and certifying presumptive eligibility for a woman eligible under Subsection (b). The department shall integrate these procedures with current procedures to minimize duplication of effort by providers, the department, and other state agencies.
- (d) The department shall provide for 12 months of continuous eligibility for a woman eligible under Subsection (b).
- (e) The department shall compile a list of potential funding sources a client can use to help pay for treatment for health problems:
- (1) identified using services provided to the client under the demonstration project; and
  - (2) for which the client is not eligible to receive treatment under the medical assistance program.
- (f) Not later than December 1 of each even-numbered year, the department shall submit a report to the legislature that includes a statement of the department's progress in establishing and operating the demonstration project.
- (g) The department shall ensure that money under the demonstration project established by this section may not be used for an abortion, as that term is defined by Section 245.002, Health and Safety Code.
- (h) To the extent required by federal budget neutrality requirements, the department may establish an appropriate enrollment limit for the demonstration project.
- (i) This section expires September 1, 2007.
- (b) The state agency responsible for implementing the demonstration projects required by Sections 32.053-32.056, Human Resources Code, as added by this Act, shall request and actively pursue any necessary waivers or authorizations from the Health Care Financing Administration or other appropriate entities to enable the agency to implement the demonstration project not later than September 1, 2002. The agency may delay implementing the demonstration project until the necessary waivers or authorizations are granted.
- SECTION 10. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.057 to read as follows:
- Sec. 32.057. PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE). (a) The department, as a part of the medical assistance program, shall develop and implement a program of all-inclusive care for the elderly (PACE) in accordance with Section 4802 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33), as amended. The department shall provide medical assistance to a participant in the PACE program in the manner and to the extent authorized by federal law.
- (b) The department shall adopt rules as necessary to implement this section. In adopting rules, the department shall:
- (1) use the Bienvenir Senior Health Services of El Paso initiative as a model for the program; and
  - (2) ensure that a person is not required to hold a certificate of authority as a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) to provide services under the PACE program.

(c) The department may not contract with a person to provide services under the PACE program unless the person:

(1) purchases reinsurance in an amount determined by the department that is sufficient to ensure the person's continued solvency; or

(2) has the financial resources sufficient to cover expenses in the event of the person's insolvency.

(d) To demonstrate sufficiency of financial resources for purposes of Subsection (c)(2), a person may use cash reserves, a letter of credit, a guarantee of a company affiliated with the person, or a combination of those arrangements. The amount of a person's financial arrangement must be at least equal to the sum of:

(1) the total capitation revenue for one month; and

(2) the average monthly payment of operating expenses.

(e) The department shall consult with the Texas Department of Insurance in determining a person's sufficiency of financial resources for continued solvency or to cover expenses in the event of the person's insolvency as required by Subsection (c).

(f) The department, with direction from the Health and Human Services Commission, shall develop and implement a coordinated plan to promote PACE program sites operating under this section. The department shall adopt policies and procedures to ensure that caseworkers and any other appropriate state agency staff discuss the benefits of participating in the PACE program with long-term care clients.

(b) The state agency administering the program of all-inclusive care for the elderly (PACE) implemented under Section 32.057, Human Resources Code, as added by this Act, shall use its best efforts to develop and support multiple PACE program sites.

(c) If before June 1, 2004, the state does not receive federal approval for the operation of all PACE program sites for which the state has applied solely because the federal limit on the number of new PACE program sites allowed nationwide per year has been attained, the Health and Human Services Commission and Texas Department of Human Services, not later than September 1, 2004, shall examine federal laws and regulations regarding PACE programs and identify changes to law that would result in an increased number of PACE programs in this state.

(d) Not later than December 1, 2004, the commissioner of health and human services shall submit to the legislature a written report concerning the results of the examination conducted under Subsection (c) of this section. The report must include any recommendations for memorializing the Congress of the United States to request changes to federal laws or regulations.

(e) As soon as practicable after the effective date of this Act, the Health and Human Services Commission shall submit an amendment to the state's Medicaid plan authorizing the state to implement the program of all-inclusive care for the elderly (PACE) established under Section 32.057, Human Resources Code, as added by this Act. The commission is not required to submit an additional amendment to the state's Medicaid plan each time the state agency administering the PACE program selects and enters into a proposed agreement with a provider to deliver services under the program.

SECTION 11. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02101-531.02107 to read as follows:

Sec. 531.02101. TRANSFER AUTHORITY RELATING TO ADMINISTRATION OF MEDICAID PROGRAM. (a) To the extent that

reorganization is necessary to achieve the goals of increased administrative efficiency, increased accountability, or cost savings in the Medicaid program or to otherwise improve the health of residents of this state, the commission, subject to Subsection (b), may transfer any power, duty, function, program, activity, obligation, right, contract, record, employee, property, or appropriation or other money relating to administration of the Medicaid program from a health and human services agency to the commission.

(b) A transfer authorized by Subsection (a) may not take effect unless approved by the Medicaid legislative oversight committee created under Section 531.02102.

(c) The commission must notify the Legislative Budget Board and the governor's office of budget and planning not later than the 30th day before the effective date of a transfer authorized by Subsection (a).

Sec. 531.02102. MEDICAID LEGISLATIVE OVERSIGHT COMMITTEE.

(a) The Medicaid legislative oversight committee is composed of:

(1) five members of the senate appointed by the lieutenant governor; and

(2) five members of the house of representatives appointed by the speaker of the house of representatives.

(b) A member of the Medicaid legislative oversight committee serves at the pleasure of the appointing official.

(c) The lieutenant governor and speaker of the house of representatives shall appoint the presiding officer of the Medicaid legislative oversight committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

(d) The Medicaid legislative oversight committee shall:

(1) meet not more than quarterly at the call of the presiding officer; and

(2) review and approve or reject any transfer proposed by the commission of a power, duty, function, program, activity, obligation, right, contract, record, employee, property, or appropriation or other money relating to administration of the Medicaid program from a health and human services agency to the commission.

(e) The Medicaid legislative oversight committee may use staff of standing committees in the senate and house of representatives with appropriate jurisdiction, the Department of Information Resources, the state auditor, the Texas Legislative Council, and the Legislative Budget Board in carrying out its responsibilities.

Sec. 531.02103. MEDICAID PROGRAM: STRATEGIES FOR IMPROVING BUDGET CERTAINTY AND COST SAVINGS. (a) To achieve administrative efficiency and cost savings in the Medicaid program, the commission shall develop and implement strategies to improve management of the cost, quality, and use of services provided under the program. The strategies developed and implemented under this section may include:

(1) expansion of an enhanced primary care case management model to areas of the state and to populations currently subject to fee-for-service arrangements;

(2) use of medical case management for complex medical cases;

(3) mandatory enrollment of some or all Medicaid recipients who receive Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.) into a STAR + Plus pilot program in an area of the state served by a STAR pilot program as of January 1, 2001, or into an alternate managed care model developed by the commission;

(4) use of telemedicine for children and other persons with special health care needs;

(5) use of copayments and other mechanisms to encourage responsible use of health care services under the program, provided that implementation occurs in accordance with Section 531.02106;

(6) use of procurement initiatives such as selective contracting as a mechanism for obtaining provider services under the program, provided that the initiatives may not apply to a Class A community independent pharmacy or a Class A community chain pharmacy with 10 or fewer pharmacies;

(7) expansion of the program of all-inclusive care for the elderly (PACE), as authorized by Section 4802 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33), as amended, to additional sites;

(8) use of disease management and drug therapy management for Medicaid recipients with chronic diseases, including congestive heart failure, chronic obstructive pulmonary disease, asthma, and diabetes;

(9) use of cost controls in the provision of pharmaceutical services as necessary to ensure appropriate pricing, cost-effective use of pharmaceutical products, and the state's greatest entitlement to rebates from pharmaceutical manufacturers;

(10) use of competitive pricing for medical equipment and supplies, including vision care equipment and supplies;

(11) expansion of the health insurance premium payment reimbursement system (HIPPS);

(12) reduction of hospital outlier payments; and

(13) any other strategy designed to improve the quality and cost-effectiveness of the Medicaid program.

(b) The commission shall consult with local communities, providers, consumers, and other affected parties in the development and implementation of strategies under Subsection (a). The commission shall use existing state or local advisory committees for this purpose.

(c) The commission shall hold public hearings at least quarterly regarding the development and implementation of strategies under Subsection (a) and the development of agency procedures and necessary state plan amendments or waivers. If the commission proposes to adopt a rule necessary to implement a strategy under Subsection (a), the commission shall adopt the rule in accordance with Chapter 2001 and hold any public hearing required by that chapter.

Sec. 531.02104. MEDICAID ELIGIBILITY AND ENROLLMENT. The commission shall ensure that:

(1) the Medicaid eligibility policies, processes, and time frames of the Texas Department of Human Services, including policies, processes, and time frames relating to an applicant or recipient whose eligibility status is on hold, are designed to minimize the time that an applicant or recipient is required to wait before the applicant or recipient begins receiving services or is recertified;

(2) each state agency operating a part of the Medicaid program conforms the Medicaid eligibility policies and related processes and time frames, including any cutoff dates, of the agency and any agency contractor to the Medicaid eligibility policies, processes, and time frames of the Texas Department of Human Services; and

(3) the Medicaid eligibility policies, processes, and time frames of each agency operating a part of the Medicaid program and any agency contractor are designed to minimize the time that an applicant or recipient is required to wait before receiving services.

Sec. 531.02105. TEXAS HEALTH STEPS PROGRAM. The commission shall:

(1) take all actions necessary to simplify:

(A) provider enrollment in the Texas Health Steps program;

(B) reporting requirements relating to the Texas Health Steps program; and

(C) billing and coding procedures so that Texas Health Steps program processes are more consistent with commercial standards;

(2) in consultation with providers of Texas Health Steps program services, develop mechanisms to promote accurate, reliable, and timely reporting of examinations of children conducted under the program to managed care organizations and other appropriate entities;

(3) in consultation with providers of Texas Health Steps program services, develop a mechanism to promote incorporation of Texas Health Steps program services into a child's medical home; and

(4) require the external quality monitoring organization to evaluate the Texas Health Steps program using information available from all relevant sources and prepare periodic reports regarding the program for submission by the commission to the legislature.

Sec. 531.02106. LIMITS ON MEDICAID COST-SHARING. Before requiring Medicaid recipients to make copayments or comply with other cost-sharing requirements, the commission by rule shall establish monthly limits on total copayments and other cost-sharing requirements.

Sec. 531.02107. AUTHORIZATION FOR EXPANDED MEDICAID COST-SHARING. Notwithstanding any other law, the commissioner may request federal authorization to require all Medicaid recipients to make copayments or comply with other cost-sharing requirements for all services provided under the program in accordance with that authorization.

(b) As soon as possible after the effective date of this Act, the lieutenant governor and the speaker of the house of representatives shall appoint the members of the Medicaid legislative oversight committee created by Section 531.02102, Government Code, as added by this Act. The speaker of the house of representatives shall appoint the initial presiding officer of the committee.

SECTION 12. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02131 to read as follows:

Sec. 531.02131. COMMUNITY OUTREACH CAMPAIGN. (a) The commission shall conduct a community outreach campaign to provide information relating to the availability of Medicaid coverage for children and adults and to promote enrollment of eligible children and adults in Medicaid.

(b) The commission may combine the community outreach campaign under this section with any other state outreach campaign or educational activity relating to health care and available health care coverage.

SECTION 13. Subsection (d), Section 531.0214, Government Code, is amended to read as follows:

(d) The commission shall develop the database system in a manner that will enable a complete analysis of the use of prescription medications~~[-including information relating to:~~

~~[(1) Medicaid clients for whom more than three medications have been prescribed; and~~

~~[(2) the medical effect denial of Medicaid coverage for more than three medications has had on Medicaid clients].~~

SECTION 14. Subsection (a), Section 531.026, Government Code, is amended to read as follows:

(a) The commission shall prepare and submit to the lieutenant governor, the speaker of the house of representatives, the comptroller, the Legislative Budget Board, [and] the governor's office of budget and planning, each member of the appropriations committees of the senate and house of representatives, and each member of the standing committees of the senate and house of representatives with responsibility for oversight of health and human services issues ~~[governor]~~ a consolidated health and human services budget recommendation not later than October 15 of each even-numbered year.

SECTION 15. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0261 to read as follows:

Sec. 531.0261. CONSOLIDATED MEDICAID APPROPRIATIONS REQUEST. (a) The commission shall include in the consolidated budget recommendation required by Section 531.026 a consolidated Medicaid appropriations request for the subsequent fiscal biennium.

(b) The commission shall:

(1) develop the consolidated Medicaid appropriations request with input from the Legislative Budget Board and the governor's office of budget and planning to ensure that relevant information for acute and long-term care Medicaid programs relating to caseloads, costs, measures, rates, waivers, and eligibility is reflected; and

(2) provide assistance with the legislative appropriations process by revising the consolidated Medicaid appropriations request each time that revised caseload and cost estimates relating to the Medicaid program are prepared.

SECTION 16. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0272 to read as follows:

Sec. 531.0272. COMPREHENSIVE MEDICAID OPERATING BUDGET; QUARTERLY EXPENDITURE REPORTS. (a) The commission shall prepare a comprehensive Medicaid operating budget at the beginning of each fiscal year, with input as appropriate from each health and human services agency that receives legislative appropriations relating to the Medicaid program.

(b) The commission shall monitor all Medicaid expenditures by the commission and health and human services agencies and submit quarterly Medicaid expenditure reports to the lieutenant governor, the speaker of the house of representatives, the comptroller, the Legislative Budget Board, the governor's office of budget and planning, each member of the appropriations committees of the senate and house of representatives, and each member of the standing committees of the senate and house of representatives with responsibility for oversight of health and human services issues.

(c) The commission shall prepare the comprehensive Medicaid operating budget and quarterly Medicaid expenditure reports with input from the Legislative Budget Board and the governor's office of budget and planning to ensure that the information described by Section 531.0261(b)(1) is reflected.

SECTION 17. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.055 to read as follows:

Sec. 531.055. MEDICAID REIMBURSEMENT RATES REPORT. Not later than December 1 of each even-numbered year, the commission shall prepare and deliver to the governor, lieutenant governor, speaker of the house of representatives, and each member of the legislature a report that:

(1) identifies the Medicaid reimbursement rates for each county in this state; and

(2) compares the state's Medicaid reimbursement rates to the Medicaid reimbursement rates of the top 15 industrial states as ranked by the United States Department of Commerce Bureau of Economic Analysis based on gross state product.

SECTION 18. (a) The purpose of this section is to pilot a coordinated approach to addressing the needs of homeless people with chronic illnesses who are recipients of medical assistance under Chapter 32, Human Resources Code, so that homeless people may learn to manage their illnesses and become productive members of society. Current state, federal, and local agencies fund separate programs that address only one aspect of the needs of homeless people, such as housing, job training, and medical care. Homeless people with chronic illnesses will benefit from a coordinated approach that comprehensively addresses the needs of homeless people.

(b) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.057 to read as follows:

Sec. 531.057. PILOT CASE MANAGEMENT PROGRAM. (a) The commission, in cooperation with the Texas Interagency Council for the Homeless, shall develop a pilot case management program for homeless people who have chronic illnesses, including diabetes and HIV infection or AIDS, and who are recipients of medical assistance under Chapter 32, Human Resources Code. The council in cooperation with relevant state agencies shall administer the pilot program under the direction of the commission.

(b) Using existing resources of the agencies composing the council, the staff of the council shall:

(1) select a county with a population of more than 2.8 million in which to implement the program;

(2) identify existing services provided through programs of the agencies composing the council to homeless people with chronic illnesses who are recipients of medical assistance;

(3) identify existing federal, state, county, and local sources from which money may be available to fund the pilot program; and

(4) create a pilot case management program for not more than 75 homeless people with chronic illnesses who are recipients of medical assistance using existing financial and agency resources.

(c) The council shall select, through competitive bidding, a nonprofit entity to implement the pilot case management program for the homeless. The pilot program established under this section must:

(1) provide case management services and existing health-related education services to participants of the program; and

(2) coordinate housing, medical, job training, and other necessary services for the participants of the program.

(d) The commission shall identify programs available through health and human services agencies through which homeless people described by Subsection (a) may receive housing, medical, job placement, or other services. The commission shall report to the council information regarding the identified programs, including the programs' sources of funding and eligibility requirements.

(e) Not later than December 15 of each even-numbered year, the council shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the effectiveness of the pilot program established under this section.

(f) This section expires September 1, 2005.

(c) The Health and Human Services Commission shall develop and the Texas Interagency Council for the Homeless shall implement the pilot program established under this section not later than November 1, 2001.

SECTION 19. The heading to Chapter 533, Government Code, is amended to read as follows:

CHAPTER 533. DEVELOPMENT AND IMPLEMENTATION  
OF MEDICAID MANAGED CARE PROGRAM

SECTION 20. Subchapter A, Chapter 533, Government Code, is amended by amending Sections 533.001 and 533.002 and adding Sections 533.0021, 533.0022, 533.0023, and 533.0024 to read as follows:

Sec. 533.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission or an agency operating part of the state Medicaid managed care program, as appropriate.

(2) "Commissioner" means the commissioner of health and human services.

(3) "Health and human services agencies" has the meaning assigned by Section 531.001.

(4) "Managed care organization" means a person who is authorized or otherwise permitted by law to arrange for or provide a managed care plan. The term includes a health care system established under Chapter 20C, Insurance Code.

(5) "Managed care plan" means a 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 includes a primary care case management provider network and a health care system established under Chapter 20C, Insurance Code. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.

(6) "Recipient" means a recipient of medical assistance under Chapter 32, Human Resources Code.

(7) "Health care service region" or "region" means a Medicaid managed care service area as delineated by the commission.

Sec. 533.002. MEDICAID HEALTH CARE DELIVERY SYSTEM. The commission may develop a health care delivery system that restructures the delivery of health care services provided under the state Medicaid program.

Sec. 533.0021. DESIGN AND DEVELOPMENT OF HEALTH CARE DELIVERY SYSTEM. In developing the health care delivery system under this chapter, the commission shall:

(1) design the system in a manner that:

(A) improves the health of the people of this state by:

(i) emphasizing prevention;

(ii) promoting continuity of care; and

(iii) providing a medical home for recipients;

(B) ensures that each recipient receives high-quality, comprehensive health care services in the recipient's local community; and

(C) ensures that the community is given an opportunity to provide input and participate in the implementation of the system in the health care service region by holding public hearings in the community at which the commission takes public comment from all persons interested in the implementation of the system;

(2) to the extent that it is cost-effective to this state and local governments:

(A) maximize the financing of the state Medicaid program by obtaining federal matching funds for all resources or other money available for matching;

(B) expand Medicaid eligibility to include persons who were eligible to receive indigent health care services through the use of those resources or other money available for matching before expansion of eligibility; and

(C) develop a sliding scale copayment schedule for recipients based on income and other factors determined by the commissioner; and

(3) develop and prepare the waiver or other documents necessary to obtain federal authorization for the system.

Sec. 533.0022. PURPOSE. The commission shall implement the Medicaid managed care program as part of the health care delivery system developed under this chapter [Chapter 532] by contracting with managed care organizations in a manner that, to the extent possible:

(1) accomplishes the goals described by Section 533.0021 [improves the health of Texans by:

[(A) emphasizing prevention;

[(B) promoting continuity of care; and

[(C) providing a medical home for recipients;

[(2) ensures that each recipient receives high quality, comprehensive health care services in the recipient's local community];

(2) [(3)] encourages the training of and access to primary care physicians and providers;

(3) [(4)] maximizes cooperation with existing public health entities, including local departments of health and community mental health and mental retardation centers established under Chapter 534, Health and Safety Code;

(4) [(5)] provides incentives to managed care organizations to improve the quality of health care services for recipients by providing value-added services; [and]

(5) [(6)] reduces administrative and other nonfinancial barriers for recipients in obtaining health care services; and

(6) controls the costs associated with the state Medicaid program.

Sec. 533.0023. RULES FOR HEALTH CARE DELIVERY SYSTEM. (a) The commissioner of insurance shall adopt rules as necessary or appropriate to carry out the functions of the Texas Department of Insurance under this chapter.

(b) The commissioner of health and human services shall adopt rules and obtain public input in accordance with Chapter 2001 before making substantive changes to policies or programs under the Medicaid managed care program.

Sec. 533.0024. RESOLUTION OF IMPLEMENTATION ISSUES. The commission shall conduct a meeting at least quarterly with managed care organizations that contract with the commission under this chapter and health care providers to identify and resolve implementation issues with respect to the Medicaid managed care program.

SECTION 21. Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0035 to read as follows:

Sec. 533.0035. LIMITATION ON NUMBER OF CONTRACTS AWARDED. The commission shall:

(1) evaluate the number of managed care organizations with which the commission contracts to provide health care services in each health care service region, focusing particularly on the market share of those managed care organizations; and

(2) limit the number of contracts awarded to managed care organizations under this chapter in a manner that promotes the successful implementation of the delivery of health care services through the state Medicaid managed care program.

SECTION 22. (a) Section 533.005, Government Code, is amended to read as follows:

Sec. 533.005. REQUIRED CONTRACT PROVISIONS. 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 and provider payment 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; ~~and~~

(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 investigations and enforcement;

(11) a process by which the commission is required to:

(A) provide in writing to the managed care organization the projected fiscal impact on the state and managed care organizations that contract with the commission under this chapter of proposed Medicaid managed care program, benefit, or contract changes; and

(B) negotiate in good faith regarding appropriate operational and financial changes to the contract with the managed care organization before implementing those changes;

(12) a requirement that the managed care organization providing services to recipients under a Medicaid STAR + Plus pilot program:

(A) have an appropriate number of clinically trained case managers within the Medicaid STAR + Plus pilot program service delivery area to manage medically complex patients; and

(B) implement disease management programs that address the medical conditions of the Medicaid STAR + Plus pilot program population, including persons with HIV infection, AIDS, or sickle cell anemia;

(13) a requirement that the renewal date of the contract coincide with the beginning of the state fiscal year; and

(14) a requirement that the managed care organization reimburse health care providers for an appropriate emergency medical screening that is within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, and that is provided to determine whether:

(A) an emergency medical or psychiatric condition exists; and

(B) additional medical examination and treatment is required to stabilize the emergency medical or psychiatric condition.

(b) The changes in law made by Section 533.005, Government Code, as amended by this Act, apply to a contract between the Health and Human Services 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. A contract that is entered into or renewed before the effective date of this Act is governed by the law in effect on the date the contract was entered into or renewed, and the former law is continued in effect for that purpose.

SECTION 23. (a) Subchapter A, Chapter 533, Government Code, is amended by adding Sections 533.0051, 533.0076, 533.0091, 533.0131, and 533.016-533.0207 to read as follows:

Sec. 533.0051. CONTRACT RENEWAL. Before renewing a contract with a managed care organization under this chapter, the commission shall consider:

(1) the managed care organization's:

(A) overall contract compliance;

(B) implementation of simplified administrative processes for health care providers and recipients;

(C) compliance with statutory requirements to promptly reimburse health care providers for covered services provided under the Medicaid managed care program;

(D) compliance with the requirements under Article 3.70-3C, Insurance Code, as added by Chapter 1260, Acts of the 75th Legislature, Regular Session, 1997, and Section 14, Texas Health Maintenance Organization Act (Article 20A.14, Vernon's Texas Insurance Code), to identify advanced practice nurses and physician assistants as providers in the managed care organization's provider network;

(E) financial performance; and

(F) participation in the state child health plan under Chapter 62, Health and Safety Code; and

(2) the level of satisfaction of recipients and health care providers with the managed care organization.

Sec. 533.0076. LIMITATIONS ON RECIPIENT DISENROLLMENT. (a) Except as provided by Subsections (b) and (c), and to the extent permitted by federal law, the commission may prohibit a recipient from disenrolling in a managed care plan under this chapter and enrolling in another managed care plan during the 12-month period after the date the recipient initially enrolls in a plan.

(b) At any time before the 91st day after the date of a recipient's initial enrollment in a managed care plan under this chapter, the recipient may disenroll in that plan for any reason and enroll in another managed care plan under this chapter.

(c) The commission shall allow a recipient who is enrolled in a managed care plan under this chapter to disenroll in that plan at any time for cause in accordance with federal law.

Sec. 533.0091. UNIFORM STANDARDS FOR IDENTIFYING RECIPIENTS WITH DISABILITIES OR CHRONIC CONDITIONS. (a) The commission shall collaborate with managed care organizations that contract with the commission under this chapter to develop a uniform screening tool to be used by the managed care organizations to identify adult recipients with disabilities or chronic health conditions and assist those recipients in accessing health care services.

(b) The commission, in cooperation with the Texas Department of Health, by rule shall adopt criteria by which to classify a child with certain health conditions as a child with special health care needs. In adopting the criteria, the commission must include children who have:

- (1) severe disabilities;
- (2) severe mental or emotional disorders;
- (3) medically complex or fragile health conditions; or
- (4) rare or chronic health conditions that are likely to last at least one year and result in limitations on the child's functioning and activities when compared to other children of the same age who do not have those conditions.

(c) The commission, in cooperation with the Texas Department of Health, shall:  
(1) monitor and assess health care services provided under the state Medicaid managed care program and the medical assistance program under Chapter 32, Human Resources Code, to children with special health care needs as determined by the criteria adopted under Subsection (b);

(2) adopt specific quality of care standards applicable to health care services provided under the state Medicaid managed care program to children described by Subdivision (1); and

(3) undertake initiatives to develop, test, and implement optimum methods for the delivery of appropriate, comprehensive, and cost-effective health care services under the state Medicaid managed care program to children described by Subdivision (1), including initiatives to:

(A) coordinate health care services with educational programs and other social and community services; and

(B) promote family involvement and support.

Sec. 533.0131. USE OF ENCOUNTER DATA IN DETERMINING PREMIUM PAYMENT RATES. (a) In determining premium payment rates and other amounts paid to managed care organizations under a managed care plan, the commission may not base or derive the rates or amounts on or from encounter data, or incorporate in the

determination an analysis of encounter data, unless a certifier of encounter data certifies that:

(1) the encounter data for the most recent state fiscal year is complete, accurate, and reliable; and

(2) there is no statistically significant variability in the encounter data attributable to incompleteness, inaccuracy, or another deficiency as compared to equivalent data for similar populations and when evaluated against professionally accepted standards.

(b) For purposes of determining whether data is equivalent data for similar populations under Subsection (a)(2), a certifier of encounter data shall, at a minimum, consider:

(1) the regional variation in utilization patterns of recipients and costs of health care services;

(2) the range and type of health care services to be covered by premium payment rates;

(3) the number of managed care plans in the region; and

(4) the current number of recipients in each region, including the number for each category of recipient.

Sec. 533.016. INTERAGENCY SHARING OF INFORMATION. (a) The commission shall require a health and human services agency implementing the Medicaid managed care program to provide to each other health and human services agency implementing the program information reported to the agency by a managed care organization or health care provider providing services to recipients.

(b) Except as prohibited by federal law, the commission, each health and human services agency implementing the Medicaid managed care program, and the Texas Department of Insurance shall share confidential information, including financial data, that relates to or affects a person who proposes to contract with or has contracted with a state agency or a contractor of a state agency for the purposes of this chapter.

(c) Information shared between agencies under Subsection (b) remains confidential and is not subject to disclosure under Chapter 552.

Sec. 533.017. REDUCTION AND COORDINATION OF REPORTING REQUIREMENTS AND INSPECTION PROCEDURES. (a) The commission shall:

(1) streamline on-site inspection procedures of managed care organizations contracting with the commission under this chapter;

(2) streamline reporting requirements for managed care organizations contracting with the commission under this chapter, including:

(A) combining information required to be reported into a quarterly management report;

(B) eliminating unnecessary or duplicative reporting requirements; and

(C) to the extent feasible, allowing managed care organizations contracting with the commission under this chapter to submit reports electronically;

(3) require managed care organizations contracting with the commission under this chapter to streamline administrative processes required of health care providers, including:

(A) simplifying and standardizing, to the extent reasonably feasible, the forms providers are required to complete, including forms for preauthorization for covered services;

(B) eliminating unnecessary or duplicative reporting requirements; and  
(C) encouraging the adoption of collaboratively developed uniform forms; and

(4) designate one entity to which managed care organizations contracting with the commission under this chapter may report encounter data.

(b) Except as provided by Subsection (d), the commission and the Texas Department of Insurance and contractors of the commission or department may not schedule, initiate, prepare for, or conduct a documentary, electronic, or on-site review, a readiness, compliance, or performance review, or any other review, audit, or examination of a managed care organization contracting with the commission under this chapter until:

(1) the commission, the department, and, if appropriate, each health and human services agency implementing a part of the Medicaid managed care program enter into a memorandum of understanding under Section 533.018; and

(2) the agencies described by Subdivision (1) provide that memorandum to the managed care organization.

(c) Notwithstanding Subsection (b), the commission or the Texas Department of Insurance may take any action:

(1) otherwise authorized by law to protect the safety of a recipient; or

(2) with respect to a managed care organization determined to be in a hazardous financial condition.

(d) The commission and the Texas Department of Insurance may review monthly, quarterly, or annual reports required to be filed by managed care organizations contracting with the commission under this chapter.

Sec. 533.018. MEMORANDUM OF UNDERSTANDING REGARDING COORDINATION OF REPORTING REQUIREMENTS AND INSPECTION PROCEDURES. (a) The commission, the Texas Department of Insurance, and, if appropriate, each health and human services agency implementing a part of the Medicaid managed care program shall enter into a memorandum of understanding that outlines methods to:

(1) maximize interagency coordination in conducting reviews of managed care organizations contracting with the commission under this chapter; and

(2) eliminate and prevent duplicative monitoring, reporting, reviewing of forms, regulation, and enforcement policies and processes with respect to those managed care organizations.

(b) The memorandum of understanding under this section must:

(1) maximize the use of electronic filing of information by managed care organizations contracting with the commission under this chapter;

(2) specify the process by which the commission and the Texas Department of Insurance will jointly schedule a single on-site visit that satisfies the requirements of all state agencies regarding regularly scheduled, comprehensive compliance monitoring of and enforcement efforts with respect to managed care organizations contracting with the commission under this chapter;

(3) require that interagency orientation and training are scheduled and conducted to ensure that agency staff members are familiar with the obligation to eliminate and prevent duplicative monitoring and enforcement activities; and

(4) ensure coordination to eliminate and prevent duplication regarding policy development and implementation, procurement, cost estimates, electronic

systems issues, and monitoring and enforcement activities with respect to managed care organizations that serve recipients as well as enrollees in the state child health plan under Chapter 62, Health and Safety Code.

Sec. 533.019. INTEGRATED OPERATIONAL AND FINANCIAL AUDIT INSTRUMENT. (a) The commission and the Texas Department of Insurance shall develop and use an integrated operational and financial audit instrument for regularly scheduled, comprehensive, on-site readiness, performance, or compliance reviews, or other reviews, audits, or examinations of managed care organizations that contract with the commission under this chapter.

(b) In developing the integrated operational and financial audit instrument, the commission and the Texas Department of Insurance must include:

(1) a method to assess compliance with each applicable federal and state law and each applicable accreditation and contractual requirement, including financial, actuarial, operational, and quality of care requirements, the agencies are authorized to enforce at least on a periodic basis;

(2) a method to assess compliance of documents, records, and electronic files the commission or the Texas Department of Insurance requires managed care organizations that contract with the commission under this chapter to submit for review, either before or as an alternative to an on-site review, audit, or examination; and

(3) a method to assess compliance through on-site reviews, audits, and examinations, including document review, electronic systems testing or review, and observation and interviews of managed care organization employees.

(c) The commission and the Texas Department of Insurance may contract on a competitive bid basis with a consultant not affiliated with the commission or department to develop the integrated operational and financial audit instrument required by this section.

Sec. 533.020. PREAUTHORIZATION FOR CERTAIN SERVICES NOT REQUIRED. The commission, in consultation with physicians, hospitals, and managed care organizations contracting with the commission under this chapter, shall develop:

(1) a process by which the managed care organizations eliminate preauthorization processes for covered services that are considered to be routine services; and

(2) a process by which to notify health care providers of covered services under the Medicaid managed care program for which preauthorization is not required.

Sec. 533.0201. UTILIZATION REVIEW UNDER PRIMARY CARE CASE MANAGEMENT NETWORK. To the extent allowed by federal law, the commission shall require a managed care organization that contracts with the commission under this chapter and that provides health care services to recipients through a primary care case management network to conduct utilization review of those services in accordance with Article 21.58A, Insurance Code.

Sec. 533.0202. NOTICE OF DETERMINATIONS MADE BY UTILIZATION REVIEW AGENTS. (a) In this section, "utilization review agent" has the meaning assigned by Section 2, Article 21.58A, Insurance Code.

(b) A utilization review agent shall notify a recipient or a person acting on behalf of the recipient and the recipient's health care provider of a utilization review determination in accordance with this section and Section 5(a), Article 21.58A, Insurance Code, with respect to services provided under the state Medicaid managed care program.

(c) If the utilization review agent makes an adverse determination, the notice required by this section must include:

- (1) the principal reasons for the adverse determination;
- (2) the clinical basis for the adverse determination;
- (3) a description or the source of the screening criteria used as guidelines in making the determination; and
- (4) a description of the procedure for the complaint and appeal process, including a description provided to the recipient of:
  - (A) the recipient's right to a Medicaid fair hearing at any time; and
  - (B) the procedures for appealing an adverse determination at a Medicaid fair hearing.

(d) The utilization review agent must provide notice of an adverse determination:

(1) to the recipient and the recipient's health care provider of record by telephone or electronic transmission not later than the next business day after the date the determination is made if the recipient is hospitalized when the determination is made, to be followed not later than the third business day after the date the determination is made by a written notice of the determination;

(2) to the recipient and the recipient's health care provider of record by written notice not later than the third business day after the date the determination is made if the recipient is not hospitalized when the determination is made; or

(3) to the recipient's treating physician or health care provider within the time appropriate to the circumstances that relate to the delivery of the services and the condition of the patient, but not later than one hour after the recipient's treating physician or provider requests poststabilization care following emergency treatment.

(e) The commissioner shall adopt rules to implement this section.

Sec. 533.0203. COMPLAINT INFORMATION. (a) The commission, in cooperation with the Texas Department of Insurance and any other appropriate entity, shall collect complaint data, including complaint resolution rates, regarding managed care organizations contracting with the commission under this chapter. In entering into or renewing a contract with a managed care organization under this chapter, the commission may include provisions in the contract to accomplish the purposes of this section.

(b) The commission shall report on a quarterly basis the complaint data collected under Subsection (a) to the state Medicaid managed care advisory committee under Subchapter C.

(c) Not later than December 1 of each even-numbered year, the commission shall report to the legislature the complaint data collected under Subsection (a). The report may be consolidated with any other report relating to the same subject matter the commission is required to submit under other law.

Sec. 533.0204. PROVIDER REPORTING OF ENCOUNTER DATA. The commission shall collaborate with managed care organizations that contract with the commission and health care providers under the organizations' provider networks to develop incentives and mechanisms to encourage providers to report complete and accurate encounter data to managed care organizations in a timely manner.

Sec. 533.0205. QUALIFICATIONS OF CERTIFIER OF ENCOUNTER DATA. (a) The person acting as the state Medicaid director shall appoint a person as the certifier of encounter data.

(b) The certifier of encounter data must have:

(1) demonstrated expertise in estimating premium payment rates paid to a managed care organization under a managed care plan; and

(2) access to actuarial expertise, including expertise in estimating premium payment rates paid to a managed care organization under a managed care plan.

(c) A person may not be appointed under this section as the certifier of encounter data if the person participated with the commission in developing premium payment rates for managed care organizations under managed care plans in this state during the three-year period before the date the certifier is appointed.

Sec. 533.0206. CERTIFICATION OF ENCOUNTER DATA. (a) The certifier of encounter data shall certify the completeness, accuracy, and reliability of encounter data for each state fiscal year.

(b) The commission shall make available to the certifier all records and data the certifier considers appropriate for evaluating whether to certify the encounter data. The commission shall provide to the certifier selected resources and assistance in obtaining, compiling, and interpreting the records and data.

Sec. 533.0207. IMPLEMENTATION OF CERTAIN MANAGED CARE PLANS IN CERTAIN COUNTIES. (a) Notwithstanding any other law, before implementing a Medicaid managed care plan that uses capitation as a method of payment in a county with a population of less than 100,000, the commission must determine that implementation is economically efficient.

(b) Notwithstanding Subsection (a), the commission may continue implementation of a Medicaid managed care plan described by Subsection (a) in a county with a population of less than 100,000 if implementation of the plan in the county was in progress on January 1, 2001.

(b) Not later than March 1, 2002, the Health and Human Services Commission and each appropriate health and human services agency implementing part of the Medicaid managed care program under Chapter 533, Government Code, shall complete the requirements for reducing and coordinating reporting requirements and inspection procedures as required by Section 533.017, Government Code, as added by this Act.

(c) Not later than March 1, 2002, the Health and Human Services Commission, the Texas Department of Insurance, and each appropriate health and human services agency implementing a part of the Medicaid managed care program under Chapter 533, Government Code, shall enter into the memorandum of understanding required by Section 533.018, Government Code, as added by this Act.

(d) Not later than March 1, 2002, the Health and Human Services Commission and the Texas Department of Insurance shall develop the integrated operational and financial audit instrument required by Section 533.019, Government Code, as added by this Act.

(e) The changes in law made by Section 533.0202, Government Code, as added by this Act, apply to a contract between the Health and Human Services 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. A contract that is entered into or renewed before the effective date of this Act is governed by the law in effect on the date the contract was entered into or renewed, and the former law is continued in effect for that purpose.

(f) Not later than January 1, 2002, the person acting as the state Medicaid director shall appoint the certifier of Medicaid managed care encounter data required by Section 533.0205, Government Code, as added by this Act.

SECTION 24. Subsection (a), Section 533.041, Government Code, is amended to read as follows:

(a) The commission shall appoint a state Medicaid managed care advisory committee. The advisory committee consists of representatives of:

- (1) hospitals;
- (2) managed care organizations;
- (3) primary care providers;
- (4) state agencies;
- (5) consumer advocates representing low-income recipients;
- (6) consumer advocates representing recipients with a disability;
- (7) parents of children who are recipients;
- (8) rural providers;
- (9) advocates for children with special health care needs;
- (10) pediatric health care providers, including specialty providers;
- (11) long-term care providers, including nursing home providers;
- (12) obstetrical care providers;
- (13) community-based organizations serving low-income children and their families; ~~and~~
- (14) community-based organizations engaged in perinatal services and outreach;
- (15) medically underserved communities; and
- (16) community mental health and mental retardation centers established under Subchapter A, Chapter 534, Health and Safety Code.

SECTION 25. Notwithstanding S.B. No. 1, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), the annual salary of the executive director of the Interagency Council on Early Childhood Intervention during the state fiscal biennium beginning September 1, 2001, is \$72,000.

SECTION 26. (a) The commissioner of health and human services shall conduct a study regarding the feasibility of expanding the medical assistance program under Chapter 32, Human Resources Code, to provide medical assistance to disabled children 18 years of age or younger in accordance with 42 U.S.C. Section 1396a(e)(3), as amended.

(b) In conducting the study, the commissioner shall evaluate:

- (1) the number of children who would be eligible for medical assistance under the expanded program and who would be likely to enroll;
- (2) the effect of other health insurance coverage provided for children who would be eligible under the expanded medical assistance program on the cost of expanding the program;
- (3) utilization patterns of similar populations of disabled children under similar programs in this state and other states;
- (4) the cost to the state of inappropriate institutionalization of disabled children resulting from unavailability of health insurance coverage for those children; and

(5) options for setting an income eligibility cap for the expanded medical assistance program.

(c) Not later than December 1, 2002, the commissioner shall submit a report to the legislature regarding the results of the study conducted under this section. The report must include a recommendation regarding expanding the medical assistance program to provide that assistance to disabled children in accordance with 42 U.S.C. Section 1396a(e)(3), as amended.

SECTION 27. The commissioner of health and human services shall examine the reimbursement methodology for air ambulance services purchased under the medical assistance program and may implement any changes necessary to maintain a viable air ambulance system through the state.

SECTION 28. On January 1, 2002, or on an earlier date specified by the Health and Human Services Commission:

(1) all powers, duties, functions, activities, obligations, rights, contracts, records, employees, property, and appropriations and other money of the Texas Department of Health that are determined by the commissioner of health and human services to be essential to the administration of Medicaid acute care services or the Medicaid vendor drug program are transferred to the Health and Human Services Commission;

(2) a rule or form adopted by the Texas Department of Health that relates to a transferred component of the Medicaid program is a rule or form of the Health and Human Services Commission and remains in effect until altered by the commission;

(3) a reference in law or an administrative rule to the Texas Department of Health that relates to a transferred component of the Medicaid program means the Health and Human Services Commission;

(4) a license, permit, or certification in effect that was issued by the Texas Department of Health that relates to a transferred component of the Medicaid program is continued in effect as a license, permit, or certification of the Health and Human Services Commission; and

(5) a complaint, investigation, or other proceeding pending before the Texas Department of Health that relates to a transferred component of the Medicaid program is transferred without change in status to the Health and Human Services Commission.

SECTION 29. (a) Subject to Subsection (b) of this section, if before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

(b) Implementation of Sections 32.053-32.056, Human Resources Code, as added by this Act, is governed by Section 9 of this Act. Implementation of Section 32.057, Human Resources Code, as added by this Act, is governed by Section 10 of this Act.

SECTION 30. Except as otherwise provided by this Act, this Act takes effect September 1, 2001, and applies to a person receiving medical assistance on or after that date regardless of the date on which the person began receiving that medical assistance.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1317**

Senator Haywood submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1317** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HAYWOOD	MERRITT
OGDEN	R. LEWIS
BROWN	FARABEE
LUCIO	

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2809**

Senator Cain submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2809** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

CAIN	WOLENS
BROWN	UHER
HARRIS	P. KING
ARMBRISTER	THOMPSON

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 305**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 305** 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.

HARRIS

ZAFFIRINI

BROWN

HAYWOOD

ARMBRISTER

On the part of the Senate

BOSSE

MCCALL

KUEMPEL

ALEXANDER

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the continuation and functions of the Parks and Wildlife Department.

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

SECTION 1. Section 11.002, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.002. **POLICY IMPLEMENTATION.** The commission shall develop and implement policies that clearly separate the policymaking [respective] responsibilities of the commission and the management responsibilities of the director and the department staff.

SECTION 2. Subchapter A, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.003 to read as follows:

Sec. 11.003. APPLICABILITY OF CERTAIN STATE LAW REQUIREMENTS. A requirement under state law that a law enforcement agency adopt a policy that requires the collection and reporting of information relating to persons detained during traffic stops, that a peace officer report information relating to persons detained during traffic and pedestrian stops, or that a law enforcement agency compile, analyze, and report information relating to persons detained during traffic and pedestrian stops does not apply to the department or an employee of the department.

SECTION 3. Section 11.0111, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0111. **SUNSET PROVISION.** The Parks and Wildlife 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, 2013 [2001].

SECTION 4. Section 11.012, Parks and Wildlife Code, is amended by adding Subsection (d) to read as follows:

(d) In making appointments under this section, the governor shall attempt to include persons with expertise in diverse fields, including fields such as historic preservation, conservation, and outdoor recreation.

SECTION 5. Section 11.0121, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0121. QUALIFICATIONS. A person may not be ~~[is not eligible for appointment as]~~ a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of conservation, outdoor recreation, or commercial fishing, unless the license is a noncommercial hunting or fishing license or a license issued under Subchapter D, Chapter 43;

(2) is employed by or participates in the management of a business entity or other organization regulated by ~~[the department]~~ or receiving money ~~[funds]~~ from the department;

(3) ~~(2)~~ owns or ~~[;]~~ controls, ~~[or has,]~~ directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by ~~[the department]~~ or receiving money ~~[funds]~~ from the department; or

(4) ~~(3)~~ uses or receives a substantial amount of tangible goods, services, or money ~~[funds]~~ from the department other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

SECTION 6. Section 11.0122, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0122. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined 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) A person may not be a member of the commission and may not be a department 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 a paid or compensated officer, [An] employee, or paid consultant of a Texas trade [statewide] association in the field of conservation, [or] outdoor recreation, or commercial fishing; or

(2) the person's [may not be a commission member or employee of the department, nor may a person who cohabits with or is the] spouse is an officer, manager, [of a managerial employee] or paid consultant of a Texas trade [statewide] association in the field of conservation, [or] outdoor recreation, or commercial fishing [be a member of the commission or an employee of the department grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act].

SECTION 7. Section 11.0123, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0123. LOBBYIST PROHIBITION [~~MAY NOT SERVE ON COMMISSION~~]. A person may not be a member of the commission or act as the general counsel to the commission or the department if the person [who] is required to register as a lobbyist under Chapter 305, Government Code, because [by virtue] of the person's [his] activities for compensation [in or] on behalf of a profession related to the operation of the department [commission, may not serve as a member of the commission or act as the general counsel to the commission].

SECTION 8. Section 11.0124, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0124. DISCRIMINATION IN APPOINTMENTS PROHIBITED. Appointments to the commission shall be made without regard to the race, color, disability [handicap], sex, religion, age, or national origin of the appointees.

SECTION 9. Section 11.0125, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0125. REMOVAL OF A COMMISSION MEMBER. (a) It is a ground for removal from the commission that [if a member]:

(1) a public member does not have at the time of taking office [appointment] the qualifications required by Section 11.0121 [of this code for appointment to the commission];

(2) a public member does not maintain during [the] service on the commission the qualifications required by Section 11.0121 [of this code for appointment to the commission];

(3) a member is ineligible for membership under [violates a prohibition established by] Section 11.012(c), 11.0122, or 11.0123 [of this code];

(4) a member cannot, because of illness or disability, [is unable to] discharge the member's [his] duties for a substantial part [portion] of the member's term [for which he was appointed because of illness or disability]; or

(5) a member is absent from more than half [one-half] of the regularly scheduled commission meetings that [which] the member is eligible to attend during a [each] calendar year without an excuse approved [except when the absence is excused] by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is [was] taken when a ground for removal of a commission member exists [of the commission existed].

(c) If the director has knowledge that a potential ground for removal exists, the director [he] shall notify the presiding officer [chairman] of the commission of the potential [such] ground. The presiding officer [chairman of the commission] shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 10. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.0126 to read as follows:

Sec. 11.0126. TRAINING PROGRAM FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

- (b) The training program must provide the person with information regarding:
- (1) the legislation that created the department and the commission;
  - (2) the programs operated by the department;
  - (3) the role and functions of the department;
  - (4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;
  - (5) the current budget for the department;
  - (6) the results of the most recent formal audit of the department;
  - (7) the requirements of:
    - (A) the open meetings law, Chapter 551, Government Code;
    - (B) the public information law, Chapter 552, Government Code;
    - (C) the administrative procedure law, Chapter 2001, Government Code; and
    - (D) other laws relating to public officials, including conflict-of-interest laws; and
  - (8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(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 11. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.0127 to read as follows:

Sec. 11.0127. TRAINING FOR EMPLOYEES ON STATE INCENTIVE PROGRAM. The director or the director's designee shall provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

SECTION 12. Section 11.014, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.014. ~~PRESIDING OFFICER [CHAIRMAN, VICE-CHAIRMAN].~~  
 (a) ~~The governor shall designate a member [biennially one of the nine members as chairman] of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor [for a term of two years expiring on January 31 of the succeeding odd-numbered year].~~

~~(b) [The commission shall elect biennially a vice-chairman from among its members for a term of two years expiring on January 31 of the succeeding odd-numbered year.~~

~~[(c)] A vacancy in the office of presiding officer is filled in the same manner as the original designation [chairman or vice-chairman is filled for the unexpired portion of the term in the same manner as the original appointment or election].~~

SECTION 13. Section 11.0151, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0151. PUBLIC HEARINGS. (a) In this section, "major decision" means a decision in which a vote is taken on:

- (1) a rule;
- (2) a proclamation;
- (3) a contract;
- (4) a budget;

(5) a grant;

(6) a development plan for a geographical area managed by the department;

(7) a memorandum of understanding with another governmental entity; or

(8) any other issue as determined by the commission.

(b) The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(c) The commission, or any committee of the commission with at least five commission members serving on the committee, shall provide an opportunity for public testimony in an open meeting before making a major decision.

SECTION 14. Section 11.0161, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0161. NOTIFICATION OF COMMISSION ACTIVITIES; COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and describing the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

(b) The department shall maintain a file on each written complaint filed with the department that the department has the authority to resolve. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the department;

(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

(6) an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.

(c) The department shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the department's policies and procedures relating to complaint investigation and resolution.

(d) The department, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(e) The commission may adopt rules to define the types of complaints to which this section applies.

SECTION 15. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Sections 11.0172 and 11.0173 to read as follows:

Sec. 11.0172. LIMIT ON CONTRACTS FOR PUBLICATIONS. (a) In this section:

(1) "Publication" includes the publication of a book, magazine, photograph, poster, or bulletin.

(2) "Youth" means an individual younger than 17 years of age.

(b) The department may not contract with a person regarding a publication unless the contract provides the department the authority to:

(1) terminate the contract for a violation of a rule adopted under Subsection (c);

(2) retain final approval over the content of the publication, including advertising; and

(3) request and receive an appropriate number of copies of the publication that contain advertising that is appropriate for viewing by youth.

(c) The commission shall adopt rules regarding the types of advertising that are appropriate for viewing by youth.

Sec. 11.0173. PROHIBITION ON TOBACCO ADVERTISING. (a) In this section, "publication" includes the publication of a book, magazine, photograph, poster, or bulletin.

(b) The department may not accept an advertisement that promotes the sale of tobacco in a publication sponsored or published by the department.

SECTION 16. Section 11.0181, Parks and Wildlife Code, is amended by adding Subsection (c) to read as follows:

(c) The department shall manage the outreach and education activities performed under this section to ensure that the activities:

(1) are consistent with the department's mission and goals;

(2) do not duplicate other efforts by the department or other entities;

(3) provide a cost-effective method for reaching participants; and

(4) can be effectively measured.

SECTION 17. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.0182 to read as follows:

Sec. 11.0182. EMPLOYEE FUND-RAISING. (a) This section applies only to the solicitation or receipt of a gift, including money, that has a value of \$500 or more.

(b) The commission by rule shall adopt policies to govern fund-raising activities by department employees on behalf of the department. The rules must:

(1) designate the types of employees who may solicit donations;

(2) restrict where and how fund-raising may occur; and

(3) establish requirements for reports by employees to the director.

(c) The director shall approve and manage fund-raising activities by department employees on behalf of the department in accordance with commission rules.

(d) At least once each biennium the state auditor shall audit the fund-raising activities performed under this section. The audit shall disclose who has engaged in fund-raising activities for the department and the value of gifts each person has received or solicited. The state auditor shall report the results of the audit to the presiding officer of each house of the legislature and of each committee having primary jurisdiction over the department. Each member of the legislature may access the report.

(e) Policies adopted by the commission under Subsection (b) are public information under Chapter 552, Government Code.

SECTION 18. Section 11.021, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.021. INFORMATION CONCERNING QUALIFICATIONS AND RESPONSIBILITIES. The director or the director's [his] designee shall provide to commission members and department employees, as often as [is] necessary, information regarding the requirements for office or employment [their qualifications] under this chapter, including information regarding a person's [code and their] responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 19. Section 11.022, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.022. EQUAL OPPORTUNITY EMPLOYMENT. (a) The director or the director's [his] designee shall prepare and maintain a written policy statement that implements [to assure implementation of] a program of equal employment opportunity to ensure that [whereby] all personnel decisions [transactions] are made without regard to race, color, disability [handicap], sex, religion, age, or national origin.

(b) The policy statement must [shall] include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, [appointment,] training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law[;

[(2) a comprehensive analysis of the department's work force that meets federal or state guidelines;

[(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons of which federal or state guidelines encourage a more equitable balance; and

[(4) reasonable methods to appropriately address areas of significant underutilization in the department work force of all persons of which federal or state guidelines encourage a more equitable balance].

(c) [(b)] The policy statement must [statements shall] be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (b); and

(3) filed with the governor's office [not later than November 1 of each year, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the legislature].

SECTION 20. Subchapter B, Chapter 11, Parks and Wildlife Code, is amended by adding Section 11.0255 to read as follows:

Sec. 11.0255. EVALUATION OF CONSTRUCTION PROJECTS. (a) The department shall calculate the costs of each department construction project as the project is completed.

(b) In calculating the costs under Subsection (a), the department:

(1) shall consider both direct and indirect costs of department employees who perform project tasks; and

(2) may use the cost accounting procedures and instructions developed by the State Council on Competitive Government under Section 2162.102, Government Code.

(c) On request, the State Council on Competitive Government shall provide technical assistance to the department, including assistance with the application of the council's cost accounting procedures and instructions.

(d) Using the costs calculated under this section for completed projects, the department shall evaluate the costs and benefits of contracting with private entities or individuals to manage proposed construction-related tasks or projects.

SECTION 21. Section 11.026, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.026. GIFTS OF PROPERTY OR MONEY. (a) Except as provided by Subsection (b), the [The] department may accept gifts of property or money in support of any department purpose authorized in this code.

(b) The department may not accept a gift or other donation from a person who holds a commercial license issued by the department. For the purposes of this section, a license issued under Subchapter D, Chapter 43, is not a commercial license.

SECTION 22. Section 11.0261, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0261. PROHIBITION AGAINST ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER THINGS OF VALUE; ~~EXCEPTION~~. (a) Except as provided by Subsection (b), a [A] person who is a member of the commission or an employee of the department may not accept a gift, gratuity, or other thing of value, including travel, from a person who:

(1) is employed by or participates in the management of a business entity or other organization that receives funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that receives funds from the department;

(3) is a person a significant portion of whose business consists of furnishing goods or services to an entity or organization described by Subdivision (1) or (2); or

(4) is an agent, representative, attorney, employee, officer, owner, director, or partner of an entity, organization, or person described by Subdivision (1), (2), or (3).

(b) A department employee may accept reimbursement for travel expenses from the official nonprofit partner designated by the commission under Section 11.205 if:

(1) the employee has sufficiently documented the expense; and

(2) the expense arose out of the performance of an activity related to an employee's official duties regarding the partner.

SECTION 23. Section 11.033, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.033. USE OF GAME, FISH, AND WATER SAFETY ACCOUNT. (a) To the extent allowed by federal law, money [Money] in the game, fish, and water safety account may be used for the following purposes:

(1) enforcement of fish, shrimp, and oyster laws, game laws, and laws pertaining to sand, shell, and gravel;

(2) dissemination of information pertaining to marine life, wild animal life, wildlife values, and wildlife management;

(3) scientific investigation and survey of marine life for the better protection and conservation of marine life;

(4) establishment and maintenance of fish hatcheries, fish sanctuaries, tidal water fish passes, wildlife management areas, and public hunting grounds;

(5) propagation and distribution of marine life, game animals, and wild birds;

(6) protection of wild birds, fish, and game;

(7) purchase, repair, and operation of boats and dredges;

(8) research, management, and protection of the fish and wildlife resources of this state, including alligators and fur-bearing animals;

(9) salaries of employees and other expenses necessary to carry out the duties of the department under laws relating to fish, shrimp, oysters, game, water safety, and sand, shell, and gravel;

(10) expansion and development of additional opportunities of hunting and fishing in state-owned land and water;

(11) removing rough fish from public water;

(12) administration and enforcement of the water safety laws as set out in Chapter 31;

(13) purchasing all necessary forms and supplies, including reimbursement of the department for any material produced by its existing facilities or work performed by other divisions of the department;

(14) purchase, construction, and maintenance of boat ramps on or near public waters as provided in Chapter 31;

(15) resource protection activities; and

(16) any other use provided by law.

(b) The department may use money from license fees paid by hunters and fishermen only for those functions required to manage the fish and wildlife resources of this state.

SECTION 24. Section 11.082, Parks and Wildlife Code, is amended by adding Subsection (d) to read as follows:

(d) In administering the state plan, the department shall consult with, advise, provide resources to, and otherwise assist local governments regarding aquatic vegetation management and control. In this subsection, "local government" includes any political subdivision with jurisdiction over a public body of surface water.

SECTION 25. Chapter 11, Parks and Wildlife Code, is amended by adding Subchapter H to read as follows:

#### SUBCHAPTER H. LAND AND WATER RESOURCES CONSERVATION PLAN

Sec. 11.101. DEFINITION. In this subchapter, "conservation" includes the conservation of historical, natural, recreational, and wildlife resources.

Sec. 11.102. PLAN APPROVAL; HEARING REQUIRED. (a) The department must obtain approval from the commission for each development plan required by statute for a geographical area managed by the department.

(b) The commission shall hold a hearing on approval of the plan.

Sec. 11.103. INVENTORY. (a) The department shall inventory all land and water associated with historical, natural, recreational, and wildlife resources in this state that are owned by:

(1) governmental entities; or

(2) nonprofit entities that offer access to the land or water to the public.

(b) The department shall use existing inventory information concerning the lands identified in Subsection (a)(1) whenever possible.

(c) The department shall create a permanent database of the resources inventoried under Subsection (a). At least once every 10 years, the department shall update the database as necessary to reflect changes in the resources.

Sec. 11.104. LAND AND WATER RESOURCES CONSERVATION AND RECREATION PLAN. (a) Using the inventory prepared under Section 11.103, the department shall:

(1) analyze the state's existing and future land and water conservation and recreation needs;

(2) identify threatened land and water resources in this state; and

(3) establish the relative importance for conservation purposes of particular resources listed in the inventory.

(b) The inclusion of a specific parcel of land in the inventory does not create any additional right of public access to that land.

(c) Based on the analysis made under Subsection (a), the department shall prepare a land and water resources conservation and recreation plan. The plan must include criteria for determining how to meet the state's conservation and recreation needs. The department shall revise the plan as necessary to reflect changes in the inventory developed under Section 11.103.

(d) The department shall modify any existing plans regarding parks and wildlife management areas to make the existing plans consistent with the land and water resources conservation and recreation plan developed under this section.

(e) The department shall base its decisions regarding the state's conservation needs on the criteria developed in the plan, including decisions relating to:

(1) the acquisition of new resources for the conservation and recreation purposes of the department;

(2) the divestiture of existing department-owned resources;

(3) department grants to local parks;

(4) department cooperation with private conservation organizations and landowners, including associations of landowners; and

(5) other major land conservation operations of the department.

Sec. 11.105. COORDINATION OF CONSERVATION AND RECREATION OPERATIONS. The department shall:

(1) consider all resources listed in the inventory prepared under Section 11.103 in conjunction with each other;

(2) coordinate department activities related to those resources internally and with similar activities of other governmental or nonprofit entities; and

(3) set priorities for department activities related to those resources according to the most vital existing and future needs for conservation and recreation.

Sec. 11.106. EXEMPTIONS. Section 11.104 does not apply to:

(1) property that is part of a fund created or specifically authorized by the constitution of this state that is administered by or with the assistance of the School Land Board or the General Land Office; or

(2) land, water, or property owned by the permanent university fund or any other land, water, or property owned by, administered by, or held for the use and benefit of an institution of higher education, as that term is defined in Section 61.003, Education Code.

SECTION 26. Chapter 11, Parks and Wildlife Code, is amended by adding Subchapter I to read as follows:

#### SUBCHAPTER I. STATEWIDE COMMERCIAL PROJECTS

Sec. 11.151. DEFINITION. In this subchapter, "statewide commercial project" means a commercial venture undertaken by the department throughout the state, including promotions, sales, or other activities to raise money for the department. The term does not include a promotion or sale undertaken solely at one site.

Sec. 11.152. BUSINESS PLANS. Each business plan developed under this subchapter must include:

- (1) a description of the product or service provided;
- (2) an analysis of the information necessary for persons to make decisions on the project;
- (3) an analysis of the personnel necessary to manage and implement the project;
- (4) financial data, including both past performance and a budget and goals for future performance; and
- (5) a list of the resources necessary for a successful project.

Sec. 11.153. DEPARTMENT PLAN: OPERATIONAL STRATEGIES. (a) The department shall develop an agency-wide business plan to guide its overall operational strategies for statewide commercial projects. The plan must:

- (1) use the plans prepared under Section 11.154 for each project;
- (2) evaluate the efficiency of existing projects;
- (3) consider or propose changes to any project necessary to meet the department's overall goals;
- (4) compare each project's services and products to similar services and products available from the private sector;
- (5) seek to increase savings and improve customer service on each project;
- (6) coordinate existing projects to avoid duplication and focus resources on the most efficient and effective projects; and
- (7) assess the potential for contracting with a private entity or individual to perform department functions relating to specific projects.

(b) The department shall use the services of the State Council on Competitive Government, where appropriate, in fulfilling the department's duties under Subsection (a)(7).

Sec. 11.154. INDIVIDUAL PROJECT PLANS. (a) The department shall develop a business plan for each statewide commercial project. The plan must contain:

- (1) an accurate accounting for all project costs, including personnel and overhead costs; and
  - (2) reasonable projections of project income.
- (b) The director shall review the plan for each project at least annually to assess the overall performance and value of the project.

(c) The department may modify a plan as necessary to meet changing conditions.

Sec. 11.155. ADJUSTMENT OR TERMINATION OF PROJECT FOR FAILURE TO MEET FINANCIAL OBJECTIVES. (a) Except as provided by Subsection (b), the department shall adjust or terminate a statewide commercial project that fails to meet the financial objectives stated in the project's plan.

(b) This section does not apply if the department determines that the project possesses a positive public relations value or fulfills a useful educational purpose.

Sec. 11.156. CONTRACT WITH PRIVATE SECTOR. The department shall consider contracting out all or part of a statewide commercial project to a private entity or individual, including a nonprofit entity or individual.

SECTION 27. Chapter 11, Parks and Wildlife Code, is amended by adding Subchapter J to read as follows:

#### SUBCHAPTER J. NONPROFIT PARTNERSHIPS

Sec. 11.201. DEFINITIONS. In this subchapter:

- (1) "Nonprofit partner" means a nonpolitical legal entity that:
  - (A) is incorporated under the laws of this state;
  - (B) has been granted an exemption from federal income tax under Section 501(c), Internal Revenue Code of 1986, as amended;

(C) works with the department to further department goals; and

(D) is selected as provided under Section 11.202.

(2) "Official nonprofit partner" means the nonprofit partner designated by the commission under Section 11.205.

Sec. 11.202. GENERAL DUTIES. (a) The department may select and cooperate with nonprofit partners to serve department goals.

(b) The department must obtain commission approval for each nonprofit partner selected under Subsection (a).

(c) The commission by rule shall establish best practices for nonprofit partners to comply with.

Sec. 11.203. ACCOUNTABILITY OF NONPROFIT PARTNERS; INVESTMENT RESTRICTIONS. (a) The commission by rule shall require a nonprofit partner to comply with specified state standards and safeguards for accounting for state assets held by the nonprofit partner.

(b) Chapter 2256, Government Code, applies to a nonprofit partner to the extent that the partner controls state money.

Sec. 11.204. PLAN. The department shall provide to each nonprofit partner a copy of the plan developed under Section 11.104.

Sec. 11.205. OFFICIAL NONPROFIT PARTNER. (a) The commission shall designate a single nonprofit partner as the official nonprofit partner of the department, unless the commission determines in writing that no nonprofit partner is capable of effectively implementing the goals of this section.

(b) The official nonprofit partner must be dedicated to meeting department goals.

(c) The official nonprofit partner may accept gifts, grants, and donations to further department goals, including a gift, grant, or donation made in the name of the department.

(d) The official nonprofit partner may use state money to acquire property or engage in construction activities only if that acquisition or construction is consistent with the department's conservation and recreation priorities outlined in the plan developed under Section 11.104.

(e) The official nonprofit partner may organize and manage accounts for local nonprofit partners or other organizations to benefit a specific state park or other sites under the department's jurisdiction.

(f) The commission by rule shall establish:

(1) guidelines under which the official nonprofit partner may solicit and accept sponsorships from private entities; and

(2) best practices under which the partner may engage in activities under this section.

Sec. 11.206. AUDIT OF OFFICIAL NONPROFIT PARTNER. (a) The official nonprofit partner shall be audited annually by an independent auditor. The partner shall file the audit with the commission.

(b) The official nonprofit partner's financial transactions involving and financial records relating to state money held by the nonprofit partner are subject to audit by the state auditor as provided in Section 321.013, Government Code.

Sec. 11.207. EXPENDITURES; LIMITS. (a) The department shall direct, by the terms of the contract or grant, how a nonprofit partner may spend any state money it receives.

(b) A state employee may not directly spend or obligate a nonprofit partner's money.

(c) A nonprofit partner may not spend state money to:

- (1) lobby or otherwise attempt to influence a member of the legislature; or
- (2) directly or indirectly attempt to influence legislation.

SECTION 28. Section 12.025, Parks and Wildlife Code, is amended to read as follows:

Sec. 12.025. TECHNICAL GUIDANCE TO LANDOWNERS. (a) The department may provide technical guidance to landowners who request information concerning fish, wildlife, nongame, and habitat management.

(b) In setting priorities for the provision of money to a landowner under this section, the department shall consider:

- (1) the inventory developed under Section 11.103; and
- (2) the priorities set under Section 11.105.

(c) The department shall support landowner education programs and cooperate with appropriate state agencies.

(d) [~~e~~] The department shall provide notice of Section 12.0251 to a private landowner who requests technical assistance before entering the property to collect and record information about animal or plant life.

(e) [~~d~~] The commission by rule shall adopt policies, including written guidelines for a method for providing notice under Subsection (d) [~~e~~] and for departmental entry onto privately owned land to collect information described by Section 12.0251(a). The policies and guidelines must identify the maximum information that the department may maintain under Section 12.0251.

(f) [~~e~~] A review or update of a record or plan produced by the department under Section 12.0251 and maintained by the landowner or the landowner's agent may be requested by the landowner or the department.

SECTION 29. Subsection (a), Section 12.0251, Parks and Wildlife Code, is amended to read as follows:

(a) Except as provided by this section, information is not subject to Chapter 552, Government Code, and may not be disclosed to any person, including a state or federal agency, if the information is collected by the department in response to a landowner request relating to the specific location, species identification, or quantity of any animal or plant life that is:

- (1) protected by this code; and
- (2) located on private land that:

(A) is subject to a wildlife management plan developed cooperatively with the department for private land; or

(B) is the subject of a recommendation report prepared by the department for the landowner.

SECTION 30. Subsection (c), Section 12.703, Parks and Wildlife Code, is amended to read as follows:

(c) The commission by rule may set the amount of compensation for a point-of-sale entity. The compensation may include an amount to be retained by the entity from the fee collected for each item issued by the entity. The rules must specify standards for the licenses, including the legibility of the license.

SECTION 31. Subsections (a), (b), and (c), Section 13.001, Parks and Wildlife Code, are amended to read as follows:

(a) Except as otherwise provided by law, the following are under the department's control and custody:

(1) all recreational and[;] natural[,-and-historical] areas designated as state parks; and

(2) all historical sites acquired by [are under the control and custody of] the department.

(b) The commission shall establish a classification system for state parks and wildlife management areas that categorizes wildlife management areas, parks, or a portion of parks as wildlife management areas, recreational areas, natural areas, or historical sites [areas]. The commission may not classify a historical site as a historical park.

(c) The commission shall adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites [areas].

SECTION 32. Section 13.002, Parks and Wildlife Code, is amended to read as follows:

Sec. 13.002. DEVELOPMENT AND ACQUISITION OF OUTDOOR AREAS [COMPREHENSIVE STATE PLAN]. The department may:

(1) ~~[prepare, maintain, and revise a statewide comprehensive plan for the development of the outdoor recreation resources of this state;~~

~~[(2)]~~ develop, operate, and maintain outdoor areas and facilities of the state; and

~~(2) [(3)]~~ acquire land, water, and interests in land and water for outdoor recreation areas and facilities.

SECTION 33. (a) Subchapter A, Chapter 13, Parks and Wildlife Code, is amended by adding Section 13.0041 to read as follows:

Sec. 13.0041. USE OF CERTAIN BOND REVENUE. The department shall, if practicable, apportion at least fifteen percent of any money received by the department from the proceeds of the sale of bonds issued under Section 50-f, Article III, Texas Constitution, to specific park maintenance or improvement projects for which matching private or local money for the specific state parks and wildlife projects has been made available to the department.

(b) This section takes effect only if the constitutional amendment proposed by H.J.R. No. 97, 77th Legislature, Regular Session, 2001, is approved by the voters. If the proposed constitutional amendment is not approved by the voters, this section has no effect.

SECTION 34. Section 13.005, Parks and Wildlife Code, is amended to read as follows:

Sec. 13.005. ACQUISITION OF HISTORICAL SITES [AREAS]. (a) The department may acquire by purchase, gift, or other manner historical sites [areas]:

(1) where events occurred that represent an important aspect of the cultural, political, economic, military, or social history of the nation or state;

(2) significantly associated with the lives of outstanding historic persons or with an important event that represents a great ideal or idea;

(3) embodying the distinguishing characteristics of an architectural type which is inherently valuable for study of a period, style, or method of construction;

(4) that contributes significantly to the understanding of aboriginal man in the nation or state; or

(5) that is of significant geologic interest relating to prehistoric animal or plant life.

(b) The department shall restore and maintain each historical site [area] acquired under this section for the benefit of the general public. The department may enter into interagency contracts for this purpose.

(c) The department shall formulate plans [In formulating a plan] for the preservation and development of [a] historical sites. Before formulating a plan for a specific site, the department shall conduct an archeological survey of the site. In formulating plans [area], the department shall:

(1) consider the results from the archeological survey for the site if the plan is for a specific site;

(2) consider the resources necessary to manage a site; and

(3) meet with and [may] consider comments [on the plan] made by the Texas Historical Commission.

(d) The department and the Texas Historical Commission shall form a joint panel to establish criteria for determining whether a site is of statewide significance under Subsection (a) and to promote the continuity of a historic sites program.

SECTION 35. Section 31.006, Parks and Wildlife Code, is amended by adding Subsection (f) to read as follows:

(f) The commission may adopt rules for the creation of a program for the continuing identification and classification of participants in the vessel and outboard motor industries doing business in this state. The commission may set fees to administer this subsection. The department shall use information from the program to appoint agents under this section or for any other purpose required by the commission's rules or this chapter.

SECTION 36. Subchapter A, Chapter 13, Parks and Wildlife Code, is amended by adding Sections 13.0051, 13.0052, and 13.0053 to read as follows:

Sec. 13.0051. COORDINATION WITH TEXAS HISTORICAL COMMISSION; REPORT ON PRESERVATION PLANS. The department shall meet regularly with the Texas Historical Commission regarding plans to preserve and develop historical sites in this state.

Sec. 13.0052. REPORTS. The department shall periodically prepare reports on plans to preserve and develop historical sites in this state.

Sec. 13.0053. REFERENCE TO HISTORICAL SITES. (a) In this section, "publication" includes the publication of a book, magazine, photograph, poster, or bulletin.

(b) The department may not refer to a historical site as a "historical park":

(1) in a department publication; or

(2) on a department marker or sign.

SECTION 37. Section 13.010, Parks and Wildlife Code, is amended to read as follows:

Sec. 13.010. HISTORIC SITES [LOCATIONS]. The department may locate, designate, and suitably mark historic grounds, battlefields, and other historic spots in Texas as historic sites. Fitting markers may be erected; however, no expense may be incurred in the name of the state for this project.

SECTION 38. Section 43.151, Parks and Wildlife Code, is amended to read as follows:

Sec. 43.151. THREATS TO PUBLIC SAFETY OR DAMAGE BY WILDLIFE.

(a) A person who has evidence clearly showing that wildlife protected by this code is

causing serious damage to agricultural, horticultural, or aquicultural interests or other property, or is a threat to public safety, and who desires to kill the protected wildlife shall give written notice of the facts to the county judge of the county or to the mayor of the municipality in which the damage or threat occurs.

(b) The county judge or mayor, on receiving the notice, shall immediately cause a substantial copy of the notice to be posted in the county courthouse or city hall, as applicable, and shall notify the department of the location of the property where the damage or threat is occurring, the type of damage or nature of the threat, and the name of the applicant.

SECTION 39. Section 43.152, Parks and Wildlife Code, is amended to read as follows:

Sec. 43.152. DEPARTMENT INSPECTION. On receiving notice from a county judge or mayor, the department shall inspect the property and determine if damage or a threat to public safety is occurring as alleged in the notice. If the damage or threat is occurring, the department shall make recommendations to the person as are feasible and appropriate for controlling the damage or threat.

SECTION 40. Subsection (b), Section 43.154, Parks and Wildlife Code, is amended to read as follows:

(b) The department shall deliver the permit, if issued, to the county judge or mayor that sent the notice of damage or threat. The permit may not be delivered earlier than 24 hours after the notice from the county judge or mayor was received by the department.

SECTION 41. Section 76.007, Parks and Wildlife Code, is amended to read as follows:

Sec. 76.007. MAXIMUM ACREAGE UNDER LOCATION. (a) The department may not issue a certificate of location for a location that includes more than 100 acres of land covered by water.

(b) A [No] person may not own, lease, or control more than 300 [100] acres of land covered by water under certificates of location. A person who does not own, lease, or control more than 300 acres of land may act as an agent for persons who, in the aggregate, own, lease, or control more than 300 acres of land.

SECTION 42. Section 76.017, Parks and Wildlife Code, is amended to read as follows:

Sec. 76.017. LOCATION RENTAL FEES. ~~(a) The [No rental fee is owed on any location when oysters are not sold or marketed from the location for a period of five years after the date of the establishment of the location.~~

~~[(b) When oysters are sold or marketed from the location and thereafter, the] holder of a [the] certificate of location shall pay to the department \$6 [\$3] per acre of location per year to rent the location under the certificate. In lieu of that payment, the commission may set the required payment under this section in a greater amount.~~

~~(b) [(c)] Rental fees are due annually by March 1.~~

(c) The holder of a certificate shall pay the department a late penalty fee equal to 10 percent of the amount due for any rental, transfer, sale, or renewal fee that is not paid when due.

(d) The failure to pay any rental, transfer, sale, renewal, or late penalty fee within 90 days of the due date [when due] terminates the lease.

SECTION 43. Subchapter A, Chapter 76, Parks and Wildlife Code, is amended by adding Sections 76.018 and 76.019 to read as follows:

Sec. 76.018. LOCATION RENTAL TERM; RENEWAL; AUCTION. (a) The term of a rental lease for a location under this subchapter is 15 years.

(b) The commission shall determine renewal procedures to follow at the end of each lease term. The procedures must include:

(1) a determination that the lease renewal will be based on the need for deperuation of polluted oysters and other considerations specified in the oyster management plan;

(2) payment of a \$200 fee due on renewal of the lease;

(3) a condition that the current leaseholder will be offered a first right of refusal if the lease is renewed under this chapter; and

(4) any other conditions for the lease renewal that do not conflict with this chapter.

(c) The commission shall determine auction procedures for the issuance of a lease that is not renewed by the previous leaseholder under Subsection (b).

Sec. 76.019. PROCEDURES FOR SALE OR TRANSFER OF LOCATION RENTAL. The commission shall determine procedures for reissuance of a lease when the lease is sold or otherwise transferred. The procedures must include:

(1) payment of a \$200 fee due on the sale or transfer of the lease unless the lease is inherited; and

(2) a provision that the sale or transfer does not change the lease term.

SECTION 44. Subsection (a), Section 76.036, Parks and Wildlife Code, is amended to read as follows:

(a) The holder of a permit shall clearly and distinctly mark[;] by buoys[~~, stakes, or fences,~~] the boundaries of the areas designated in the permit from which he may take or in which he may deposit oysters.

SECTION 45. Subchapter A, Chapter 77, Parks and Wildlife Code, is amended by adding Section 77.005 to read as follows:

Sec. 77.005. STUDY AND REPORT ON SHRIMP INDUSTRY AND RESOURCES. (a) Using the shrimp management plan required by Section 77.007 and the research conducted under Section 77.004, the department shall comprehensively study shrimp resources, including the shrimp population, and the shrimp industry. The study shall analyze:

(1) the status of the shrimp population in coastal water, including the size and projected growth of shrimping beds;

(2) the economic health of the shrimp industry;

(3) the status of conservation measures, including department regulations and license buybacks; and

(4) the status of marine resources and habitats affected by shrimping.

(b) In conducting the study, the department shall solicit and consider input from:

(1) the public;

(2) the shrimp industry;

(3) other businesses affected by the shrimp industry;

(4) any other persons interested in marine resources; and

(5) the comptroller regarding economic data.

(c) The department shall report on the status of the study to:

(1) the commission;

(2) the presiding officer of each house of the legislature; and

(3) the committees of each house of the legislature that have primary oversight jurisdiction over the department.

(d) The department may repeat the study and report as necessary to adequately regulate the shrimp industry and to preserve shrimp resources.

(e) The commission shall base policies and rules relating to shrimping on the results of the most recent study completed under this section.

SECTION 46. Subchapter A, Chapter 89, Parks and Wildlife Code, is amended by adding Section 89.005 to read as follows:

Sec. 89.005. USE OF BRIDGES, TUNNELS, AND CAUSEWAYS. (a) The department, in cooperation with the Texas Department of Transportation and local governments, may use obsolete bridges, tunnels, and causeways to create artificial reefs under this chapter.

(b) The department may receive from the Texas Department of Transportation the transfer of obsolete bridges, tunnels, and causeways to create artificial reefs.

(c) The department may provide assistance, including money, to a local government to fulfill the purposes of this section.

(d) Any money appropriated to the department for the artificial reef program under this chapter may be used for the purposes of this section.

SECTION 47. Subdivision (4), Section 11.001, Parks and Wildlife Code, is amended to read as follows:

(4) "Presiding officer" [~~"Chairman"~~] means the presiding officer [~~chairman~~] of the Parks and Wildlife Commission.

SECTION 48. Section 11.0162, Parks and Wildlife Code, is amended to read as follows:

Sec. 11.0162. ADVISORY COMMITTEES TO COMMISSION. (a) The presiding officer [~~chairman~~] may appoint committees to advise the commission on issues under its jurisdiction.

(b) The presiding officer [~~chairman~~] may adopt rules that set the membership, terms of service, qualifications, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this section.

SECTION 49. Subsection (b), Section 21.013, Parks and Wildlife Code, is amended to read as follows:

(b) The bonds shall be signed by the presiding officer [~~chairman~~] and the director, and the seal of the department shall be impressed on them.

SECTION 50. Section 21.014, Parks and Wildlife Code, is amended to read as follows:

Sec. 21.014. FACSIMILE SIGNATURES AND SEALS. In the resolution authorizing the issuance of an installment or series of bonds, the commission may prescribe the extent to which facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals may be used in executing the bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the presiding officer [~~chairman~~] and the director.

SECTION 51. Subsection (b), Section 22.055, Parks and Wildlife Code, is amended to read as follows:

(b) The presiding officer [~~chairman of the commission~~], on behalf of the department, may execute and deliver the necessary instruments to convey the iron ore in place to the purchasers.

SECTION 52. Subsection (a), Section 81.206, Parks and Wildlife Code, is amended to read as follows:

(a) Sanctuaries shall be set aside and designated by proclamation of the commission signed by the presiding officer [~~chairman~~].

SECTION 53. Section 76.016, Parks and Wildlife Code, is repealed.

SECTION 54. (a) The Parks and Wildlife Department shall study all outreach and education activities performed under Section 11.0181, Parks and Wildlife Code, to determine whether the activities comply with Subsection (c), Section 11.0181, Parks and Wildlife Code, as added by this Act.

(b) Not later than September 1, 2002, the Parks and Wildlife Department shall report to the following entities on the study's results:

- (1) the Parks and Wildlife Commission;
- (2) the House Appropriations Committee;
- (3) the House State Recreational Resources Committee;
- (4) the Senate Finance Committee; and
- (5) the Senate Natural Resources Committee.

(c) Until the report is submitted under Subsection (b) of this section, the Parks and Wildlife Commission shall limit spending on outreach and education activities performed under Section 11.0181, Parks and Wildlife Code, unless the Parks and Wildlife Department can prove to the Parks and Wildlife Commission that the spending is for an activity that:

- (1) is effective; or
- (2) is required by statute.

SECTION 55. (a) The Parks and Wildlife Department may not acquire a new park, historical site, or wildlife site before:

- (1) the Parks and Wildlife Department has completed the inventory required by Section 11.103, Parks and Wildlife Code, as added by this Act; and
- (2) the Parks and Wildlife Commission has approved, under Section 11.102, Parks and Wildlife Code, as added by this Act, the plan prepared by the department under Section 11.104, Parks and Wildlife Code, as added by this Act.

(b) This section does not apply to acquisitions, as determined by the Parks and Wildlife Department, that:

- (1) began before the effective date of this Act;
- (2) are within or adjacent to existing Parks and Wildlife Department land and increase public access to those facilities; or
- (3) are of statewide significance.

SECTION 56. (a) In this section, "publication" and "youth" have the meanings assigned by Section 11.0172, Parks and Wildlife Code, as added by this Act.

(b) To the extent a contract for a publication does not expressly allow the Parks and Wildlife Department to terminate the contract for a violation of a rule adopted under Subsection (c), Section 11.0172, Parks and Wildlife Code, as added by this Act, retain final approval over the content of the publication, including advertising, or request and receive an appropriate number of copies of the publication that contain advertising that is appropriate for viewing by youth, not later than March 1, 2002, the department shall negotiate a modification to or otherwise modify the contract to contain provisions allowing for:

- (1) termination of the contract for a violation of a rule adopted under Subsection (c), Section 11.0172, Parks and Wildlife Code, as added by this Act;
- (2) final approval over the content of the publication, including advertising; and
- (3) requesting and receiving an appropriate number of copies of the publication that contain advertising that is appropriate for viewing by youth.

SECTION 57. Not later than September 1, 2002, the Parks and Wildlife Department shall complete the initial report required under Subsection (c), Section 77.005, Parks and Wildlife Code, as added by this Act.

SECTION 58. Not later than October 15, 2002, the Parks and Wildlife Department shall prepare the plan required under Section 11.104, Parks and Wildlife Code, as added by this Act.

SECTION 59. The changes in law made by this Act in the qualifications of, and the prohibitions applying to, the members of the Parks and Wildlife Commission do not affect the entitlement of a person serving as a member of the commission immediately before September 1, 2001, to continue to carry out the functions of the person's office for the remainder of the person's term. The changes in law apply only to a person appointed on or after September 1, 2001. This Act does not prohibit a person who is a member of the Parks and Wildlife Commission immediately before September 1, 2001, from being reappointed as a commission member if the person has the qualifications required for the position under Chapter 11, Parks and Wildlife Code, as amended by this Act.

SECTION 60. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 515**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas  
May 24, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 515** 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.

MADLA  
CARONA  
LUCIO

TRUITT  
KITCHEN  
SMITH  
HOPE

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the establishment of an adult fatality review team and to the reporting and investigation of certain adult deaths; providing a penalty.

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

SECTION 1. Subtitle A, Title 8, Health and Safety Code, is amended by adding Chapter 672 to read as follows:

CHAPTER 672. ADULT FATALITY REVIEW  
AND INVESTIGATION

Sec. 672.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting emotional or physical harm leading to death; or

(B) sexual abuse of an adult, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code, or Chapter 22, Penal Code.

(2) "Autopsy" and "inquest" have the meanings assigned by Article 49.01, Code of Criminal Procedure.

(3) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(4) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including dental and mental health evaluation or treatment.

(5) "Review" means a reexamination of information regarding a deceased adult from relevant agencies, professionals, and health care providers.

(6) "Review team" means an unexpected fatality review team established under this chapter.

(7) "Unexpected death" includes a death of an adult that before investigation appears:

(A) to have occurred without anticipation or forewarning; and

(B) to have been caused by suicide, family violence, or abuse.

Sec. 672.002. ESTABLISHMENT OF REVIEW TEAM. (a) A multidisciplinary and multiagency unexpected fatality review team may be established for a county to conduct reviews of unexpected deaths that occur within the county. A review team for a county with a population of less than 50,000 may join with an adjacent county or counties to establish a combined review team.

(b) The commissioners court of a county may oversee the activities of the review team or may designate a county department to oversee those activities. The commissioners court may designate a nonprofit agency or a political subdivision of the state involved in the support or treatment of victims of family violence, abuse, or suicide to oversee the activities of the review team if the governing body of the nonprofit agency or political subdivision concurs.

(c) Any person who may be a member of a review team under Subsection (d) may initiate the establishment of a review team and call the first organizational meeting of the team.

(d) A review team may include:

(1) a criminal prosecutor involved in prosecuting crimes involving family violence;

(2) a peace officer;

(3) a justice of the peace or medical examiner;

(4) a public health professional;

(5) a representative of the Department of Protective and Regulatory Services engaged in providing adult protective services;

(6) a mental health services provider;

(7) a representative of the family violence shelter center providing services to the county;

(8) the victim witness advocate in the county prosecutor's office;

(9) a representative from the battering intervention and prevention program for the county; and

(10) a community supervision and corrections department officer.

(e) Members of a review team may select additional team members according to community resources and needs.

(f) A review team shall select a presiding officer from its members.

(g) Members selected under Subsection (e) must reflect the geographical, cultural, racial, ethnic, and gender diversity of the county or counties represented.

(h) Members selected under this section should have experience in abuse, neglect, suicide, family violence, or elder abuse.

Sec. 672.003. PURPOSE AND POWERS OF REVIEW TEAM. (a) The purpose of a review team is to decrease the incidence of preventable adult deaths by:

(1) promoting cooperation, communication, and coordination among agencies involved in responding to unexpected deaths;

(2) developing an understanding of the causes and incidence of unexpected deaths in the county or counties in which the review team is located; and

(3) advising the legislature, appropriate state agencies, and local law enforcement agencies on changes to law, policy, or practice that will reduce the number of unexpected deaths.

(b) To achieve its purpose, a review team shall:

(1) develop and implement, according to local needs and resources, appropriate protocols;

(2) meet on a regular basis to review fatality cases suspected to have resulted from suicide, family violence, or abuse and recommend methods to improve coordination of services and investigations between agencies that are represented on the team;

(3) collect and maintain data, as appropriate; and

(4) submit the report required under Section 672.008.

Sec. 672.004. DUTIES OF PRESIDING OFFICER. The presiding officer of a review team may:

(1) send notices to the review team members of a meeting to review a fatality involving suspected suicide, family violence, or abuse;

(2) provide a list to the review team members of each fatality to be reviewed at the meeting; and

(3) ensure that the review team operates according to the protocols developed by the review team.

Sec. 672.005. REVIEW PROCEDURE. (a) The review team of the county in which the event that was the cause of the unexpected death occurred, as stated on the death certificate or as otherwise indicated by the medical examiner or justice of the peace notified of the death, may review the death.

(b) On receipt of the list of fatalities under Section 672.004, each review team member shall review available records for information regarding each listed unexpected death.

Sec. 672.006. ACCESS TO INFORMATION. (a) A review team may request information and records regarding adult deaths resulting from suicide, family violence, or abuse as necessary to carry out the review team's purpose and duties. Records and information that may be requested under this section include:

(1) medical, dental, and mental health care information; and  
(2) information and records maintained by any state or local government agency, including:

(A) a birth certificate;

(B) law enforcement investigative data;

(C) medical examiner investigative data;

(D) juvenile court records;

(E) parole and probation information and records; and

(F) adult protective services information and records.

(b) On request of the presiding officer of a review team, the custodian of the relevant information or records relating to the deceased adult shall provide the information or records to the review team. A law enforcement agency or a medical examiner may decline to provide investigative data to a review team until after the conclusion of the investigation.

(c) This section does not authorize the release of the original or copies of the mental health or medical records of any member of the deceased adult's family, the guardian or caretaker of the deceased adult, or an alleged or suspected perpetrator of family violence or abuse of the adult that are in the possession of any state or local government agency as provided in Subsection (a)(2). Information relating to the mental health or medical condition of a member of the deceased adult's family, the guardian or caretaker of the deceased adult, or the alleged or suspected perpetrator of family violence or abuse of the deceased adult acquired as part of an investigation by a state or local government agency as provided in Subsection (a)(2) may be provided to the review team.

(d) This section does not authorize any interference with a criminal investigation, inquest, or autopsy.

Sec. 672.007. MEETING OF REVIEW TEAM. (a) A meeting of a review team is closed to the public and not subject to the open meetings law, Chapter 551, Government Code.

(b) This section does not prohibit a review team from requesting the attendance at a closed meeting of a person who is not a member of the review team and who has information regarding a fatality resulting from suicide, family violence, or abuse.

(c) Except as necessary to carry out a review team's purpose and duties, members of a review team and persons attending a review team meeting may not disclose what occurred at the meeting.

Sec. 672.008. REPORT. (a) Not later than December 15 of each even-numbered year, each review team shall submit to the Department of Protective and Regulatory Services a report on deaths reviewed.

(b) Subject to Section 672.009, the Department of Protective and Regulatory Services shall make the reports received under Subsection (a) available to the public.

Sec. 672.009. USE OF INFORMATION AND RECORDS: CONFIDENTIALITY. (a) Information and records acquired by a review team in the exercise of its purpose and duties under this chapter are confidential and exempt from

disclosure under the open records law, Chapter 552, Government Code, and may only be disclosed as necessary to carry out the review team's purpose and duties.

(b) A report of a review team or a statistical compilation of data reports is a public record subject to the open records law, Chapter 552, Government Code, as if the review team were a governmental body under that chapter, if the report or statistical compilation does not contain any information that would permit the identification of an individual and is not otherwise confidential or privileged.

(c) A member of a review team may not disclose any information that is confidential under this section.

(d) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class A misdemeanor.

Sec. 672.010. CIVIL LIABILITY FOR DISCLOSURE OF INFORMATION. Subject to the limits described in Section 101.023(b), Civil Practice and Remedies Code, a team organized pursuant to this chapter, or any member thereof, may be civilly liable for damages caused by the disclosure of information gathered pursuant to an investigation if such disclosure is made in violation of Section 672.007 and Section 672.009.

Sec. 672.011. GOVERNMENTAL UNIT. Subject to Section 672.010, a review team established under this chapter is a local governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code.

Sec. 672.012. REPORT OF UNEXPECTED FATALITY. (a) A person, including a health care provider, who knows of the death of an adult that resulted from, or that occurred under circumstances indicating death may have resulted from, suicide, family violence, or abuse, shall immediately report the death to the medical examiner of the county in which the death occurred or, if the death occurred in a county that does not have a medical examiner's office or that is not part of a medical examiner's district, to a justice of the peace in that county.

(b) The requirement of this section is in addition to any other reporting requirement imposed by law.

Sec. 672.013. PROCEDURE IN THE EVENT OF REPORTABLE DEATH. (a) A medical examiner or justice of the peace notified of a death under Section 672.012 may hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death was caused by suicide, family violence, or abuse.

(b) Without regard to whether an inquest is held under Subsection (a), the medical examiner or justice of the peace shall immediately notify the county or entity designated under Section 672.002(b) of:

(1) each notification of death received under Section 672.012;

(2) each death found to be caused by suicide, family violence, or abuse; or

(3) each death that may be a result of suicide, family violence, or abuse, without regard to whether the suspected suicide, family violence, or abuse is determined to be a sole or contributing cause and without regard to whether the cause of death is conclusively determined.

SECTION 2. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2146**

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2146** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIVINS  
SHAPIRO  
LUCIO  
SIBLEY

CHISUM  
ALLEN  
HAGGERTY

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1784**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1784** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

OGDEN  
ARMBRISTER  
DUNCAN  
BERNSEN

COOK  
WALKER  
R. LEWIS  
KOLKHORST  
COUNTS

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3244**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 3244** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DUNCAN	GALLEGO
ARMBRISTER	HEFLIN
OGDEN	GLAZE
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2912**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2912** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS	BOSSE
ARMBRISTER	CHISUM
BERNSEN	COUNTS
BROWN	DUKES
SIBLEY	PUENTE
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3348**

Senator Haywood submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 3348** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HAYWOOD	COUNTS
STAPLES	CHISUM
BROWN	MERRITT
BERNSEN	

On the part of the Senate                      On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1925**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1925** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

STAPLES	HAGGERTY
ARMBRISTER	HINOJOSA
JACKSON	ALLEN
BIVINS	RITTER

On the part of the Senate                      On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1173**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1173** 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  
WHITMIRE  
BROWN  
TRUAN  
OGDEN

HILDERBRAN  
T. KING  
PITTS  
AVERITT

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to authorizing the issuance of not more than \$9 million in revenue bonds for the benefit of the Fleet Admiral Chester W. Nimitz Memorial Naval Museum.

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

SECTION 1. Subchapter Q, Chapter 22, Parks and Wildlife Code, is amended by adding Section 22.233 to read as follows:

Sec. 22.233. REVENUE BONDS FOR MUSEUM. (a) The department, by resolution of the commission, may request the Texas Public Finance Authority to issue revenue bonds or other revenue obligations to finance the repair, renovation, improvement, expansion, and equipping of the Nimitz museum for one or more projects not to exceed an aggregated estimated cost of \$9 million.

(b) On receipt of a request by the department under this section, the Texas Public Finance Authority shall promptly issue the bonds or other revenue obligations under and in accordance with Chapter 1232, Government Code.

(c) The department shall deposit the proceeds of revenue bonds or other revenue obligations issued under this section to the credit of the Texas parks and wildlife conservation and capital account and may use the proceeds only to finance the repair, renovation, improvement, expansion, and equipping of the museum.

(d) Notwithstanding any other law, the department may contract with the Admiral Nimitz Foundation for the renovation, improvement, or expansion of the museum.

(e) The department may accept contributions from the Admiral Nimitz Foundation and other sources in connection with the repair, renovation, improvement, expansion, equipping, or operation of the museum.

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, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1203**

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1203** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

FRASER  
SHAPIRO

BROWN  
ARMBRISTER  
MADLA

On the part of the Senate

BRIMER  
J. DAVIS  
ELKINS

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2585**

Senator Shapleigh submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2585** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

SHAPLEIGH  
ARMBRISTER  
BERNSEN  
MADLA

On the part of the Senate

CHAVEZ  
B. TURNER  
G. LEWIS  
VILLARREAL

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 660**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 660** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE  
STAPLES  
BIVINS  
SHAPIRO

On the part of the Senate

SEAMAN  
KEFFER  
LUNA  
YARBROUGH  
ZBRANEK

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 507**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 24, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 507** 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

DUTTON

ARMBRISTER

BRIMER

MADLA

BOSSE

SHAPIRO

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to residential subdivisions that require membership in a property owners' association.

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

SECTION 1. Title 11, Property Code, is amended by adding Chapter 209 to read as follows:

CHAPTER 209. TEXAS RESIDENTIAL  
PROPERTY OWNERS PROTECTION ACT

Sec. 209.001. SHORT TITLE. This chapter may be cited as the Texas Residential Property Owners Protection Act.

Sec. 209.002. DEFINITIONS. In this chapter:

(1) "Assessment" means a regular assessment, special assessment, or other amount a property owner is required to pay a property owners' association under the dedicatory instrument or by law.

(2) "Board" means the governing body of a property owners' association.

(3) "Declaration" means an instrument filed in the real property records of a county that includes restrictive covenants governing a residential subdivision.

(4) "Dedicatory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision. The term includes restrictions or similar instruments subjecting property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the property owners' association, and to all lawful amendments to the covenants, bylaws, rules, or regulations.

(5) "Lot" means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel.

(6) "Owner" means a person who holds record title to property in a residential subdivision and includes the personal representative of a person who holds record title to property in a residential subdivision.

(7) "Property owners' association" or "association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of property in a residential subdivision;

(B) has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the residential subdivision; and

(C) manages or regulates the residential subdivision for the benefit of the owners of property in the residential subdivision.

(8) "Regular assessment" means an assessment, a charge, a fee, or dues that each owner of property within a residential subdivision is required to pay to the

property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

(9) "Residential subdivision" or "subdivision" means a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that:

(A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only;

(B) are recorded in the real property records of the county in which the residential subdivision is located; and

(C) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

(10) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

(11) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(12) "Special assessment" means an assessment, a charge, a fee, or dues, other than a regular assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for:

(A) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;

(B) maintenance and improvement of common areas owned by the property owners' association; or

(C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

Sec. 209.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a residential subdivision that is subject to restrictions or provisions in a declaration that authorize the property owners' association to collect regular or special assessments on all or a majority of the property in the subdivision.

(b) This chapter applies only to a property owners' association that requires mandatory membership in the association for all or a majority of the owners of residential property within the subdivision subject to the association's dedicatory instruments.

(c) This chapter applies to a residential property owners' association regardless of whether the entity is designated as a "homeowners' association," "community association," or similar designation in the restrictions or dedicatory instrument.

(d) This chapter does not apply to a condominium development governed by Chapter 82.

Sec. 209.004. MANAGEMENT CERTIFICATES. (a) A property owners' association shall record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating:

- (1) the name of the subdivision;
- (2) the name of the association;
- (3) the recording data for the subdivision;
- (4) the recording data for the declaration;
- (5) the mailing address of the association or the name and mailing address of the person managing the association; and
- (6) other information the association considers appropriate.

(b) The property owners' association shall record an amended management certificate not later than the 30th day after the date the association has notice of a change in any information in the recorded certificate required by Subsection (a).

(c) The property owners' association and its officers, directors, employees, and agents are not subject to liability to any person for a delay in recording or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

Sec. 209.005. ASSOCIATION RECORDS. (a) A property owners' association shall make the books and records of the association, including financial records, reasonably available to an owner in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes).

(b) An attorney's files and records relating to the association, excluding invoices requested by an owner under Section 209.008(d), are not:

- (1) records of the association;
- (2) subject to inspection by the owner; or
- (3) subject to production in a legal proceeding.

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION. (a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, the association or its agent must give written notice to the owner by certified mail, return receipt requested.

(b) The notice must:

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

(2) inform the owner that the owner:

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

(B) may request a hearing under Section 209.007 on or before the 30th day after the date the owner receives the notice.

Sec. 209.007. HEARING BEFORE BOARD; ALTERNATIVE DISPUTE RESOLUTION. (a) If the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the board of the property owners' association or before the board if the board does not appoint a committee.

(b) If a hearing is to be held before a committee, the notice prescribed by Section 209.006 must state that the owner has the right to appeal the committee's decision to the board by written notice to the board.

(c) The association shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. The board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. The owner or the association may make an audio recording of the meeting.

(d) The notice and hearing provisions of Section 209.006 and this section do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a matter to which those sections apply, a party to the suit may file a motion to compel mediation. The notice and hearing provisions of Section 209.006 and this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section.

(e) An owner or property owners' association may use alternative dispute resolution services.

Sec. 209.008. ATTORNEY'S FEES. (a) A property owners' association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain.

(b) An owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under Section 209.006 if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007 or, if the owner does not request a hearing under that section, before the date by which the owner must request a hearing. The owner's presence is not required to hold a hearing under Section 209.007.

(c) All attorney's fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the association or its managing agent. Only members of the association's board or its managing agent or employees of its managing agent may be signatories on the account.

(d) On written request from the owner, the association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the association seeks reimbursement of fees and costs.

(e) The notice provisions of Subsection (a) do not apply to a counterclaim of an association in a lawsuit brought against the association by a property owner.

(f) If the dedicatory instrument or restrictions of an association allow for nonjudicial foreclosure, the amount of attorney's fees that a property owners' association may include in a nonjudicial foreclosure sale for an indebtedness covered by a property owners' association's assessment lien is limited to the greater of:

(1) one-third of the amount of all actual costs and assessments, excluding attorney's fees, plus interest and court costs, if those amounts are permitted to be included by law or by the restrictive covenants governing the property; or

(2) \$2,500.

(g) Subsection (f) does not prevent a property owners' association from recovering or collecting attorney's fees in excess of the amounts prescribed by Subsection (f) by other means provided by law.

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. A property owners' association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

(1) fines assessed by the association; or

(2) attorney's fees incurred by the association solely associated with fines assessed by the association.

Sec. 209.010. NOTICE AFTER FORECLOSURE SALE. (a) A property owners' association that conducts a foreclosure sale of an owner's lot must send to the lot owner not later than the 30th day after the date of the foreclosure sale a written notice stating the date and time the sale occurred and informing the lot owner of the owner's right to redeem the property under Section 209.011.

(b) The notice must be sent by certified mail, return receipt requested, to the lot owner's last known mailing address, as reflected in the records of the property owners' association.

(c) Not later than the 30th day after the date the association sends the notice required by Subsection (a), the association must record an affidavit in the real property records of the county in which the lot is located, stating the date on which the notice was sent and containing a legal description of the lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit.

(d) The notice requirements of this section also apply to the sale of an owner's lot by a sheriff or constable conducted as provided by a judgment obtained by the property owners' association.

Sec. 209.011. RIGHT OF REDEMPTION AFTER FORECLOSURE. (a) A property owners' association or other person who purchases occupied property at a sale foreclosing a property owners' association's assessment lien must commence and prosecute a forcible entry and detainer action under Chapter 24 to recover possession of the property.

(b) The owner of property in a residential subdivision may redeem the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner under Section 209.010.

(c) A person who purchases property at a sale foreclosing a property owners' association's assessment lien may not transfer ownership of the property to a person other than a redeeming lot owner during the redemption period.

(d) To redeem property purchased by the property owners' association at the foreclosure sale, the lot owner must pay to the association:

(1) all amounts due the association at the time of the foreclosure sale;

(2) interest from the date of the foreclosure sale to the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

(3) costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;

(4) any assessment levied against the property by the association after the date of the foreclosure sale;

(5) any reasonable cost incurred by the association, including mortgage payments and costs of repair, maintenance, and leasing of the property; and

(6) the purchase price paid by the association at the foreclosure sale less any amounts due the association under Subdivision (1) that were satisfied out of foreclosure sale proceeds.

(e) To redeem property purchased at the foreclosure sale by a person other than the property owners' association, the lot owner:

(1) must pay to the association:

(A) all amounts due the association at the time of the foreclosure sale less the foreclosure sales price received by the association from the purchaser;

(B) interest from the date of the foreclosure sale through the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;

(C) costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;

(D) any unpaid assessments levied against the property by the association after the date of the foreclosure sale; and

(E) taxable costs incurred in a proceeding brought under Subsection (a); and

(2) must pay to the person who purchased the property at the foreclosure sale:

(A) any assessments levied against the property by the association after the date of the foreclosure sale and paid by the purchaser;

(B) the purchase price paid by the purchaser at the foreclosure sale;

(C) the amount of the deed recording fee;

(D) the amount paid by the purchaser as ad valorem taxes, penalties, and interest on the property after the date of the foreclosure sale; and

(E) taxable costs incurred in a proceeding brought under Subsection (a).

(f) If a lot owner redeems the property under this section, the purchaser of the property at foreclosure shall immediately execute and deliver to the owner a deed transferring the property to the redeeming lot owner. If a purchaser fails to comply with this section, the lot owner may file a cause of action against the purchaser and may recover reasonable attorney's fees from the purchaser if the lot owner is the prevailing party in the action.

(g) If, before the expiration of the redemption period, the redeeming lot owner fails to record the deed from the foreclosing purchaser or fails to record an affidavit stating that the lot owner has redeemed the property, the lot owner's right of redemption as against a bona fide purchaser or lender for value expires after the redemption period.

(h) The purchaser of the property at the foreclosure sale or a person to whom the person who purchased the property at the foreclosure sale transferred the property may presume conclusively that the lot owner did not redeem the property unless the lot owner files in the real property records of the county in which the property is located:

(1) a deed from the purchaser of the property at the foreclosure sale; or

(2) an affidavit that:

(A) states that the lot owner has redeemed the property; and

(B) contains a legal description of the property.

(i) If the property owners' association purchases the property at foreclosure, all rent and other income collected by the association from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the association under Subsection (d), and if there are excess proceeds, they shall be refunded to the lot owner. If a person other than the association purchases the property at foreclosure, all rent and other income collected by the purchaser from the date of the foreclosure sale to the date of redemption shall be credited toward the amount owed the purchaser under Subsection (e), and if there are excess proceeds, those proceeds shall be refunded to the lot owner.

(j) If a person other than the property owners' association is the purchaser at the foreclosure sale, before executing a deed transferring the property to the redeeming lot owner, the purchaser shall obtain an affidavit from the association or its authorized agent stating that all amounts owed the association under Subsection (e) have been paid. The association shall provide the purchaser with the affidavit not later than the 10th day after the date the association receives all amounts owed to the association under Subsection (e). Failure of a purchaser to comply with this subsection does not affect the validity of a redemption by a redeeming lot owner.

(k) Property that is redeemed remains subject to all liens and encumbrances on the property before foreclosure. Any lease entered into by the purchaser of property at a sale foreclosing an assessment lien of a property owners' association is subject to the right of redemption provided by this section and the lot owner's right to reoccupy the property immediately after the redemption.

(l) If a lot owner makes partial payment of amounts due the association at any time before the redemption period expires but fails to pay all amounts necessary to redeem the property before the redemption period expires, the association shall refund any partial payments to the lot owner by mailing payment to the owner's last known address as shown in the association's records not later than the 30th day after the expiration date of the redemption period.

(m) If a lot owner sends by certified mail, return receipt requested, a written request to redeem the property on or before the last day of the redemption period, the lot owner's right of redemption is extended until the 10th day after the date the association and any third party foreclosure purchaser provides written notice to the lot owner of the amounts that must be paid to redeem the property.

(n) After the redemption period and any extended redemption period provided by Subsection (m) expires, the association or third party foreclosure purchaser shall record an affidavit in the real property records of the county in which the property is located stating that the lot owner did not redeem the property during the redemption period or any extended redemption period.

(o) The association or the person who purchased the property at the foreclosure sale may file an affidavit in the real property records of the county in which the property is located that states the date the citation was served in a suit under Subsection (a) and contains a legal description of the property. Any person may rely conclusively on the information contained in the affidavit.

(p) The rights of a lot owner under this section also apply if the sale of the lot owner's property is conducted by a constable or sheriff as provided by a judgment obtained by the property owners' association.

SECTION 2. SB 507, 77th Legislature, Regular Session, 2001, is enacted in honor of Wenonah Blevins and may be unofficially referred to as the Wenonah Blevins Residential Property Owners Protection Act.

SECTION 3. This Act takes effect January 1, 2002.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 259**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas  
May 24, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 259** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER  
SIBLEY  
CAIN  
BERNSEN

G. LEWIS  
CHAVEZ  
THOMPSON  
MCCLENDON  
Y. DAVIS

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 2**

Senator Brown submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2** 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.

BROWN

R. LEWIS

ARMBRISTER

COUNTS

BIVINS

COOK

BERNSEN

T. KING

HAYWOOD

PUENTE

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the development and management of the water resources of the state, including the ratification of the creation of certain groundwater conservation districts; providing penalties.

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

ARTICLE 1. TEXAS WATER ADVISORY COUNCIL

SECTION 1.01. Subtitle A, Title 2, Water Code, is amended by adding Chapter 9 to read as follows:

CHAPTER 9. TEXAS WATER ADVISORY COUNCIL

Sec. 9.001. DEFINITIONS. In this chapter:

(1) "Authority" means an entity listed in Section 9.010(b).

(2) "Board" means the governing body of an authority.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

(4) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

(5) "Council" means the Texas Water Advisory Council.

Sec. 9.002. CREATION AND MEMBERSHIP. (a) The council consists of 13 members as follows:

(1) the chairman, or a board member designated by the chairman, of the Texas Water Development Board;

(2) the chairman, or a commissioner designated by the chairman, of the commission;

(3) the chairman, or a commissioner designated by the chairman, of the Parks and Wildlife Commission;

(4) the commissioner of agriculture;

(5) the commissioner of the General Land Office;

(6) three members of the house of representatives appointed by the speaker of the house of representatives;

(7) two members of the senate appointed by the lieutenant governor; and

(8) three members of the general public appointed by the governor, one representing groundwater management, one representing surface water management, and one representing the environmental community.

(b) Council members may not delegate participation or council duties to staff.

Sec. 9.003. TERMS. (a) Except for the commissioner of the General Land Office and the commissioner of agriculture, council members who are officials of state agencies serve terms as determined by the chairman of each agency.

(b) Council members who are members of the general public serve staggered six-year terms with the term of one member expiring August 31 of each odd-numbered year.

(c) Council members may be reappointed to serve additional terms.

(d) A vacancy on the council shall be filled by appointment by the original appointing authority for the unexpired term.

Sec. 9.004. OFFICERS OF THE COUNCIL. (a) The governor shall appoint a council member as the chair of the council for a two-year term expiring May 31 of each even-numbered year.

(b) The council shall have a secretary of the council who serves at the pleasure of the council and is accountable only to the council.

Sec. 9.005. COUNCIL STAFF. On request by the council, the commission, the Parks and Wildlife Department, the Department of Agriculture, and the Texas Water Development Board shall provide any staff other than the secretary of the council necessary to assist the council in the performance of its duties.

Sec. 9.006. MEETINGS. (a) The council shall meet at least once in each calendar quarter. Six members constitute a quorum.

(b) The council is subject to Chapters 551 and 2001, Government Code.

Sec. 9.007. COMPENSATION OF MEMBERS. (a) Members of the council serve without compensation but may be reimbursed by legislative appropriation for actual and necessary expenses related to the performance of council duties.

(b) Reimbursement under Subsection (a) is subject to the approval of the chair.

Sec. 9.008. POWERS AND DUTIES OF COUNCIL. (a) The council shall:

(1) heighten the level of dialogue on significant water policy issues and, in an advisory role only, strive to provide focus and recommendations on state water policy initiatives, including:

(A) promoting flexibility and incentives for water desalination, brush control, regionalization, weather modification projects, and public-private partnerships relating to water projects;

(B) promoting adequate financing for surface water and groundwater projects;

(C) development of water conservation and drought management projects;

(D) implementation of approved regional and state water plans;

(E) encouraging commonality of technical data and information such as joint agency studies, freshwater inflow recommendations, surface water and groundwater availability models, and bay and estuary and instream flow recommendations developed by the Parks and Wildlife Department, the commission, and the Texas Water Development Board; and

(F) encouraging the use of supplemental environmental projects for water infrastructure needs and enhancing the aquatic environment and habitat in enforcement proceedings at a state agency or political subdivision;

(2) encourage the enhancement and coordination of state, interstate, and international efforts to improve environmental quality and living conditions along the Texas-Mexico border;

(3) coordinate a unified state position on federal and international water issues; and

(4) advise the Texas Water Development Board on developing criteria for prioritizing the funding of projects in the state water plan.

(b) The council may not:

(1) adopt rules;

(2) regulate water use, water quality, or any other aspect of water resource management;

(3) plan or construct water resource projects or have such projects planned or constructed;

(4) grant or lend money for the construction of water resource projects;

(5) establish water resource management standards or otherwise usurp the authority of or infringe upon the duties, responsibilities, or powers of local, regional, or state water management entities, including groundwater districts, river authorities and compacts, regional water planning groups, or member agencies of the council; or

(6) consider or discuss a specific permit or project or recommendation for a project until the water permit has been issued by the state and all motions for rehearing have been overruled.

Sec. 9.009. REPORT. Not later than December 1 of each even-numbered year, the council shall submit a report to the governor, lieutenant governor, and speaker of the house of representatives and to the senate and house standing committees with primary responsibility over water resource management and financing. The report must include findings of the council made in the periodic reviews of authorities during the preceding two-year period and any other findings and recommendations the council considers necessary.

Sec. 9.010. ANALYSIS OF AUTHORITIES. (a) On a five-year cycle, each authority shall provide the council with the information required by Sections 9.011 and 9.012. The information shall be provided to the council in the order of groups described in Subsection (b), with the information submitted by group 1 by the council's first quarterly meeting of the five-year period and group 2 submitted by the council's third quarterly meeting of the period. The council shall continue in numerical order to receive the information by each group at every other quarterly meeting until all 10 groups have been completed and then shall recommence the cycle.

(b) Authorities shall provide the information under Subsection (a) in the following groups:

(1) in group 1, Northeast Texas Municipal Water District;

(2) in group 2, Angelina and Neches River Authority, Lower Neches Valley Authority, Sabine River Authority, and Upper Neches River Municipal Water Authority;

(3) in group 3, Red River Authority of Texas, Sulphur River Municipal Water District, and Sulphur River Basin Authority;

(4) in group 4, San Jacinto River Authority, Gulf Coast Water Authority, and North Harris County Regional Water Authority;

(5) in group 5, North Texas Municipal Water District, Tarrant Regional Water District, Trinity River Authority of Texas, and Dallas County Utility and Reclamation District;

(6) in group 6, Brazos River Authority, West Central Texas Municipal Water District, and North Central Texas Municipal Water Authority;

(7) in group 7, Guadalupe-Blanco River Authority, Lavaca-Navidad River Authority, Lower Colorado River Authority, and Upper Guadalupe River Authority;

(8) in group 8, Nueces River Authority, San Antonio River Authority, and Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1;

(9) in group 9, Colorado River Municipal Water District, Central Colorado River Authority, and Upper Colorado River Authority; and

(10) in group 10, Canadian River Municipal Water Authority and Mackenzie Municipal Water Authority.

(c) The council may not require an authority under this section to submit the information required under Section 9.012 more than once every five years. The council may, however, request an authority that has submitted information to provide follow-up information on any specific item or issue raised during the initial council analysis.

(d) The council, on a request by an authority, may modify the schedule in order to have the flexibility in scheduling the information submittal and council analysis, if needed, to be more responsive to particular circumstances, changing conditions, or time-sensitive conflicts.

Sec. 9.011. PERFORMANCE STANDARDS. (a) Before its five-year analysis under Section 9.010, an authority shall report to the council a self-assessment of:

(1) how the authority is achieving its stated mission and goals, including an identification of any barriers to achieving the mission and goals;

(2) how the authority is providing service to its customers, including mechanisms the authority provides to encourage input from the public and its customers;

(3) how the authority is addressing issues raised by its most recent management audit, if the audit is required by commission rule to be performed, including its administrative policies; and

(4) the authority's role in the regional water planning process.

(b) The authority's report to the council under this section must include recommendations related to:

(1) any interregional issues the authority has identified as problematic and any potential solutions to those issues; and

(2) solutions to any barriers the authority determines are interfering with the successful implementation of the approved regional water plan or state water plan.

Sec. 9.012. ADMINISTRATIVE POLICIES FOR AUTHORITIES. The commission shall expand the applicability of its rules under 30 T.A.C. Chapter 292 to include all the authorities subject to this chapter. The commission shall provide the council with copies of the most recent information provided by each authority in accordance with its administrative rules.

Sec. 9.013. GIFTS AND GRANTS. The council may accept gifts and grants from any source to carry out the purposes of this chapter. The use of gifts and grants other than legislative appropriations is subject only to limitations contained in the gift or grant.

Sec. 9.014. FUNDING. (a) The interagency water advisory account is a special account in the general revenue fund.

(b) The interagency water advisory account consists of legislative appropriations, gifts and grants received under Section 9.013, and other money required by law to be deposited in the account.

(c) Money in the interagency water advisory account may be used only as provided by this chapter.

Sec. 9.015. CONTINUING RIGHT OF SUPERVISION. Nothing in this chapter affects the continuing right of supervision over authorities by the commission as provided by Section 12.081.

Sec. 9.016. PUBLIC PARTICIPATION. The council shall encourage public input regarding the exercise of its powers and duties under Section 9.008, its preparation of the report described in Section 9.009, and its analysis of authorities under Sections 9.010 and 9.011.

Sec. 9.017. DISSOLUTION OF COUNCIL AND ACCOUNT. Unless extended by the 78th Texas Legislature, this chapter and the interagency water advisory account expire on September 1, 2005.

## ARTICLE 2. SURFACE WATER AND GROUNDWATER CONJUNCTIVE MANAGEMENT; REGULATORY INCENTIVES

SECTION 2.01. Section 11.002, Water Code, is amended by adding Subdivisions (11), (12), (13), and (14) to read as follows:

(11) "River basin" means a river or coastal basin designated by the board as a river basin under Section 16.051. The term does not include waters originating in bays or arms of the Gulf of Mexico.

(12) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(13) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(14) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

SECTION 2.02. Subsection (a), Section 11.023, Water Code, is amended to read as follows:

(a) State water may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

- (3) [~~irrigation~~;
- [~~(4)~~] mining and recovery of minerals;
- (4) [~~(5)~~] hydroelectric power;
- (5) [~~(6)~~] navigation;
- (6) [~~(7)~~] recreation and pleasure;
- (7) [~~(8)~~] stock raising;
- [~~(9)~~] public parks; and
- (8) [~~(10)~~] game preserves.

SECTION 2.03. Section 11.024, Water Code, is amended to read as follows:

Sec. 11.024. APPROPRIATION: PREFERENCES. In order to conserve and properly utilize state water, the public welfare requires not only recognition of beneficial uses but also a constructive public policy regarding the preferences between these uses, and it is therefore declared to be the public policy of this state that in appropriating state water preference shall be given to the following uses in the order named:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals, it being the public policy of the state and for the benefit of the greatest number of people that in the appropriation of water as herein defined, the appropriation of water for domestic and municipal uses shall be and remain superior to the rights of the state to appropriate the same for all other purposes;

(2) agricultural uses and industrial uses, which means [~~meaning~~] processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

- (3) [~~irrigation~~;
- [~~(4)~~] mining and recovery of minerals;
- (4) [~~(5)~~] hydroelectric power;
- (5) [~~(6)~~] navigation;
- (6) [~~(7)~~] recreation and pleasure; and
- (7) [~~(8)~~] other beneficial uses.

SECTION 2.04. Section 11.038, Water Code, is amended to read as follows:

Sec. 11.038. RIGHTS OF OWNERS OF LAND ADJOINING CANAL, ETC.

(a) A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake constructed and maintained under the provisions of this chapter and who has secured a right to the use of water in the canal, ditch, flume, lateral, dam, reservoir, or lake is entitled to be supplied from the canal, ditch, flume, lateral, dam, reservoir, or lake with water [~~for irrigation of the land and~~] for agricultural uses, mining, milling, manufacturing, development of power, and stock raising, in accordance with the terms of the person's [~~his~~] contract.

(b) If the person, association of persons, or corporation owning or controlling the water and the person who owns or holds a possessory interest in the adjoining land cannot agree on a price for a permanent water right or for the use of enough water for irrigation of the person's land or for agricultural uses, mining, milling, manufacturing, development of power, or stock raising, then the party owning or controlling the water, if the person [~~he~~] has any water not contracted to others, shall furnish the water necessary for these purposes at reasonable and nondiscriminatory prices.

SECTION 2.05. Subsection (p), Section 11.085, Water Code, is amended to read as follows:

(p) ~~[For the purposes of this section, a basin is designated as provided in accordance with Section 16.051 of this code.]~~ A river basin may not be redesignated in order to allow a transfer or diversion of water otherwise in violation of this section.

SECTION 2.06. Section 11.088, Water Code, is amended to read as follows:

Sec. 11.088. DESTRUCTION OF WATERWORKS. No person may wilfully cut, dig, break down, destroy, or injure or open a gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder, pump or machinery, building, structure, or other work which is the property of another, or in which another owns an interest, or which is lawfully possessed or being used by another, and which is used for ~~[irrigation,]~~ milling, mining, manufacturing, the development of power, domestic purposes, agricultural uses, or stock raising, with intent to:

(1) maliciously injure a person, association, corporation, water improvement or irrigation district;

(2) gain advantage for himself; or

(3) take or steal water or cause water to run out or waste out of the ditch, canal, or reservoir, feeder, or flume for his own advantage or to the injury of a person lawfully entitled to the use of the water or the use or management of the ditch, canal, tunnel, reservoir, feeder, flume, machine, structure, or other irrigation work.

SECTION 2.07. Subsection (a), Section 11.122, Water Code, is amended to read as follows:

(a) All holders of permits, certified filings, and certificates of adjudication issued under Section 11.323 of this code shall obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right. Without obtaining an amendment, the holder of a permit, certified filing, or certificate of adjudication that includes industrial or irrigation use may use or supply water for an agricultural use that was classified as industrial or irrigation before September 1, 2001.

SECTION 2.08. Subsection (b), Section 11.134, Water Code, is amended to read as follows:

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply;

(3) the proposed appropriation:

(A) is intended for a beneficial use;

(B) does not impair existing water rights or vested riparian rights;

(C) is not detrimental to the public welfare;

(D) considers the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152 ~~[effects of any hydrological connection between surface water and groundwater]~~; and

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant ~~[an]~~ approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Subdivision (8)(B), Section 11.002~~[, of this code]~~.

SECTION 2.09. Section 11.142, Water Code, is amended to read as follows:

Sec. 11.142. PERMIT EXEMPTIONS. (a) Without obtaining a permit, a person may construct on the person's [his] own property a dam or reservoir with normal storage of not more than 200 acre-feet of water for domestic and livestock purposes. A person who temporarily stores more than 200 acre-feet of water in a dam or reservoir described by this subsection is not required to obtain a permit for the dam or reservoir if the person can demonstrate that the person has not stored in the dam or reservoir more than 200 acre-feet of water on average in any 12-month period. This exemption does not apply to a commercial operation.

(b) Without obtaining a permit, a person may construct on the person's property a dam or reservoir with normal storage of not more than 200 acre-feet of water for fish and wildlife purposes if the property on which the dam or reservoir will be constructed is qualified open-space land, as defined by Section 23.51, Tax Code. This exemption does not apply to a commercial operation.

(c) Without obtaining a permit, a person who is drilling and producing petroleum and conducting operations associated with drilling and producing petroleum may take for those purposes state water from the Gulf of Mexico and adjacent bays and arms of the Gulf of Mexico in an amount not to exceed one acre-foot during each 24-hour period.

(d) [(e)] Without obtaining a permit, a person may construct or maintain a reservoir for the sole purpose of sediment control as part of a surface coal mining operation under the Texas Surface Coal Mining and Reclamation Act (Article 5920-11, Vernon's Texas Civil Statutes).

SECTION 2.10. Section 11.146, Water Code, is amended by adding Subsection (g) to read as follows:

(g) This section does not apply to a permit for construction of a reservoir designed for the storage of more than 50,000 acre-feet of water.

SECTION 2.11. Subsection (b), Section 11.147, Water Code, is amended to read as follows:

(b) In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the permit, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

SECTION 2.12. Subsection (b), Section 11.173, Water Code, is amended to read as follows:

(b) A permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) ~~[of this section]~~:

(1) to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985) or a similar governmental program; ~~[or]~~

(2) if a significant ~~[any]~~ portion of the water authorized to be used pursuant to a permit, certified filing, or certificate of adjudication has been used in accordance with a specific recommendation for meeting a water need included in the regional water plan approved pursuant to Section 16.053;

(3) if the permit, certified filing, or certificate of adjudication:

(A) was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder; and

(B) is consistent with projections of future water needs contained in the state water plan; or

(4) if the permit, certified filing, or certificate of adjudication was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term water planning [of this code].

SECTION 2.13. Subsection (b), Section 11.177, Water Code, is amended to read as follows:

(b) In determining what constitutes reasonable diligence or a justified nonuse as used in Subsection (a)(2) ~~[of this section]~~, the commission shall give consideration to:

(1) whether sufficient water is available in the source of supply to meet all or part of the appropriation during the 10-year period of nonuse;

(2) whether the nonuse is justified by the holder's participation in the federal Conservation Reserve Program or a similar governmental program as provided by Section 11.173(b)(1) ~~[of this code]~~;

~~(3) [whether the permit, certified filing, or certificate of adjudication was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder and consistent with projections of future water needs contained in the state water plan;~~

~~[(4) whether the permit, certified filing, or certificate of adjudication was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term water planning;~~

~~[(5) whether the existing or proposed authorized purpose and place of use are consistent with an approved regional water plan as provided by Section 16.053 [of this code];~~

~~(4) [(6) whether the permit, certified filing, or certificate of adjudication has been deposited into the Texas Water Bank as provided by Sections 15.7031 and 15.704 [of this code] or whether it can be shown that the water right or water available under the right is currently being made available for purchase through private marketing efforts; or~~

~~(5) [(7) whether the permit, certified filing, or certificate of adjudication has been reserved to provide for instream flows or bay and estuary inflows.~~

SECTION 2.14. Subdivision (2), Section 15.701, Water Code, is amended to read as follows:

(2) "Depositor" means a person who deposits or has on deposit a water right in the water bank or trust.

SECTION 2.15. Section 16.012, Water Code, is amended by adding Subsections (l) and (m) to read as follows:

(l) The executive administrator shall obtain or develop groundwater availability models for major and minor aquifers in coordination with groundwater conservation districts and regional water planning groups created under Section 16.053 that overlie the aquifers. Modeling of major aquifers shall be completed not later than October 1, 2004. On completing a groundwater availability

model for an aquifer, the executive administrator shall provide the model to each groundwater conservation district and each regional water planning group created under Section 16.053 overlying that aquifer.

(m) The executive administrator may conduct surveys of entities using groundwater and surface water at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply planning. Recipients of the survey shall complete and return the survey to the executive administrator. A person who fails to timely complete and return the survey is not eligible for funding from the board for board programs and is ineligible to obtain permits, permit amendments, or permit renewals from the commission under Chapter 11. A person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor. Surveys obtained by the board from nongovernmental entities are excepted from the requirements of Section 552.021, Government Code, unless otherwise directed in writing by the person completing the survey. This subsection does not apply to survey information regarding windmills used for domestic and livestock use.

SECTION 2.16. Subsections (a), (f), (g), and (h), Section 16.051, Water Code, are amended to read as follows:

(a) Not [No] later than January 5, 2002, and before the end of each successive five-year period after that date [every five years thereafter], the board shall prepare, develop, formulate, and adopt a comprehensive state water plan that incorporates the regional water plans approved under Section 16.053. The state water plan shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the entire state.

(f) The legislature may designate a[:

[(+) river or stream segment of unique ecological value. This designation solely means that a state agency or political subdivision of the state may not finance the actual construction of a reservoir in a specific river or stream segment designated by the legislature under this subsection.

(g) The legislature may designate a[; or

[(2) site of unique value for the construction of a reservoir.

[(g) A state agency or political subdivision of the state may not obtain a fee title or an easement that would[:

[(1) destroy the unique ecological value of a river or stream segment designated by the legislature under Subsection (f) of this section; or

[(2) significantly prevent the construction of a reservoir on a site designated by the legislature under [Subsection (f) of] this subsection [section].

(h) The board, the commission, or the Parks and Wildlife Department or a political subdivision affected by an action taken in violation of Subsection (f) or (g) ~~of this section~~ may bring a cause of action to remedy or prevent the violation. A cause of action brought under this subsection must be filed in a district court in Travis County or in the county in which the action is proposed or occurring.

SECTION 2.17. Subsections (d) and (e), Section 16.053, Water Code, are amended to read as follows:

(d) The board shall provide guidelines for the consideration of existing regional planning efforts by regional water planning groups. The board shall provide guidelines for the format in which information shall be presented in the regional water plans. The board by rule shall require a holder of a surface water permit, a certified filing, or a certificate of adjudication for surface water, a holder of a permit for the export of groundwater from a groundwater conservation district, a retail public water supplier, a wholesale water provider, an irrigation district, and any other person who is transporting groundwater or surface water 20 miles or more to report to the board information on certain water pipelines and other facilities that can be used for water conveyance. Nothing in the initial planning effort shall prevent development of a management plan or project where local or regional needs require action prior to completion of the initial regional water plan under this section.

(e) Each regional water planning group shall submit to the board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the board under Section 16.051(d);

(2) provides information based on data provided or approved by the board in a format consistent with the guidelines provided by the board under Subsection (d);

(3) identifies:

(A) each source of water supply in the regional water planning area in accordance with the guidelines provided by the 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; ~~and~~

(C) actions to be taken as part of the response; and

(D) information on water pipelines and other facilities that can be used for water conveyance, including, but not limited to, currently used and abandoned oil, gas, and water pipelines, as provided by board rules and guidelines;

(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) certified 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, 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; ~~and~~

(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 2.18. Subdivision (7), Subsection (h), Section 16.053, Water Code, is amended to read as follows:

(7) The board may approve a regional water plan only after it has determined that:

(A) all interregional conflicts involving that regional water planning area have been resolved;

(B) the plan includes water conservation practices and drought management measures incorporating, at a minimum, the provisions of Sections 11.1271 and 11.1272; and

(C) the plan is consistent with long-term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles adopted under Section 16.051(d).

SECTION 2.19. Section 16.053, Water Code, is amended by amending Subsection (j) and adding Subsections (p) and (q) to read as follows:

(j) The board may provide financial assistance to political subdivisions under Subchapters E and F of this chapter, Subchapters C, D, E, F, ~~and~~ J, O, and P, Chapter 15, and Subchapters D, I, K, and L, Chapter 17, for water supply projects only if:

(1) the board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan; and

(2) beginning January 5, 2002, the board:

(A) has approved a regional water plan as provided by Subsection (i), and any required updates of the plan, for the region of the state that includes the area benefiting from the proposed project; and

(B) determines that the needs to be addressed by the project will be addressed in a manner that is consistent with that regional water plan.

(p) If a groundwater conservation district files a petition with the board stating that a conflict requiring resolution may exist between the district's certified groundwater conservation district management plan developed under Section 36.1071 and the approved regional water plan, the board shall facilitate coordination between the district and the involved region to resolve the conflict. If conflict remains, the board shall resolve the conflict. If the board determines that resolution of conflict requires a revision of an approved regional water plan, the board shall suspend the approval of that plan and provide information to the regional water planning group. The regional water planning group shall prepare any revisions to its plan specified by the board and shall hold, after notice, at least one public hearing at some central location within the regional water planning area. The regional water planning group

shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board for approval and inclusion in the state water plan. If the board determines that resolution of conflict requires a revision of the district's certified groundwater conservation district management plan, the board shall suspend the certification of that plan and provide information to the district. The groundwater district shall prepare any revisions to its plan specified by the board and shall hold, after notice, at least one public hearing at some central location within the district. The groundwater district shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board for certification. On the request of the involved region or groundwater conservation district, the board shall include discussion of the conflict and its resolution in the state water plan that the board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e).

(q) Each regional planning group shall examine the financing needed to implement the water management strategies and projects identified in the group's most recent approved regional plan and, not later than June 1, 2002, shall report to the board regarding:

(1) how local governments, regional authorities, and other political subdivisions in the region propose to pay for water infrastructure projects identified in the plan; and

(2) what role the regional planning group proposes for the state in financing projects identified in the plan, giving particular attention to proposed increases in the level of state participation in funding for regional projects to meet needs beyond the reasonable financing capability of local governments, regional authorities, and other political subdivisions involved in building water infrastructure.

SECTION 2.20. Subsections (a), (c), and (d), Section 16.054, Water Code, are amended to read as follows:

(a) Notwithstanding the provisions of this subsection, groundwater districts are the state's preferred method of managing groundwater resources. It is the policy of the state that water resource management, water conservation, and drought planning should occur on an ongoing basis. The board, commission, and Parks and Wildlife Department shall make available where appropriate technical and financial assistance for such planning. In addition, the Department of Agriculture may provide input and assistance, as appropriate, for local water [such] planning.

(c) When preparing a plan to be submitted under this section, a person shall consider the implementation of a desalination program if practicable.

(d) The regional water planning group shall consider any plan submitted under this section when preparing the regional water plan under Section 16.053 of this code. A political subdivision, including a groundwater conservation district, in the regional water planning area may request a regional water planning group to consider specific changes to a regional water plan based on changed conditions or new information. The regional water planning group shall consider the request and shall amend its regional water plan if it determines that an amendment is warranted. If the entity requesting the change is dissatisfied with the decision of the regional planning group, the entity may request that the board review the decision and consider changing the state-approved regional plan.

(e) After January 5, 2002, when [(d) When] preparing individual water plans that address drought or the development, management, or conservation of water

resources from the holders of existing permits, certified filings, or certificates of adjudication, the water suppliers, [~~groundwater districts;~~] special districts, irrigation districts, and other water users should ensure that the plan is not in conflict with the applicable approved regional water plan for their region.

SECTION 2.21. Subdivision (11), Section 35.002, Water Code, is amended to read as follows:

(11) "Management area" means an area designated and delineated by the Texas Water Development Board [~~commission~~] as an area suitable for management of groundwater resources.

SECTION 2.22. Section 35.004, Water Code, is amended to read as follows:

Sec. 35.004. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS.

(a) The Texas Water Development Board, with assistance and cooperation from the commission, shall designate groundwater management areas covering all major and minor aquifers in the state. The initial designation of groundwater management areas shall be completed not later than September 1, 2003 [~~On its own motion from time to time, or on receiving a petition, the commission may designate groundwater management areas~~]. Each groundwater management area shall be designated with the objective of providing the most suitable area for the management of the groundwater resources. To the extent feasible, the groundwater management area shall coincide with the boundaries of a groundwater reservoir or a subdivision of a groundwater reservoir. The Texas Water Development Board [~~commission~~] also may consider other factors, including the boundaries of political subdivisions.

(b) The commission may designate a groundwater management area after September 1, 2001, for a petition filed and accepted by the commission according to its rules in effect before September 1, 2001. The commission shall act on the designation in accordance with this section [~~On the request of any person interested in the petition, or on the request of the commission, the executive director shall prepare available evidence relating to the configuration of a groundwater management area. Before making the designation, the commission shall consider the evidence prepared by the executive director and other evidence submitted at the hearing~~].

(c) The Texas Water Development Board [~~commission~~] may alter the boundaries of designated management areas as required by future conditions and as justified by factual data. An alteration of boundaries does not invalidate the previous creation of any district.

(d) The Texas Water Development Board [~~commission~~] shall designate groundwater management areas using the procedures applicable to rulemaking under [~~the Administrative Procedure Act, Subchapter B;~~] Chapter 2001, Government Code.

SECTION 2.23. Subsections (a) and (f), Section 35.007, Water Code, are amended to read as follows:

(a) The executive director and the executive administrator shall meet periodically [~~at least once a year~~] to identify, based on information gathered by the commission and the Texas Water Development Board, those areas of the state that are experiencing or that are expected to experience, within the immediately following 25-year period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. Not later than September 1, 2005, the commission, with assistance and cooperation from the Texas Water Development Board, shall complete the initial designation of priority groundwater management areas across all major and

minor aquifers of the state for all areas that meet the criteria for that designation. The studies may be prioritized considering information from the regional planning process, information from the Texas Water Development Board groundwater management areas and from groundwater conservation districts, and any other information available. After the initial designation of priority groundwater management areas, the commission and the Texas Water Development Board shall annually review the need for additional designations as provided by this subsection.

(f) The report shall include:

(1) the recommended delineation of the boundaries of any proposed priority groundwater management area in the form of an order to be considered for adoption by the commission;

(2) the reasons and supporting information for or against designating the area as a priority groundwater management area;

(3) a recommendation regarding whether one or more districts [~~a district~~] should be created in the priority groundwater management area, [~~or~~] whether the priority groundwater management area should be added to an existing district, or whether a combination of those actions should be taken;

(4) a recommendation as to actions that should be considered to conserve natural resources;

(5) an evaluation of information or studies submitted to the executive director under Subsection (c); and

(6) any other information that the executive director considers helpful to the commission.

SECTION 2.24. Section 35.008, Water Code, is amended to read as follows:

Sec. 35.008. PROCEDURES FOR DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA; CONSIDERATION OF CREATION OF NEW DISTRICT OR ADDITION OF LAND IN PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT; COMMISSION ORDER.

(a) The commission shall designate priority groundwater management areas using the procedures provided by this chapter in lieu of those provided by Subchapter B, Chapter 2001, Government Code.

(b) The commission shall call an evidentiary hearing to consider:

(1) the designation of a priority groundwater management area; and

(2) whether one or more districts [~~a district~~] should be created over all or part of a priority groundwater management area, [~~or~~

~~(3) whether~~] all or part of the land in the priority groundwater management area should be added to an existing district, or a combination of those actions should be taken. Consideration of this issue shall include a determination of whether a district is feasible and practicable.

(c) Evidentiary hearings shall be held at a location in one of the counties in which the priority groundwater management area is located, or proposed to be located, or in the nearest convenient location if adequate facilities are not available in those counties.

(d) At the hearing, the commission shall hear testimony and receive evidence from affected persons. Affected persons shall include landowners, well owners, and other users of groundwater in the proposed priority groundwater management area. The commission shall consider the executive director's report and supporting information and the testimony and evidence received at the hearing. If the commission considers further information necessary, the commission may request such information from any source.

(e) Any evidentiary hearing shall be concluded not later than the 75th day after the date notice of the hearing is published.

(f) At the conclusion of the hearing and the commission's considerations, the commission shall issue an order stating its findings and conclusions, including whether a priority groundwater management area should be designated in the area and recommendations regarding district creation as set forth in Subsection (g).

(g) The commission's order designating a priority groundwater management area must recommend that the area be covered by a district in any of the following ways:

(1) creation of one or more new districts;

(2) addition of the land in the priority groundwater management area to one or more existing districts; or

(3) a combination of actions under Subdivisions (1) and (2).

(h) In recommending the boundaries of a district or districts under Subsection (g), the commission shall give preference to boundaries that are coterminous with those of the priority groundwater management area, but may recommend district boundaries along existing political subdivision boundaries at the discretion of the commission to facilitate district creation and confirmation.

(i) The designation of a priority groundwater management area may not be appealed nor may it be challenged under Section 5.351 of this code or [the Administrative Procedure Act,] Section 2001.038, Government Code.

SECTION 2.25. Subsections (a) and (b), Section 35.009, Water Code, are amended to read as follows:

(a) The commission shall have notice of the hearing published in at least one newspaper with general circulation in the county or counties in which the area proposed for designation as a priority groundwater management area [~~or the area within a priority groundwater management area being considered for district creation or for addition to an existing district~~] is located. Notice must be published not later than the 30th day before the date set for the hearing [~~commission to consider the designation of the priority groundwater management area, the creation of a district in a priority groundwater management area, or the addition of land in a priority groundwater management area to an existing district~~].

(b) The notice must include:

(1) if applicable, a statement of the general purpose and effect of designating the proposed priority groundwater management area;

(2) if applicable, a statement of the general purpose and effect of creating a new district in the priority groundwater management area;

(3) if applicable, a statement of the general purpose and effect of adding all or part of the land in the priority groundwater management area to an existing district;

(4) a map generally outlining the boundaries of the area being considered for priority groundwater management area designation [~~or the priority groundwater management area being considered for district creation or for addition to an existing district,~~] or notice of the location at which a copy of the map may be examined or obtained;

(5) a statement that the executive director's report concerning the priority groundwater management area or proposed area is available at the commission's main office in Austin, Texas, and at regional offices of the commission for regions which include territory within the priority groundwater management area or proposed priority groundwater management area and that the report is available for inspection during regular business hours;

(6) a description or the name of the locations in the affected area at which the commission has provided copies of the executive director's report to be made available for public inspection;

(7) the name and address of each public library, each county clerk's office, and each district to which the commission has provided copies of the executive director's report; and

(8) the date, time, and place of the hearing.

SECTION 2.26. Section 35.012, Water Code, is amended to read as follows:

Sec. 35.012. CREATION OF DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA [~~COMMISSIONER ORDER~~]. (a) [~~At the conclusion of its hearing and considerations, the commission shall issue an order stating its findings and conclusions:~~

~~[(b) If the commission finds that the land and other property in the priority groundwater management area would benefit from the creation of one or more districts, that there is a public need for one or more districts, and that the creation of one or more districts would further the public welfare, the commission shall issue an order stating that the creation of one or more districts is needed.~~

~~[(c)] Following the issuance of a commission order under Section 35.008 designating a priority groundwater management area and recommending the creation of one or more districts, or the addition of land to an existing district [Subsection (b)], the landowners in the priority groundwater management area may:~~

- ~~(1) create one or more districts under Subchapter B, Chapter 36;~~
- ~~(2) have the area annexed to a district that adjoins the area; or~~
- ~~(3) create one or more districts through the legislative process.~~

~~(b) Within two years, but no sooner than 120 days, from the date on which the commission issues an order under Section 35.008 designating a priority groundwater management area, for those areas that are not within a district, the commission shall:~~

~~(1) create one or more new districts under Section 36.0151;~~

~~(2) recommend that the areas, or a portion of the areas, be added to an existing district under Section 35.013; or~~

~~(3) take any combination of the actions under Subdivisions (1) and (2).~~

~~(c) Following the issuance of a commission order under Section 35.008 [(d) The commission shall identify the areas subject to the order of the commission issued under Subsection (b) that have not been incorporated into a district and shall delineate proposed boundaries of a district to include those areas. If the commission proposes the creation of one or more districts], the Texas Agricultural Extension Service shall begin an educational program within such areas with the assistance and cooperation of the Texas Water Development Board, the commission, the Department of Agriculture, other state agencies, and existing districts to inform the residents of the status of the area's water resources and management options including possible formation of a district[, before beginning the procedures for creation of a district provided in Subchapter B, Chapter 36]. The county commissioners court of each county in the priority groundwater management area shall form a steering committee to provide assistance to the Texas Agricultural Extension Service in accomplishing the goals of the education program within the area.~~

~~[(e) If the commission fails to find that the district would be a benefit to the land and other property within the priority groundwater management area, that there is a public need for the district, or that creation of the district will further the public~~

welfare, the commission shall issue an order stating that a district should not be created within the boundaries of the priority groundwater management area:

~~[(f) An order of the commission issued under this section may not be appealed.]~~

SECTION 2.27. Section 35.013, Water Code, is amended to read as follows:

Sec. 35.013. ADDING PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT. (a) ~~[If land in a priority groundwater management area is located adjacent to one or more existing districts, the commission, instead of issuing an order under Section 35.012, may issue an order recommending that the priority groundwater management area be added to the existing district designated by the commission. In its order, the commission must find that the land and other property in the priority groundwater management area and the land in the existing district will benefit from the addition of the area, that there is a public need to add the priority groundwater management area to the existing district, and that the addition of the land to the existing district would further the public welfare:~~

~~[(b)] If the commission in its order under Section 35.008 ~~[executive director]~~ recommends that the priority groundwater management area or a portion of the priority groundwater management area be added to an existing district ~~[or if the commission considers it possible to add the priority groundwater management area to an adjacent existing district]~~, the commission shall give notice to the board of the existing district recommended in its order ~~[by the executive director or considered by the commission to possibly serve the area]~~ and to any other existing districts adjacent to the priority groundwater management area.~~

~~(b) [(e)]~~ The commission shall submit a copy of the order to the board of the district to which it is recommending the priority groundwater management area be added. The board shall vote on the addition of the priority groundwater management area to the district and shall advise the commission of the outcome.

~~(c) [(d)]~~ If the board votes to accept the addition of the priority groundwater management area to the district, the board:

(1) may request the Texas Agricultural Extension Service, the commission, and the Texas Water Development Board, with the cooperation and assistance of the Department of Agriculture and other state agencies, to administer an educational program to inform the residents of the status of the area's water resources and management options including possible annexation into a district;

(2) shall call an election within the priority groundwater management area, or portion of the priority groundwater management area, as delineated by the commission to determine if the priority groundwater management area will be added to the district; and

(3) shall designate election precincts and polling places for the elections in the order calling an election under this subsection.

~~(d) [(e)]~~ The board shall give notice of the election and the proposition to be voted on. The board shall publish notice of the election at least one time in one or more newspapers with general circulation within the boundaries of the priority groundwater management area. The notice must be published before the 30th day preceding the date set for the election.

~~(e) [(f)]~~ The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of \_\_\_\_\_ (briefly describe priority groundwater management area) in the \_\_\_\_\_ District." If the district has outstanding debts or taxes, the proposition shall include the following language: "and assumption by the described area of a proportional share of the debts or taxes of the district."

(f) ~~[(g)]~~ Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the board, and the board shall canvass the returns for the election within the priority groundwater management area and declare the results. If a majority of the voters in the priority groundwater management area voting on the proposition vote in favor of the proposition, the board shall declare that the priority groundwater management area is added to the district. If a majority of the voters in the priority groundwater management area voting on the proposition vote against adding the priority groundwater management area to the district, the board shall declare that the priority groundwater management area is not added to the district. The board shall file a copy of the election results with the commission.

(g) ~~[(h)]~~ If the voters approve adding the priority groundwater management area to the district, the board of the district to which the priority groundwater management area is added shall provide reasonable representation on that board compatible with the district's existing scheme of representation. Not later than the 30th day after the date on which the board declares that the priority groundwater management area is added to the district, the board of the existing district shall appoint a person or persons to represent the area until the next regularly scheduled election or appointment of directors.

(h) ~~[(i)]~~ If the proposition is defeated, or if the board of the existing district votes not to accept the addition of the area to the district, then the commission shall, except as provided under Subsection (i), create under Section 36.0151 one or more districts covering the priority groundwater management area not later than the first anniversary of the date on which the proposition is defeated or the board votes not to accept the area.

(i) For an area that is not feasible for the creation of one or more districts as determined in the commission's findings under Section 35.008, the commission shall include in its report under Section 35.018 recommendations for the future management of the priority groundwater management area.

(j) Another [another] election to add the priority groundwater management area to an existing district may not be called before the first anniversary of the date on which the election on the proposition was held.

SECTION 2.28. Subsection (c), Section 35.018, Water Code, is amended to read as follows:

(c) If the commission determines that a district created under Chapter 36 is not appropriate for, or capable of, the protection of the groundwater resources for a particular management area or priority groundwater management area, the commission may recommend in its report to the legislature the creation of a special district or amendment of an existing district. ~~[(1) If voters fail to create a groundwater district in a priority groundwater management area or if voters fail to add the priority groundwater management area to an existing groundwater district, the report shall include recommendations for the future management of the priority groundwater management area. The recommendations may include but are not limited to the following:~~

~~[(A) creation of a groundwater district by the legislature;~~

~~[(B) annexation of a priority groundwater management area into an existing district by the legislature; or~~

~~[(C) management of the priority groundwater management area by the nearest regional office of the commission. The commission may be authorized to:~~

~~(i) adopt spacing and annual per acre pumping restrictions;~~  
~~(ii) issue well permits in accordance with Sections 36.113 and 36.1131;~~  
~~(iii) prevent waste and protect the quality of groundwater in accordance with Sections 36.001(8)(A)-(G);~~  
~~(iv) levy administrative penalties for violations; and~~  
~~(v) collect fees in accordance with Sections 36.206(a) and (b).~~

~~(2) If the commission is required by the legislature to manage the priority groundwater management area, a new election may not be called for three years from the date of the last election.]~~

SECTION 2.29. Section 36.001, Water Code, is amended by amending Subdivision (13) and adding Subdivisions (18) through (22) to read as follows:

(13) "Management area" means an area designated and delineated by the Texas Water Development Board [~~commission~~] under Chapter 35 as an area suitable for management of groundwater resources.

(18) "River basin" means a river or coastal basin designated as a river basin by the board under Section 16.051. The term does not include waters of the bays or arms originating in the Gulf of Mexico.

(19) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(E) wildlife management; and

(F) raising or keeping equine animals.

(20) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(21) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

(22) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

SECTION 2.30. Section 36.0015, Water Code, is amended to read as follows:

Sec. 36.0015. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation

districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

SECTION 2.31. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. 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 depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by [subject to] rules promulgated by a district.

SECTION 2.32. Subsection (b), Section 36.011, Water Code, is amended to read as follows:

(b) The commission has exclusive jurisdiction over the [~~delineation of management areas and the~~] creation of districts.

SECTION 2.33. Section 36.012, Water Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not apply to districts created under Section 36.0151.

SECTION 2.34. Section 36.013, Water Code, is amended to read as follows:

Sec. 36.013. PETITION TO CREATE DISTRICT. (a) A petition requesting creation of a district must be filed with the commission [executive director] for review and certification under Section 36.015 [submission to the commission].

(b) The petition filed pursuant to this section must be signed by:

(1) a majority of the landowners within the proposed district, as indicated by the county tax rolls; or

(2) if there are more than 50 landowners in the proposed district, at least 50 of those landowners.

(c) The petition must include:

(1) the name of the proposed district;

(2) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;

(3) the purpose or purposes of the district;

(4) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated costs of those projects according to the persons filing the projects if the projects are to be funded by the sale of bonds or notes; ~~and~~

(5) the names of at least five individuals qualified to serve as temporary directors; and

(6) financial information, including the projected maintenance tax or production fee rate and a proposed budget of revenues and expenses for the district [any additional terms or conditions that restrict the powers of the district from those provided in this chapter].

~~[(d) If a part of the proposed district is not included within either a management area or a priority groundwater management area, the petition to create a district may also contain a request to create a management area. A request to create a management area must comply with the requirements for a petition in Section 35.005, and may be acted on by the commission separately from the petition to create the district.]~~

SECTION 2.35. Section 36.014, Water Code, is amended to read as follows:

Sec. 36.014. NOTICE AND PUBLIC MEETING ~~[HEARING]~~ ON DISTRICT CREATION. (a) If a petition is filed under Section 36.013, the commission shall give

notice of the [an] application [as required by Section 49.011(a)] and shall [may] conduct a public meeting in a central location within the area of the proposed district [hearing] on the application not later than the 60th day after the date the commission issues notice [if the commission determines that a hearing is necessary under Section 49.011]. The notice must contain the date, time, and location of the public meeting and must be published in one or more newspapers of general circulation in the area of the proposed district.

(b) If the petition contains a request to create a management area in all or part of the proposed district, the notice must also be given in accordance with the requirements in Section 35.006 for the designation of management areas.

SECTION 2.36. Section 36.015, Water Code, is amended to read as follows:

Sec. 36.015. COMMISSION CERTIFICATION AND ORDER. (a) Not later than the 90th day after the date the commission holds a public meeting on a petition under Section 36.014, the commission shall certify the petition if the petition is administratively complete. A petition is administratively complete if it complies with the requirements of Sections 36.013(b) and (c).

(b) The commission may not certify a petition if the commission finds that the proposed district cannot be adequately funded to carry out its purposes based on the financial information provided in the petition under Section 36.013(c)(6) or that the boundaries of the proposed district do not provide for the effective management of the groundwater resources. The commission shall give preference to boundary lines that are coterminous with those of a groundwater management area but may also consider boundaries along existing political subdivision boundaries if such boundaries would facilitate district creation and confirmation.

(c) If a petition proposes the creation of a district in an area, in whole or in part, that has not been designated as a management area, the commission shall provide notice to the Texas Water Development Board. On the receipt of notice from the commission, the Texas Water Development Board shall initiate the process of designating a management area for the area of the proposed district not included in a management area. The commission may not certify the petition until the Texas Water Development Board has adopted a rule whereby the boundaries of the proposed district are coterminous with or inside the boundaries of a management area.

(d) If the commission does not certify the petition, the commission shall provide to the petitioners, in writing, the reasons for not certifying the petition. The petitioners may resubmit the petition, without paying an additional fee, if the petition is resubmitted within 90 days after the date the commission sends the notice required by this subsection.

(e) If the commission certifies the petition as administratively complete, the commission shall issue an order, notify the petitioners, and appoint temporary directors as provided by Section 36.016.

(f) Refusal by the commission to certify a petition to create a district does not invalidate or affect the designation of any management area. [FINDINGS. (a) If the commission finds that a district is feasible and practicable, that it would be a benefit to the land in the district, and that it would be a public benefit or utility, the commission shall issue an order containing these findings granting the petition:

[b) If the commission finds that a district is not feasible and practicable, that it would not be a benefit to the land in the district, that it would not be a public benefit or utility, or that it is not needed, the commission by order shall deny the petition:

~~(c) The commission may adjust the boundaries of the proposed district to exclude any land that would not be benefited by inclusion in the district and is not necessary to the district for proper regulation of the groundwater reservoir.~~

~~(d) If the commission grants the petition to create the district, it shall direct in its order creating the district that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors.~~

~~(e) The refusal to grant a petition to create a district does not invalidate or affect the designation of any management area requested in the same petition.~~

~~(f) The commission shall act on the petition within a reasonable amount of time.]~~

SECTION 2.37. Subsection (a), Section 36.0151, Water Code, is amended to read as follows:

(a) If the commission is required to create ~~[proposes that]~~ a district ~~[be created]~~ under Section 35.012(b) ~~[35.012(d)]~~, it shall, ~~without an evidentiary hearing, issue an order creating the district and shall provide~~ in its order ~~[creating the district provide]~~ that temporary directors be appointed under Section 36.016 and that an election be called by the temporary directors to ~~authorize the district to assess taxes [confirm the creation of the district]~~ and to elect permanent directors.

SECTION 2.38. Subsection (a), Section 36.016, Water Code, is amended to read as follows:

(a) If the commission ~~certifies [grants]~~ a petition to create a district under Section 36.015, ~~the commission shall appoint the temporary directors named in the petition. If [or after]~~ the commission dissolves a district's board under Section 36.303, it shall appoint five temporary directors.

SECTION 2.39. Section 36.017, Water Code, is amended by amending the section heading and Subsections (a), (d), and (g) and adding Subsection (i) to read as follows:

Sec. 36.017. CONFIRMATION AND DIRECTORS' ELECTION FOR DISTRICT IN A MANAGEMENT AREA. (a) For a district created under Section 36.015, not [Not] later than the 120th [60th] day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to approve the creation of the district and to elect permanent directors.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of the \_\_\_\_\_ Groundwater Conservation District." If the district levies a maintenance tax for payment of its expenses, then an additional [the] proposition shall be included with [include] the following language: "The [and the] levy of a maintenance tax at a rate not to exceed \_\_\_\_\_ cents for each \$100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.

(g) If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare the district defeated and shall enter the result in its minutes. The temporary board shall continue operations in accordance with Subsection (h).

(i) If a majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set production fees to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 2.40. Subchapter B, Chapter 36, Water Code, is amended by adding Section 36.0171 to read as follows:

Sec. 36.0171. TAX AUTHORITY AND DIRECTORS' ELECTION FOR DISTRICT IN A PRIORITY GROUNDWATER MANAGEMENT AREA. (a) For a district created under Section 36.0151, not later than the 120th day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to authorize the district to assess taxes and to elect permanent directors.

(b) In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of all voters for conveniently located polling places.

(c) The temporary directors shall publish notice of the election at least once in at least one newspaper with general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The levy of a maintenance tax by the Groundwater Conservation District at a rate not to exceed \_\_\_\_\_ cents for each \$100 of assessed valuation." The same ballot or another ballot must provide for the election of permanent directors, in accordance with Section 36.059.

(e) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the temporary board, and the board shall canvass the returns, declare the result, and turn over the operations of the district to the elected permanent directors. The board shall file a copy of the election result with the commission.

(f) If a majority of the votes cast at the election favor the levy of a maintenance tax, the temporary board shall declare the levy approved and shall enter the result in its minutes.

(g) If a majority of the votes cast at the election are against the levy of a maintenance tax, the temporary board shall declare the levy defeated and shall enter the result in its minutes.

(h) If the majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set permit fees to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 2.41. Section 36.019, Water Code, is amended to read as follows:

Sec. 36.019. CONFIRMATION ELECTION IN DISTRICT INCLUDING LAND IN MORE THAN ONE COUNTY. (a) A district, the major portion of which is located in one county, may not be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is approved by a majority of the voters of the other county voting in an election called for that purpose.

(b) This section does not apply to districts created under Section 36.0151.

SECTION 2.42. Subsection (a), Section 36.060, Water Code, is amended to read as follows:

(a) A director is entitled to receive fees of office of not more than \$150 [~~\$100~~] a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed \$9,000 [~~\$6,000~~] a year.

SECTION 2.43. Subsection (g), Section 36.066, Water Code, is amended to read as follows:

(g) If the district prevails in any suit other than a suit in which it voluntarily intervenes, the district may seek and the court shall grant [it may], in the same action, recovery [recover reasonable fees] for attorney's fees [attorneys], costs for expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

SECTION 2.44. Subsection (a), Section 36.101, Water Code, is amended 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. During the rulemaking process the board shall consider all groundwater uses and needs and shall develop rules which are fair and impartial.

SECTION 2.45. Subsection (b), Section 36.102, Water Code, is amended to read as follows:

(b) The board by rule may set reasonable civil penalties for breach of any rule of the district [that shall] not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation [the jurisdiction of a justice court as provided by Section 27.031, Government Code].

SECTION 2.46. Section 36.1071, Water Code, is amended by amending Subsections (a) and (b) and adding Subsection (h) 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; ~~and~~
- (5) addressing natural resource issues;
- (6) addressing drought conditions; and
- (7) addressing conservation.

(b) After January 5, 2002, a [A] district management plan, or any amendments to a district management plan, shall be developed by the district using the district's best available data and forwarded to the regional water planning group for consideration in their planning process [adopted after the Texas Water Development Board approval of a regional water plan for the region in which the district is located shall be consistent with the regional water plan].

(h) In developing its management plan, the district shall use the groundwater availability modeling information provided by the executive administrator in conjunction with any available site-specific information provided by the district and acceptable to the executive administrator.

SECTION 2.47. Section 36.1072, Water Code, is amended by adding Subsection (g) to read as follows:

(g) In this subsection, "board" means the Texas Water Development Board. A person with a legally defined interest in groundwater in a district or the regional water

planning group may file a petition with the board stating that a conflict requiring resolution may exist between the district's certified groundwater conservation district management plan developed under Section 36.1071 and the state water plan. If a conflict exists, the board shall facilitate coordination between the involved person or regional water planning group and the district to resolve the conflict. If conflict remains, the board shall resolve the conflict. The board action under this provision may be consolidated, at the option of the board, with related action under Section 16.053(p). If the board determines that resolution of the conflict requires a revision of the certified groundwater conservation district management plan, the board shall suspend the certification of the plan and provide information to the district. The district shall prepare any revisions to the plan specified by the board and shall hold, after notice, at least one public hearing at some central location within the district. The district shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board for certification. On the request of the district or the regional water planning group, the board shall include discussion of the conflict and its resolution in the state water plan that the board provides to the governor, the lieutenant governor, and the speaker of the house of representatives under Section 16.051(e).

SECTION 2.48. Section 36.108, Water Code, is amended to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) 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 certification 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.

(b) The board of directors of each district in the management area may, by resolution, call for [a] joint planning [meeting] with [the boards of directors of] the other districts in the management area to review the management plans and accomplishments for the management area. [The boards shall meet to consider the plans individually and shall compare them to other management plans then in force in the management area.] In reviewing the management plans, the boards 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; and

(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.

(c) If a [A] joint meeting of the boards of directors is called, the meeting must be held in accordance with [the Open Meetings Act,] Chapter 551, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act. In addition, notice of the meeting shall be published not later than the 30th day before the date of the scheduled meeting in a newspaper with general circulation in each county in the management area.

(d) A district in the management area may file with good cause a petition with the commission requesting an inquiry if the petitioner district adopted a resolution calling

for joint planning and the other district or districts refused to join in the planning process or the process failed to result in adequate planning, and the petition provides evidence [believes] that:

- (1) another district in the management area has failed to adopt rules;
- (2) the groundwater in the management area is not adequately protected by the rules adopted by another district; or
- (3) the groundwater in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(e) Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:

- (1) dismiss it if it 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 (f).

(f) If the petition is not dismissed under Subsection (e), the ~~[The]~~ commission shall ~~[may]~~ appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the 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.

(g) 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 ~~[prepare]~~ a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the 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.

(h) 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.

(i) The review panel shall submit its report to the commission.

(j) Districts located within the same 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 2.49. Section 36.113, Water Code, is amended by amending Subsection (d), adding a new Subsection (e), and relettering existing Subsections (e) and (f) as Subsections (f) and (g) to read as follows:

(d) Before granting or denying a permit, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) the applicant has agreed to avoid waste and achieve water conservation; and

(6) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(e) The district may impose more restrictive permit conditions on new permit applications and increased use by historic users if the limitations:

(1) apply to all subsequent new permit applications and increased use by historic users, regardless of type or location of use;

(2) bear a reasonable relationship to the existing district management plan; and

(3) are reasonably necessary to protect existing use.

(f) Permits may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, or alteration of wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

(g) [(f)] A district may require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district.

SECTION 2.50. Section 36.116, Water Code, is amended to read as follows:

Sec. 36.116. REGULATION OF SPACING AND PRODUCTION. (a) In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, a district by rule may regulate:

(1) [~~provide for~~] the spacing of water wells by:

(A) requiring all water wells to be spaced a certain distance from property lines or adjoining wells;

(B) requiring wells with a certain production capacity, pump size, or other characteristic related to the construction or operation of and production from a well to be spaced a certain distance from property lines or adjoining wells; or

(C) imposing spacing requirements adopted by the board; and

(2) the production of groundwater by:

(A) setting production limits on wells;

(B) limiting the amount of water produced based on acreage or tract size;

(C) limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;

(D) limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site per acre; or

(E) any combination of the above [and may regulate the production of wells].

(b) In promulgating any rules limiting groundwater production, the district may preserve historic use before the effective date of the rules to the maximum extent practicable consistent with the district's comprehensive management plan under Section 36.1071.

(c) In regulating the production of groundwater based on tract size or acreage, a district may consider the service needs of a retail water utility. For purposes of this subsection, "retail water utility" shall have the meaning provided at Section 13.002.

SECTION 2.51. Section 36.117, Water Code, is amended to read as follows:

Sec. 36.117. EXEMPTIONS; EXCEPTION; LIMITATIONS. (a) A district may exempt wells from the requirement of obtaining [~~requirements to obtain~~] a drilling permit, an operating permit, or any other permit required by this chapter or the district's rules.

(b) A district may not require any [a] permit issued by the district for:

(1) [drilling or producing from] a well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or [alteration of the size of a well or to restrict the production of a well if the water produced or to be produced from the well is used or to be used to supply the domestic needs of 10 or fewer households and a person who is a member of each household is either the owner of the well, a person related to the owner or a member of the owner's household within the second degree by consanguinity, or an employee of the owner;]

(3) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water. [or alteration of the size of a well or to restrict the production from the well if the water produced or to be produced from the well is used or to be used to provide water for feeding livestock and poultry connected with farming, ranching, or dairy enterprises; or

[(4) water wells to supply water for hydrocarbon production activities, regardless of whether those wells are producing, that are associated with any well permitted by the Railroad Commission of Texas drilled before September 1, 1985.

[(b) The board shall adopt rules determining the applicability of Subsection (a)(3) to facilities used primarily for feeding livestock.]

(c) [The district shall not deny the owner of a tract of land, or his lessee, who has no well equipped to produce more than 25,000 gallons a day on the tract, either a permit to drill a well on his land or the privilege to produce groundwater from his land, subject to the rules of the district.

~~[(d)]~~ A district may not restrict the production of any well that is exempt from permitting under Subsection (b)(1) [equipped to produce 25,000 gallons or less a day].

(d) Notwithstanding Subsection (b), a district may require a well to be permitted by the district and to comply with all district rules if:

(1) the purpose of a well exempted under Subsection (b)(2) is no longer solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or

(2) the withdrawals from a well exempted under Subsection (b)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

(e) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

(1) the total amount of water withdrawn during the month;

(2) the quantity of water necessary for mining activities; and

(3) the quantity of water withdrawn for other purposes. ~~[Nothing in this chapter applies to wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluid, or for any other purpose, under permits issued by the Railroad Commission of Texas. A district may not require a drilling permit for a well to supply water for drilling any wells permitted by the Railroad Commission of Texas. Any well that ceases to be used for these purposes and is then used as an ordinary water well is subject to the rules of the district. Water wells drilled after September 1, 1997, to supply water for hydrocarbon production activities must meet the spacing requirements of the district unless no space is available within 300 feet of the production well or the central injection station.]~~

(f) Notwithstanding Subsection (d), a district may not require a well exempted under Subsection (b)(3) to comply with the spacing requirements of the district. ~~[Water wells exempted under this section shall be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.]~~

(g) A district may not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets all applicable rules as promulgated by the district.

(h) A ~~[shall require]~~ water well ~~[wells]~~ exempted under Subsection (a) or (b) shall:

(1) ~~[this section to]~~ be registered in accordance with rules promulgated by the district; and

(2) ~~[before drilling. All exempt water wells shall]~~ be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(i) The driller of a well exempted under Subsection (a) or (b) shall file the drilling log with the district.

(j) ~~(h)~~ A well to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code, ~~[law]~~ is not exempted under Subsection (b) ~~[this section]~~.

(k) Groundwater withdrawn from a well exempt from permitting or regulation under this section and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees under Sections 36.122 and 36.205.

(l) This chapter applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This chapter does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

SECTION 2.52. Section 36.122, Water Code, is amended to read as follows:

Sec. 36.122. TRANSFER OF GROUNDWATER OUT OF DISTRICT. (a) If an application for a permit or an amendment to a permit under Section 36.113 proposes the transfer of groundwater outside of a district's boundaries, the district may also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment.

(b) A district may promulgate rules requiring a person to obtain a permit or an amendment to a permit under Section 36.113 from the district for the transfer of groundwater out of the district to:

(1) increase, on or after March 2, 1997, the amount of groundwater to be transferred under a continuing arrangement in effect before that date; or

(2) transfer groundwater out of the district on or after March 2, 1997, under a new arrangement.

(c) Except as provided in Section 36.113(e), the district may not impose more restrictive permit conditions on transporters than the district imposes on existing in-district users.

(d) ~~(h)~~ The district may impose a reasonable fee for processing an application [for a permit] under this section. The fee may not exceed fees that the district imposes for processing other applications under Section 36.113. An application filed to comply with this section shall be considered and processed under the same procedures as other applications for permits under Section 36.113 and shall be combined with applications filed to obtain a permit for in-district water use under Section 36.113 from the same applicant.

(e) The district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

(1) a fee negotiated between the district and the transporter;

(2) a rate not to exceed the equivalent of the district's tax rate per hundred dollars of valuation for each thousand gallons of water transferred out of the district or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation; or

(3) for a fee-based district, a 50 percent export surcharge, in addition to the district's production fee, for water transferred out of the district.

(f) ~~(e)~~ Before issuing a permit under this section, the district must give notice of the application and hold a public hearing.

~~(d)~~ In reviewing a proposed transfer of groundwater out of the district [determining whether to issue a permit under this section], the district shall consider:

(1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;

(2) ~~the availability of feasible and practicable alternative supplies to the applicant;~~

~~[(3) the amount and purposes of use in the proposed receiving area for which water is needed;~~

~~[(4) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and~~

~~(3) [(5) the approved regional water plan and certified district management plan.~~

~~(g) [(e)] The district may not deny a permit based on the fact that the applicant seeks to transfer groundwater outside of the district but may limit a permit issued under this section if conditions in Subsection (f) [(d)] warrant the limitation, subject to Subsection (c).~~

~~(h) [(f)] In addition to conditions provided by Section 36.1131, the permit shall specify:~~

~~(1) the amount of water that may be transferred out of the district; and~~

~~(2) the period for which the water may be transferred.~~

~~(i) The period specified by Subsection (h)(2) shall be:~~

~~(1) at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit; or~~

~~(2) at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.~~

~~(j) A term under Subsection (i)(1) shall automatically be extended to the terms agreed to under Subsection (i)(2) if construction of a conveyance system is begun before the expiration of the initial term.~~

~~(k) Notwithstanding the period specified in Subsections (i) and (j) during which water may be transferred under a permit, a district may periodically review the amount of water that may be transferred under the permit and may limit the amount if additional factors considered in Subsection (f) warrant the limitation, subject to Subsection (c). The review described by this subsection may take place not more frequently than the period provided for the review or renewal of regular permits issued by the district. In its determination of whether to renew a permit issued under this section, the district shall consider relevant and current data for the conservation of groundwater resources and shall consider the permit in the same manner it would consider any other permit in the district.~~

~~(l) A district is prohibited from using revenues obtained under Subsection (e) to prohibit the transfer of groundwater outside of a district. A district is not prohibited from using revenues obtained under Subsection (e) for paying expenses related to enforcement of this chapter or district rules.~~

~~(m) [(g)] A district may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997.~~

~~(n) [(h)] This section applies only to a transfer of water that is permitted [initiated or increased] after September 1, 1997 [the effective date of this section].~~

~~(o) [(i)] A district shall adopt rules as necessary to implement this section but may not adopt rules expressly prohibiting the export of groundwater.~~

(p) Subsection (e) does not apply to a district that is collecting an export fee or surcharge on March 1, 2001.

(q) In applying this section, a district must be fair, impartial, and nondiscriminatory.

SECTION 2.53. Section 36.205, Water Code, is amended to read as follows:

Sec. 36.205. AUTHORITY TO SET FEES. (a) A district may set fees for administrative acts of the district, such as filing applications. Fees set by a district may not unreasonably exceed the cost to the district of performing the administrative function for which the fee is charged.

(b) A district shall set and collect fees for all services provided outside the boundaries of the district. The fees may not unreasonably exceed the cost to the district of providing the services outside the district.

(c) A district may assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may assess the fees in lieu of, or in conjunction with, any taxes otherwise levied by the district. A district may use revenues generated by the fees for any lawful purpose. Production fees [Fees based on the amount of water to be withdrawn from a well] shall not exceed:

(1) \$1 [one dollar] per acre-foot payable annually [acre-foot] for water used for agricultural use [the purpose of irrigating agricultural crops]; or

(2) \$10 per acre-foot payable annually [17 cents per thousand gallons] for water used for any other purpose.

(d) The Barton Springs-Edwards Aquifer Conservation District, the Lone Star Groundwater Conservation District, and the Guadalupe County Groundwater Conservation District may not charge production fees for an annual period greater than \$1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose. The Barton Springs-Edwards Aquifer Conservation District [A district affected by Subsection (c)(2) that also] may assess a water use fee against a specific municipality in [shall assess] an amount not to exceed 60 percent of the total funding of the district received from water use fees assessed against that municipality and other nonexempt users in the district. This subsection shall take precedence over all prior enactments.

(e) Subsection (c) does not apply to the following districts:

(1) the Edwards Aquifer Authority;

(2) the Fort Bend Subsidence District; [or]

(3) the Harris-Galveston Coastal Subsidence District;

(4) the Barton Springs-Edwards Aquifer Conservation District; or

(5) any district that collects a property tax and that was created before September 1, 1999, unless otherwise authorized by special law.

(f) A district, including a district described under Subsection (d), may assess a production fee under Subsection (c) for any water produced under an exemption under Section 36.117 if that water is subsequently sold to another person.

(g) A district may assess a transportation fee under Section 36.122.

SECTION 2.54. Section 36.206, Water Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The rate of fees set for [~~crop or livestock production or other~~] agricultural uses shall be no more than 20 percent of the rate applied to municipal uses.

(c) District fees may not be used to purchase groundwater rights unless the purchased rights are acquired for conservation purposes and are permanently held in trust not to be produced.

SECTION 2.55. Subchapter I, Chapter 36, Water Code, is amended by adding Section 36.3011 to read as follows:

Sec. 36.3011. FAILURE OF A DISTRICT TO CONDUCT JOINT PLANNING.

(a) If the board of a district within a common management area fails to forward a copy of its new or revised certified management plan under Section 36.108, the commission shall take appropriate action under Section 36.303.

(b) Not later than the 45th day after receiving the review panel's report under Section 36.108, the executive director or the commission shall take action to implement any or all of the panel's recommendations. If the commission finds that a district in the joint planning area has failed to adopt rules, the groundwater in the management area is not adequately protected by the rules adopted by the district, or the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules, the commission may take any action it considers necessary in accordance with Section 36.303.

SECTION 2.56. Subsection (a), Section 36.303, Water Code, is amended to read as follows:

(a) If Section 36.108, 36.301, or 36.302(f) applies, the commission, after notice and hearing in accordance with Chapter 2001, Government Code, shall take action the commission considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with Sections 36.305 and 36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the groundwater conservation district [removing the district's taxing authority]; or

(4) dissolving the district in accordance with Sections 36.304, 36.305, and 36.308.

SECTION 2.57. Subchapter I, Chapter 36, Water Code, is amended by adding Section 36.3035 to read as follows:

Sec. 36.3035. APPOINTMENT OF A RECEIVER. (a) If the attorney general brings a suit for the appointment of a receiver for a district, a district court shall appoint a receiver if an appointment is necessary to protect the assets of the district.

(b) 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.

(c) After appointment and execution of bond, the receiver shall take possession of the assets of the district specified by the court.

(d) Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the district and shall strictly observe the final order involved.

(e) On a showing of good cause by the district, the court may dissolve the receivership and order the assets and control of the business returned to the district.

SECTION 2.58. Section 51.149, Water Code, is amended to read as follows:

Sec. 51.149. CONTRACTS. (a) No approvals other than those specified in Subsection (c) and in Section 1, Chapter 778, Acts of the 74th Legislature, Regular Session, 1995, need be obtained in order for a contract between a district and a municipality to be valid, binding, and enforceable against all parties to the contract. After approval by a majority of the electors voting at an election conducted in the manner of a bond election, a district may make payments under a contract from taxes for debt that does not exceed 30 years.

(b) ~~(f)~~ A contract may provide that the district will make payments under the contract from proceeds from the sale of notes or bonds, from taxes, from any other income of the district, or from any combination of these.

(c) ~~(e)~~ A district may make payments under a contract from taxes, other than maintenance taxes, after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose.

(d) ~~(f)~~ Any contract election may be held at the same time as and in conjunction with an election to issue bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

(e) A district created pursuant to Chapter 628, Acts of the 68th Legislature, Regular Session, 1983, is defined as a municipal corporation and political subdivision pursuant to Chapter 405, Acts of the 76th Legislature, Regular Session, 1999, and is authorized to take action accordingly.

SECTION 2.59. Subsection (a), Section 182.052, Utilities Code, is amended to read as follows:

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

SECTION 2.60. Section 1.03, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subdivisions (26) and (27) to read as follows:

(26) "Agricultural use" means any use or activity involving any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) wildlife management;

(E) raising or keeping equine animals; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(27) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item before sale or lease and typically includes activities associated with the production or multiplying of stock, such as the development of new plants from cuttings, grafts, plugs, or seedlings.

SECTION 2.61. Subsection (e), Section 1.29, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(e) In developing an equitable fee structure under this section, the authority may establish different fee rates on a per acre-foot basis for different types of use. The fees must be equitable between types of uses. The fee rate for agricultural use shall be based on the volume of water withdrawn and may not be more than \$2 per acre-foot [~~20 percent of the fee rate for municipal use~~]. The authority shall assess the fees on the amount of water a permit holder is authorized to withdraw under the permit.

SECTION 2.62. Section 1.44, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (e) to read as follows:

(e) The authority may contract for injection or artificial recharge under this section only if provision is made for protecting and maintaining the quality of groundwater in the receiving part of the aquifer, and:

(1) the water used for artificial recharge is groundwater withdrawn from the aquifer; or

(2) the water is recharged through a natural recharge feature.

SECTION 2.63. Subsections (a) and (b), Section 4.03, Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, are amended to read as follows:

(a) The authority may establish fees, rates, and charges, and classifications of fee payers and ratepayers, as necessary to enable the authority to fulfill the authority's purposes and regulatory obligations provided by this Act.

(b) The authority may charge against the owner of a well located in the authority's boundaries a fee on the amount of water pumped from the well. The board shall establish the rate of a fee under this subsection only after a special meeting on the fee. The board shall by rule exempt from the fee under this subsection those classes of wells that are not subject to groundwater reduction requirements imposed by the subsidence district, except that if any of those classes of wells become subject at a future date to a groundwater reduction requirement imposed by the subsidence district, then the authority may after that date charge the fee under this subsection to those affected classes of wells. The board by rule may exempt any other classes of wells from the fee under this subsection. The board may not apply the fee to a well:

(1) with a casing diameter of less than five inches that serves a single-family dwelling;

(2) regulated under Chapter 27, Water Code;

(3) used for irrigation of agricultural crops; or

(4) [~~that produces 10 million gallons or less annually; or~~  
(~~5~~) used solely for electric generation.

### ARTICLE 3. DISTRICT RATIFICATIONS AND CREATIONS

#### PART 1. COW CREEK GROUNDWATER

##### CONSERVATION DISTRICT

SECTION 3.0101. RATIFICATION OF CREATION. (a) The creation of the Cow Creek Groundwater Conservation District in Kendall County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0108 of this part. The district is a governmental agency and a body politic and corporate.

(b) The district may develop and implement regulatory, conservation, and recharge programs that preserve and protect groundwater resources located in the district.

**SECTION 3.0102. DEFINITIONS.** In this part:

- (1) "District" means the Cow Creek Groundwater Conservation District.
- (2) "Retail public utility" means a retail public utility as defined by Section 13.002, Water Code, that is providing service in the district on September 1, 2001.
- (3) "Well" means any excavation drilled or dug into the ground that may intercept or penetrate a water-bearing stratum or formation.

**SECTION 3.0103. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Kendall County.

**SECTION 3.0104. POWERS.** Except as otherwise provided by this part, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

**SECTION 3.0105. BOARD OF DIRECTORS.** (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Sections 3.0108 and 3.0109 of this part or until this part expires under Section 3.0108 of this part, whichever occurs first.

(c) Initial directors serve until permanent directors are elected under Section 3.0110 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) A director serves until the director's successor has qualified.

(f) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(g) A vacancy in the office of director is filled by appointment of the board until the next election for directors. At the next election for directors, a person shall be elected to fill the position. If the position is not scheduled to be filled at the election, the person elected to fill the position shall serve only for the remainder of the unexpired term.

**SECTION 3.0106. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS.** (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this part.

(b) One director shall be elected by the qualified voters of the entire district and one director shall be elected from each county commissioners precinct by the qualified voters of that precinct.

(c) A person shall indicate on the application for a place on the ballot the precinct that the person seeks to represent or that the person seeks to represent the district at large.

(d) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

(e) To be eligible to be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter in the precinct from which the person is elected or appointed. To be eligible to be a candidate for or to serve as director at large, a person must be a registered voter in the district.

**SECTION 3.0107. TEMPORARY DIRECTORS.** (a) The temporary board of directors shall be appointed by the county commissioners court. One temporary director shall be appointed from each commissioners precinct, and one temporary director shall be a director at large.

(b) If a temporary director fails to qualify for office, the temporary directors who have qualified shall appoint a person to fill the vacancy. If at any time there are fewer than three qualified temporary directors, the Texas Natural Resource Conservation Commission shall appoint the necessary number of persons to fill all vacancies on the board.

**SECTION 3.0108. CONFIRMATION AND INITIAL DIRECTORS ELECTION.** (a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect five initial directors.

(b) A person who wishes to be a candidate for the office of initial director may file an application with the temporary board of directors to have the candidate's name printed on the ballot as provided by Section 3.0106 of this part.

(c) At the confirmation and initial directors election, the temporary board of directors shall have the names of the five persons serving as temporary directors placed on the ballot by commissioners precinct and as at-large director, together with the name of any candidate filing for the office of director as provided by this section.

(d) If a majority of the votes cast at the election favor the creation of the district, the temporary directors shall declare the district created. If a majority of the votes cast at the election are against the creation of the district, the temporary directors shall declare the district defeated. The temporary directors shall file a copy of the election results with the Texas Natural Resource Conservation Commission.

(e) If a majority of the votes cast at the election are against the creation of the district, the temporary directors may call and hold subsequent elections to confirm establishment of the district and to elect initial directors. A subsequent election may not be held earlier than the first anniversary of the date on which the previous election was held. If the district is not created before September 1, 2006, this part expires on that date.

(f) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held under this section.

(g) Section 36.017(a), Water Code, does not apply to the district.

(h) Except as provided by this section, a confirmation and directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

**SECTION 3.0109. INITIAL DIRECTORS.** (a) If the district is created at the election, the temporary directors, at the time the vote is canvassed, shall declare the candidate receiving the most votes for each commissioners precinct or for the at-large director to be elected as the initial directors.

(b) The initial directors for Precincts 2 and 3 serve until the first regular meeting of the board of directors held after the first permanent directors election under Section 3.0110 of this part. The initial directors for Precincts 1 and 4 and the initial director representing the district at large serve until the first regular meeting of the board of directors held after the second permanent directors election under Section 3.0110 of this part.

SECTION 3.0110. ELECTION OF PERMANENT DIRECTORS. Beginning in the second year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district on the first Saturday in May every two years to elect the appropriate number of directors to the board.

SECTION 3.0111. ADDITIONAL AUTHORITY. (a) The district may contract with one or more state agencies or other governmental bodies, including a county, a river authority, or another district, to carry out any function of the district.

(b) The district may require a drilling permit before a new well is drilled or an existing well is substantially altered. Notwithstanding an exemption for a well under Section 36.117, Water Code, written authorization granted by the district must be received before a new well is drilled or an existing well is substantially altered.

(c) The district may participate in the construction, implementation, and maintenance of best management practices for water resource management in the district and may engage in and promote the acceptance of best management practices through education efforts sponsored by the district. Construction, implementation, and maintenance of best management practices must address water quantity and quality practices such as brush management, prescribed grazing, recharge structures, water and silt detention and retention structures, plugging of abandoned wells, rainwater harvesting, and other treatment measures for the conservation of water resources.

(d) Reasonable fees, as determined by the district, may be imposed on an annual basis on each nonexempt well. The district shall adopt any rules necessary for the assessment and collection of fees under this subsection.

(e) The district may use money collected from fees:

(1) in any manner necessary for the management and operation of the district;

(2) to pay all or part of the principal of and interest on district bonds or notes; and

(3) for any purpose consistent with the district's certified water management plan.

(f) The district shall grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented. The district shall adopt rules to implement this subsection. A retail public utility shall receive the same exemption or relief from ad valorem taxes on property as any other customer of the district would receive.

(g) As a water conservation initiative to encourage retail public utilities to obtain water supplies from sources other than groundwater, the district shall grant an exemption or other relief from ad valorem taxes on property served by a retail public utility based on:

(1) the percentage of potable water supplied within the district by the retail public utility from sources other than groundwater compared to the total water supplied by the retail public utility for the preceding year; and

(2) the percentage of wastewater effluent produced by the retail public utility that is used as reclaimed water within the district compared to the total wastewater effluent produced by the retail public utility for the preceding year. The district may consider the impact of floods and equipment breakage on the retail public utility's ability to supply water from sources other than groundwater.

(h) The total amount of the exemption or other relief from ad valorem taxes may not exceed one-half of the tax levied by the district.

SECTION 3.0112. PROHIBITED ACTS. The district may not:

(1) impose an ad valorem property tax for administrative, operation, or maintenance expenses that exceeds the lesser of the rate approved by the majority of the qualified voters voting in the election authorizing the tax, or three cents per \$100 valuation;

(2) require the owner of a well used solely for domestic or livestock purposes to install a meter or measuring device on the well;

(3) enter into any contract or engage in any action to supply water to any person in the service area of any municipality or retail public utility located in the district, except with the consent of the municipality or retail public utility; or

(4) issue any bonds secured by ad valorem taxes before September 1, 2004.

#### PART 2. CROSSROADS GROUNDWATER CONSERVATION DISTRICT

SECTION 3.0201. RATIFICATION OF CREATION. The creation of the Crossroads Groundwater Conservation District in Victoria County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0210 of this part.

SECTION 3.0202. DEFINITIONS. In this part:

(1) "Board" means the district's board of directors.

(2) "Commissioners court" means the Victoria County Commissioners Court.

(3) "District" means the Crossroads Groundwater Conservation District.

SECTION 3.0203. LEGISLATIVE FINDINGS. The legislature finds that:

(1) the organization of the district is feasible and practicable;

(2) all of the land to be included in, and the residents of, the district will benefit from the creation of the district;

(3) there is a public necessity for the district; and

(4) the creation of the district will provide a benefit and utility to the public.

SECTION 3.0204. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Victoria County.

SECTION 3.0205. APPLICATION OF CHAPTER 36, WATER CODE; GENERAL POWERS AND DUTIES. (a) Except to the extent of any conflict with this part or as specifically limited by this part, the district is governed by and subject to Chapter 36, Water Code, and may exercise all of the powers contained in that chapter, including the power to issue bonds and levy and collect taxes and the power of eminent domain. The district may exercise all of the duties provided by Chapter 36, Water Code.

(b) This part prevails over any conflicting or inconsistent provision of Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999.

SECTION 3.0206. BOARD OF DIRECTORS. (a) The district is governed by a board of seven directors.

(b) The directors for Places 1-4 are appointed by the commissioners court. The directors for Places 5-7 are appointed by the city council of the City of Victoria.

(c) The directors shall select from their members persons to serve as chairman, vice chairman, and secretary.

SECTION 3.0207. QUALIFICATIONS OF BOARD MEMBERS. To be qualified for appointment as a director, a person must be a resident of the district and must be at least 18 years of age.

SECTION 3.0208. TERM OF OFFICE. (a) Except for the temporary and initial directors of the district, directors serve staggered four-year terms.

(b) A vacancy in the office of director is filled for the remainder of the term by appointment by the commissioners court or the city council of the City of Victoria, as appropriate.

SECTION 3.0209. TEMPORARY DIRECTORS. (a) On September 1, 2001, the following persons are designated as temporary directors of the district:

- (1) Place 1: Mark Dierlam
- (2) Place 2: Rocky Sanders
- (3) Place 3: S. F. Ruschhaupt III
- (4) Place 4: Joseph Dial
- (5) Place 5: Stephen Diebel
- (6) Place 6: Jerry James
- (7) Place 7: Denise McCue

(b) If a temporary director fails to qualify for office or if a vacancy occurs in the office of temporary director for any reason, the commissioners court shall appoint a person to fill a vacancy in Place 1, 2, 3, or 4, and the city council of the City of Victoria shall appoint a person to fill a vacancy in Place 5, 6, or 7.

(c) The temporary directors shall select from their members persons to serve as chairman, vice chairman, and secretary.

(d) The temporary directors serve until they declare the district created, at which time they become the initial directors of the district under Section 3.0211 of this part.

(e) To be qualified to serve as a temporary director, a person must be a resident of Victoria County and at least 18 years of age.

SECTION 3.0210. CONFIRMATION ELECTION. (a) Not later than October 1, 2001, and without the necessity of having a petition presented, the temporary directors shall meet and call an election to be held not later than January 1, 2002, within the boundaries of the proposed district to confirm the creation of the district.

(b) Section 41.001(a), Election Code, does not apply to an election called under this section.

(c) The ballot for the election shall be printed to provide for a vote for or against the following propositions:

(1) the creation of the Crossroads Groundwater Conservation District in Victoria County; and

(2) the levy and collection of a property tax in the district.

(d) The temporary board may include other propositions on the ballot that it considers necessary.

(e) If a majority of votes cast at the election favor the creation of the district, the temporary directors shall declare the district created. If a majority of the votes cast at the election are against the creation of the district, the temporary directors shall declare the district defeated. The temporary directors shall file a copy of the election results with the Texas Natural Resource Conservation Commission.

(f) If the creation of the district is defeated, further elections may be called and held after the first anniversary of the most recent confirmation election. If the district is not created by September 1, 2006, this part expires.

SECTION 3.0211. INITIAL DIRECTORS. (a) On confirmation of the creation of the district under Section 3.0210 of this part, the temporary directors become the initial directors of the district and serve terms as provided by Subsection (b) of this section, except that not later than the 60th day after the date on which the temporary directors declare the district created, the commissioners court may replace any director in Places 1-4 and the city council of the City of Victoria may replace any director in Places 5-7.

(b) The initial directors for Places 1, 3, 5, and 7 serve for four years following the confirmation of the district. The initial directors for Places 2, 4, and 6 serve for two years following the confirmation of the district.

(c) If, for any reason, an appointed director is not qualified to take office at the first regular meeting of the board following the director's appointment, the director for that place shall continue to serve until a successor has qualified.

SECTION 3.0212. LIMITATION ON TAXATION. The district may not impose an ad valorem tax at a rate that exceeds two cents on the \$100 valuation of taxable property in the district.

### PART 3. HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT

SECTION 3.0301. RATIFICATION OF CREATION. The creation by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, of the Hays Trinity Groundwater Conservation District in Hays County is ratified as required by Section 15(a) of that Act, subject to approval at a confirmation election under Section 3.0309 of this part.

SECTION 3.0302. DEFINITION. In this part, "district" means the Hays Trinity Groundwater Conservation District.

SECTION 3.0303. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Hays County, Texas, excluding any area in Hays County that is, on the effective date of this Act, within another groundwater conservation district with authority to require a permit to drill or alter a well for the withdrawal of groundwater. Not later than the 30th day after the date of the first meeting of the board of directors of the district, and before a confirmation election is held, the board shall prepare and file a description of district boundaries with the Hays County clerk and the Texas Natural Resource Conservation Commission.

SECTION 3.0304. GENERAL POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law that is in conflict or inconsistent with this part, including any provision of Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999.

(b) Notwithstanding Subsection (a) of this section, the following provisions prevail over a conflicting or inconsistent provision of this part:

- (1) Sections 36.1071-36.108, Water Code;
- (2) Sections 36.159-36.161, Water Code; and
- (3) Subchapter I, Chapter 36, Water Code.

(c) The district may not enter property to inspect an exempt well without the property owner's permission.

(d) The Hays County Commissioners Court by resolution may require an election to affirm or reverse a decision of the board of directors of the district not later than six months after the date of the decision.

(e) The district may not adopt standards for the construction of a residential well that are more stringent than state standards for a residential well.

SECTION 3.0305. EXEMPT WELLS. (a) The following wells are exempt from the requirements of Chapter 36, Water Code, and may not be regulated, permitted, or metered by the district:

(1) a well used for domestic use by a single private residential household and producing less than 25,000 gallons per day; and

(2) a well used for conventional farming and ranching activities, including such intensive operations as aquaculture, livestock feedlots, or poultry operations.

(b) The district may not require a permit to construct a well described by Subsection (a)(2) of this section.

(c) A well used for dewatering and monitoring in the production of coal or lignite is exempt from permit requirements, regulations, and fees imposed by the district.

SECTION 3.0306. FISCAL RESPONSIBILITIES. (a) The district annually shall prepare a budget showing proposed expenditures and disbursements and estimated receipts and collections for the next fiscal year and shall hold a public hearing on the proposed budget. The district must publish notice of the hearing at least once in a newspaper of general circulation in the county not later than the 10th day before the date of the hearing. A taxpayer of the district is entitled to appear at the hearing to be heard regarding any item in the proposed budget.

(b) At the written request of the Hays County Commissioners Court, the county auditor shall audit the performance of the district. The court may request a general audit of the performance of the district or may request an audit of only one or more district matters.

SECTION 3.0307. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 3.0309 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.0310 of this part.

(d) Permanent directors serve staggered two-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

(g) If there is a vacancy on the board, the Hays County Commissioners Court shall appoint a director to serve the remainder of the term.

(h) A director may not receive a salary or other compensation for service as a director but may be reimbursed for actual expenses of attending meetings at the rate in effect for employees of Hays County.

SECTION 3.0308. METHOD OF ELECTING DIRECTORS: SINGLE-MEMBER DISTRICTS. (a) The temporary directors shall draw five numbered, single-member districts for electing directors.

(b) For the conduct of an election under Section 3.0309 or Section 3.0310 of this part, the board shall provide for one director to be elected from each of the single-member districts. A director elected from a single-member district represents the residents of that single-member district.

(c) To be qualified to be a candidate for or to serve as director, a person must be a registered voter in the single-member district that the person represents or seeks to represent.

(d) The initial or permanent directors may revise the districts as necessary or appropriate. The board of directors shall revise each single-member district after each federal decennial census to reflect population changes. At the first election after the single-member districts are revised, a new director shall be elected from each district. The directors shall draw lots to determine which two directors serve one-year terms and which three directors serve two-year terms.

**SECTION 3.0309. CONFIRMATION AND INITIAL DIRECTORS ELECTION.**

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director's position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under Section 3.0308 of this part may file for an initial director's position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

**SECTION 3.0310. ELECTION OF DIRECTORS.** (a) On the first Saturday in May or the first Tuesday after the first Monday in November of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of three directors to serve two-year terms and two directors to serve one-year terms.

(b) On the first Saturday in May or the first Tuesday after the first Monday in November, as applicable, of each subsequent second year following the election held under Subsection (a) of this section, the appropriate number of directors shall be elected.

**SECTION 3.0311. OTHER ELECTIONS.** An election held by the district, other than an election under Section 3.0309 or 3.0310 of this part, must be scheduled to coincide with a general election in May or November.

**SECTION 3.0312. FUNDING AUTHORITY.** (a) Except as provided by Sections 3.0305(b) and (c) of this part, the district may require a permit for the construction of a new well completed after the effective date of this Act and may charge and collect a construction permit fee not to exceed \$300.

(b) The district may levy and collect a water utility service connection fee not to exceed \$300 for each new water service connection made after the effective date of this Act. This subsection does not apply to a water utility that has surface water as its sole source of water.

(c) Notwithstanding Section 3.0304(a) of this part or Subchapter G, Chapter 36, Water Code, the district may not impose a tax or assess or collect any fees except as authorized by Subsection (a) or (b) of this section.

**SECTION 3.0313. EXPIRATION DATE.** If the creation of the district is not confirmed at a confirmation election held under Section 3.0309 of this part before September 1, 2003, this part expires on that date.

PART 4. LONE WOLF GROUNDWATER  
CONSERVATION DISTRICT

SECTION 3.0401. RATIFICATION OF CREATION. The creation of the Lone Wolf Groundwater Conservation District in Mitchell County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0407 of this part.

SECTION 3.0402. DEFINITION. In this part, "district" means the Lone Wolf Groundwater Conservation District.

SECTION 3.0403. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

SECTION 3.0404. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 3.0407 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.0408 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

SECTION 3.0405. COMPENSATION OF DIRECTORS. A director is not entitled to fees of office but is entitled to reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

SECTION 3.0406. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this section.

(b) One director shall be elected by the voters of the entire district, and one director shall be elected from each county commissioners precinct by the voters of that precinct.

(c) To be eligible to be a candidate for or to serve as director at large, a person must be a registered voter in the district. To be eligible to be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(d) A person shall indicate on the application for a place on the ballot:

(1) the precinct that the person seeks to represent; or

(2) that the person seeks to represent the district at large.

(e) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

**SECTION 3.0407. CONFIRMATION AND INITIAL DIRECTORS ELECTION.**

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director position and blank spaces to write in the names of other persons. A temporary director who is eligible to be a candidate under Section 3.0406 of this part may file for an initial director position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

**SECTION 3.0408. ELECTION OF DIRECTORS.** (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of three directors to serve four-year terms and two directors to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.

**SECTION 3.0409. LIMITATION ON TAXATION.** The district may levy property taxes at a rate not to exceed 20 cents on each \$100 of assessed valuation to pay any part of the bonds or notes issued by the district if the authority to impose property taxes under this part is approved by a majority of the voters voting at a confirmation election under Section 3.0407 of this part or at a separate election called for that purpose by the board of directors.

**SECTION 3.0410. EXPIRATION.** If the creation of the district is not confirmed at a confirmation election held under Section 3.0407 of this part before September 1, 2003, the district is dissolved and this part expires on that date.

**PART 5. LOST PINES GROUNDWATER  
CONSERVATION DISTRICT**

**SECTION 3.0501. RATIFICATION OF CREATION.** The creation of the Lost Pines Groundwater Conservation District in Bastrop and Lee counties by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0507 of this part.

**SECTION 3.0502. DEFINITIONS.** In this part:

(1) "District" means the Lost Pines Groundwater Conservation District.

(2) "Public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency operating, maintaining, or controlling facilities in the state for providing potable water service for compensation.

**SECTION 3.0503. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Bastrop and Lee counties, Texas.

**SECTION 3.0504. POWERS.** (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any

provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

(b) The district may not impose a tax. The district may assess regulatory pumping fees for water produced in or exported from the district. The regulatory pumping fees the district assesses for water for crop or livestock production or other agricultural uses may not exceed 20 percent of the rate applied to water for municipal uses. Regulatory pumping fees based on the amount of water withdrawn from a well may not exceed:

(1) \$1 per acre-foot for water used for the purpose of irrigating agricultural crops; or

(2) 17 cents per thousand gallons for water used for any other purpose.

(c) The district may adopt a rule exempting a well that is not capable of producing more than 50,000 gallons of groundwater a day from a permit requirement, a fee, or a restriction on production.

**SECTION 3.0505. GROUNDWATER WELLS UNDER JURISDICTION OF RAILROAD COMMISSION.** (a) Groundwater wells drilled or operated within the district under permits issued by the Railroad Commission of Texas are under the exclusive jurisdiction of the railroad commission and are exempt from regulation by the district.

(b) Groundwater produced in an amount authorized by a railroad commission permit may be used within or exported from the district without obtaining a permit from the district.

(c) To the extent groundwater production exceeds railroad commission authorization, the holder of the railroad commission permit must apply to the district for appropriate permits for the excess production and is subject to the applicable regulatory fees.

(d) Groundwater produced from wells under the jurisdiction of the railroad commission is generally exempt from water district fees. However, the district may impose either a pumping fee or an export fee on groundwater produced from an otherwise exempt mine well that is used for municipal purposes or by a public utility. Any fee imposed by the district under this subsection may not exceed the fee imposed on other groundwater producers in the district.

**SECTION 3.0506. BOARD OF DIRECTORS.** (a) The district is governed by a board of 10 directors.

(b) Five directors shall be appointed from Bastrop County by the county judge of Bastrop County and five directors shall be appointed from Lee County by the county judge of Lee County.

(c) Temporary directors serve until their successors are appointed and have qualified.

(d) The temporary directors shall draw lots to determine:

(1) which three directors from each county will serve four-year terms that expire December 31, 2005; and

(2) which two directors from each county will serve two-year terms that expire December 31, 2003.

(e) In each subsequent second year following the initial appointment of directors, the appropriate number of directors shall be appointed.

(f) Except as provided by Subsection (d) of this section, directors serve staggered four-year terms.

(g) Directors may serve consecutive terms.

(h) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(i) A director serves until the director's successor has qualified.

(j) If a vacancy occurs on the board of directors, the board may appoint a director to serve the remainder of the term.

(k) A director may receive fees of office as provided by Section 36.060, Water Code, and is entitled to reimbursement for reasonable actual expenses incurred in performing duties as a director.

#### SECTION 3.0507. INITIAL MEETING AND CONFIRMATION ELECTION.

(a) As soon as practicable after September 1, 2001, the temporary directors shall meet to set the date for and call the confirmation election. The directors shall hold the meeting in conjunction with the regularly scheduled meeting of the directors.

(b) The election shall be held on the authorized election date in November if the United States Department of Justice has precleared this part by that time. If this part has not been precleared by the November election date, the confirmation election shall be held at the next authorized election date. The district shall contract with the county clerks of Bastrop and Lee counties to conduct the election.

(c) Except as provided by this section, the confirmation election must be conducted as provided by Sections 36.017 and 36.018, Water Code, and the Election Code.

(d) If a majority of the votes cast at an election held under this section is against the confirmation of the district, the temporary directors may not call another election under this section before the first anniversary of that election.

#### SECTION 3.0508. REGIONAL COOPERATION. The district shall:

(1) adopt a management plan detailing proposed efforts of the district to cooperate with other groundwater conservation districts;

(2) participate as needed in coordination meetings with adjacent groundwater conservation districts that share one or more aquifers with the district;

(3) coordinate the collection of data with adjacent groundwater conservation districts in such a way as to achieve relative uniformity of data type and quality;

(4) provide groundwater level information to adjacent groundwater conservation districts;

(5) investigate any groundwater pollution to identify the pollution's source;

(6) notify adjacent groundwater conservation districts and all appropriate agencies of any groundwater pollution detected and the source of pollution identified;

(7) provide to adjacent groundwater conservation districts annually an inventory of water wells in the district and an estimate of groundwater production within the district; and

(8) include adjacent groundwater conservation districts on mailing lists for district newsletters and information regarding seminars, public education events, news articles, and field days.

SECTION 3.0509. EXPIRATION. If the creation of this district is not confirmed at a confirmation election held under Section 3.0507 of this part before September 1, 2005, this part expires on that date.

SECTION 3.0510. CONFLICTS. If another bill relating to the Lost Pines Groundwater Conservation District is enacted by the 77th Legislature, Regular Session, 2001, and becomes law, then, to the extent of any conflict between that Act and this part, the provisions of that Act shall prevail.

PART 6. MCMULLEN GROUNDWATER  
CONSERVATION DISTRICT

SECTION 3.0601. RATIFICATION OF CREATION. The creation of the McMullen Groundwater Conservation District in McMullen County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0607 of this part.

SECTION 3.0602. DEFINITION. In this part, "district" means the McMullen Groundwater Conservation District.

SECTION 3.0603. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of McMullen County.

SECTION 3.0604. GENERAL POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

(b) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state to be exercised by and through the Texas Natural Resource Conservation Commission.

SECTION 3.0605. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 3.0607 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.0608 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

(g) If there is a vacancy on the board, the remaining directors shall appoint a director to serve the remainder of the term.

SECTION 3.0606. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this section.

(b) One director shall be elected by the voters of the entire district and one director shall be elected from each county commissioners precinct by the voters of that precinct.

(c) To be qualified as a candidate for or to serve as director at large, a person must be a registered voter in the district. To be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(d) A person shall indicate on the application for a place on the ballot:

(1) the precinct that the person seeks to represent; or

(2) that the person seeks to represent the district at large.

(e) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

**SECTION 3.0607. CONFIRMATION AND INITIAL DIRECTORS ELECTION.**

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the names of the persons serving as temporary directors who intend to run for an initial director position and are qualified to be a candidate under Section 3.0606 of this part together with the name of any candidate filing for an initial director position and blank spaces to write in the names of other persons.

(c) If the district is created at the election, the temporary board of directors, at the time the vote is canvassed, shall:

(1) declare the qualified person who receives the most votes for each position to be elected as the initial director for that position; and

(2) include the results of the initial directors election in the district's election report to the Texas Natural Resource Conservation Commission.

(d) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(e) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

(f) If a majority of the votes cast at an election held under this section is against the confirmation of the district, the temporary directors may not call another election under this section before the first anniversary of that election.

**SECTION 3.0608. ELECTION OF PERMANENT DIRECTORS.** (a) On the first Saturday in October of the second year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of directors from county commissioners precincts one and three, each of whom serves a two-year term, and directors from county commissioners precincts two and four and the director at large, each of whom serves a four-year term.

(b) On the first Saturday in October of each subsequent second year following the election, the appropriate number of directors shall be elected to the board, each of whom serves a four-year term.

**SECTION 3.0609. LIMITATION ON TAXATION.** The district may not impose an ad valorem tax at a rate that exceeds five cents on the \$100 valuation of taxable property in the district.

**SECTION 3.0610. EXPIRATION.** If the creation of the district is not confirmed at a confirmation election held under Section 3.0607 of this part before September 1, 2003, this part expires on that date.

**PART 7. KIMBLE COUNTY GROUNDWATER  
CONSERVATION DISTRICT**

**SECTION 3.0701. CREATION.** (a) A groundwater conservation district, to be known as the Kimble County Groundwater Conservation District, is created in Kimble County, subject to approval at a confirmation election under this part. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

SECTION 3.0702. DEFINITION. In this part, "district" means the Kimble County Groundwater Conservation District.

SECTION 3.0703. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Kimble County, Texas, excluding that part of Kimble County that lies within the boundaries of the Hickory Underground Water District.

SECTION 3.0704. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION 3.0705. GENERAL POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law that is in conflict or is inconsistent with this part.

(b) Notwithstanding Subsection (a) of this section, the following provisions prevail over a conflicting or inconsistent provision of this part:

- (1) Sections 36.1071-36.108, Water Code;
- (2) Sections 36.159-36.161, Water Code; and
- (3) Subchapter I, Chapter 36, Water Code.

(c) Chapter 49, Water Code, does not apply to the district.

SECTION 3.0706. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under this part.

(c) Initial directors serve until permanent directors are elected under this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

SECTION 3.0707. COMPENSATION OF DIRECTORS. A director is not entitled to fees of office but is entitled to reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

SECTION 3.0708. TEMPORARY DIRECTORS. (a) The temporary board of directors consists of five members appointed by the Commissioners Court of Kimble County.

(b) If a temporary director fails to qualify for office, the Commissioners Court of Kimble County shall appoint a person to fill the vacancy.

SECTION 3.0709. METHOD OF ELECTING DIRECTORS: SINGLE-MEMBER DISTRICTS. (a) The temporary directors shall draw five numbered, single-member districts for electing directors.

(b) For the conduct of an election under the following two sections of this part, the board shall provide for one director to be elected from each of the single-member districts. A director elected from a single-member district represents the residents of that single-member district.

(c) To be qualified to be a candidate for or to serve as director, a person must be a registered voter in the single-member district that the person represents or seeks to represent.

(d) The initial or permanent directors may revise the districts as necessary or appropriate. The board of directors shall revise each single-member district after each federal decennial census to reflect population changes. At the first election after the single-member districts are revised, a new director shall be elected from each district. The directors shall draw lots to determine which two directors serve two-year terms and which three directors serve four-year terms.

**SECTION 3.0710. CONFIRMATION AND INITIAL DIRECTORS ELECTION.**

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director's position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under the preceding section of this part may file for an initial director's position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

**SECTION 3.0711. ELECTION OF DIRECTORS.** (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of three directors to serve four-year terms and two directors to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.

**SECTION 3.0712. TAX RATE.** The district may not levy a tax to pay any part of bonds or notes issued by the district that exceeds 20 cents on each \$100 of assessed valuation.

**SECTION 3.0713. EFFECTIVE DATE; EXPIRATION DATE.** (a) This part takes effect September 1, 2001.

(b) If the creation of the district is not confirmed at a confirmation election held under this part before September 1, 2003, this part expires on that date.

**PART 8. RED SANDS GROUNDWATER  
CONSERVATION DISTRICT**

**SECTION 3.0801. RATIFICATION OF CREATION.** The creation of the Red Sands Groundwater Conservation District in Hidalgo County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0808 of this part.

**SECTION 3.0802. DEFINITION.** In this part, "district" means the Red Sands Groundwater Conservation District.

**SECTION 3.0803. BOUNDARIES.** The district includes all of the territory contained in the following described area:

A 19,232 acre tract more or less out of San Salvador Del Tule Grant as recorded in Volume 10, Page 58 of the Hidalgo County, Texas map records and out of the

Santa Anita Grant as recorded in Volume 7, Page 38 of the Hidalgo County, Texas map records.

Commencing at the Southeast Corner of this here in described boundary tract, said point being the intersection of the centerline of U.S. Highway 281 and the centerline of Farm to Market Road number 490 (F.M. 490) (West Hargill Road) as shown in the map of San Salvador Del Tule Grant as recorded in Volume 10, Page 58 of the Hidalgo County map records. Said point is also the point of beginning.

Thence, Westerly along the center line of the F.M. 490, an approximate distance of 18,400 feet to a point on the West line of San Salvador Del Tule Grant, said point also being the intersection of the centerline of F.M. 490 and the West line of the San Salvador Del Tule Grant,

Thence, Northerly along the West line of the San Salvador Del Tule Grant and the East line of the Santa Anita Grant at an approximate distance of 21,300 feet to a point, said point being an inside corner of this herein described tract, and also being the Southeast corner of Redland Vineyards Subdivision as recorded in Volume 4, Page 51 of the Hidalgo County map records,

Thence, Westerly along the South line of the Redland Vineyards Subdivision, an approximate distance of 4,238 feet to a point, said point being an outside corner of this herein described tract, said point also being the Southwest corner of the Redland Vineyard Subdivision,

Thence, Northerly with the West line of Redland Vineyards Subdivision, at approximately 4,590.50 feet past a point, said point being the Northwest corner of Redland Vineyard Subdivision, and the Southwest corner of Delbridge Subdivision as recorded in Volume 5, Page 11, Hidalgo County map records, and continuing Northerly along the West line of Delbridge Subdivision for an approximate total distance of 6,646 feet to a point, said point being an inside corner of this herein described tract, and also being the Northwest corner of Delbridge Subdivision,

Thence, Westerly along the South line of a 196.37 acres tract, known as the A.B. De Kock Tract, an approximate distance of 3,500 feet past the Southeast corner of share 4, out of the 8,374.70 acre tract partition out of the Santa Anita Grant as recorded in Volume 7, Page 38, in the Hidalgo County map records and continuing Westerly for an approximate total distance of 6,500 feet to a point, said point being an outside corner of this herein described tract and also being the Southwest corner of share 4,

Thence, Northerly along the West line of share 4, an approximate total distance of 19,143 feet to a point, said point being the Northwest corner of this herein described tracts and, the intersection of the West line of share 4 and the centerline of Farm to Market Road number 1017, (F.M. 1017)

Thence, in a Southeasterly direction, with the Right-of-Way centerline of Farm to Market Road number 1017 (F.M. 1017) an approximate total distance of 27,800 feet to a point, said point being the Northeast corner of this herein described tract, and also being the intersection of the centerline of F.M. 1017 Right-of-Way and the center line of the U.S. Highway 281 Right-Of-Way,

Thence, in a Southerly direction, with the centerline of U.S. Highway 281 Right-Of-Way, an approximate distance of 7,500 feet past Floral Road, and at approximate 21,700 feet past Red Gate Road and at approximate 29,700 feet past Laguna Seca Road and for an approximate total distance of 39,300 feet to the point of beginning of this here in described tract, said tract contains 19,232 Acres, More or Less.

SECTION 3.0804. FINDINGS RELATIVE TO BOUNDARIES. The legislature finds that the boundaries and field notes of the district form a closure. A mistake in the field notes or in the copying of the field notes in the legislative process does not affect the organization, existence, or validity of the district, the right of the district to levy and collect taxes, or the legality or operation of the district or its governing body.

SECTION 3.0805. GENERAL POWERS. (a) Except as provided by this part, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

(b) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state, to be exercised by and through the Texas Natural Resource Conservation Commission.

SECTION 3.0806. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors, each elected at large to one of five numbered places.

(b) To be eligible to serve as a director, an individual must reside in the district.

(c) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(d) Permanent directors serve staggered three-year terms.

(e) A director serves until the director's successor has qualified.

(f) A vacancy in the office of director shall be filled by appointment of the board of directors until the next election of directors, at which election a person shall be elected to fill the position. If the position is not scheduled to be filled at the election, the person elected to fill the position serves only the remainder of the unexpired term.

(g) An appointed director who is qualified to serve as a director under Subsection (b) of this section is eligible to run for election to the board of directors.

SECTION 3.0807. TEMPORARY DIRECTORS. (a) The temporary board of directors is composed of:

- (1) Lucas Hinojosa;
- (2) Becky Guerra;
- (3) Arcadio Guerra;
- (4) Elizabeth Ann Sweet; and
- (5) John Cozad.

(b) The temporary directors are not required to meet the eligibility requirements of permanent directors.

(c) Temporary directors serve until permanent directors are elected at the confirmation election under Section 3.0808 of this part.

SECTION 3.0808. CONFIRMATION AND INITIAL DIRECTORS ELECTION. (a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the names of the candidates for each of the five numbered positions and blank spaces to write in the names of other persons. Names on the ballot may include persons serving as temporary directors who intend to run for an initial director position together with the name of any candidate filing for an initial director position.

(c) If a majority of the votes cast at the election are in favor of the creation of the district, the temporary board of directors shall declare the district created. If a majority of the votes cast at the election are against the creation of the district, the temporary board of directors shall declare the district defeated. The temporary board of directors shall file a copy of the election results with the Texas Natural Resource Conservation Commission.

(d) If a majority of the votes cast at the election are against the creation of the district, the temporary board of directors may not call another election under this section before the first anniversary of the date of the election.

(e) If the creation of the district is confirmed at the election, the temporary board of directors, at the time the vote is canvassed, shall:

(1) declare the qualified person who receives the most votes for each position to be elected as the initial director for that position; and

(2) include the results of the initial directors election in the district's election report to the Texas Natural Resource Conservation Commission.

(f) The initial directors shall draw lots to determine their terms so that:

(1) one director serves a one-year term that expires on the anniversary of the date the initial directors were elected;

(2) two directors serve two-year terms that expire on the anniversary of the date the initial directors were elected; and

(3) two directors serve three-year terms that expire on the anniversary of the date the initial directors were elected.

(g) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(h) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

**SECTION 3.0809. ELECTION OF PERMANENT DIRECTORS.** Beginning in the first year after the year in which the district is authorized to be created at a confirmation election, the board of directors shall call an election to be held in the district on the first Saturday of the month in which the initial directors were elected under Section 3.0808 of this part and every year after that date to elect the appropriate number of directors to the board.

**SECTION 3.0810. ELIGIBLE DISTRICT VOTERS.** Any person qualified to vote under the Election Code who resides in the district is eligible to vote in district elections.

**SECTION 3.0811. TAXATION AUTHORITY.** (a) The board of directors shall impose taxes in accordance with Subchapter G, Chapter 36, Water Code.

(b) Notwithstanding Section 36.201, Water Code, the board of directors may annually impose an ad valorem tax at a rate not to exceed two cents on each \$100 of assessed valuation unless a higher rate is approved by a majority of the voters of the district voting at an election called and held for that purpose.

**SECTION 3.0812. TRANSPORTATION OF GROUNDWATER.** (a) The board of directors may adopt rules under Section 36.122, Water Code, requiring a permit to transport district groundwater outside the district. The board of directors shall authorize the transportation of groundwater for use outside the district if the board determines that the use is in the public interest. The board of directors may:

(1) designate uses of water that are in the public interest; and

(2) establish criteria for permits issued under the rules.

(b) Transportation projects for the use of groundwater outside the district that began before September 1, 2001, may continue without a permit if the use of groundwater is on land contiguous to the district's boundaries and is for domestic or livestock purposes.

SECTION 3.0813. EXPIRATION. If the creation of the district is not confirmed at a confirmation election held under Section 3.0808 of this part before September 1, 2003, this part expires on that date.

#### PART 9. REFUGIO GROUNDWATER CONSERVATION DISTRICT

SECTION 3.0901. RATIFICATION OF CREATION. The creation of the Refugio Groundwater Conservation District in Refugio County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.0907 of this part.

SECTION 3.0902. DEFINITION. In this part, "district" means the Refugio Groundwater Conservation District.

SECTION 3.0903. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Refugio County.

SECTION 3.0904. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

SECTION 3.0905. BOARD OF DIRECTORS. (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 3.0907 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.0908 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

(g) If a director fails to qualify for office or if there is at any time a vacancy on the temporary board of directors, the commissioners court shall appoint a person to fill the vacancy.

SECTION 3.0906. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS. (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this section.

(b) One director shall be elected by the qualified voters of the entire district, and one director shall be elected from each county commissioners precinct by the qualified voters of that precinct.

(c) To be qualified to be a candidate for or to serve as director at large, a person must be a registered voter in the district. To be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(d) A person shall indicate on the application for a place on the ballot:

- (1) the precinct that the person seeks to represent; or
- (2) that the person seeks to represent the district at large.

(e) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

#### SECTION 3.0907. CONFIRMATION AND INITIAL DIRECTORS ELECTION.

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under Sections 3.0905 and 3.0906 of this part may file for an initial director position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

SECTION 3.0908. ELECTION OF DIRECTORS. (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of three directors to serve four-year terms and two directors to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.

SECTION 3.0909. EXPIRATION. If the creation of the district is not confirmed at a confirmation election held under Section 3.0907 of this part before September 1, 2003, the district is dissolved and this part expires on that date.

### PART 10. SOUTHEAST TRINITY GROUNDWATER CONSERVATION DISTRICT

SECTION 3.1001. PURPOSE. The purpose of this part is to ratify the Southeast Trinity Groundwater Conservation District, a locally controlled groundwater district, to protect, recharge, and prevent the waste of groundwater and to control subsidence of water from the groundwater reservoirs.

SECTION 3.1002. RATIFICATION OF CREATION. The creation of the Southeast Trinity Groundwater Conservation District by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that Act, subject to a confirmation election under Section 3.1008 of this part.

SECTION 3.1003. DEFINITIONS. In this part:

- (1) "Board" means the board of directors of the district.
- (2) "Commission" means the Texas Natural Resource Conservation Commission.
- (3) "District" means the Southeast Trinity Groundwater Conservation District.

SECTION 3.1004. BOUNDARIES. The boundaries of the district are as follows:

BEGINNING at the point of intersection of the Bexar County - Comal County - Kendall County line:

THENCE following the meanders of the Cibolo Creek, the Bexar County - Comal County line in an Easterly direction to the point of intersection with latitude 29° 40':

THENCE along 29° 40' in a Southeasterly direction to the point of intersection with Farm to Market Road 3009:

THENCE with the centerline of Farm to Market Road 3009 in a Southerly direction to the point of intersection with the centerline of Schoenthal Road:

THENCE with the centerline of Schoenthal Road in a Northeasterly direction to the point of intersection with the centerline of Farm to Market Road 1863:

THENCE with the centerline of Farm to Market Road 1863 in an Easterly direction to the point of intersection with the centerline of Mission Valley Road:

THENCE with the centerline of Mission Valley Road in a Northeasterly direction to the point of intersection with the centerline of State Highway 46;

THENCE with the centerline of State Highway 46 in a Northwesterly direction to the point of intersection with the centerline of Hueco Springs Loop Road:

THENCE with the centerline of Hueco Springs Loop Road in a Northeasterly then Easterly direction to the point of intersection with the centerline of River Road:

THENCE with the centerline of River Road in a Northeasterly direction to the point of intersection with the Guadalupe River at the First Crossing:

THENCE following the meanders of the Guadalupe River in a Northerly direction to the point of intersection of the centerlines of the Guadalupe River and Deep Creek:

[Note: the next four paragraphs coincide with the Southern boundary of Comal County Voters Precinct 18]

THENCE along the meanders of Deep Creek in a Northeasterly direction to the point of intersection of the centerline of Deep Creek and the South line of the G. F. Lawrence Survey No. 33, Abstract No. 358:

THENCE with the South line of the G. F. Lawrence Survey No. 33, Abstract No. 358 in a Northeasterly, Southeasterly, and Northeasterly direction to the point of intersection of the South centerline of Farm to Market Road 306 being at approximately Engineers Station 397+98.3:

THENCE with the centerline of Farm to Market Road 306 in a Southeasterly direction to the point of intersection of the centerlines of Farm to Market Road 306 and the William Pfeuffer private ranch road:

THENCE with the approximate bearing N 69° E and approximate distance 5,000 feet to an angle point in the Comal County - Hays County Line:

THENCE with the Comal County - Hays County line in a Northwesterly direction to the point of intersection of the Comal County - Hays County line with the Comal County - Blanco County line:

THENCE with the Comal County - Blanco County line in a Southwesterly direction to the point of intersection of the Comal County - Blanco County - Kendall County line, continuing with the Comal County - Kendall County line in a Southwesterly direction to point of intersection of the Kendall County - Comal County - Bexar County line being the Point of Beginning.

SECTION 3.1005. FINDINGS RELATIVE TO BOUNDARIES. The legislature finds that the boundaries and field notes of the district form a closure. A mistake in the

field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district, the right of the district to levy and collect taxes, or the legality or operation of the district or its governing body.

**SECTION 3.1006. AUTHORITY OF DISTRICT.** (a) Except as provided by this section or otherwise by this part, the district has the same permitting and general management powers as those granted under Chapter 36, Water Code.

(b) The district has no regulatory jurisdiction over the Edwards Aquifer or any surface water supply.

(c) The board by rule may impose reasonable fees, including fees for groundwater transported out of the district, on each groundwater well in the district that is not exempt from regulation by the district, based on the amount of water withdrawn from the well. The fees may be assessed annually, based on the size of column pipe used in the wells, pump capacity, or actual, authorized, or anticipated pumpage, to pay the maintenance and operating expenses of the district's regulation of groundwater.

(d) Section 36.205(c), Water Code, does not apply to the district.

(e) The district may assess an ad valorem property tax not to exceed seven cents per \$100 valuation for administrative, operation, and maintenance expenses if approved by a majority of the qualified voters voting in an election authorizing the tax.

(f) Any district conservation fee paid by a retail public utility to the district shall be:

(1) collected by the retail public utility directly as a regulatory fee from the customers of the utility and paid to the district; and

(2) shown as a separate line item on the customer's bill.

(g) Fees may not be assessed for groundwater withdrawn from the Edwards Aquifer.

(h) The district shall determine which classes of wells are exempt from permitting requirements.

(i) The district may not require a permit for:

(1) the drilling of or producing from a well either drilled, completed, or equipped so that it is capable of producing less than 10,000 gallons of water per day; or

(2) the drilling of or alteration of the size of a well or to restrict the production of a well if the water produced or to be produced from the well is or will be used to supply the domestic needs of five or fewer households in which a person who is a member of each household is either the owner of the well, a person related to the owner or to a member of the owner's household within the second degree by consanguinity, or an employee of the owner.

(j) The district may construct according to, implement, and maintain best management practices in the district and may engage in and promote acceptance of best management practices through education efforts sponsored by the district for the purposes of water quality and water availability practices such as brush management, recharge enhancement, water and silt detention and retention structures, plugging of abandoned wells, and other treatment measures for the conservation of groundwater resources.

**SECTION 3.1007. BOARD OF DIRECTORS.** (a) The district is governed by a board of five directors.

(b) Temporary directors have been appointed by Comal County Commissioners Court and shall serve until initial directors are elected under Section 3.1008 of this part.

- (c) The temporary directors are:
- (1) Cal Perrine;
  - (2) Ernest T. Lee;
  - (3) Jill Sondeen;
  - (4) Larry Hull; and
  - (5) Stovy Bowlin.
- (d) Initial directors shall be elected at a confirmation election and serve until permanent directors are elected under Section 3.1009 of this part.
- (e) Permanent directors serve staggered four-year terms.
- (f) The directors shall be elected from four precincts, and one director will represent the district at large. No more than two precincts may be in a single municipality.
- (g) A member of the board must reside in and be a registered voter in the precinct from which the person is elected or appointed if representing a precinct or must reside and be registered to vote in the district if representing the district at large.
- (h) Directors may serve consecutive terms.
- (i) In an election for board members, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates. A declaration of write-in candidacy must be filed not later than 5 p.m. of the 45th day before election day.
- (j) Vacancies in the office of director are filled by appointment of the board. If the vacant office is not scheduled for election within the next two years at the time of the appointment, the board shall order an election for the unexpired term to be held as part of the next regularly scheduled directors election. The appointed director's term ends on qualification of the director elected at that election.
- (k) The district may not issue bonds before September 1, 2004.
- SECTION 3.1008. CONFIRMATION ELECTION AND ELECTION OF INITIAL DIRECTORS.** (a) As soon as practicable after September 1, 2001, the temporary board of directors may set the date for, call, and hold an election:
- (1) to confirm establishment of the district;
  - (2) to elect five initial directors; and
  - (3) to authorize the district to impose a tax.
- (b) The election may be held on the first authorized election date after the United States Department of Justice has precleared this part. The district shall contract with the county clerk of Comal County to conduct the election.
- (c) The elected initial directors shall draw lots to determine their terms so that:
- (1) two of the initial directors serve two-year terms that expire on the uniform election date in November of the second year after the date the initial directors were elected; and
  - (2) the remaining three initial directors serve four-year terms that expire on the uniform election date in November of the fourth year after the year in which the initial directors were elected.
- (d) Section 41.001(a), Election Code, does not apply to a confirmation and directors election held as provided by this section.
- (e) Except as provided by this section, a confirmation and directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.
- (f) The Comal County Commissioners Court shall pay the expenses of conducting the confirmation and initial directors election, subject to reimbursement

from the district if the establishment of the district is confirmed or from available revenues, including funds allocated under Section 36.160, Water Code, if the establishment of the district is defeated.

(g) If the district is defeated, the temporary directors may call and hold subsequent elections to confirm establishment of the district. A subsequent election may not be held earlier than the first anniversary of the date on which the previous election was held. If the district has not been confirmed at an election held under this section before the fourth anniversary of the effective date of this part, the district is dissolved on that date, except that any debts incurred shall be paid and the organization of the district shall be maintained until all debts are paid.

SECTION 3.1009. ELECTION OF PERMANENT DIRECTORS. (a) On the uniform election date in November of the second year after the year in which initial directors are elected, an election shall be held in the district to elect two permanent directors for the positions of the two initial directors serving two-year terms.

(b) On the uniform election date in November of each subsequent second year following the election held under Subsection (a) of this section, an election shall be held to elect the appropriate number of permanent directors to the board.

SECTION 3.1010. COORDINATION WITH OTHER DISTRICTS. The district may coordinate activities with other groundwater districts that regulate the Trinity Aquifer for the purposes of conjunctively managing the common resource.

SECTION 3.1011. MODIFICATION OF DISTRICT. The district may be modified only under Subchapter J, Chapter 36, Water Code, and by subsequent acts of the legislature.

SECTION 3.1012. STATUTORY INTERPRETATION. Except as otherwise provided by this part, if there is a conflict between this part and Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, this part controls.

#### PART 11. TEXANA GROUNDWATER CONSERVATION DISTRICT

SECTION 3.1101. RATIFICATION OF CREATION. The creation of the Texana Groundwater Conservation District in Jackson County by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.1107 of this part.

SECTION 3.1102. DEFINITION. In this part, "district" means the Texana Groundwater Conservation District.

SECTION 3.1103. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Jackson County.

SECTION 3.1104. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

SECTION 3.1105. BOARD OF DIRECTORS. (a) The district is governed by a board of seven directors.

(b) Temporary directors serve until initial directors are elected under Section 3.1107 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.1108 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(f) A director serves until the director's successor has qualified.

(g) If there is a vacancy on the board, the remaining directors shall appoint a director to serve the remainder of the term.

(h) A director may not receive a salary or other compensation for service as a director but may be reimbursed for actual expenses of attending meetings at the rate in effect for employees of Jackson County.

**SECTION 3.1106. METHOD OF ELECTING DIRECTORS: COMMISSIONERS PRECINCTS.** (a) The directors of the district shall be elected according to the commissioners precinct method as provided by this section.

(b) Three directors shall be elected by the qualified voters of the entire district, and one director shall be elected from each county commissioners precinct by the qualified voters of that precinct.

(c) To be qualified to be a candidate for or to serve as a director at large, a person must be a registered voter in the district. To be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(d) A person shall indicate on the application for a place on the ballot:

(1) the precinct that the person seeks to represent; or

(2) that the person seeks to represent the district at large.

(e) When the boundaries of the commissioners precincts are changed, each director in office on the effective date of the change or elected to a term of office beginning on or after the effective date of the change serves in the precinct to which the director was elected for the entire term to which the director was elected, even though the change in boundaries places the person's residence outside the precinct for which the person was elected.

**SECTION 3.1107. CONFIRMATION AND INITIAL DIRECTORS ELECTION.**

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect initial directors.

(b) At the confirmation and initial directors election, the temporary board of directors shall have placed on the ballot the name of any candidate filing for an initial director position and blank spaces to write in the names of other persons. A temporary director who is qualified to be a candidate under Sections 3.1105 and 3.1106 of this part may file for an initial director position.

(c) Section 41.001(a), Election Code, does not apply to a confirmation and initial directors election held as provided by this section.

(d) Except as provided by this section, a confirmation and initial directors election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

(e) If the majority of the votes cast at an election held under this section is against the confirmation of the district, the temporary directors may not call another election under this section before the first anniversary of that election.

SECTION 3.1108. ELECTION OF DIRECTORS. (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of two directors at large and two directors representing precincts to serve four-year terms and one director at large and two directors representing precincts to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.

SECTION 3.1109. LIMITATION ON TAXATION. The district may not levy or collect an ad valorem tax at a rate that exceeds two cents on each \$100 valuation of taxable property in the district.

SECTION 3.1110. CONTRACTS WITH GOVERNMENT ENTITIES. (a) The district may contract with other government entities.

(b) The district may contract with other governmental entities, including river authorities located in the district, for the performance of any or all district functions. A river authority with which the district contracts under this section may perform district functions as provided by the contract.

#### PART 12. TRI-COUNTY GROUNDWATER CONSERVATION DISTRICT

SECTION 3.1201. RATIFICATION OF CREATION. The creation of the Tri-County Groundwater Conservation District in Foard, Hardeman, and Wilbarger counties by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, is ratified as required by Section 15(a) of that chapter, subject to approval at a confirmation election under Section 3.1207 of this part.

SECTION 3.1202. DEFINITION. In this part, "district" means the Tri-County Groundwater Conservation District.

SECTION 3.1203. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Foard, Hardeman, and Wilbarger counties.

SECTION 3.1204. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law, including Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, that is in conflict or inconsistent with this part.

SECTION 3.1205. BOARD OF DIRECTORS. (a) The district is governed by a board of six directors. Two directors are appointed by the commissioners court of each county in the district.

(b) Each director must qualify to serve as director in the manner provided by Section 36.055, Water Code.

(c) Directors other than initial directors serve staggered four-year terms.

(d) A director serves until the director's successor has qualified.

(e) If there is a vacancy on the board, the appropriate commissioners court shall appoint a director to serve the remainder of the term.

(f) The appropriate commissioners court shall appoint a director to succeed a director on or before the date the director's term expires.

(g) A director may not receive a salary or other compensation for service as a director but may be reimbursed for actual expenses of attending meetings.

**SECTION 3.1206. APPOINTMENT AND TERMS OF INITIAL DIRECTORS.**

(a) As soon as practicable after September 1, 2001, the commissioners courts of Foard, Hardeman, and Wilbarger counties shall each appoint two initial directors.

(b) The initial directors serve terms as follows:

(1) the two initial directors appointed by the Foard County Commissioners Court serve terms expiring February 1, 2002;

(2) the two initial directors appointed by the Hardeman County Commissioners Court serve terms expiring February 1, 2004; and

(3) the two initial directors appointed by the Wilbarger County Commissioners Court serve terms expiring February 1, 2006.

**SECTION 3.1207. CONFIRMATION ELECTION.** (a) The board of directors shall call and hold an election to confirm the establishment of the district.

(b) Section 41.001(a), Election Code, does not apply to a confirmation election held as provided by this section.

(c) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b)-(h), Water Code, and the Election Code.

**SECTION 3.1208. TAXING AUTHORITY.** The district may levy and collect an ad valorem tax in the district at a rate not to exceed one cent on each \$100 of assessed valuation.

**SECTION 3.1209. EXPIRATION.** If the creation of the district is not confirmed at a confirmation election held under Section 3.1207 of this part before September 1, 2003, the district is dissolved and this part expires on that date.

**PART 13. BRAZOS VALLEY GROUNDWATER  
CONSERVATION DISTRICT**

**SECTION 3.1301. RATIFICATION OF CREATION.** The creation by Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999, of the Brazos Valley Groundwater Conservation District in Robertson and Brazos counties is ratified as required by Section 15(a) of that Act, subject to approval at a confirmation election under Section 3.1312 of this part.

**SECTION 3.1302. DEFINITION.** In this part, "district" means the Brazos Valley Groundwater Conservation District.

**SECTION 3.1303. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Robertson and Brazos counties, Texas.

**SECTION 3.1304. GENERAL POWERS.** (a) Except as otherwise provided by this part, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law that is in conflict or inconsistent with this part, including any provision of Chapter 36, Water Code, or Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999.

(b) The district does not have the authority granted by the following provisions of Chapter 36, Water Code:

(1) Section 36.105, relating to eminent domain; and

(2) Sections 36.020 and 36.201-36.204, relating to taxes.

**SECTION 3.1305. BONDS.** The district may issue bonds and notes under Sections 36.171-36.181, Water Code, not to exceed \$500,000 of total indebtedness at any time.

SECTION 3.1306. FEES. (a) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. A fee may be based on the size of column pipe used by the well or on the actual, authorized, or anticipated amount of water to be withdrawn from the well.

(b) The initial fee shall be based on the amount of water to be withdrawn from the well. The initial fee:

(1) may not exceed:

(A) \$0.25 per acre-foot for water used for irrigating agricultural crops or operating existing steam electric stations; or

(B) \$0.0425 per thousand gallons for water used for any other purpose; and

(2) may be increased at a cumulative rate not to exceed three percent per year.

(c) In addition to the fee authorized under Subsection (b) of this section, the district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

(1) a fee negotiated between the district and the transporter; or

(2) a combined production and export fee not to exceed 17 cents per thousand gallons for water used.

SECTION 3.1307. GROUNDWATER WELLS UNDER JURISDICTION OF RAILROAD COMMISSION. (a) Groundwater wells drilled or operated within the district under permits issued by the Railroad Commission of Texas are under the exclusive jurisdiction of the railroad commission and are exempt from regulation by the district.

(b) Groundwater produced in an amount authorized by a railroad commission permit may be used within or exported from the district without obtaining a permit from the district.

(c) To the extent groundwater production exceeds railroad commission authorization, the holder of the railroad commission permit must apply to the district for appropriate permits for the excess production and is subject to the applicable regulatory fees.

(d) Groundwater produced from wells under the jurisdiction of the railroad commission is generally exempt from water district fees. However, the district may impose either a pumping fee or an export fee on groundwater produced from an otherwise exempt mine well that is used for municipal purposes or by a public utility. Any fee imposed by the district under this subsection may not exceed the fee imposed on other groundwater producers in the district.

SECTION 3.1308. REGIONAL COOPERATION. (a) To provide for regional continuity, the district shall:

(1) participate in a regular annual coordination meeting with other groundwater districts in its designated management area and may hold coordination meetings at other times as needed;

(2) coordinate the collection of data with other groundwater districts in its designated management area in such a way as to achieve relative uniformity of data type and quality;

(3) coordinate efforts to monitor water quality with other groundwater districts in its designated management area, local governments, and state agencies;

(4) provide groundwater level data to other groundwater districts in its designated management area;

(5) investigate any groundwater and aquifer pollution with the intention of locating its source;

(6) notify other groundwater districts in its designated management area and all appropriate agencies of any detected groundwater pollution;

(7) annually provide to other groundwater districts in its designated management area an inventory of water wells and an estimate of groundwater production within the district; and

(8) include other groundwater districts in its designated management area on the mailing lists for district newsletters, seminars, public education events, news articles, and field days.

(b) The district shall prepare a comprehensive management plan as required by Section 36.1071, Water Code, covering that district's respective territory. On completion and certification of the plan as required by Section 36.1072, Water Code, the district shall forward a copy of the new or revised management plan to the other districts in its designated management area. The district shall consider the management plans individually and shall compare them to other management plans in the designated management area.

(1) The district shall, by resolution, call for joint planning with the other districts in the designated management area to review and coordinate the management plans and accomplishments for the designated management area. In reviewing and coordinating the management plans, the boards shall consider:

(A) the goals of each management plan and its impact on planning throughout the management area;

(B) the groundwater management standards of each district describing the desired condition of the groundwater source over time as indicated by indices of quantity of water in the source, quality of water produced from the source, springflows, or subsidence of the land surface;

(C) the groundwater withdrawal rates adopted by each district and the effectiveness of those rates in achieving the groundwater management standard of the district;

(D) 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; and

(E) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

(2) In the management plan the district may establish and coordinate with the other districts within the designated management area an annual total groundwater withdrawal limit and equitable allocation as determined from an evaluation of the overall scientific data of the groundwater resources in the region, including the Texas Water Development Board's groundwater availability model. The determination of sustainable groundwater withdrawal shall be reviewed at least every five years.

(3) Each district participating in the joint planning process initiated under this subsection shall ensure that the groundwater management standards adopted by the district are adequate to protect the groundwater within the area of each district and are not incompatible with the groundwater management standards adopted by the other districts in the management area.

(4) If a joint meeting of the boards of directors is called, the meeting must be held in accordance with Chapter 551, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that chapter. In addition, notice of the meeting shall be published not later than the 30th day before the date of the scheduled meeting in a newspaper with general circulation in each county in the management area.

(5) A district in the management area may file with good cause a petition with the Texas Natural Resource Conservation Commission requesting an inquiry if the petitioner district adopted a resolution calling for joint planning and the other district or districts refused to join in the planning process or the process failed to result in adequate planning, and the petition provides evidence that:

(A) another district in the management area has failed to adopt rules;

(B) the groundwater in the management area is not adequately protected by the rules adopted by another district; or

(C) the groundwater in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(6) The district may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial with districts located within the same management area or in adjacent management areas. 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.

(c) The district shall determine biennially, using the overall available scientific data of groundwater resources in the Central Carrizo-Wilcox area, whether pumping within the district or an adjacent district is unreasonably affecting groundwater wells. The district, in agreement with other districts within the designated management area, may adopt mitigation measures in response to such unreasonable adverse effects only if the measures are based on a scientific determination made.

(d) The district may assist in the mediation between landowners regarding the mitigation of the loss of existing groundwater supply of exempt domestic and livestock users due to the groundwater pumping of others in adjoining districts.

**SECTION 3.1309. BOARD OF DIRECTORS.** (a) The district is governed by a board of eight directors.

(b) Initial directors serve until permanent directors are appointed under Section 3.1310 of this part and qualified as required by Subsection (d) of this section.

(c) Permanent directors serve four-year staggered terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) A director may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

**SECTION 3.1310. APPOINTMENT OF DIRECTORS.** (a) The Robertson County Commissioners Court shall appoint four directors, of whom:

- (1) one must represent municipal interests in the county;
- (2) one must represent agricultural interests in the county;
- (3) one must represent rural water suppliers' interests in the county; and
- (4) one must represent industrial interests in the county.

(b) The Brazos County Commissioners Court shall appoint two directors, of whom:

- (1) one must represent rural water suppliers' interests in the county; and
- (2) one must represent agricultural interests in the county.

(c) The governing body of the City of Bryan, with the approval of the Brazos County Commissioners Court, shall appoint one director.

(d) The governing body of the City of College Station, with the approval of the Brazos County Commissioners Court, shall appoint one director.

(e) Each of the governing bodies authorized by this section to make an appointment shall appoint the appropriate number of initial directors as soon as practicable following the effective date of this Act, but not later than the 45th day after the effective date of this Act.

(f) The four initial directors from Robertson County shall draw lots to determine their terms. Two initial directors from Robertson County and the two initial directors from Brazos County serve terms that expire on January 1 of the second year following the confirmation of the district at an election held under Section 3.1312 of this part. The remaining four initial directors serve terms that expire on January 1 of the fourth year following the confirmation of the district. On January 1 of the second year following confirmation of the district and every two years after that date, the appropriate governing body shall appoint the appropriate number of permanent directors.

**SECTION 3.1311. ORGANIZATIONAL MEETING.** As soon as practicable after all the initial directors have been appointed and have qualified as provided in this part, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If no location can be agreed on, the organizational meeting of the directors shall be at the Robertson County Courthouse.

**SECTION 3.1312. CONFIRMATION ELECTION.** (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

(c) Confirmation of the district requires a vote in favor of confirmation by a majority of the qualified voters voting in the election.

(d) The district is dissolved and this part expires on August 31, 2003, unless the voters confirm the creation of the district before that date.

PART 14. POST OAK SAVANNAH GROUNDWATER  
CONSERVATION DISTRICT

SECTION 3.1401. CREATION. (a) A groundwater conservation district, to be known as the Post Oak Savannah Groundwater Conservation District, is created in Milam and Burleson counties, subject to approval at a confirmation election under Section 3.1412 of this part. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

SECTION 3.1402. DEFINITION. In this part, "district" means the Post Oak Savannah Groundwater Conservation District.

SECTION 3.1403. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Milam and Burleson counties.

SECTION 3.1404. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION 3.1405. GENERAL POWERS. (a) Except as otherwise provided by this part, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law that is in conflict or inconsistent with this part, including any provision of Chapter 36, Water Code.

(b) The district does not have the authority granted by the following provisions of Chapter 36, Water Code:

- (1) Section 36.105, relating to eminent domain; and
- (2) Sections 36.020 and 36.201-36.204, relating to taxes.

SECTION 3.1406. FEES. (a) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. A fee may be based on the size of column pipe used by the well or on the actual, authorized, or anticipated amount of water to be withdrawn from the well.

(b) Fees may not exceed:

- (1) one dollar per acre-foot for water used for irrigating agricultural crops; or
- (2) 17 cents per thousand gallons for water used for any other purpose.

(c) In addition to the fee authorized under Subsection (b) of this section, the district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

- (1) a fee negotiated between the district and the transporter; or
- (2) a combined production and export fee not to exceed 17 cents per thousand gallons for water used.

SECTION 3.1407. GROUNDWATER WELLS UNDER JURISDICTION OF RAILROAD COMMISSION. (a) Groundwater wells drilled or operated within the district under permits issued by the Railroad Commission of Texas are under the exclusive jurisdiction of the railroad commission and are exempt from regulation by the district.

(b) Groundwater produced in an amount authorized by a Railroad Commission of Texas permit may be used within or exported from the district without obtaining a permit from the district.

(c) To the extent groundwater production exceeds Railroad Commission of Texas authorization, the holder of the railroad commission permit must apply to the district for appropriate permits for the excess production and is subject to the applicable regulatory fees.

(d) Groundwater produced from wells under the jurisdiction of the Railroad Commission of Texas is generally exempt from water district fees. However, the district may impose either a pumping fee or an export fee on groundwater produced from an otherwise exempt mine well that is used for municipal purposes or by a public utility. Any fee imposed by the district under this subsection may not exceed the fee imposed on other groundwater producers in the district.

SECTION 3.1408. REGIONAL COOPERATION. (a) To provide for regional continuity, the district shall:

(1) participate in a regular annual coordination meeting with other groundwater districts in its designated management area and may hold coordination meetings at other times as needed;

(2) coordinate the collection of data with other groundwater districts in its designated management area in such a way as to achieve relative uniformity of data type and quality;

(3) coordinate efforts to monitor water quality with other groundwater districts in its designated management area, local governments, and state agencies;

(4) provide groundwater level data to other groundwater districts in its designated management area;

(5) investigate any groundwater and aquifer pollution with the intention of locating its source;

(6) notify other groundwater districts in its designated management area and all appropriate agencies of any detected groundwater pollution;

(7) annually provide to other groundwater districts in its designated management area an inventory of water wells and an estimate of groundwater production within the district; and

(8) include other groundwater districts in its designated management area on the mailing lists for district newsletters, seminars, public education events, news articles, and field days.

(b) The district shall prepare a comprehensive management plan as required by Section 36.1071, Water Code, covering that district's respective territory. On completion and certification of the plan as required by Section 36.1072, Water Code, the district shall forward a copy of the new or revised management plan to the other districts in its designated management area. The district shall consider the management plans individually and shall compare them to other management plans in the designated management area.

(1) The district shall, by resolution, call for joint planning with the other districts in the designated management area to review and coordinate the management plans and accomplishments for the designated management area. In reviewing and coordinating the management plans, the boards shall consider:

(A) the goals of each management plan and its impact on planning throughout the management area;

(B) the groundwater management standards of each district describing the desired condition of the groundwater source over time as indicated by indices of quantity of water in the source, quality of water produced from the source, springflows, or subsidence of the land surface;

(C) the groundwater withdrawal rates adopted by each district and the effectiveness of those rates in achieving the groundwater management standard of the district;

(D) 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; and

(E) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

(2) In the management plan the district may establish and coordinate with the other districts within the designated management area an annual total groundwater withdrawal limit and equitable allocation as determined from an evaluation of the overall scientific data of the groundwater resources in the region, including the Texas Water Development Board's groundwater availability model. The determination of sustainable groundwater withdrawal shall be reviewed at least every five years.

(3) Each district participating in the joint planning process initiated under this subsection shall ensure that the groundwater management standards adopted by the district are adequate to protect the groundwater within the area of each district and are not incompatible with the groundwater management standards adopted by the other districts in the management area.

(4) If a joint meeting of the boards of directors is called, the meeting must be held in accordance with Chapter 551, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that chapter. In addition, notice of the meeting shall be published not later than the 30th day before the date of the scheduled meeting in a newspaper with general circulation in each county in the management area.

(5) A district in the management area may file with good cause a petition with the Texas Natural Resource Conservation Commission requesting an inquiry if the petitioner district adopted a resolution calling for joint planning and the other district or districts refused to join in the planning process or the process failed to result in adequate planning, and the petition provides evidence that:

(A) another district in the management area has failed to adopt rules;

(B) the groundwater in the management area is not adequately protected by the rules adopted by another district; or

(C) the groundwater in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(6) The district may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial with districts located within the same management area or in adjacent management areas. 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.

(c) The district shall determine biennially, using the overall available scientific data of groundwater resources in the Central Carrizo-Wilcox area, whether pumping within the district or an adjacent district is unreasonably affecting groundwater wells. The district, in agreement with other districts within the designated management area, may adopt mitigation measures in response to such unreasonable adverse effects only if the measures are based on a scientific determination made.

(d) The district may assist in the mediation between landowners regarding the mitigation of the loss of existing groundwater supply of exempt domestic and livestock users due to the groundwater pumping of others in adjoining districts.

SECTION 3.1409. BOARD OF DIRECTORS. (a) The district is governed by a board of 10 directors.

(b) Initial directors serve until permanent directors are appointed under Section 3.1410 of this part and qualified as required by Subsection (d) of this section.

(c) Permanent directors serve four-year staggered terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) A director may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A quorum exists when at least two-thirds of the board members are present. A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

SECTION 3.1410. APPOINTMENT OF DIRECTORS. (a) The Milam County Commissioners Court shall appoint five directors, of whom:

- (1) one must represent municipal interests in the county;
- (2) one must represent agricultural interests in the county;
- (3) one must represent rural water suppliers' interests in the county;
- (4) one must represent industrial interests in the county; and
- (5) one must represent the interests of the county at large.

(b) The Burleson County Commissioners Court shall appoint five directors, of whom:

- (1) one must represent municipal interests in the county;
- (2) one must represent agricultural interests in the county;
- (3) one must represent rural water suppliers' interests in the county;
- (4) one must represent industrial interests in the county; and
- (5) one must represent the interests of the county at large.

(c) Each of the governing bodies authorized by this section to make an appointment shall appoint the appropriate number of initial directors as soon as practicable following the effective date of this Act, but not later than the 45th day after the effective date of this Act.

(d) The initial directors shall draw lots to determine their terms. Two initial directors from Milam County and two initial directors from Burleson County serve terms that expire on January 1 of the second year following the confirmation of the

district at an election held under Section 3.1412 of this part. The remaining six initial directors serve terms that expire on January 1 of the fourth year following the confirmation of the district. On January 1 of the second year following confirmation of the district and every two years after that date, the appropriate commissioners court shall appoint the appropriate number of permanent directors.

**SECTION 3.1411. ORGANIZATIONAL MEETING.** As soon as practicable after all the initial directors have been appointed and have qualified as provided in this part, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If no location can be agreed on, the organizational meeting of the directors shall be at the Milam County Courthouse.

**SECTION 3.1412. CONFIRMATION ELECTION.** (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

(c) If the majority of qualified voters in a county who vote in the election vote to confirm the creation of the district, that county is included in the district.

(d) The district is dissolved and this part expires on August 31, 2003, unless the voters confirm the creation of the district before that date.

#### **PART 15. MID-EAST TEXAS GROUNDWATER CONSERVATION DISTRICT**

**SECTION 3.1501. CREATION.** (a) A groundwater conservation district, to be known as the Mid-East Texas Groundwater Conservation District, is created in Leon, Madison, and Freestone counties, subject to approval at a confirmation election under Section 3.1512 of this part. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

**SECTION 3.1502. DEFINITION.** In this part, "district" means the Mid-East Texas Groundwater Conservation District.

**SECTION 3.1503. BOUNDARIES.** The boundaries of the district are coextensive with the boundaries of Leon, Madison, and Freestone counties.

**SECTION 3.1504. FINDING OF BENEFIT.** All of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

**SECTION 3.1505. GENERAL POWERS.** (a) Except as otherwise provided by this part, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution. This part prevails over any provision of general law that is in conflict or inconsistent with this part, including any provision of Chapter 36, Water Code.

(b) The district does not have the authority granted by the following provisions of Chapter 36, Water Code:

- (1) Section 36.105, relating to eminent domain; and
- (2) Sections 36.020 and 36.201-36.204, relating to taxes.

SECTION 3.1506. FEES. (a) The board of directors of the district by rule may impose reasonable fees on each well for which a permit is issued by the district and which is not exempt from regulation by the district. A fee may be based on the size of column pipe used by the well or on the actual, authorized, or anticipated amount of water to be withdrawn from the well.

(b) Fees may not exceed:

- (1) one dollar per acre-foot for water used for irrigating agricultural crops; or
- (2) 17 cents per thousand gallons for water used for any other purpose.

(c) In addition to the fee authorized under Subsection (b) of this section, the district may impose a reasonable fee or surcharge for an export fee using one of the following methods:

- (1) a fee negotiated between the district and the transporter; or
- (2) a combined production and export fee not to exceed 17 cents per thousand gallons for water used.

SECTION 3.1507. GROUNDWATER WELLS UNDER JURISDICTION OF RAILROAD COMMISSION. (a) Groundwater wells drilled or operated within the district under permits issued by the Railroad Commission of Texas are under the exclusive jurisdiction of the railroad commission and are exempt from regulation by the district.

(b) Groundwater produced in an amount authorized by a Railroad Commission of Texas permit may be used within or exported from the district without obtaining a permit from the district.

(c) To the extent groundwater production exceeds Railroad Commission of Texas authorization, the holder of the railroad commission permit must apply to the district for appropriate permits for the excess production and is subject to the applicable regulatory fees.

(d) Groundwater produced from wells under the jurisdiction of the Railroad Commission of Texas is generally exempt from water district fees. However, the district may impose either a pumping fee or an export fee on groundwater produced from an otherwise exempt mine well that is used for municipal purposes or by a public utility. Any fee imposed by the district under this subsection may not exceed the fee imposed on other groundwater producers in the district.

SECTION 3.1508. REGIONAL COOPERATION. (a) To provide for regional continuity, the district shall:

- (1) participate in a regular annual coordination meeting with other groundwater districts in its designated management area and may hold coordination meetings at other times as needed;
- (2) coordinate the collection of data with other groundwater districts in its designated management area in such a way as to achieve relative uniformity of data type and quality;
- (3) coordinate efforts to monitor water quality with other groundwater districts in its designated management area, local governments, and state agencies;
- (4) provide groundwater level data to other groundwater districts in its designated management area;
- (5) investigate any groundwater and aquifer pollution with the intention of locating its source;

(6) notify other groundwater districts in its designated management area and all appropriate agencies of any detected groundwater pollution;

(7) annually provide to other groundwater districts in its designated management area an inventory of water wells and an estimate of groundwater production within the district; and

(8) include other groundwater districts in its designated management area on the mailing lists for district newsletters, seminars, public education events, news articles, and field days.

(b) The district shall prepare a comprehensive management plan as required by Section 36.1071, Water Code, covering that district's respective territory. On completion and certification of the plan as required by Section 36.1072, Water Code, the district shall forward a copy of the new or revised management plan to the other districts in its designated management area. The district shall consider the management plans individually and shall compare them to other management plans in the designated management area.

(1) The district shall, by resolution, call for joint planning with the other districts in the designated management area to review and coordinate the management plans and accomplishments for the designated management area. In reviewing and coordinating the management plans, the boards shall consider:

(A) the goals of each management plan and its impact on planning throughout the management area;

(B) the groundwater management standards of each district describing the desired condition of the groundwater source over time as indicated by indices of quantity of water in the source, quality of water produced from the source, springflows, or subsidence of the land surface;

(C) the groundwater withdrawal rates adopted by each district and the effectiveness of those rates in achieving the groundwater management standard of the district;

(D) 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; and

(E) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

(2) In the management plan the district may establish and coordinate with the other districts within the designated management area an annual total groundwater withdrawal limit and equitable allocation as determined from an evaluation of the overall scientific data of the groundwater resources in the region, including the Texas Water Development Board's groundwater availability model. The determination of sustainable groundwater withdrawal shall be reviewed at least every five years.

(3) Each district participating in the joint planning process initiated under this subsection shall ensure that the groundwater management standards adopted by the district are adequate to protect the groundwater within the area of each district and are not incompatible with the groundwater management standards adopted by the other districts in the management area.

(4) If a joint meeting of the boards of directors is called, the meeting must be held in accordance with Chapter 551, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that chapter. In addition, notice of the meeting shall be published not later than the 30th day before the date of the scheduled meeting in a newspaper with general circulation in each county in the management area.

(5) A district in the management area may file with good cause a petition with the Texas Natural Resource Conservation Commission requesting an inquiry if the petitioner district adopted a resolution calling for joint planning and the other district or districts refused to join in the planning process or the process failed to result in adequate planning, and the petition provides evidence that:

(A) another district in the management area has failed to adopt rules;

(B) the groundwater in the management area is not adequately protected by the rules adopted by another district; or

(C) the groundwater in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(6) The district may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial with districts located within the same management area or in adjacent management areas. 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.

(c) The district shall determine biennially, using the overall available scientific data of groundwater resources in the Central Carrizo-Wilcox area, whether pumping within the district or an adjacent district is unreasonably affecting groundwater wells. The district, in agreement with other districts within the designated management area, may adopt mitigation measures in response to such unreasonable adverse effects only if the measures are based on a scientific determination made.

(d) The district may assist in the mediation between landowners regarding the mitigation of the loss of existing groundwater supply of exempt domestic and livestock users due to the groundwater pumping of others in adjoining districts.

**SECTION 3.1509. BOARD OF DIRECTORS.** (a) The district is governed by a board of nine directors.

(b) Initial directors serve until permanent directors are appointed under Section 3.1510 of this part and qualified as required by Subsection (d) of this section.

(c) Permanent directors serve four-year staggered terms.

(d) Each director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(e) A director serves until the director's successor has qualified.

(f) A director may serve consecutive terms.

(g) If there is a vacancy on the board, the governing body of the entity that appointed the director who vacated the office shall appoint a director to serve the remainder of the term.

(h) Directors are not entitled to receive compensation for serving as a director but may be reimbursed for actual, reasonable expenses incurred in the discharge of official duties.

(i) A majority vote of a quorum is required for board action. If there is a tie vote, the proposed action fails.

SECTION 3.1510. APPOINTMENT OF DIRECTORS. (a) The Leon County Commissioners Court shall appoint three directors, of whom:

(1) one must represent the interests of rural water suppliers or municipalities in the county, or both;

(2) one must represent agricultural interests in the county; and

(3) one must represent industrial interests in the county.

(b) The Madison County Commissioners Court shall appoint three directors, of whom:

(1) one must represent the interests of rural water suppliers or municipalities in the county, or both;

(2) one must represent agricultural interests in the county; and

(3) one must represent industrial interests in the county.

(c) The Freestone County Commissioners Court shall appoint three directors, of whom:

(1) one must represent the interests of rural water suppliers or municipalities in the county, or both;

(2) one must represent agricultural interests in the county; and

(3) one must represent industrial interests in the county.

(d) Each of the governing bodies authorized by this section to make an appointment shall appoint the appropriate number of initial directors as soon as practicable following the effective date of this Act, but not later than the 45th day after the effective date of this Act.

(e) The initial directors shall draw lots to determine their terms. A simple majority of the initial directors, if an odd number of initial directors are appointed, or half the initial directors, if an even number of initial directors are appointed, serve terms that expire on January 1 of the fourth year following the confirmation of the district at an election held under Section 3.1512 of this part. The remaining initial directors serve terms that expire on January 1 of the second year following the confirmation of the district. On January 1 of the second year following confirmation of the district and every two years after that date, the appropriate commissioners courts shall appoint the appropriate number of permanent directors.

SECTION 3.1511. ORGANIZATIONAL MEETING. As soon as practicable after all the initial directors have been appointed and have qualified as provided by this part, a majority of the directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If no location can be agreed on, the organizational meeting of the directors shall be at the Leon County Courthouse.

SECTION 3.1512. CONFIRMATION ELECTION. (a) The initial board of directors shall call and hold an election on the same date in each county within the district to confirm the creation of the district.

(b) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017, 36.018, and 36.019, Water Code, and Section 41.001, Election Code.

(c) If the majority of qualified voters in a county who vote in the election vote to confirm the creation of the district, that county is included in the district. If the majority of qualified voters in a county who vote in the election vote not to confirm the creation of the district, that county is excluded from the district.

(d) The district is dissolved and this part expires on August 31, 2003, unless the voters confirm the creation of the district before that date.

PART 16. NORTHEAST TRAVIS COUNTY  
UTILITY DISTRICT

SECTION 3.1601. CREATION. (a) A conservation and reclamation district, to be known as the Northeast Travis County Utility District, is created in Travis County, subject to approval at a confirmation election under Section 3.1611 of this part. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

SECTION 3.1602. DEFINITION. In this part, "district" means the Northeast Travis County Utility District.

SECTION 3.1603. BOUNDARIES. The district includes the territory contained within the following areas:

Tract No. 1, approximately 146.50 acres of land out of the E. Kirkland Survey No. 7, in Travis County, Texas, being all of that certain tract conveyed to Kathleen Marie England and Jay Lawrence Johnson by Deeds recorded in Volume 11403, Page 374, Volume 11618, Page 104, Volume 11861, Page 120 and Volume 12118, Page 195, Real Property Records of Travis County, Texas;

Tract No. 2, approximately 70.31 acres of land out of the E. Kirkland Survey No. 7 in Travis County, Texas, being all of that certain tract of land conveyed to Charles E. Baker, et ux, by Deed recorded in Volume 7188, Page 1756, Deed Records of Travis County, Texas;

Tract No. 3, approximately 104.34 acres of land out of the G. M. Martin Survey No. 9, Abstract 529, Travis County, Texas, being all of that certain tract called 103.984 acres conveyed to Bernice Becker Zreet, Freida Becker Woodland, Edline Becker McMains, Adolf Becker, Jr., Wilbert Becker and Edwin F. Zreet and Bernice Zreet, Trustees of The Edwin F. and Bernice Zreet Trust dated August 27, 1997, by Deeds recorded in Volume 10215, Page 610, Volume 10537, Page 939, and Volume 13171, Page 102, Real Property Records of Travis County, Texas, and all of that certain tract called 0.356 of one acre conveyed by Muniment of Title recorded in Document No. 71552 of the Travis County Probate Records;

Tract No. 4, approximately 103.266 acres of land out of the George M. Martin Survey No. 9, Abstract 529, Travis County, Texas, being all of that certain tract conveyed to Kermit Hees and wife, Lydia Hees by Partition Deed recorded in Volume 11552, Page 475, Real Property Records of Travis County, Texas, said 103.266 acre tract being the remainder of that tract called 106-1/2 acres conveyed to W. A. Randig by Deed recorded in Volume 498, Page 219, SAVE AND EXCEPT, that portion deeded to Travis County, Texas for highway purposes by Deed recorded in Volume 2268, Page 195, Deed Records of Travis County, Texas;

Tract No. 5, approximately 177.301 acres of land out of the G. M. Martin Survey in Travis County, Texas, being all of that certain tract of land conveyed to Karolyn P. Graf and Robert L. Pfluger, Trustees of the Lawrence and Willie Mae Pfluger Family Trust by Deeds recorded in Volume 10431, Page 422, Volume 10555, Page 214, and Volume 11091, Page 691, Real Property Records of Travis County, Texas;

Tract No. 6, approximately 107.4 acres of land out of the George M. Martin Survey, Abstract No. 9, and being all of that certain tract of land conveyed to Robert L. Pfluger and Karolyn P. Graf by Deed recorded in Volume 12947, Page 560

and to Robert L. Pfluger, Trustee for Miranda Kimbro and Weston N. Kimbro and Wayne Pfluger, Trustee for Joseph L. Pfluger and Lydia Pfluger, by Deed recorded in Volume 12947, Page 562, Real Property Records of Travis County, Texas;

Tract No. 7, approximately 9.198 acres of land out of the G. M. Martin Survey, Abstract No. 9, in Travis County, Texas, and being all of that certain tract of land conveyed to Peggy Pfluger and Robert L. Pfluger by Deed recorded in Volume 13049, Page 1353, Real Property Records of Travis County, Texas.

**SECTION 3.1604. FINDINGS RELATIVE TO BOUNDARIES.** The legislature finds that the boundaries and field notes of the district form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district, the right of the district to impose taxes, or the legality or operation of the district or its governing body.

**SECTION 3.1605. FINDING OF BENEFIT.** All of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

**SECTION 3.1606. GENERAL POWERS.** (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 30, 49, and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

(b) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state to be exercised by and through the Texas Natural Resource Conservation Commission.

**SECTION 3.1607. DIVISION OF DISTRICT.** (a) The district may divide into two or more districts as provided by Sections 51.748-51.753, Water Code, and this section. The proposed district may divide into two or more proposed districts before the establishment of the district is confirmed at the confirmation election held under Section 3.1611 of this part.

(b) A district created by division under this section may divide into two or more districts after the establishment of the district is confirmed at a confirmation election. A proposed district created by division under this section may divide into two or more proposed districts before the establishment of the district is confirmed at a confirmation election.

(c) The district or any district resulting from a division of the district may exercise powers under Chapters 49 and 54, Water Code, to annex or exclude property after a confirmation election. The temporary board of the proposed district or of any proposed district resulting from a division of the proposed district may, after a hearing, alter the proposed boundaries of the proposed district before the temporary board orders a confirmation election.

(d) The order creating a district by division under this section and Sections 51.748-51.753, Water Code, must give the district an appropriate name that does not conflict with the name of any other district. The provisions of Section 51.749(c), Water Code, relating to naming a district, do not apply.

**SECTION 3.1608. ANNEXATION BY MUNICIPALITY.** (a) The district is a water or sewer district as defined by Section 43.071, Local Government Code, for purposes of that section.

(b) On annexation of the district by a municipality, the district is dissolved and the municipality shall assume the powers, authority, functions, duties, and outstanding bonded indebtedness of the district.

(c) A municipality that annexes the district must provide full municipal services, as defined by Section 43.056(c), Local Government Code, in the district before the expiration of two and one-half years after the effective date of the annexation, unless certain services cannot reasonably be provided within that period and the municipality proposes a schedule for providing those services. If the municipality proposes a schedule to extend the period for providing certain services, the schedule must provide for the provision of full municipal services before the expiration of four and one-half years after the effective date of the annexation.

**SECTION 3.1609. BOARD OF DIRECTORS.** (a) The district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 3.1611 of this part.

(c) Initial directors serve until permanent directors are elected under Section 3.1612 of this part.

(d) Permanent directors serve staggered four-year terms.

(e) Each director must qualify to serve as a director in the manner provided by Section 49.055, Water Code.

(f) A director serves until the director's successor has qualified.

**SECTION 3.1610. TEMPORARY DIRECTORS.** (a) The temporary board of directors consists of:

- (1) Chris Fields;
- (2) Nate Nickerson;
- (3) Seth Spiker;
- (4) John Pfluger; and
- (5) Steven Thomas.

(b) The temporary directors are not required to own land or reside in the district.

(c) The temporary directors shall take the oath of office and execute bonds to qualify for holding their offices as soon as possible after the effective date of this Act.

(d) If a temporary director fails to qualify for office, the temporary directors who have qualified shall appoint a person to fill the vacancy. If at any time there are fewer than three qualified temporary directors, the Texas Natural Resource Conservation Commission shall appoint the necessary number of persons to fill all vacancies on the board.

**SECTION 3.1611. CONFIRMATION AND INITIAL DIRECTORS ELECTION.**

(a) The temporary board of directors shall call and hold an election to confirm establishment of the district and to elect five initial directors as provided by Section 49.102, Water Code. The board may submit to the voters propositions to authorize the issuance of bonds, a maintenance tax, and a tax to make payments under a contract.

(b) Section 41.001(a), Election Code, does not apply to an election held under this section.

**SECTION 3.1612. ELECTION OF DIRECTORS.** (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, a general election shall be held in the district for the election of three directors to serve four-year terms and two directors to serve two-year terms.

(b) On the first Saturday in May of each subsequent second year following the election, the appropriate number of directors shall be elected.

SECTION 3.1613. FINDINGS RELATING TO PROCEDURAL REQUIREMENTS. (a) The proper and 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 by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) 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 3.1614. EFFECTIVE DATE OF THIS PART. This part 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 part takes effect September 1, 2001.

#### ARTICLE 4. WATER INFRASTRUCTURE FINANCING

SECTION 4.01. Chapter 15, Water Code, is amended by adding Subchapter O to read as follows:

##### SUBCHAPTER O. WATER INFRASTRUCTURE FUND

Sec. 15.901. DEFINITIONS. In this subchapter:

(1) "Eligible political subdivision" means:

(A) a municipality;

(B) a county;

(C) a river authority or special law district that is listed in

Section 9.010(b);

(D) a water improvement district;

(E) an irrigation district;

(F) a water control and improvement district; and

(G) a groundwater district with a groundwater management plan

certified by the board under Section 36.1072.

(2) "Fund" means the water infrastructure fund.

(3) "Metropolitan statistical area" means an area so designated by the United States Office of Management and Budget.

(4) "Political subdivision bonds" means bonds or other obligations issued by a political subdivision to fund a project and purchased by the board from money in the fund.

(5) "Project" means any undertaking or work, including planning and design activities and work to obtain regulatory authority, to conserve, mitigate, convey, and develop water resources of the state, including any undertaking or work done outside the state that the board determines will result in water being available for use in or for the benefit of the state.

Sec. 15.902. FINDINGS. The legislature finds that:

(1) the creation of the fund and the administration of the fund by the board will encourage the conservation and development of the water resources of the state;

(2) the use of the fund is in furtherance of the public purpose of conserving and developing the water resources of the state; and

(3) the use of the fund for the purposes provided by this subchapter is for the benefit of both the state and the political subdivisions to which the board makes financial assistance available in accordance with this subchapter and constitutes a program under, and is in furtherance of the public purposes set forth in, Section 52-a, Article III, Texas Constitution.

Sec. 15.903. WATER INFRASTRUCTURE FUND. (a) The water infrastructure fund is a special account in the general revenue fund to be administered by the board under this subchapter and rules adopted by the board under this subchapter. Money in the fund may be used to pay for the implementation of water projects recommended through the state and regional water planning processes under Sections 16.051 and 16.053.

(b) The fund consists of:

(1) appropriations from the legislature;

(2) any other fees or sources of revenue that the legislature may dedicate for deposit to the fund;

(3) repayments of loans made from the fund;

(4) interest earned on money credited to the fund;

(5) depository interest allocable to the fund in the general revenue fund;

(6) money from gifts, grants, or donations to the fund;

(7) money from revenue bonds or other sources designated by the board; and

(8) proceeds from the sale of political subdivision bonds or obligations held in the fund and not otherwise pledged to the discharge, repayment, or redemption of revenue bonds or other bonds, the proceeds of which were placed in the fund.

Sec. 15.904. USE OF WATER INFRASTRUCTURE FUND. (a) The board may use the fund:

(1) to make loans to political subdivisions at or below market interest rates for projects;

(2) to make grants, low-interest loans, or zero interest loans to political subdivisions for projects to serve areas outside metropolitan statistical areas in order to ensure that the projects are implemented, or for projects to serve economically distressed areas;

(3) to make loans at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the board if the proceeds of the sale of the bonds will be deposited in the fund; and

(5) to pay the necessary and reasonable expenses of the board in administering the fund.

(b) Funding under Subsection (a)(2) or under Subsection (a)(3) may not exceed 10 percent of the amount of financial assistance budgeted by the board to be made available from the fund in a fiscal year.

(c) Principal and interest payments on loans made under Subsection (a)(3) may be deferred for a maximum of 10 years or until construction of the project is completed, whichever is earlier.

Sec. 15.905. APPROVAL OF APPLICATIONS. (a) On review and recommendation by the executive administrator, the board by resolution may approve an application if the board finds that:

(1) the application and the assistance applied for meet the requirements of this subchapter and board rules;

(2) the revenue or taxes, or both the revenue and taxes, pledged by the applicant will be sufficient to meet all the obligations assumed by the political subdivision; and

(3) the project will meet water needs in a manner consistent with the state and regional water plans as required by Section 16.053(j), unless otherwise specified by an act of the legislature.

(b) For an application under this subchapter, a program of water conservation through a more effective use of water shall be required in the same manner as for approval of an application for financial assistance under Section 15.106.

(c) The board may deliver funds for the part of a loan or grant for a project relating to surface water development, other than for planning and design costs, permitting costs, and other costs associated with federal and state regulatory activities with respect to a project, only if the executive administrator makes a written finding that the applicant:

(1) has the necessary water rights authorizing the applicant to appropriate and use the water that the project will provide, if the applicant is proposing surface water development; or

(2) has the right to use water that the project will provide, if the applicant is proposing groundwater development.

Sec. 15.906. APPLICABLE LAW. Subchapter E, Chapter 17, applies to financial assistance made available from the fund, except that the board may also execute contracts as necessary to evidence grant agreements.

Sec. 15.907. RULES. The board shall adopt rules necessary to carry out this subchapter, including rules establishing procedures for application for and for the award of financial assistance, for the investment of funds, and for the administration of the fund.

Sec. 15.908. SALE OF POLITICAL SUBDIVISION BONDS. (a) The board may sell or dispose of political subdivision bonds at the price and under the terms that the board determines to be reasonable.

(b) The board may sell political subdivision bonds without making a previous offer to the political subdivision that issued the bonds and without advertising, soliciting, or receiving bids for sale.

(c) Notwithstanding other provisions of this chapter, the board may sell to the Texas Water Resources Finance Authority any political subdivision bonds purchased with money in the fund and may apply the proceeds of a sale in the manner provided by this section.

(d) Proceeds from the sale of political subdivision bonds under this section shall be deposited in the fund for use as provided by Section 15.904.

(e) As part of a sales agreement with the Texas Water Resources Finance Authority, the board by contract may agree to perform the functions required to ensure that the political subdivision pays the debt service on political subdivision bonds sold and observes the conditions and requirements stated in those bonds.

(f) The board may exercise any powers necessary to carry out the authority granted by this section, including the authority to contract with any person to accomplish the purposes of this section.

Sec. 15.909. FUNDING FOR LOCAL ECONOMIC DEVELOPMENT. (a) The board may use the fund to provide financial assistance to an eligible political subdivision to enable the political subdivision to fund loans and grants for projects that conserve and develop the water resources of the political subdivision for the ultimate benefit of the public, and that develop and diversify its local economy, consistent with the terms and conditions set forth in a program adopted by the governing body of the political subdivision under authority granted by Section 15.910.

(b) The board may not purchase political subdivision bonds issued for the purposes described by Subsection (a) that are secured in whole or in part by a pledge of ad valorem taxes unless the political subdivision submits evidence satisfactory to the board that the issuance of the bonds has been approved by the citizens of the political subdivision voting at an election held for the purposes described in Section 15.910.

Sec. 15.910. AUTHORITY TO ESTABLISH ECONOMIC DEVELOPMENT PROGRAMS. (a) An eligible political subdivision may establish economic development programs and make loans and grants of public funds to assist in providing projects within the political subdivision that conserve and develop the water resources of the political subdivision for the ultimate benefit of the public. The authority granted to a political subdivision to make loans and grants in accordance with this section constitutes a program in furtherance of the public purposes provided by Section 52-a, Article III, Texas Constitution.

(b) Financial assistance received from the fund may be used by an eligible political subdivision to make loans or grants to persons for projects that the political subdivision finds will conserve and develop the water resources of the political subdivision for the ultimate benefit of the public and assist in diversifying and developing the economy of the political subdivision and the state.

(c) In exercising the authority granted by this section, the governing body of an eligible political subdivision may determine the terms and conditions governing the loan or grant of money and determine whether to approve an agreement with a person who receives a loan or grant.

Sec. 15.911. An eligible political subdivision may not sell or incur obligations to fund an economic development program established under authority granted by Section 15.910 that are payable in whole or in part from ad valorem taxes unless the residents of the political subdivision, voting at an election held for the purpose, approve the issuance of obligations to fund an economic development program for the provision of loans or grants to persons to construct projects that will conserve and develop the water resources of the political subdivision for the ultimate benefit of the public and assist in developing and diversifying the local economy.

SECTION 4.02. Chapter 15, Water Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. RURAL WATER  
ASSISTANCE FUND

Sec. 15.951. PURPOSE. The legislature finds that the rural areas of the state, characterized by small populations extended over disproportionately large service areas, require a means of financing water projects in addition to those established by other provisions of this chapter.

Sec. 15.952. DEFINITIONS. In this subchapter:

(1) "District" means a conservation or reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(2) "Federal agency" means an agency or other entity of the United States Department of Agriculture or an agency or entity that is acting through or on behalf of that department.

(3) "Fund" means the rural water assistance fund.

(4) "Rural political subdivision" means:

(A) a nonprofit water supply or sewer service corporation, district, or municipality with a service area of 10,000 or less in population or that otherwise qualifies for financing from a federal agency; or

(B) a county in which no urban area exceeds 50,000 in population.

(5) "State agency" means an agency or other entity of the state, including the Department of Agriculture and the Texas Department of Housing and Community Affairs and any agency or authority that is acting through or on behalf of the Department of Agriculture or the Texas Department of Housing and Community Affairs.

Sec. 15.953. FUND. The rural water assistance fund is a special account in the general revenue fund. The fund consists of:

(1) money directly appropriated to the board;

(2) repayment of principal and interest from loans made from the fund not otherwise needed as a source of revenue pursuant to Section 17.9615(b);

(3) money transferred by the board from any sources available; and

(4) interest earned on the investment of money in the fund and depository interest allocable to the fund in the general revenue fund.

Sec. 15.954. USE OF FUND. (a) The fund may be used to provide low-interest loans to rural political subdivisions for water or water-related projects, including the purchase of well fields, the purchase or lease of rights to produce groundwater, and interim financing of construction projects.

(b) The fund may be used to enable a rural political subdivision to obtain water supplied by larger political subdivisions or to finance the consolidation or regionalizing of neighboring political subdivisions, or both.

(c) The fund may be used to finance an outreach and technical assistance program to assist rural political subdivisions in obtaining assistance through the fund. The board may use money in the fund to contract for such outreach and technical assistance.

(d) The fund may be used to buy down interest rates on loans.

(e) A rural political subdivision may enter into an agreement with a federal agency or a state agency to submit a joint application for financial assistance under this subchapter.

(f) A nonprofit water supply or sewer service corporation is exempt from payment of any sales tax that may be incurred under other law or ordinance for any project financed by the fund.

(g) The fund may be used as a source of revenue for the payment of principal and interest on water financial assistance bonds issued by the board if the proceeds of the sale of these bonds will be deposited into the rural water assistance fund.

Sec. 15.955. FINANCIAL ASSISTANCE. (a) The board shall adopt rules necessary to administer this subchapter, including rules establishing procedures for

the application for and award of loans, the distribution of loans, the investment of funds, and the administration of loans and the fund.

(b) The board may not release from the fund money for the construction phase of parts of projects proposing surface water or groundwater development until the executive administrator makes a written finding that a rural political subdivision:

(1) has the necessary water right authorizing it to appropriate and use the water that the project will provide, if the rural political subdivision is proposing surface water development; or

(2) has the right to use water that the project will provide, if the rural political subdivision is proposing groundwater development.

(c) In passing on an application from a rural political subdivision for financial assistance, the board shall consider:

(1) the needs of the area to be served by the project, the benefit of the project to the area, the relationship of the project to the overall state water needs, and the relationship of the project to the state water plan; and

(2) the availability of revenue to the rural political subdivision from all sources for the ultimate repayment of the cost of the water supply project, including all interest.

(d) The board by resolution may approve an application if, after considering the factors listed in Subsection (c) and other relevant factors, the board finds that:

(1) the public interest is served by state assistance for the project; and

(2) the revenue or taxes pledged by the rural political subdivision will be sufficient to meet all the obligations assumed by the rural political subdivision during the succeeding period of not more than 50 years.

(e) A program of water conservation for the more efficient use of water shall be required in the same manner as is required for approval of an application for financial assistance under Section 15.106.

(f) Sections 17.183-17.187 apply to the construction of projects funded pursuant to this subchapter.

SECTION 4.03. Subsection (j), Section 5.235, Water Code, is amended to read as follows:

(j) The fee for other uses of water not specifically named in this section is \$1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution. This fee is waived for applications for instream-use water rights deposited into the Texas Water Trust.

SECTION 4.04. Section 15.001, Water Code, is amended by adding Subdivision (12) to read as follows:

(12) "Regionalization" means development of a water supply or wastewater collection and treatment system that incorporates multiple service areas into an areawide service facility or any such system that serves an area that includes more than a single county, city, special district, or other political subdivision of the state.

SECTION 4.05. Subsection (a), Section 15.002, Water Code, is amended to read as follows:

(a) The legislature finds that it is in the public interest and to the benefit of the general public of the state to encourage and to assist in the planning and construction of projects to develop and conserve the storm water and floodwater as well as the ordinary flows of the rivers and streams of the state, to maintain and enhance the

quality of the water of the state, to provide protection to the state's citizens from the floodwater of the rivers and streams of the state, to provide drainage, subsidence control, public beach nourishment, recharge, chloride control, brush control, weather modification, regionalization, and desalination [~~desalination~~], to provide for the management of aquatic vegetation, and other purposes as provided by law or board rule.

SECTION 4.06. Subsection (b), Section 15.011, Water Code, is amended to read as follows:

(b) After notice and hearing and subject to any limitations established by the General Appropriations Act, the board may transfer money from the fund to the loan fund created under Subchapter C [~~of this chapter~~], the storage acquisition fund created under Subchapter E [~~of this chapter~~], the research and planning fund created under Subchapter F [~~of this chapter~~], the hydrographic survey account created under Subchapter M [~~of this chapter~~], provided the hydrographic survey account transfer does not exceed \$425,000, [~~and~~] the aquatic vegetation management fund created under Subchapter N, and the rural water assistance fund created under Subchapter P [~~of this chapter~~].

SECTION 4.07. Subsections (a) and (b), Section 15.102, Water Code, are amended to read as follows:

(a) The loan fund may be used by the board to provide loans of financial assistance to political subdivisions, federal agencies, or both political subdivisions and federal agencies acting jointly for the construction, acquisition, improvement, or enlargement of projects involving water conservation, water development, or water quality enhancement, providing nonstructural and structural flood control, or drainage, project recreation lands and revenue-generating recreational improvements within any watershed, or providing recharge, chloride control, subsidence control, brush control, weather modification, regionalization, or desalination [~~desalination~~] as provided by legislative appropriations, this chapter, and the board rules.

(b) The loan fund may also be used by the board to provide grants for:

(1) projects that include supplying water and wastewater services in economically distressed areas, including projects involving retail distribution of those services; and

(2) desalination, brush control, weather modification, regionalization, and projects providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

SECTION 4.08. Section 15.105, Water Code, is amended to read as follows:

Sec. 15.105. CONSIDERATIONS IN PASSING ON APPLICATION. (a) In passing on an application for financial assistance from the loan fund, the board shall consider but is not limited to:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the applicant from all sources for the ultimate repayment of the cost of the project, including all interest;

(3) the relationship of the project to overall statewide needs;

(4) the ability of the applicant to finance the project without state assistance; [~~and~~]

(5) for applications for grants for economically distressed areas, the regulatory efforts by the county in which the project is located to control the construction of subdivisions that lack basic utility services; and

(6) for applications for grants under Section 15.102(b)(2), the ability of the applicant to construct the project without the grant and the benefits of the project to water and wastewater needs of the state.

(b) The board by rule shall further define eligibility for grants under this subchapter.

SECTION 4.09. Subsection (a), Section 15.106, Water Code, is amended to read as follows:

(a) The board, by resolution, may approve an application for financial assistance [~~a loan~~] if after considering the factors listed in Section 15.105 of this code and any other relevant factors, the board finds:

- (1) that the public interest requires state participation in the project; and
- (2) that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision.

SECTION 4.10. Section 15.107, Water Code, is amended to read as follows:

Sec. 15.107. METHOD OF MAKING [~~LOANS OF~~] FINANCIAL ASSISTANCE AVAILABLE. (a) The board may make financial assistance available to successful applicants in any manner that it considers economically feasible including:

(1) contracts or agreements with a political subdivision for the payment of the principal of or interest on or both the principal of and interest on bonds or other obligations issued or to be issued by the political subdivision;

(2) contracts or agreements with a political subdivision for the purpose of providing the political subdivision's share of any cost-sharing required as a participant in or local sponsor of any federal project; [~~or~~]

(3) purchase of the bonds or other obligations of a political subdivision for the purpose of completely or partially financing the project for which the application is being submitted; or

(4) contracts or agreements for the receipt of funds and performance of obligations in relation to any grant of funds provided by the board.

(b) Contracts or agreements entered into under Subdivision (1) of Subsection (a) of this section may cover all or any part of the debt service requirements in a given year and may cover debt service requirements in as many years of an issue as the board considers appropriate.

(c) In a determination on a loan for financial assistance, the board may approve interest deferral or the capitalization of interest costs and may approve periods of repayment for the loans of up to 50 years.

SECTION 4.11. Section 15.434, Water Code, is amended to read as follows:

Sec. 15.434. USE OF MONEY IN FUND. Money deposited to the credit of the agricultural soil and water conservation fund, on appropriation by the legislature to the board, the Department of Agriculture, the State Soil and Water Conservation Board, the Texas Agricultural Experiment Station, the Texas Agricultural Extension Service, public colleges and universities, and other state agencies shall be used for the following purposes:

- (1) agricultural water conservation technical assistance programs;
- (2) agricultural water conservation, education, and demonstration programs;
- (3) purchase of equipment, including demonstration and educational equipment;

(4) grants made to groundwater [~~underground water~~] conservation districts and political subdivisions for the purchase of equipment under programs established by Subchapter H of this chapter;

(5) research in water utilization and conservation including artificial recharge and secondary recovery of groundwater [~~underground water~~];

(6) desalination [~~desalinization~~];

(7) weather modification;

(8) technical assistance programs for developing on-farm soil and water conservation plans developed jointly by landowners and operators and local soil and water conservation districts, as provided by Subchapter H, Chapter 201, Agriculture Code;

(9) research and demonstration relating to the production of native and low-water-use plants and water-efficient crops;

(10) a pilot program for low-interest loans for the purchase of agricultural water conservation systems established by Subchapter I of this chapter; [~~and~~]

(11) research, demonstration, and education relating to brush control; and

(12) regionalization designed to promote agricultural water conservation.

SECTION 4.12. Section 15.471, Water Code, is amended to read as follows:

Sec. 15.471. GRANTS; PURPOSES. The board may make grants of money to groundwater [~~underground water~~] conservation districts, to political subdivisions, and to other districts created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution for purchasing equipment required for:

(1) measurement and evaluation of irrigation systems and agricultural water conservation practices on irrigated land, dryland, and rangeland;

(2) demonstration of efficient irrigation systems and agricultural water conservation practices on irrigated land, dryland, and rangeland;

(3) testing and evaluation of water quality and the suitability of water from groundwater or surface water resources for irrigation, rural domestic use, livestock, or agricultural industry use;

(4) demonstration of efficient or sound chemical application and evaluation or demonstration of systems which will prevent contamination of groundwater and surface water from chemicals and other substances used in agriculture; or

(5) measurement and data collection related to the conservation of groundwater resources.

SECTION 4.13. Section 15.602, Water Code, is amended by adding a new Subdivision (8) and redesignating existing Subdivisions (8) through (14) as Subdivisions (9) through (15) to read as follows:

(8) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or any interstate body, as defined by Section 502 of the federal act, including a political subdivision as defined by this subchapter, if the person is eligible for financial assistance under federal law establishing the revolving fund.

(9) "Political subdivision" means a municipality, intermunicipal, interstate, or state agency, any other public entity eligible for assistance under this subchapter, or a nonprofit water supply corporation created and operating under Chapter 67, if such entity is eligible for financial assistance under federal law establishing the state revolving fund or an additional state revolving fund.

(10) [(9)] "Public water system" means a system that is owned by any person and that meets the definition of public water system in the Safe Drinking Water Act.

(11) [(10)] "Public works" means any project to acquire, construct, improve, repair, or otherwise provide any buildings, structures, facilities, equipment, or other

real or personal property or improvements designed for public use, protection, or enjoyment undertaken by a political subdivision and paid for, in whole or in part, out of public funds.

(12) [(11)] "Revolving fund" means the state water pollution control revolving fund.

(13) [(12)] "Safe Drinking Water Act" means Title XIV of the federal Public Health Service Act, commonly known as the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f et seq.).

(14) [(13)] "Safe drinking water revolving fund" means the fund established by the board as an additional state revolving fund to provide financial assistance in accordance with the federal program established pursuant to the provisions of the Safe Drinking Water Act.

(15) [(14)] "Treatment works" has the meaning established by the federal act and the eligible components of the management programs established by Sections 319 and 320 of the federal act.

SECTION 4.14. Subsection (a), Section 15.603, Water Code, is amended to read as follows:

(a) The revolving fund is held separately from other funds by the board outside the State Treasury to provide financial assistance to political subdivisions for construction of treatment works and to persons for nonpoint source pollution control and estuary management projects.

SECTION 4.15. Subsection (a), Section 15.604, Water Code, is amended to read as follows:

(a) The board may use the revolving fund for financial assistance only as provided by the federal act:

(1) to make loans, on the conditions that:

(A) those loans are made at or below market interest rates, including interest-free loans, at terms not to exceed 20 years;

(B) principal and interest payments will begin not later than one year after completion of any treatment works and all loans will be fully amortized not later than 20 years after completion of the treatment works;

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(D) the revolving fund will be credited with all payments of principal of and interest on all loans;

(2) to buy or refinance the debt obligation of political subdivisions at or below market rates if the debt obligations were incurred after March 7, 1985;

(3) to guarantee or purchase insurance for political subdivisions if the guarantee or insurance would improve access to market credit or reduce interest rates;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the state if the proceeds of the sale of those bonds will be deposited in the revolving fund;

(5) to provide loan guarantees to similar revolving funds established by municipalities or intermunicipal agencies;

(6) to earn interest on revolving fund accounts;

(7) for the reasonable costs of administering the revolving fund and conducting activities provided for by Title VI of the federal act, except that those amounts may not exceed the amount authorized under Title VI of the federal act; ~~and~~

(8) to provide financial assistance to persons for a nonpoint source pollution control project under Section 319 of the federal act or for an estuary management project under Section 320 of the federal act; and

(9) for other purposes as provided by the federal act.

SECTION 4.16. Section 15.607, Water Code, is amended to read as follows:

Sec. 15.607. APPROVAL OF APPLICATION. On review of recommendations by the executive administrator, the board by resolution may approve an application if the board finds that in its opinion the revenue or taxes or both revenue and taxes pledged by the applicant will be sufficient to meet all the obligations assumed by the applicant [~~political subdivision~~] and that the application and assistance applied for meet the requirements of the federal act and state law. A program of water conservation for the more effective use of water shall be required in the same manner as required for approval of an application for financial assistance under Section 15.106 of this code.

SECTION 4.17. Subchapter C, Chapter 16, Water Code, is amended by adding Section 16.059 to read as follows:

Sec. 16.059. COLLECTION OF INSTREAM FLOW DATA; CONDUCT OF STUDIES. (a) The Parks and Wildlife Department, the commission, and the board, in cooperation with other appropriate governmental agencies, shall jointly establish and continuously maintain an instream flow data collection and evaluation program and shall conduct studies and analyses to determine appropriate methodologies for determining flow conditions in the state's rivers and streams necessary to support a sound ecological environment. Any stream that consists only of floodwaters and is dry more than 75 percent of the year is exempt from this section.

(b) The Parks and Wildlife Department, the commission, and the board shall each designate an employee to share equally in the oversight of the program studies. Other responsibilities shall be divided between the Parks and Wildlife Department, the commission, and the board to maximize present in-house capabilities of personnel and equipment and to minimize costs to the state.

(c) The Parks and Wildlife Department, the commission, and the board shall each have reasonable access to all data, studies, analyses, information, and reports produced by the other agencies.

(d) The priority studies shall be completed not later than December 31, 2010. The Parks and Wildlife Department, the commission, and the board shall establish a work plan that prioritizes the studies and that sets interim deadlines providing for publication of flow determinations for individual rivers and streams on a reasonably consistent basis throughout the prescribed study period. Before publication, completed studies shall be submitted for comment to the commission, the board, and the Parks and Wildlife Department.

(e) Results of studies completed under this section shall be considered by the commission in its review of any management plan, water right, or interbasin transfer.

(f) The board may authorize the use of money from the research and planning fund established under Chapter 15 to accomplish the purposes of this section. The money shall be used by the board in cooperation with the commission and the Parks and Wildlife Department for interagency contracts with cooperating agencies and universities and contracts with private sector establishments, as necessary, to accomplish the purposes of this section.

SECTION 4.18. Subsection (c), Section 17.853, Water Code, is amended to read as follows:

(c) The board may use the fund only:

(1) to provide state matching funds for federal funds provided to the state water pollution control revolving fund or to any additional state revolving fund created under Subchapter J, Chapter 15;

(2) to provide financial assistance from the proceeds of taxable bond issues to water supply corporations organized under Chapter 67, and other participants;

(3) to provide financial assistance to participants for the construction of water supply projects and treatment works;

(4) to provide financial assistance for an interim construction period to participants for projects for which the board will provide long-term financing through the water development fund; ~~and~~

(5) to provide financial assistance for water supply and sewer service projects in economically distressed areas as provided by Subchapter K, Chapter 17, to the extent the board can make that assistance without adversely affecting the current or future integrity of the fund or of any other financial assistance program of the board; and

(6) to provide funds to the water infrastructure fund created under Section 15.903.

SECTION 4.19. Subdivisions (2) and (6), Section 17.871, Water Code, are amended to read as follows:

(2) "Borrower district" means a political subdivision, including a district or authority created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution, that receives or is eligible to receive a conservation loan from the board for a purpose described by Section 17.895 or 17.8955 [improvement to district facilities].

(6) "Lender district" means a political subdivision, including a soil and water conservation district under Chapter 201, Agriculture Code, a groundwater [an underground water] conservation district created under Article XVI, Section 59, of the Texas Constitution, or a district or authority created under Article III, Section 52(b)(1), or Article XVI, Section 59, of the Texas Constitution authorized to supply water for irrigation purposes, that is eligible to receive or that receives a loan from the board for the purpose of making conservation loans to individual borrowers.

SECTION 4.20. Section 17.895, Water Code, is amended to read as follows:

Sec. 17.895. CONSERVATION LOANS. (a) This section applies only to a conservation loan from a lender district that is:

(1) a soil and water conservation district under Chapter 201, Agriculture Code;

(2) a groundwater conservation district created under Section 59, Article XVI, Texas Constitution; or

(3) a district or authority created under Section 52(b)(1), Article III, or Section 59, Article XVI, Texas Constitution.

(b) The board or a lender district [districts] may make conservation loans for capital equipment or materials, labor, preparation costs, and installation costs:

(1) to improve water use efficiency of water delivery and application on existing irrigation systems;

(2) for preparing irrigated land to be converted to dryland conditions; and

(3) for preparing dryland for more efficient use of natural precipitation[;]

~~[(4) for preparing and maintaining land to be used for brush control activities, including but not limited to activities conducted pursuant to Chapter 203, Agriculture Code; or~~

~~[(5) for implementing precipitation enhancement activities in areas of the state where such activities would be, in the board's judgment, most effective].~~

~~(c) [(b)] Conservation loans for the purposes listed in Subsection (b) [(a)] may be made by lender districts to individual borrowers for use on private property or by the board to borrower districts [for use on district facilities].~~

~~(d) [(c)] The board may make conservation loans to borrower districts for the cost of purchasing and installing devices, on public or private property, designed to indicate the amount of water withdrawn for irrigation purposes.~~

~~(e) [(d)] For purposes of this section, the board or lender districts may seek the advice of the Department of Agriculture regarding the feasibility of a project for which a conservation loan is sought.~~

SECTION 4.21. Subchapter J, Chapter 17, Water Code, is amended by adding Section 17.8955 to read as follows:

Sec. 17.8955. CONSERVATION LOANS FOR BRUSH CONTROL AND PRECIPITATION ENHANCEMENT. (a) The board or a lender district may make a conservation loan for capital equipment or materials, labor, preparation costs, and installation costs for:

(1) preparing and maintaining land to be used for brush control activities, including activities conducted under Chapter 203, Agriculture Code; or

(2) implementing precipitation enhancement activities in areas of the state where those activities would be, in the board's judgment, most effective.

(b) A conservation loan for a purpose listed in Subsection (a) may be made by a lender district to an individual borrower for use on private property or by the board to a borrower district.

SECTION 4.22. Subchapter L, Chapter 17, Water Code, is amended by adding Section 17.9615 to read as follows:

Sec. 17.9615. TRANSFERS TO RURAL WATER ASSISTANCE FUND. (a) The board may direct the comptroller to transfer amounts from the financial assistance account to the rural water assistance fund to provide financial assistance under this subchapter for the purposes provided in Section 15.954.

(b) The board shall use the rural water assistance fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are to be deposited into the rural water assistance fund and to be used to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

SECTION 4.23. Subchapter L, Chapter 17, Water Code, is amended by adding Section 17.9616 to read as follows:

Sec. 17.9616. TRANSFER TO WATER INFRASTRUCTURE FUND. (a) The board may direct the comptroller to transfer amounts from the financial assistance account to the water infrastructure fund to provide financial assistance under this subchapter for the purposes provided in Section 15.904.

(b) The board shall use the water infrastructure fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are to

be deposited into the water infrastructure fund and to be used to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

SECTION 4.24. Section 11.32, Tax Code, is amended to read as follows:

Sec. 11.32. CERTAIN WATER CONSERVATION INITIATIVES. The governing body of a taxing unit by official action of the governing body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of property on which approved water conservation initiatives, desalination projects, or brush control initiatives have been implemented. For purposes of this section, approved water conservation, desalination, and brush control initiatives shall be designated pursuant to an ordinance or other law adopted by the governing unit.

SECTION 4.25. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.355 to read as follows:

Sec. 151.355. WATER-RELATED EXEMPTIONS. The following are exempted from taxes imposed by this chapter:

(1) rainwater harvesting equipment or supplies, water recycling and reuse equipment or supplies, or other equipment, services, or supplies used to reduce or eliminate water use;

(2) equipment, services, or supplies used for desalination of surface water or groundwater;

(3) equipment, services, or supplies used for brush control designed to enhance the availability of water;

(4) equipment, services, or supplies used for precipitation enhancement;

(5) equipment, services, or supplies used to construct or operate a water or wastewater system or component of a system sponsored by a political subdivision, as defined by Section 15.001, Water Code, which is certified by the Texas Natural Resource Conservation Commission as providing regional water or wastewater service; and

(6) equipment, services, or supplies used to construct or operate a water supply or wastewater system by a private entity as a public-private partnership, as certified by the political subdivision, as defined by Section 15.001, Water Code, that is a party to the project.

#### ARTICLE 5. JOINT COMMITTEE ON WATER RESOURCES

SECTION 5.01. In this article, "committee" means the joint committee on water resources.

SECTION 5.02. The committee shall conduct an interim study and make recommendations regarding:

(1) increasing the efficient use of existing water resources;

(2) developing sufficient long-term water financing strategies;

(3) improving existing water conveyance systems;

(4) water marketing;

(5) determining the appropriate role of environmental and wildlife concerns in water permitting and water development; and

(6) protection of the natural condition of beds and banks of the state-owned watercourses.

SECTION 5.03. The committee is composed of six members as follows:

(1) the chair of the Senate Committee on Natural Resources and the chair of the House Committee on Natural Resources;

(2) two members of the senate appointed by the lieutenant governor; and

(3) two members of the house of representatives appointed by the speaker of the house of representatives.

SECTION 5.04. The committee shall:

(1) meet at least annually with the Texas Natural Resource Conservation Commission and the Texas Water Development Board; and

(2) receive information relating to:

(A) encouraging the effective development of water marketing and water movement;

(B) prioritizing the use of state funds for financing the development and conservation of water resources; and

(C) identifying reasonable mechanisms, including measures for encouraging donation of water rights, for protecting instream uses.

SECTION 5.05. Not later than November 1, 2002, the committee shall make a final report to the lieutenant governor, the speaker of the house of representatives, and the 78th Legislature evaluating the issues described in Section 5.02 of this article.

SECTION 5.06. The committee has the authority necessary to perform its duties and, in connection with those duties, may call and hold hearings.

SECTION 5.07. The committee may request the assistance of state agencies, departments, or offices to carry out its duties.

SECTION 5.08. The Senate Committee on Natural Resources and the House Committee on Natural Resources shall provide staff to the committee.

SECTION 5.09. The committee shall submit a proposed budget to the appropriate committee on administration in each house of the legislature. The administration committees shall jointly approve the committee budget in an amount appropriate for the committee to accomplish its duties under this article.

SECTION 5.10. The committee may travel around the state and hold hearings or public meetings as needed to fulfill its duties under this article.

SECTION 5.11. This article expires and the committee is abolished on January 1, 2003.

#### ARTICLE 6. RULEMAKING PROCEDURES FOR THE EDWARDS AQUIFER AUTHORITY

SECTION 6.01. Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 1.115 to read as follows:

Sec. 1.115. RULEMAKING PROCEDURES. (a) The authority shall comply with the procedures provided by this section in adopting rules.

(b) The authority shall provide, by using the United States mail, notice of a proposed rule to all applicants and permit holders. The authority shall publish in a newspaper of general circulation within the boundaries of the authority notice of a public hearing on a proposed rule at least 14 days before the date of the public hearing on the rule. The notice must include:

(1) the date, time, and place of the public hearing;

(2) a statement of the general subject matter of the proposed rule;

(3) the procedures for obtaining copies of the proposed rule and for submitting comments; and

(4) the deadline for submitting comments.

(c) The board shall allow at least 45 days for comment on a proposed rule, other than an emergency rule, before the board adopts the rule. The board shall consider all written comments and shall, in the order adopting the rule, state the reasons and justification for the rule and the authority's responses to the written comments.

(d) The meeting at which a proposed rule is adopted as a final rule must be an open meeting, and the public must be allowed to make comments on the proposed rule and the agency responses. A proposed rule becomes final and effective on the 10th day after the date the rule is adopted by the board.

(e) Notwithstanding Subsections (b)-(d) of this section, the board may adopt emergency rules in anticipation of imminent harm to human health, safety, or welfare, or if compliance with the procedures provided in Subsections (b)-(d) of this section would prevent an effective response to emergency aquifer or springflow conditions. The board may adopt emergency rules five days after providing public notice. Emergency rules are effective immediately on adoption for a period of 120 days and may be renewed once for not more than 60 days.

(f) Subsections (b)-(d) of this section do not apply to the adoption of bylaws or internal procedures of the board and authority.

SECTION 6.02. Section 1.15, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsections (e) and (f) to read as follows:

(e) The authority shall conduct a contested case hearing on a permit application if a person with a personal justiciable interest related to the application requests a hearing on the application.

(f) The authority shall adopt rules establishing procedures for contested case hearings consistent with Subchapters C, D, and F, Chapter 2001, Government Code.

SECTION 6.03. Subsection (h), Section 1.11, and Subsection (e), Section 1.41, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are repealed.

SECTION 6.04. A rule adopted by the Edwards Aquifer Authority before the effective date of this Act remains in effect until repealed, amended, or readopted. Nothing contained in this article shall be construed as repealing the applicability of the open meetings law, Chapter 551, Government Code, or the public information law, Chapter 552, Government Code, to the Edwards Aquifer Authority.

SECTION 6.05. The rules in 31 T.A.C. Part 20 shall continue in effect until replaced by rules adopted pursuant to this article. The secretary of state shall delete 31 T.A.C. Part 20.

## ARTICLE 7. LIMITED LIABILITY FOR AQUATIC HERBICIDE APPLICATION

SECTION 7.01. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.050 to read as follows:

Sec. 26.050. LIMITED LIABILITY FOR AQUATIC HERBICIDE APPLICATION. (a) In this section, "commercially licensed aquatic herbicide applicator" means a person who holds a commercial applicator license issued by the Department of Agriculture under Chapter 76, Agriculture Code, to apply aquatic herbicides.

(b) Except as provided by Chapter 12, Parks and Wildlife Code, a commercially licensed aquatic herbicide applicator working under contract with a river authority organized pursuant to Section 59, Article XVI, Texas Constitution, is not liable for damages in excess of \$2 million for each occurrence of personal injury, property damage, or death resulting directly or indirectly from the application of aquatic herbicide in compliance with such contract, applicable law, and the license terms or permit.

(c) The control and elimination of noxious weeds, grasses, and vegetation in the rivers, tributaries, impoundments, and reservoirs of the state through the application by river authorities or their agents, employees, or contractors, in compliance with applicable law, licenses, and permits, of aquatic herbicides are essential governmental functions, and except to the extent provided in Chapter 101, Civil Practice and Remedies Code, nothing herein shall be deemed or construed to waive, limit, or restrict the governmental immunity of river authorities in the performance of such governmental functions.

(d) The limited liability provided by this section does not apply to a commercially licensed aquatic herbicide applicator if the applicator uses the wrong aquatic herbicide, fails to follow manufacturers' warnings, instructions, and directions for the application of the aquatic herbicide, fails to follow the directions of the river authority concerning the application of the aquatic herbicide, or applies the aquatic herbicide in a manner that violates federal or state law, rules, or regulations.

#### ARTICLE 8. CONCENTRATED ANIMAL FEEDING OPERATIONS

SECTION 8.01. Section 26.0286, Water Code, is amended to read as follows:

Sec. 26.0286. PROCEDURES APPLICABLE TO PERMITS FOR CERTAIN CONCENTRATED ANIMAL FEEDING OPERATIONS. (a) In this section:

(1) "~~Sole-source~~[-;~~sole-source~~] surface drinking water supply" means a body of surface water that[:

~~[(1)] is designated as a sole-source surface drinking [public] water supply in rules adopted by the commission [under Section 26.023; and~~

~~[(2) is the single source of supply of a public water supply system, exclusive of emergency water interconnections].~~

(2) "Protection zone" means an area so designated by commission rule under Subsection (c).

(b) The commission shall process an application for authorization to construct or operate a concentrated animal feeding operation as a specific permit under Section 26.028 subject to the procedures provided by Subchapter M, Chapter 5, if, on the date the commission determines that the application is administratively complete, any part of a pen, lot, pond, or other type of control or retention facility or structure of the concentrated animal feeding operation is located or proposed to be located within the protection zone of a sole-source surface drinking water supply. For the purposes of this subsection, a land application area is not considered a control or retention facility[:

~~[(1) in the watershed of a sole-source surface drinking water supply; and~~

~~[(2) sufficiently close, as determined by the commission by rule, to an intake of a public water supply system in the sole-source surface drinking water supply that contaminants discharged from the concentrated animal feeding operation could potentially affect the public drinking water supply].~~

(c) For the purposes of this section only, the commission by rule shall designate a surface water body as a sole-source surface drinking water supply if that surface water body is identified as a public water supply in rules adopted by the commission under Section 26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections. At the same time, the commission shall designate as a protection zone any area within the watershed of a sole-source surface drinking water supply that is:

(1) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;

(2) within two miles of that part of a perennial stream that is:

(A) a tributary of a sole-source surface drinking water supply; and

(B) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or

(3) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake.

SECTION 8.02. Not later than the 45th day after the effective date of this Act, the Texas Natural Resource Conservation Commission by order shall identify surface water bodies that are considered "sole-source surface drinking water supplies" for purposes of Subsection (b), Section 26.0286, Water Code, as amended by this Act, and shall designate the protection zones for those identified water bodies. The order expires on the date on which the commission adopts final rules under Subsection (c), Section 26.0286, Water Code, as added by this Act.

#### ARTICLE 9. REVOCATION OF CERTIFICATE OF PUBLIC UTILITY

SECTION 9.01. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.2541 to read as follows:

Sec. 13.2541. REVOCATION OF CERTIFICATE WHEN SERVICE PROVIDED TO A MUNICIPALITY. (a) This section applies only to a municipality with a population of more than 1.3 million.

(b) On request of a municipality served by a public utility, the commission at any time after notice and hearing may revoke the public utility's certificate of public convenience and necessity if it finds that the public utility:

(1) has never provided, is no longer providing, or has failed to provide continuous and adequate service in the municipality requesting the revocation; or

(2) has been grossly or continuously mismanaged or has grossly or continuously not complied with this chapter, commission rules, or commission orders.

(c) If the certificate of a public utility is revoked under Subsection (b), the municipality that requested the revocation shall operate the decertified public utility for an interim period prescribed by commission rule and shall request commission approval to acquire the decertified public utility's facilities and to transfer the decertified public utility's certificate of convenience and necessity to the municipality. The municipality must apply in accordance with Subchapter H.

(d) The compensation paid to the decertified public utility for its facilities shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified public utility and the municipality. The determination of compensation by the independent appraiser shall be binding on the commission. The municipality shall pay the costs of the independent appraiser. For the purpose of implementing this section, the value of real property shall be determined according to the standards prescribed by Chapter 21, Property Code, governing actions in eminent domain.

(e) The commission shall determine whether the municipality shall pay the compensation in a lump sum or over a specified period.

#### ARTICLE 10. WATER UTILITY SYSTEMS

SECTION 10.01. 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 commission to be kept in this state.

(b) The 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 commission.

SECTION 10.02. Section 13.144, Water Code, is amended to read as follows:

Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the 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 10.03. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.145 to read as follows:

Sec. 13.145. MULTIPLE SYSTEMS CONSOLIDATED UNDER TARIFF. A utility may consolidate more than one system under a single tariff only if:

(1) the systems under the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

SECTION 10.04. Section 13.182, Water Code, is amended to read as follows:

Sec. 13.182. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable.

(b) Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers.

(c) For ratemaking purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission considers that treatment to be appropriate.

(d) The 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 10.05. Section 13.183, Water Code, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows:

(c) To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the regulatory authority, by rule or ordinance, as appropriate, may adopt specific alternative ratemaking [may develop] methodologies for water or sewer rates based on factors other than rate of return and those specified in Section 13.185. Overall revenues determined according [pursuant] to an alternative ratemaking [alternate] methodology adopted [developed] under this section must provide revenues to the utility that satisfy the requirements of Subsection (a). The regulatory authority may not approve rates under an alternative ratemaking methodology unless the regulatory authority adopts the methodology before the date the rate application was administratively complete.

(d) A regulatory authority other than the commission may not approve an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

(e) In determining to use an alternative ratemaking methodology [alternate ratemaking methodologies], the regulatory authority shall assure that rates, operations, and services are just and reasonable to the consumers and to the utilities.

SECTION 10.06. Section 13.187, Water Code, is amended to read as follows:

Sec. 13.187. STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) A utility may not make changes in its rates except by delivering a statement of intent to each ratepayer and with the regulatory authority having original jurisdiction at least 60 [30] days before the effective date of the proposed change. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

(1) the information required by the regulatory authority's rules;

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

(A) 10,000 gallons of water; and

(B) 30,000 gallons of water; and

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services.

(b) A copy of the statement of intent shall be mailed or delivered to the appropriate offices of each affected municipality, and to any other affected persons as required by the regulatory authority's rules.

(c) When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported expenses.

(d) 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 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 commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.235(n) of this code.

(e) ~~(b)~~ If, before the 91st day ~~[within 60 days]~~ after the effective date of the rate change, the regulatory authority receives a complaint from any affected municipality, or from the lesser of 1,000 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction, the regulatory authority shall set the matter for hearing.

(f) The regulatory authority may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change. If more than half of the ratepayers of the utility receive service in a county with a population of more than 2.5 million, the hearing must be held at a location in that county.

(g) The hearing may be informal.

(h) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.

(i) ~~(e)~~ The regulatory authority, pending final action in a rate proceeding, may order the utility to deposit all or part of the rate increase received or to be received into an escrow account with a financial institution approved by the regulatory authority. Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest as determined by the regulatory authority.

(j) For good cause shown, the regulatory authority may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.

(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. The proposed rate may not be suspended for longer than:

(1) 90 days by a local regulatory authority; or

(2) 150 days by the commission.

(l) At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect until a final determination is made on the proposed rate.

(m) If the regulatory authority sets a final rate that is higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(n) For good cause shown, the regulatory authority may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(o) If a ~~the~~ regulatory authority other than the 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 ~~[within 335 days after]~~ the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility.

(p) ~~(d)~~ Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

SECTION 10.07. Subchapter I, Chapter 13, Water Code, is amended by adding Section 13.343 to read as follows:

Sec. 13.343. WHOLESAL WATER CONTRACTS BETWEEN CERTAIN AFFILIATES. (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 commission rule; or

(2) the executive director determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

(b) The utility may not purchase groundwater from any provider if:

(1) the source of the groundwater is located in a priority groundwater management area; and

(2) a wholesale supply of surface water is available.

SECTION 10.08. (a) The changes in law made by this article to Chapter 13, Water Code, apply to a proceeding in which the Texas Natural Resource Conservation Commission has not issued a final order before the effective date of this article; provided, however, that this article does not apply to a retail public utility for which a final order in any rate proceeding has been issued by the Texas Natural Resource Conservation Commission prior to January 1, 2001, as long as that retail public utility is the same as, controlled by, or an affiliate of the retail public utility for which a final order was issued prior to January 1, 2001. This subsection shall not be construed to permit a public utility to increase rates without obtaining the approval of the Texas Natural Resource Conservation Commission.

(b) Section 13.343, Water Code, as added by this article, does not apply to a contract executed before the effective date of this article. A contract executed before the effective date of this article is governed by the law in effect on the date it was executed, and that law is continued in effect for that purpose.

#### ARTICLE 11. MISCELLANEOUS PROVISIONS

SECTION 11.01. Section 26.177, Water Code, is amended by adding Subsection (h) to read as follows:

(h) Property subject to a permit or plat in the extraterritorial jurisdiction of a municipality may not be subjected to new or additional water pollution regulations if the property is transferred to another municipality's extraterritorial jurisdiction, and all provisions of Chapter 245, Local Government Code, shall apply to the property. If the

release of extraterritorial jurisdiction for the purpose of transferring it to another municipality results in property not being subject to any municipality's water pollution regulations on the date of release, the releasing municipality retains its jurisdiction to enforce its water pollution regulations until the property is included in the extraterritorial jurisdiction of the receiving municipality.

SECTION 11.02. Section 26.359, Water Code, is amended to read as follows:

Sec. 26.359. LOCAL REGULATION OR ORDINANCE. (a) In this section, "local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(b) A [This subchapter establishes a unified statewide program for underground and surface water protection, and any local] regulation or ordinance adopted by a local government that imposes standards [is effective only to the extent the regulation or ordinance does not conflict with the standards adopted] for the design, construction, installation, or operation of underground storage tanks is not valid [under this subchapter].

(c) This section does not apply to a rule adopted by the Edwards Aquifer Authority, or to a regulation or ordinance in effect as of January 1, 2001, or thereafter amended.

SECTION 11.03. (a) Section 27.051, Water Code, is amended by adding Subsection (h) to read as follows:

(h) The commission may not authorize by rule or permit an injection well that transects or terminates in the Edwards Aquifer. The commission by rule may authorize injection of groundwater withdrawn from the Edwards Aquifer, or injections of storm water, flood water, or groundwater through improved sinkholes or caves located in karst topographic areas. For purposes of this subsection, "Edwards Aquifer" has the meaning assigned by Section 26.046(a).

(b) The change in law made by Subsection (h), Section 27.051, Water Code, as added by this section, applies only to an application for a permit that is filed with the Texas Natural Resource Conservation Commission on or after September 1, 2001.

SECTION 11.04. Section 36.121, Water Code, is amended to read as follows:

Sec. 36.121. LIMITATION ON RULEMAKING POWER OF DISTRICTS OVER WELLS IN CERTAIN COUNTIES. Except as provided by Section 36.117, a district that is created under this chapter on or after September 1, 1991, shall exempt from regulation under this chapter a well and any water produced or to be produced by a well that is located in a county that has a population of 14,000 or less if the water is to be used solely to supply a municipality that has a population of 121,000 [~~115,000~~] or less and the rights to the water produced from the well are owned by a political subdivision that is not a municipality, or by a municipality that has a population of 100,000 [~~93,000~~] or less, and that purchased, owned, or held rights to the water before the date on which the district was created, regardless of the date the well is drilled or the water is produced. The district may not prohibit the political subdivision or municipality from transporting produced water inside or outside the district's boundaries.

## ARTICLE 12. NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY

SECTION 12.01. Subsection (a), Section 4.06, Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(a) The authority may:

(1) acquire and provide by purchase, gift, [or] lease, contract, or any other legal means, a water treatment or supply system, or any other works, plants, improvements, or facilities necessary or convenient to accomplish the purposes of the authority, or any interest in those assets, inside of or outside of the authority's boundaries;

(2) design, finance, or construct a water treatment or supply system, or any other supply systems, or any other works, plants, improvements, or facilities necessary or convenient to accomplish the purposes of the authority, and provide water services inside of or outside of the authority's boundaries;

(3) maintain, operate, lease, or sell a water treatment or supply system, or any other works, plants, improvements, or facilities necessary or convenient to accomplish the purposes of the authority, that the authority constructs or acquires inside of or outside of the authority's boundaries; and

(4) contract with any person to operate or maintain a water treatment or supply system the person owns.

#### ARTICLE 13. REPORTS; REPEALER;

##### TRANSITION; VALIDATION; EFFECTIVE DATE

SECTION 13.01. BOARD STUDY AND REPORT ON FINANCING WATER INFRASTRUCTURE PROJECTS. The Texas Water Development Board shall consider the reports submitted by the regional planning groups under Subsection (q), Section 16.053, Water Code, as added by this Act, relating to financing water infrastructure projects and shall consult with potentially impacted groups and other interested persons regarding the information reported and the recommendations made by the regional planning groups. Not later than October 1, 2002, the board shall submit to the legislature a report consisting of the regional planning groups' reports and the board's analysis of and recommendations regarding those reports.

SECTION 13.02. REPEALER. Sections 35.005 and 35.006, Water Code, are repealed.

SECTION 13.03. TRANSITIONS. (a) The changes in law made by this Act by amending Section 17.895, Water Code, and adding Section 17.8955, Water Code, apply only to a conservation loan for which an application is filed on or after the effective date of this Act. A conservation loan for which an application was filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b) Not later than January 1, 2002, the Texas Water Development Board shall adopt rules to administer Subchapter O, Chapter 15, Water Code, as added by this Act, including rules establishing procedures for applications for and the award of financial assistance for water projects, for the investment of funds, and for the administration of the water infrastructure fund, as created by this Act.

(c) Not later than January 1, 2002, the Texas Water Development Board shall adopt rules to administer Subchapter P, Chapter 15, Water Code, as added by this Act, including establishing procedures for the application for and award of loans, the distribution of loans, the investment of funds, and the administration of loans and the rural water assistance fund, as created by this Act.

(d) Not later than January 1, 2002, the Texas Water Development Board shall adopt rules requiring a holder of a surface water permit, certified filing, or certificate of adjudication for surface water, a holder of a permit for the export of groundwater

from a groundwater conservation district, a retail public water supplier, a wholesale water provider, and an irrigation district to report to the board information on certain water pipelines and other facilities that can be used for water conveyance.

(e) The changes in law made by this Act by amending Sections 11.023 and 11.122, Water Code, shall not change the existing priority of any industrial water right holder on the mainstem of the Rio Grande below Amistad Reservoir who uses or supplies water to a nursery grower.

(f) If any changes made by this Act to Chapter 36, Water Code, conflict with changes made to Chapter 36, Water Code, by any other Act passed by the 77th Legislature, Regular Session, 2001, this Act shall prevail.

**SECTION 13.04. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS.** (a) The proper and 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 by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of the 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 13.05. SEVERABILITY.** If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

**SECTION 13.06. EFFECTIVE DATE.** This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 189**

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas  
May 24, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 189** 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.

LINDSAY

NELSON

BIVINS

SHAPIRO

VAN DE PUTTE

On the part of the Senate

DUTTON

HOCHBERG

HARDCASTLE

S. TURNER

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to school district disciplinary action against a student with a disability who receives special education services and to the authority of a juvenile justice alternative education program to obtain a waiver regarding required days of operation.

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

SECTION 1. Section 37.004, Education Code, is amended to read as follows:

Sec. 37.004. PLACEMENT OF STUDENTS WITH DISABILITIES. (a) The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.

(b) Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:

(1) functional behavioral assessments;

(2) positive behavioral interventions, strategies, and supports; and

(3) behavioral intervention plans.

(c) A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes [~~if the student does not also meet the criteria for alternative placement in Section 37.006(a) or 37.007(a)~~].

(d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

(e) Notwithstanding any other provision of this subchapter, in a county with a juvenile justice alternative education program established under Section 37.011, the expulsion under a provision of Section 37.007 described by this subsection of a student with a disability who receives special education services must occur in accordance with this subsection and Subsection (f). The school district from which the student was expelled shall, in accordance with applicable federal law, provide the administrator of the juvenile justice alternative education program or the administrator's designee with reasonable notice of the meeting of the student's admission, review, and dismissal committee to discuss the student's expulsion. A representative of the juvenile justice alternative education program may participate in the meeting to the extent that the meeting relates to the student's placement in the program. This subsection applies only to an expulsion under:

(1) Section 37.007(b), (c), or (f); or

(2) Section 37.007(d) as a result of conduct that contains the elements of any offense listed in Section 37.007(b)(3) against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.

(f) If, after placement of a student in a juvenile justice alternative education program under Subsection (e), the administrator of the program or the administrator's designee has concerns that the student's educational or behavioral needs cannot be met in the program, the administrator or designee shall immediately provide written notice of those concerns to the school district from which the student was expelled. The student's admission, review, and dismissal committee shall meet to reconsider the placement of the student in the program. The district shall, in accordance with applicable federal law, provide the administrator or designee with reasonable notice of the meeting, and a representative of the program may participate in the meeting to the extent that the meeting relates to the student's continued placement in the program.

(g) Subsections (e) and (f) and this subsection expire September 1, 2003.

SECTION 2. Subsection (f), Section 37.011, Education Code, is amended to read as follows:

(f) A juvenile justice alternative education program must operate at least[:

~~(+)~~ seven hours per day[;] and

~~(=)~~ 180 days per year, except that a program may apply to the Texas Juvenile Probation Commission for a waiver of the 180-day requirement. The commission may not grant a waiver to a program under this subsection for a number of days that exceeds the highest number of instructional days waived by the commissioner during the same school year for a school district served by the program.

SECTION 3. This Act applies beginning with the 2001-2002 school year.

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, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2932**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2932** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

CARONA  
SIBLEY  
MONCRIEF

G. LEWIS  
HINOJOSA  
HILL  
SEAMAN

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 311**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 311** 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  
SHAPLEIGH  
ARMBRISTER  
FRASER  
BARRIENTOS

GALLEGO  
HEFLIN  
MCCALL  
BOSSE  
WOLENS

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the abolition of the General Services Commission; to the transfer of its functions to a newly created Texas Building and Procurement Commission; and to the operations of certain other state agencies having functions transferred from or associated with the General Services Commission, including the Department of Information Resources, the telecommunications planning and oversight council, the attorney general, the Legislative Budget Board, and the State Cemetery Committee.

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

**ARTICLE 1. ABOLITION OF GENERAL SERVICES COMMISSION;  
TRANSFER OF POWERS AND DUTIES**

SECTION 1.01. Subdivision (4), Section 1232.003, Government Code, is amended to read as follows:

(4) "Commission" means the Texas Building and Procurement [~~General Services~~] Commission.

SECTION 1.02. Subdivision (1), Section 2151.002, Government Code, is amended to read as follows:

(1) "Commission" means the Texas Building and Procurement [General Services] Commission.

SECTION 1.03. Section 2151.003, Government Code, is amended to read as follows:

Sec. 2151.003. REFERENCE. A statutory reference to the General Services Commission, the State Board of Control, or the State Purchasing and General Services Commission means the Texas Building and Procurement [General Services] Commission.

SECTION 1.04. Chapter 2151, Government Code, is amended by adding Section 2151.004 to read as follows:

Sec. 2151.004. TRANSFER OF POWERS AND DUTIES TO DEPARTMENT OF INFORMATION RESOURCES. (a) The powers and duties of the General Services Commission under Chapter 2170 or other law relating to providing telecommunications services for state government are transferred to the Department of Information Resources.

(b) A reference in law to the General Services Commission that relates to the powers and duties of the General Services Commission under Chapter 2170 or other law relating to providing telecommunications services for state government is a reference to the Department of Information Resources.

SECTION 1.05. The heading of Chapter 2152, Government Code, is amended to read as follows:

CHAPTER 2152. TEXAS BUILDING AND PROCUREMENT  
[GENERAL SERVICES] COMMISSION

SECTION 1.06. Section 2152.001, Government Code, is amended to read as follows:

Sec. 2152.001. COMMISSION. The Texas Building and Procurement [General Services] Commission is an agency of the state.

SECTION 1.07. Section 2152.002, Government Code, is amended to read as follows:

Sec. 2152.002. SUNSET PROVISION. The Texas Building and Procurement [General 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 subtitle, except for Chapter 2170 and Section 2157.121, expires September 1, 2013 [2001].

SECTION 1.08. Section 2152.051, Government Code, is amended to read as follows:

Sec. 2152.051. COMPOSITION OF COMMISSION. (a) The commission consists of:

(1) three members appointed by the governor;

(2) two additional members appointed by the governor from a list of nominees submitted by the speaker of the house of representatives; and

(3) two members appointed by the lieutenant governor [is composed of six representatives of the public appointed by the governor with the advice and consent of the senate].

(b) In making an appointment under Subsection (a)(2), the governor may reject one or more of the nominees on a list submitted by the speaker of the house of representatives and request a new list of different nominees.

SECTION 1.09. Subsection (b), Section 2152.052, Government Code, is amended to read as follows:

(b) In making appointments under this section, the governor and lieutenant governor shall attempt to appoint women and members of different minority groups, including African Americans, Hispanic Americans, Native Americans, and Asian Americans.

SECTION 1.10. Subsections (b) and (c), Section 2152.054, Government Code, are amended to read as follows:

(b) An officer, employee, or paid consultant of a Texas trade association of business entities that contracts with the state may not:

(1) serve as a commission member; or

(2) be employed as a commission employee 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 [who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule].

(c) An individual who is the spouse of an officer, manager, or paid consultant of a Texas trade association of business entities that contracts with the state may not:

(1) serve as a commission member; or

(2) be employed as a commission employee 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 [who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule].

SECTION 1.11. Subsection (c), Section 2152.056, Government Code, is amended to read as follows:

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 1.12. Section 2152.057, Government Code, is amended to read as follows:

Sec. 2152.057. TERMS. Commission members serve staggered six-year terms with two or three members' terms expiring January 31 of each odd-numbered year.

SECTION 1.13. Subchapter B, Chapter 2152, Government Code, is amended by adding Section 2152.0581 to read as follows:

Sec. 2152.0581. TRAINING FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

- (b) The training program must provide the person with information regarding:
- (1) the legislation that created the commission;
  - (2) the programs operated by the commission;
  - (3) the role and functions of the commission;
  - (4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;
  - (5) the current budget for the commission;
  - (6) the results of the most recent formal audit of the commission;
  - (7) the requirements of:
    - (A) the open meetings law, Chapter 551;
    - (B) the public information law, Chapter 552;
    - (C) the administrative procedure law, Chapter 2001; and
    - (D) other laws relating to public officials, including conflict-of-interest laws; and
  - (8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(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 1.14. Section 2152.060, Government Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The commission shall maintain a [keep an information] file on [about] each written complaint filed with the commission [that the commission has authority to resolve]. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the commission;
- (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
- (6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(d) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

SECTION 1.15. Subchapter C, Chapter 2152, Government Code, is amended by adding Section 2152.110 to read as follows:

Sec. 2152.110. STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108.

SECTION 1.16. On October 1, 2001:

- (1) the Department of Information Resources replaces the General Services Commission as the telecommunications services provider for state government;
- (2) all functions and activities performed by the General Services Commission that relate to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the

electronic commerce network under Chapters 2170 and 2177, Government Code, or other law immediately before that date are transferred to the Department of Information Resources;

(3) all employees of the General Services Commission who primarily perform duties related to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network, including employees who provide administrative support for those services, under Chapters 2170 and 2177, Government Code, or other law become employees of the Department of Information Resources, but continue to work in the same physical location unless moved in accordance with the plan created under Section 1.17 of this Act;

(4) a rule or form adopted by the General Services Commission that relates to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law is a rule or form of the Department of Information Resources and remains in effect until changed by the department;

(5) a reference in law to the General Services Commission that relates to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law means the Department of Information Resources;

(6) a waiver in effect that was issued by the General Services Commission relating to telecommunications under Chapter 2170, Government Code, or other law is continued in effect as a waiver of the Department of Information Resources;

(7) a rate case, contract negotiation, or other proceeding involving the General Services Commission that is related to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law is transferred without change in status to the Department of Information Resources, and the Department of Information Resources assumes, without a change in status, the position of the General Services Commission in a negotiation or proceeding relating to telecommunications, the marketplace, or the network to which the General Services Commission is a party;

(8) all money, contracts, leases, rights, and obligations of the General Services Commission related to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law are transferred to the Department of Information Resources;

(9) all property, including records, in the custody of the General Services Commission related to providing telecommunications services for state government or to the establishment of the electronic procurement marketplace or the electronic commerce network under Chapters 2170 and 2177, Government Code, or other law becomes the property of the Department of Information Resources, but stays in the same physical location unless moved in accordance with the plan created under Section 1.17 of this Act; and

(10) all funds appropriated by the legislature to the General Services Commission for purposes related to providing telecommunications services for state

government or to the establishment of the electronic procurement marketplace or the electronic commerce network, including funds for providing administrative support for those services such as funds to pay the salary and benefits of employees who provide the administrative support, under Chapters 2170 and 2177, Government Code, or other law are transferred to the Department of Information Resources.

SECTION 1.17. The General Services Commission or the Texas Building and Procurement Commission, as applicable, and the Department of Information Resources shall establish a transition plan for the transfer described in Section 1.16 of this Act. The plan must include:

(1) a timetable for any necessary or advisable movement of the physical location of employees and property;

(2) an inventory of all equipment and other property required to be transferred;

(3) a determination of any continued support and cooperation the commission must provide the department before the commission is abolished to ensure an efficient continuation of service and of planning for future needs; and

(4) provisions for the immediate access of the Department of Information Resources to facilities that house telecommunications equipment and any related facilities.

SECTION 1.18. (a) The General Services Commission as it exists on the effective date of this Act is abolished and the offices of the members of the commission serving on that date are abolished. The abolition takes effect on the date of the first meeting of the Texas Building and Procurement Commission as created by this Act. Until the General Services Commission as it exists on the effective date of this Act is abolished, the commission shall continue to perform its duties under Chapter 2152, Government Code, as that law existed immediately before the effective date of this Act.

(b) The Texas Building and Procurement Commission, composed as provided by Section 2152.051, Government Code, as amended by this Act, is created with the powers and duties assigned by Subtitle D, Title 10, Government Code, as amended by this Act. The creation takes effect on the date of the first meeting of the Texas Building and Procurement Commission as created by this Act. The governor and the lieutenant governor shall make appointments to the Texas Building and Procurement Commission in accordance with Section 2152.051, Government Code, as amended by this Act, as soon as possible after the effective date of this Act.

(c) In making appointments under this section:

(1) the governor shall appoint:

(A) two members for terms expiring January 31, 2003;

(B) one member for a term expiring January 31, 2005; and

(C) two members from a list of nominees submitted by the speaker of the house of representatives for terms expiring January 31, 2007; and

(2) the lieutenant governor shall appoint:

(A) one member for a term expiring January 31, 2005; and

(B) one member for a term expiring January 31, 2007.

(d) Subject to the changes in law made by this Act, the Texas Building and Procurement Commission created by this Act has all the powers and duties provided by law and all the property, employees, unspent appropriations, documents, rights, and obligations of the abolished General Services Commission.

(e) The validity of an action taken by the General Services Commission before it is abolished under Subsection (a) of this section is not affected by the abolishment.

SECTION 1.19. This Act does not prohibit a person who is a member of the General Services Commission immediately before September 1, 2001, from being appointed as a member of the new Texas Building and Procurement Commission if the person has the qualifications required for the position under Chapter 2152, Government Code, as amended by this Act.

SECTION 1.20. Section 2152.0581, Government Code, as added by this Act, takes effect January 31, 2003.

SECTION 1.21. The executive director, associate deputy directors, and division directors of the General Services Commission serving on the effective date of this Act become employees of the Texas Building and Procurement Commission as provided by this Act, but they do not automatically become the executive director, associate deputy directors, and division directors of the Texas Building and Procurement Commission. To become the executive director, associate deputy directors, and division directors of the Texas Building and Procurement Commission, they must apply for the positions and their employments in those capacities must be approved by the Texas Building and Procurement Commission.

## ARTICLE 2. MULTIPLE AWARD CONTRACTS

### FOR STATE AND LOCAL GOVERNMENT PURCHASES

SECTION 2.01. Chapter 2155, Government Code, is amended by adding Subchapter I to read as follows:

#### SUBCHAPTER I. MULTIPLE AWARD CONTRACT SCHEDULE

Sec. 2155.501. DEFINITIONS. In this subchapter:

- (1) "Department" means the Department of Information Resources.
- (2) "Local government" has the meaning assigned by Section 271.101, Local Government Code.
- (3) "Multiple award contract" means an award of a contract for an indefinite amount of one or more similar goods or services from a vendor.
- (4) "Schedule" means a list of multiple award contracts from which agencies may purchase goods and services.

Sec. 2155.502. DEVELOPMENT OF MULTIPLE AWARD CONTRACT SCHEDULE. (a) The commission shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by:

- (1) the federal government, including the federal General Services Administration; or
- (2) any other governmental entity in any state.

(b) In developing the schedule under Subsection (a), the commission shall modify any contractual terms, with the agreement of the parties to the contract, as necessary to comply with any federal or state requirements, including rules adopted under this subchapter.

(c) The commission may not list a multiple award contract on a schedule developed under this section if the goods or services provided by that contract:

- (1) are available from only one vendor; or
- (2) are telecommunications services, facilities, or equipment.

(d) In this section, "telecommunications" has the meaning assigned by Section 2054.003.

Sec. 2155.503. RULES. (a) The commission and the department shall adopt rules to implement this subchapter. The rules must:

- (1) establish standard terms for contracts listed on a schedule; and
- (2) maintain consistency with existing purchasing standards.

(b) The commission and the department shall consult with the attorney general and the comptroller in developing rules under this section.

Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES.

(a) A state agency or local government may purchase goods or services directly from a vendor under a contract listed on a schedule developed under this subchapter. A purchase authorized by this section satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Chapter 2157.

(b) The price listed for a good or service under a multiple award contract is a maximum price. An agency or local government may negotiate a lower price for goods or services under a contract listed on a schedule developed under this subchapter.

Sec. 2155.505. HISTORICALLY UNDERUTILIZED AND SMALL BUSINESSES. (a) In this section:

(1) "Historically underutilized business" has the meaning assigned by Section 2161.001.

(2) "Small business" means a small business concern as defined by regulations of the United States Small Business Administration in 13 C.F.R. Section 121.201.

(b) The commission shall strongly encourage each vendor with a contract listed on a schedule developed under this subchapter and who is not a historically underutilized business or small business to use historically underutilized or small businesses to sell or provide a service under the contract. If a vendor does not make a good faith effort to use historically underutilized and small businesses under the contract, the commission may exclude the vendor from being listed on a schedule developed under this subchapter.

(c) A historically underutilized business or small business may sell or provide a service under another vendor's contract listed on a schedule developed under this subchapter if:

(1) the contract is on a schedule developed under Section 2155.502;

(2) the vendor for the contract authorizes in writing the historically underutilized business or small business to sell or provide a service under that contract; and

(3) the historically underutilized business or small business provides that written authorization to the commission.

Sec. 2155.506. REPORTING REQUIREMENTS. (a) A vendor listed on a contract for a schedule developed under this subchapter shall report its sales to the commission in the manner prescribed by the commission.

(b) The commission shall compile the information reported under Subsection (a) and include the information in its report under Section 2101.011.

Sec. 2155.507. EXEMPTION FROM CATALOGUE PURCHASE METHOD FOR INFORMATION SYSTEM VENDORS. Section 2157.062 does not apply to a vendor who applies to be listed on a schedule developed under this subchapter.

Sec. 2155.508. INTERNET AVAILABILITY. (a) The commission shall develop a database of the multiple award contracts developed under this subchapter

and make that information available on an Internet site. The database must have search capabilities that allow a person to easily access the contracts.

(b) The commission shall allow vendors to apply through the Internet site to be listed on a schedule developed under this subchapter. The applicant shall provide an electronic mail address to the commission as part of the application process.

(c) The department shall post appropriate information regarding contracts developed under this subchapter to any electronic procurement system developed under Chapter 2177. On request by the department, the commission and any vendor with a contract on a schedule developed under this subchapter shall provide to the department any information necessary for posting on the system.

Sec. 2155.509. NOTICE REGARDING PROCUREMENTS EXCEEDING \$25,000. After a purchase order has been placed, a state agency subject to Section 2155.083 shall post, as required under that section, a procurement made under a contract listed on a schedule developed under this subchapter.

SECTION 2.02. Subsection (a), Section 2155.079, Government Code, is amended to read as follows:

(a) The commission shall adopt rules specifying the circumstances under which it is advantageous for the state to allow a state agency to purchase goods or services under a contract made by another state agency other than the commission, including as provided under Subchapter I.

SECTION 2.03. (a) Not later than March 1, 2002, the Texas Building and Procurement Commission shall develop initial schedules of multiple award contracts under Section 2155.502, Government Code, as added by this Act.

(b) Not later than January 1, 2002, the Texas Building and Procurement Commission shall adopt the rules required by Subchapter I, Chapter 2155, Government Code, as added by this Act.

### ARTICLE 3. OVERSIGHT OF MAJOR INFORMATION RESOURCES PROJECTS

SECTION 3.01. Section 2054.003, Government Code, is amended by adding a new Subdivision (8) and renumbering existing Subdivisions (8), (9), and (10) as Subdivisions (9), (10), and (11) to read as follows:

(8) "Major information resources project" means:

(A) any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed \$1 million and that:

(i) requires one year or longer to reach operations status;

(ii) involves more than one state agency; or

(iii) substantially alters work methods of state agency personnel or the delivery of services to clients; and

(B) any information resources technology project designated by the legislature in the General Appropriations Act as a major information resources project.

(9) "Project" means a program to provide information resources technologies support to functions within or among elements of a state agency, that ideally is characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.

(10) ~~(9)~~ "State agency" means a department, commission, board, office, council, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

(11) [(H)] "Telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, or sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems. The term includes all facilities and equipment performing those functions that are owned, leased, or used by state agencies and branches of state government.

SECTION 3.02. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.1181 to read as follows:

Sec. 2054.1181. OVERSIGHT OF MAJOR INFORMATION RESOURCES PROJECTS. (a) The department shall create a division in the department to oversee the implementation of major information resources projects.

(b) In performing its duties under this section, the department shall:

(1) develop policies for the oversight of projects;

(2) implement project management standards;

(3) use effective risk management strategies;

(4) establish standards that promote the ability of information resources systems to operate with each other; and

(5) use industry best practices and process reengineering when feasible.

(c) The division shall be funded from a percentage of money appropriated to or budgeted by state agencies for the major information resources projects designated by the legislature under Section 2054.003(8)(B). The legislature shall prescribe the percentage or percentages, as applicable, in the General Appropriations Act.

SECTION 3.03. Subsection (d), Section 2054.118, Government Code, is repealed.

#### ARTICLE 4. TELECOMMUNICATIONS

SECTION 4.01. Subsection (e), Section 2054.051, Government Code, is amended to read as follows:

(e) The department shall provide for all interagency use of information resources technologies by state agencies[~~except for telecommunications services provided by the General Services Commission under other law~~]. The department may provide for interagency use of information resources technologies either directly or by certifying another state agency to provide specified uses of information resources technologies to other state agencies.

SECTION 4.02. Subsection (d), Section 2054.091, Government Code, is amended to read as follows:

(d) The executive director shall appoint an advisory committee to assist in the preparation of the state strategic plan. The members of the advisory committee appointed by the executive director must be approved by the board and must include officers or employees of state government. The telecommunications planning and oversight council shall appoint one of its members to serve as a member of the advisory committee.

SECTION 4.03. The heading to Subchapter H, Chapter 2054, Government Code, is amended to read as follows:

#### SUBCHAPTER H. TELECOMMUNICATIONS PLANNING AND OVERSIGHT COUNCIL [GROUP]

SECTION 4.04. Section 2054.201, Government Code, is amended to read as follows:

Sec. 2054.201. COMPOSITION; TERMS. (a) The telecommunications planning and oversight council [group] is composed of:

(1) a representative of the comptroller's office, appointed by the comptroller;  
(2) the executive director of the Telecommunications Infrastructure Fund  
Board;

(3) a representative of the Texas Building and Procurement Commission,  
appointed by the executive director of the commission;

(4) a member representing the interests of state agencies with 1,000  
employees or more, appointed by the lieutenant governor;

(5) a member representing the interests of state agencies with fewer  
than 1,000 employees, appointed by the speaker of the house of representatives;

(6) a member representing the interests of institutions of higher education,  
appointed by the commissioner of higher education;

(7) a member representing the interests of The University of Texas System,  
appointed by the chancellor;

(8) a member representing the interests of The Texas A&M University  
System, appointed by the chancellor;

(9) a member representing the interests of public school districts that are  
customers of the consolidated telecommunications system, appointed by the governor;

(10) a member representing the interests of local governments that are  
customers of the consolidated telecommunications system, appointed by the  
governor; and

(11) two public members with telecommunications expertise, appointed by  
the governor [the comptroller, the executive director of the department, and the  
executive director of the General Services Commission].

(b) Appointed members of the telecommunications planning and oversight  
council serve two-year terms, except that the representative of the comptroller's office  
serves at the discretion of the comptroller and the representative of the Texas Building  
and Procurement Commission serves at the discretion of the executive director of the  
commission [Each member of the group may designate an employee of the member's  
agency to serve in the member's place].

(c) Members of the telecommunications planning and oversight council who  
represent a state agency shall abstain from any action taken by the council regarding  
a request for a waiver under Section 2170.051 from the state agency that is represented  
by the member.

SECTION 4.05. Subchapter H, Chapter 2054, Government Code, is amended by  
adding Section 2054.2011 to read as follows:

Sec. 2054.2011. DEFINITIONS. In this subchapter:

(1) "Centralized capitol complex telephone system" means the system  
described in Section 2170.059.

(2) "Consolidated telecommunications system" has the meaning assigned by  
Section 2170.001.

SECTION 4.06. Section 2054.202, Government Code, is amended to read as  
follows:

Sec. 2054.202. ADMINISTRATIVE PROVISIONS. (a) The  
telecommunications planning and oversight council [group] shall post notice of its  
meetings in accordance with the open meetings law, Chapter 551, in the manner  
required for a state governmental body under that chapter.

(b) The department shall provide [coordinate] the staff and administrative  
support necessary for [provided to] the telecommunications planning and oversight

council to perform its duties under this subchapter [~~group by the department, by the comptroller, and by the General Services Commission~~].

(c) The telecommunications planning and oversight council [~~group~~] may periodically elect one of its members to serve as presiding officer of the council [~~group~~].

SECTION 4.07. Section 2054.203, Government Code, is amended by amending Subsections (a) through (d) and adding Subsection (g) to read as follows:

(a) The telecommunications planning and oversight council [~~group~~] shall comprehensively collect and manage telecommunications network configuration information about existing and planned telecommunications networks throughout state government.

(b) The telecommunications planning and oversight council [~~group~~] may require state agencies to submit to the council [~~group~~] the agencies' network configuration information, but the council [~~group~~] must use existing reports to gather the information if possible and minimize the reporting burden on agencies to the extent possible.

(c) The telecommunications planning and oversight council [~~group~~] shall establish plans and policies for a system of telecommunications services to be managed and operated by the department [~~General Services Commission~~].

(d) The telecommunications planning and oversight council [~~group~~] shall develop a statewide telecommunications operating plan for all state agencies. The plan shall implement a statewide network and include technical specifications that are binding on the department [~~General Services Commission~~].

(g) The telecommunications planning and oversight council shall perform strategic planning for all state telecommunications services in accordance with the guiding principles of the state strategic plan for information resources management.

SECTION 4.08. Subsections (a) and (c), Section 2054.204, Government Code, are amended to read as follows:

(a) The telecommunications planning and oversight council [~~group~~] shall develop a plan for a state telecommunications network that will effectively and efficiently meet the long-term requirements of state government for voice, video, and computer communications, with the goal of achieving a single centralized telecommunications network for state government.

(c) The plan must incorporate efficiencies obtained through the use of shared transmission services and open systems architecture as they become available, building on existing systems as appropriate. In developing the plan, the telecommunications planning and oversight council [~~group~~] shall make use of the technical expertise of state agencies, including institutions of higher education.

SECTION 4.09. Section 2054.205, Government Code, is amended to read as follows:

Sec. 2054.205. DEVELOPMENT OF SYSTEM. (a) The telecommunications planning and oversight council [~~group~~] shall develop functional requirements for a statewide system of telecommunications services for all state agencies. Existing networks, as configured on September 1, 1991, of institutions of higher education are exempt from the requirements.

(b) The telecommunications planning and oversight council [~~group~~] shall develop requests for information and proposals for a statewide system of telecommunications services for all state agencies.

(c) The telecommunications planning and oversight council [group] shall negotiate rates and execute contracts with telecommunications service providers for services. The telecommunications planning and oversight council [group] may:

(1) acquire transmission facilities by purchase, lease, or lease-purchase in accordance with Chapters 2155-2158; and

(2) develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system.

SECTION 4.10. Subchapter H, Chapter 2054, Government Code, is amended by adding Section 2054.2051 to read as follows:

Sec. 2054.2051. OVERSIGHT OF SYSTEMS. (a) The telecommunications planning and oversight council shall develop service objectives for the consolidated telecommunications system and the centralized capitol complex telephone system.

(b) The telecommunications planning and oversight council shall develop performance measures for the operations and staff of the consolidated telecommunications system and the centralized capitol complex telephone system.

(c) The telecommunications planning and oversight council shall review every three months the status of all projects related to and the financial performance of the consolidated telecommunications system and the centralized capitol complex telephone system, including a comparison between actual performance and projected goals.

(d) The telecommunications planning and oversight council shall make recommendations to the board on ways to improve the operation of the consolidated telecommunications system and the centralized capitol complex telephone system based on its review of their performance and on concerns raised by using entities.

SECTION 4.11. Section 2054.206, Government Code, is amended to read as follows:

Sec. 2054.206. ANNUAL REPORT. The telecommunications planning and oversight council shall submit an annual report to the department and to each entity served by the consolidated telecommunications system or the centralized capitol complex telephone system. The report must include:

(1) information about the accomplishment of service objectives and other performance measures for management of the consolidated telecommunications system and the centralized capitol complex telephone system;

(2) information about the accounting and financial performance of the consolidated telecommunications system and the centralized capitol complex telephone system;

(3) estimates of savings to entities served by the consolidated telecommunications system over standard rates available to state agencies who acquire telecommunications services directly;

(4) trends in network use, including the number of users, workstations, and locations supported; and

(5) rate information for services provided by the consolidated telecommunications system and the centralized capitol complex telephone system.

[ADVISORY AGENCIES. The following state agencies shall formally advise the telecommunications planning group and send representatives to meetings of the group:

[(1) the Texas Education Agency;

[(2) the Texas Higher Education Coordinating Board;

- ~~[(3) The Texas A&M University System;~~  
~~[(4) The University of Texas System;~~  
~~[(5) the Telecommunications Infrastructure Fund Board; and~~  
~~[(6) the Texas State Library and Archives Commission.]~~

SECTION 4.12. Section 2054.207, Government Code, is amended to read as follows:

Sec. 2054.207. REPORT TO LEGISLATURE. The telecommunications planning and oversight council [group] shall report biennially to the legislature not later than October 1 of each even-numbered year on the status of the current plan for a state telecommunications network and on the progress state government has made towards accomplishing the goals of the plan. The report shall address consolidated telecommunications system performance, centralized capitol complex telephone system performance, telecommunications system needs, and recommended statutory changes to enhance system capability and cost-effectiveness.

SECTION 4.13. Subdivision (1), Section 2157.001, Government Code, is amended to read as follows:

(1) "Automated information system" includes:

(A) the computers and computer devices on which an information system is automated, including computers and computer devices that the commission identifies in guidelines developed by the commission in consultation with the Department of Information Resources and in accordance with Chapter 2054 and rules adopted under that chapter;

(B) a service related to the automation of an information system, including computer software or computers;

(C) a telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network, and services related to telecommunications that are not covered under Paragraph (D); and

(D) for the Department of Information Resources [~~General Services Commission~~], as telecommunications provider for the state, the term includes any service provided by a telecommunications provider, as that term is defined by Section 51.002, Utilities Code.

SECTION 4.14. Section 2157.121, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A state agency, other than the Department of Information Resources, shall send its proposal specifications and criteria to the commission for approval or request the commission to develop the proposal specifications and criteria.

(c) The Department of Information Resources may acquire a telecommunications device, system, or service or an automated information system by using competitive sealed proposals without regard to whether the commission makes the determination required under Subsection (a) for other state agencies.

SECTION 4.15. Subsection (a), Section 2170.001, Government Code, is amended by adding Subdivision (3) to read as follows:

(3) "Department" means the Department of Information Resources.

SECTION 4.16. Section 2170.002, Government Code, is amended to read as follows:

Sec. 2170.002. DEPARTMENT [~~COMMISSION~~] RESPONSIBLE FOR OBTAINING TELECOMMUNICATIONS SERVICES. The department [~~commission~~] is the state agency responsible for obtaining telecommunications services.

SECTION 4.17. Section 2170.003, Government Code, is amended to read as follows:

Sec. 2170.003. OWNERSHIP OR LEASE OF NECESSARY EQUIPMENT. The department [~~commission~~] may own, lease, or lease-purchase in accordance with Chapters 2155, 2156, 2157, and 2158 any or all of the facilities or equipment necessary to provide telecommunications services.

SECTION 4.18. Section 2170.004, Government Code, is amended to read as follows:

Sec. 2170.004. CONTRACTS WITH ENTITIES OTHER THAN STATE AGENCIES. The department [~~commission~~] may contract for use of the consolidated telecommunications system with:

- (1) each house of the legislature;
- (2) a legislative agency;
- (3) an agency that is not a state agency as defined by Section 2151.002; ~~and~~
- (4) a political subdivision, including a county, municipality, or district; and
- (5) a private institution of higher education accredited by a recognized accrediting agency, as defined by Section 61.003, Education Code, that:

(A) engages in distance learning, as defined by Section 57.021, Utilities Code; and

(B) receives federal funds for distance learning initiatives.

SECTION 4.19. Subsections (a) and (c), Section 2170.005, Government Code, are amended to read as follows:

(a) To ensure efficient operation of the consolidated telecommunications system at minimum cost to the state, the department [~~commission~~] shall adopt and disseminate to all agencies appropriate guidelines, operating procedures, and telephone directories.

(c) Telephone directories published by the department [~~commission~~] under this section and Section 2170.059 must be revised regularly and must list state telephone numbers alphabetically by the subject matter of agency programs as well as alphabetically by agency. The subject matter listing of programs and telephone numbers in the telephone directories must be consistent with the categorization developed by the Records Management Interagency Coordinating Council under Section 441.203 [~~441.053~~]. The department [~~commission~~] may authorize, under procedures and rules considered appropriate by the department [~~commission~~], a yellow pages advertising section in the directories to recover development, publication, and distribution costs of the directories.

SECTION 4.20. Section 2170.006, Government Code, is amended to read as follows:

Sec. 2170.006. COST-EFFECTIVENESS OF SYSTEM. (a) The department [~~commission~~], with the advice of the state auditor, shall maintain records relating to the consolidated telecommunications system necessary to enable the department [~~commission~~] to analyze the cost-effectiveness of the system to state agencies.

(b) The department [~~commission~~] shall advise the legislature at each session about the system's cost-effectiveness.

SECTION 4.21. Section 2170.008, Government Code, is amended to read as follows:

Sec. 2170.008. RATE INTERVENTION. (a) If the department [~~commission~~] determines there is sufficient economic impact on state government, the department

[commission] may intervene on behalf of state agencies in telecommunications rate cases and may hire special counsel and expert witnesses to prepare and present testimony.

(b) The attorney general shall represent the department [commission] before the courts in all appeals from rate cases in which the department [commission] intervenes.

SECTION 4.22. Subsections (a) and (c), Section 2170.009, Government Code, are amended to read as follows:

(a) A pay telephone may be located in the capitol complex only with the approval of the department [commission]. The department [commission] shall collect the revenue from the installation and operation of the pay telephone and deposit it to the credit of the general revenue fund.

(c) The department [commission] or other state entity shall account for the revenue collected under this section in the entity's annual report.

SECTION 4.23. Section 2170.051, Government Code, is amended to read as follows:

Sec. 2170.051. MANAGEMENT AND USE OF SYSTEM. (a) The department [commission] shall manage the operation of a system of telecommunications services for all state agencies. Each agency shall identify its particular requirements for telecommunications services and the site at which the services are to be provided.

(b) The department [commission] shall fulfill the telecommunications requirements of each state agency to the extent possible and to the extent that money is appropriated or available for that purpose.

(c) A state agency shall use the consolidated telecommunications system to the fullest extent possible. A state agency may not acquire telecommunications services unless the telecommunications planning and oversight council [group] determines that the agency's requirement for telecommunications services cannot be met at a comparable cost by the consolidated telecommunications system.

(d) A state agency may not enter into or renew a contract with a carrier or other provider of telecommunications services without obtaining a waiver from the telecommunications planning and oversight council [group] certifying that the requested telecommunications services cannot be provided at a comparable cost on the consolidated telecommunications system. The telecommunications planning and oversight council [group] shall evaluate requests for waivers based on cost-effectiveness to the state government as a whole. A waiver may be granted only for a specific period and will automatically expire on the stated expiration date unless an extension is approved by the telecommunications planning and oversight council [group]. A contract for telecommunications services obtained under waiver may not extend beyond the expiration date of the waiver. If the telecommunications planning and oversight council [group] becomes aware of any state agency receiving telecommunications services without a waiver, the telecommunications planning and oversight council [group] shall notify the agency and the comptroller. The state agency shall have 60 days after notification by the telecommunications planning and oversight council [group] in which to submit a waiver request to the telecommunications planning and oversight council [group] documenting the agency's reasons [reasoning] for bypassing the consolidated telecommunications system and otherwise providing all information required by the waiver application form.

SECTION 4.24. Section 2170.052, Government Code, is amended to read as follows:

Sec. 2170.052. BALANCING TECHNOLOGICAL ADVANCEMENTS AND EXISTING FACILITIES. In the planning, design, implementation, and operation of the consolidated telecommunications system, the department [~~commission~~] shall maintain an appropriate balance between the adoption of technological advancements and the efficient use of existing facilities and services to avoid misapplication of state money and degradation or loss of the integrity of existing systems and facilities.

SECTION 4.25. Section 2170.056, Government Code, is amended to read as follows:

Sec. 2170.056. COSTS TO STATE OF PARALLEL TOLLS. All contracts with telecommunications carriers shall provide that the department [~~commission~~] or any participating agency may obtain any information relating to the costs to the state of parallel tolls.

SECTION 4.26. Subsections (a), (c), and (d), Section 2170.057, Government Code, are amended to read as follows:

(a) The department [~~commission~~] 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.

(c) To provide an adequate cash flow as necessary for purposes of this chapter, using state agencies and other entities, on proper notification, shall make monthly payments into the telecommunications revolving fund account from appropriated or other available money. The legislature may appropriate money for operating the system directly to the department [~~commission~~], in which case the revolving fund account shall be used to receive money due from local governmental entities and other agencies to the extent that their money is not subject to legislative appropriation.

(d) The department [~~commission~~] 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 [~~commission~~] 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 [~~22A, Information Resources Management Act (Article 4413(32j), Revised Statutes)~~].

SECTION 4.27. Subsections (b) and (c), Section 2170.058, Government Code, are amended to read as follows:

(b) The department [~~commission~~] shall adopt rules that govern student access to the system, including:

(1) times of access to the system; and

(2) the full recovery of actual costs from each student who uses the system.

(c) In consideration of the duties and responsibilities given the department [~~commission~~] under this chapter [~~subtitle~~], it is the policy of this state that a state agency or unit of state government may not provide telecommunications products or services to the general public in competition with private enterprise unless there is a finding that providing the products or services is in the public interest. This subsection does not prohibit students who reside in housing for which institutions of higher education provide telephone service from using service provided under this section.

SECTION 4.28. Section 2170.059, Government Code, is amended to read as follows:

Sec. 2170.059. CENTRALIZED CAPITOL COMPLEX TELEPHONE SYSTEM.

(a) The department [~~commission~~] shall provide centralized telephone service for state

agencies, each house of the legislature, and legislative agencies in the capitol complex. State agencies in the capitol complex shall use the service. Each house of the legislature and each legislative agency shall use the service at the discretion of the legislature. The department [~~commission~~] may provide the service to other state agencies that subscribe to it.

(b) Each using entity shall make monthly payments to the department [~~commission~~] when billed by the department [~~commission~~].

(c) Each using entity may arrange for its own terminal telephone equipment, but the equipment must be compatible with the centralized telephone service. The department [~~commission~~] shall make terminal equipment available for using entities that choose to use that terminal equipment.

(d) The department [~~commission~~] annually shall prepare and issue a revised centralized telephone service directory not later than March 31.

SECTION 4.29. Subchapter B, Chapter 2170, Government Code, is amended by adding Section 2170.060 to read as follows:

Sec. 2170.060. QUARTERLY REPORT. The department shall quarterly submit a report to the telecommunications planning and oversight council on:

(1) the department's accomplishment of service objectives and other performance measures;

(2) the financial performance of the consolidated telecommunications system and the centralized capitol complex telephone system; and

(3) the status of projects for the consolidated telecommunications system and the centralized capitol complex telephone system.

SECTION 4.30. Subsection (e), Section 2054.091, Government Code, is repealed.

SECTION 4.31. Section 2170.007, Government Code, is repealed.

SECTION 4.32. (a) The telecommunications planning group is abolished.

(b) The governor, the lieutenant governor, the speaker of the house of representatives, the comptroller of public accounts, the executive director of the Texas Building and Procurement Commission, the commissioner of higher education, the chancellor of The University of Texas System, and the chancellor of The Texas A&M University System shall make appointments to the telecommunications planning and oversight council in accordance with Section 2054.201, Government Code, as amended by this Act, as soon as possible after September 1, 2001.

(c) Any powers, duties, rights, contracts, appropriations, property, and records of the telecommunications planning group are transferred to the telecommunications planning and oversight council as created by this Act.

(d) A rule, policy, plan, waiver, standard, requirement, or guideline of the telecommunications planning group continues in effect as a rule, policy, plan, waiver, standard, requirement, or guideline of the telecommunications planning and oversight council until it is superseded by an act of the telecommunications planning and oversight council as created by this Act or until it expires according to its terms or by operation of law.

(e) The validity of a rule, policy, plan, requirement, guideline, or procedure adopted, waiver granted, contract or acquisition made, obligation incurred, right accrued, or other action taken by or in connection with the authority of the telecommunications planning group before it is abolished under Subsection (a) of this section is not affected by the abolishment.

SECTION 4.33. The telecommunications planning and oversight council shall issue the first annual report required under Section 2054.206, Government Code, as amended by this Act, not later than September 1, 2002.

ARTICLE 5. STATEWIDE CONTRACT MANAGEMENT

SECTION 5.01. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2262 to read as follows:

CHAPTER 2262. STATEWIDE CONTRACT MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2262.001. DEFINITIONS. In this chapter:

(1) "Team" means the Contract Advisory Team created under Subchapter C.  
(2) "Contract management guide" means the guide developed under Section 2262.051.

(3) "Contract manager" means a person who:  
(A) is employed by a state agency; and  
(B) has significant contract management duties for the state agency, as determined by the agency in consultation with the state auditor.

(4) "Major contract" means a contract that has a value of at least \$1 million.

(5) "State agency" has the meaning provided by Section 2056.001.

Sec. 2262.002. EXEMPTIONS. (a) This chapter does not apply to an institution of higher education as defined by Section 61.003, Education Code.

(b) This chapter does not apply to contracts of the Texas Department of Transportation that relate to highway construction or highway engineering.

[Sections 2262.003-2262.050 reserved for expansion]

SUBCHAPTER B. CONTRACT MANAGEMENT

Sec. 2262.051. CONTRACT MANAGEMENT GUIDE; RULES. (a) In consultation with the Texas Building and Procurement Commission, the Department of Information Resources, the comptroller, and the state auditor, the attorney general shall develop and periodically update a contract management guide for use by state agencies.

(b) The attorney general may adopt rules necessary to develop the guide.

(c) The guide must provide information regarding the primary duties of a contract manager, including how to:

(1) develop and negotiate a contract;

(2) select a contractor; and

(3) monitor contractor and subcontractor performance under a contract.

(d) The guide must include model provisions for state agency contracts. The guide must:

(1) distinguish between essential provisions that a state agency must include in a contract to protect the interests of this state and recommended provisions that a state agency may include in a contract;

(2) recognize the unique contracting needs of an individual state agency or program and provide sufficient flexibility to accommodate those needs, consistent with protecting the interests of this state; and

(3) include maximum contract periods under which a new competitive solicitation is not necessary.

(e) The guide must recommend time frames under which a state agency may issue a competitive solicitation for a major contract in relation to the date on which the contract is to be executed.

(f) The guide must establish procedures by which a state agency is required to consult with the team before issuing a solicitation for a major contract. The procedures must establish a process under which the team is required to review and comment on whether to proceed with the solicitation. As detailed in the procedures, the team may recommend that the agency use the services of the attorney general or private counsel or of private consultants who are experts in any technical matter that is the subject of the major contract.

(g) The guide must establish procedures under which a state agency is required to solicit explanations from qualified potential respondents who did not respond to a competitive solicitation for a contract on which fewer than two qualified bids were received by the agency.

Sec. 2262.052. COMPLIANCE WITH GUIDE. (a) Each state agency shall comply with the contract management guide.

(b) The state auditor shall:

(1) periodically monitor compliance with this section;

(2) report any noncompliance to:

(A) the governor;

(B) the lieutenant governor;

(C) the speaker of the house of representatives; and

(D) the team; and

(3) assist, in coordination with the attorney general and the comptroller, a noncomplying state agency to comply with this section.

Sec. 2262.053. TRAINING. (a) In coordination with the Texas Building and Procurement Commission, the comptroller, and the Department of Information Resources, the state auditor shall develop a training program for contract managers.

(b) The training must provide the contract manager with information regarding how to:

(1) fairly and objectively select and negotiate with the most qualified contractor;

(2) establish prices that are cost-effective and that reflect the cost of providing the service;

(3) include provisions in a contract that hold the contractor accountable for results;

(4) monitor and enforce a contract;

(5) make payments consistent with the contract; and

(6) comply with any requirements or goals contained in the contract management guide.

(c) Each state agency shall ensure that the agency's contract managers complete the training developed under this section.

Sec. 2262.054. PUBLIC COMMENT. The attorney general by rule may establish procedures by which each state agency is required to invite public comment by publishing the proposed technical specifications for major contracts on the Internet through the information service known as the Texas Marketplace or through a suitable successor information service. The guide must define "technical specifications."

[Sections 2262.055-2262.100 reserved for expansion]

#### SUBCHAPTER C. CONTRACT ADVISORY TEAM

Sec. 2262.101. CREATION; DUTIES. The Contract Advisory Team is created to assist state agencies in improving contract management practices by:

- (1) reviewing the solicitation of major contracts by state agencies;
- (2) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b), regarding a state agency's compliance with the contract management guide; and
- (3) providing recommendations to:
  - (A) the attorney general regarding the development of the contract management guide; and
  - (B) the state auditor regarding the training under Section 2262.053.

Sec. 2262.102. MEMBERS. (a) The team consists of the following five members:

- (1) one member from the attorney general's office;
- (2) one member from the comptroller's office;
- (3) one member from the Department of Information Resources;
- (4) one member from the Texas Building and Procurement Commission; and
- (5) one member from the governor's office.

(b) The Legislative Budget Board and the state auditor shall provide technical assistance to the team.

Sec. 2262.103. PERSONNEL. Each agency or officer with representation on the team shall provide, at the request of the team, staff to assist the team in carrying out its duties under this chapter.

SECTION 5.02. Subsection (b), Section 2056.002, Government Code, is amended to read as follows:

(b) The Legislative Budget Board and the Governor's Office of Budget and Planning shall determine the elements required to be included in each agency's strategic plan. Unless modified by the Legislative Budget Board and the Governor's Office of Budget and Planning, and except as provided by Subsection (c), a plan must include:

- (1) a statement of the mission and goals of the state agency;
- (2) a description of the indicators developed under this chapter and used to measure the output and outcome of the agency;
- (3) identification of the groups of people served by the agency, including those having service priorities, or other service measures established by law, and estimates of changes in those groups expected during the term of the plan;
- (4) an analysis of the use of the agency's resources to meet the agency's needs, including future needs, and an estimate of additional resources that may be necessary to meet future needs;
- (5) an analysis of expected changes in the services provided by the agency because of changes in state or federal law;
- (6) a description of the means and strategies for meeting the agency's needs, including future needs, and achieving the goals established under Section 2056.006 for each area of state government for which the agency provides services;
- (7) a description of the capital improvement needs of the agency during the term of the plan and a statement, if appropriate, of the priority of those needs;
- (8) identification of each geographic region of this state, including the Texas-Louisiana border region and the Texas-Mexico border region, served by the agency, and if appropriate the agency's means and strategies for serving each region;
- (9) a description of the training of the agency's contract managers under Section 2262.053; and
- (10) ~~(9)~~ other information that may be required.

SECTION 5.03. Not later than March 1, 2002, the members of the Contract Advisory Team created under Section 2262.101, Government Code, as added by this Act, shall be designated by the appropriate state agency or officer.

SECTION 5.04. Not later than March 1, 2002, the attorney general shall complete the contract management guide required by Section 2262.051, Government Code, as added by this Act.

SECTION 5.05. (a) In this section:

(1) "Team" means the Contract Advisory Team created under Subchapter C, Chapter 2262, Government Code, as added by this Act.

(2) "Major contract" has the meaning provided by Section 2262.001, Government Code, as added by this Act.

(3) "Solicitation" includes an invitation for bid, request for proposal, request for offer, request for quote, or other method for soliciting contracts in this state.

(4) "State agency" has the meaning provided by Section 2056.001, Government Code.

(b) Not later than March 1, 2002, each state agency shall provide the team:

(1) a list of all unexpired major contracts entered into by the agency for which a competitive bid was solicited before September 1, 1998; and

(2) a plan for issuing new solicitations for those contracts not later than September 1, 2003.

(c) The team may review and comment on the plan submitted under Subsection (b) of this section.

(d) This section does not apply to contracts of the Texas Department of Transportation that relate to highway construction or highway engineering.

SECTION 5.06. Not later than December 31, 2002, one contract manager designated by each state agency must have received the training required by Subsection (c), Section 2262.053, Government Code, as added by this Act.

SECTION 5.07. (a) Except as provided by Subsections (b) and (c) of this section, this article takes effect September 1, 2001.

(b) Subsection (a), Section 2262.052, Government Code, as added by this Act, takes effect January 1, 2003. A state agency may comply with Subsection (a), Section 2262.052, Government Code, before its effective date.

(c) A state agency is not required to comply with Subdivision (9), Subsection (b), Section 2056.002, Government Code, as added by this Act, until June 1, 2004.

## ARTICLE 6. COMMERCIALY

### AVAILABLE ACTIVITIES

SECTION 6.01. Subtitle D, Title 10, Government Code, is amended by adding Chapter 2163 to read as follows:

#### CHAPTER 2163. COMMERCIALY

##### AVAILABLE ACTIVITIES

Sec. 2163.001. REVIEW PROCESS. (a) The commission shall develop a systematic review process to identify commercially available services being performed by the commission and study the services to determine if they may be better provided by other state agency providers of the services or private commercial sources.

(b) In reviewing its services, the commission shall:

(1) determine whether competitive vendors exist in the private sector;

(2) compare the cost of contracting for the services from other state agency providers of the services or private commercial sources to the commission's cost of performing the services; and

(3) document cost savings from contracting for the services from other state agency providers of the services or private commercial sources.

(c) Each commercially available service performed by the commission shall be reviewed at least once every six years.

(d) The commission shall consult with the State Council on Competitive Government as necessary in planning and conducting its reviews under this subchapter.

Sec. 2163.002. COST COMPARISON AND CONTRACT CONSIDERATIONS.

(a) The commission shall consider all of its direct and indirect costs in determining the cost of providing a service.

(b) In comparing the cost of providing a service, the commission must include the:

(1) cost of supervising the work of a private contractor; and

(2) cost to the state of the commission's performance of the service,

including:

(A) the costs of the office of the attorney general and other support agencies; and

(B) other indirect costs related to the commission's performance of the service.

Sec. 2163.003. CONTRACTING WITH ANOTHER STATE AGENCY OR PRIVATE SOURCE. (a) If the commission determines that a service can be performed with a comparable or better level of quality at a savings to the state of at least 10 percent by using other state agency providers of the service or a private commercial source, the commission may contract with other state agency providers of the services or private commercial sources for the service.

(b) The commission maintains responsibility for providing a contracted service and shall set measurable performance standards for a contractor.

Sec. 2163.004. PROHIBITION. The commission may not begin providing a service the General Services Commission did not provide as of September 1, 2001, unless, after conducting an in-depth analysis on cost in accordance with Section 2163.002 and on availability of a service, the commission determines that it can perform the service at a higher level of quality or at a lower cost than other state agency providers of the service or private commercial sources.

ARTICLE 7. ELECTRONIC COMMERCE; TRAVEL

SECTION 7.01. Subsection (a), Section 2155.062, Government Code, is amended to read as follows:

(a) In purchasing goods and services the commission may use, but is not limited to, the:

(1) contract purchase procedure;

(2) multiple award contract procedure, including under any schedules developed under Subchapter I; [or]

(3) open market purchase procedure; or

(4) reverse auction procedure.

SECTION 7.02. Subsections (c), (d), (f), (k), and (l), Section 2155.83, Government Code, are amended to read as follows:

(c) The commission [department] each business day shall produce and post a business daily in an electronic format. The commission [department] shall post in the business daily information as prescribed by this section about each state agency procurement that will exceed \$25,000 in value. The commission [department] shall also post in the business daily other information relating to the business activity of the state that the commission [department] considers to be of interest to the public.

(d) The commission [~~department~~] shall make the business daily available on the Internet [~~through its information service known as the Texas Marketplace or through a suitable successor information service that will make the information available on the Internet~~]. Each [~~The department and each~~] state agency shall cooperate with the commission in making the electronic business daily available.

(f) The commission [~~department~~] and other state agencies may not charge a fee designed to recover the cost of preparing and gathering the information that is published in the business daily. These costs are considered part of a procuring agency's responsibility to publicly inform potential bidders or offerors of its procurement opportunities.

(k) Each state agency that will award a procurement contract estimated to exceed \$25,000 in value shall send to the commission [~~department~~]:

(1) the information the commission [~~department~~] requires for posting in the state business daily under this section; and

(2) a notice when the procurement contract has been awarded or when the state agency has decided to not make the procurement.

(l) The commission [~~department~~] may adopt rules, prescribe forms, and require information to administer this section. The commission [~~department~~] shall send any proposed rules to the governor, Legislative Budget Board, comptroller, and state auditor [~~, and commission~~] for review and comment. The commission's [~~department's~~] rules shall require that each state agency [~~, to the extent feasible,~~] shall directly and electronically post its own notices or solicitation packages under Subsections (g) and (h).

SECTION 7.03. Subsections (a) and (b), Section 2156.003, Government Code, are amended to read as follows:

(a) The commission shall electronically maintain a bidders list that is integrated into the electronic procurement marketplace established by the Department of Information Resources. If the commission determines that it is in the state's best interest, the commission may also maintain the list on paper. The commission may [~~and~~] add or delete names from the list according to applicable standards provided by Section 2156.007.

(b) In addition to any requirements of Chapter 2177, an [~~An~~] invitation to bid on an item to be purchased may be sent electronically [~~only~~] to a vendor on the bidders list who has expressed a desire to bid on that type of item.

SECTION 7.04. Section 2171.052, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The commission shall maintain at least one contract with a provider of travel services that offers reservation and ticketing services in person or by telephone.

SECTION 7.05. Subchapter B, Chapter 2171, Government Code, is amended by adding Section 2171.0521 to read as follows:

Sec. 2171.0521. ONLINE RESERVATION AND TICKETING CAPABILITY.

(a) The Department of Information Resources, in consultation with the commission, shall establish and manage the electronic infrastructure of an online travel reservation and ticketing capability for use by state agencies participating in the commission's contracts for travel services. The commission shall manage and administer the content of the online travel reservation and ticketing capability. The Department of Information Resources, in consultation with the commission, shall enter into contracts with private or public entities to establish a secure means by which a state employee traveling on state business may electronically participate in the commission's contracts

for travel services. The Department of Information Resources shall attempt to establish an online capability that connects to the online reservation or ticketing systems of providers of travel services. Reservations must be made with a state-issued credit card or other form of payment authorized by the commission.

(b) The preference in Section 2171.052(c) for a resident entity of this state does not apply to this section.

(c) A state agency may use the online reservation and ticketing capability to make travel reservations for a state employee traveling on state business.

SECTION 7.06. Chapter 2177, Government Code, is amended to read as follows:

CHAPTER 2177. ELECTRONIC COMMERCE  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2177.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Information Resources.

(2) "Electronic procurement system" means the electronic system for procuring goods and services consisting of the electronic procurement marketplace created under Subchapter B and the electronic commerce network created under Subchapter C.

Sec. 2177.002. SMALL AND HISTORICALLY UNDERUTILIZED BUSINESSES. The commission and the department shall ensure that small and historically underutilized businesses have maximum access to electronic commerce opportunities.

Sec. 2177.003. CONSULTATION. The commission, at least quarterly, shall consult with the following entities to ensure that the electronic procurement system meets the needs of users of the system:

(1) the department;

(2) the state auditor;

(3) groups, including coordinating councils, created by the commission to assist with electronic commerce initiatives;

(4) the vendor advisory committee established under Section 2155.081; and

(5) other state agencies and local governments that use the system.

Sec. 2177.004. INTERFACE WITH TEXAS ONLINE. (a) The department, with the assistance of the commission, shall assess whether all or parts of the electronic procurement system should interface with the project known as Texas Online that is a continuation of the demonstration project authorized by Section 2054.062 as enacted by the 76th Legislature.

(b) Based on the assessment, the department and the commission may interface all or parts of the electronic procurement system with Texas Online or use features of Texas Online to enhance the electronic procurement system.

SUBCHAPTER B. ELECTRONIC  
PROCUREMENT MARKETPLACE

Sec. 2177.051. ELECTRONIC PROCUREMENT MARKETPLACE. (a) The department [commission] shall establish and manage the electronic infrastructure of an electronic procurement marketplace. The commission shall manage and administer the content of the electronic procurement marketplace in accordance with this subtitle. The department or commission, as appropriate, may enter into contracts with private or public entities to establish or maintain all or part of the databases comprising the marketplace, to the extent feasible, including contracts to procure hardware or software. The department or commission, as appropriate, shall procure all goods and services related to the marketplace through a competitive selection process appropriate for the good or service being acquired.

(b) The commission, in consultation with the ~~department~~ [~~Department of Information Resources~~], shall define standards, including keyword and product code standards, for the electronic procurement marketplace. The marketplace may contain:

- (1) information relevant to the state's standard procurement specifications for goods and services;
- (2) information about vendors, including [~~information from the centralized master bidders list and~~] vendor performance information;
- (3) information about products, including product testing results;
- (4) historical purchasing information, qualified purchase lists, and trends; [~~and~~]
- (5) information about the availability of surplus property; ~~and~~
- (6) information about recycled, remanufactured, or environmentally sensitive commodities or services, including commodities or services identified under Section 2155.448.

(c) The commission shall integrate the business daily into the electronic procurement marketplace.

(d) The ~~department~~ [~~commission~~] may adopt rules relating to the design and use of the electronic procurement marketplace that concern the technical requirements of the marketplace. The commission may adopt rules relating to the use of the marketplace for its intended purpose, including rules that require state agencies to provide information for or receive information from the marketplace. The department and the commission shall consult in adopting rules under this subsection.

(e) [~~(d)~~] The commission may make state procurement information available to political subdivisions through the electronic procurement marketplace on a fee-for-service basis. The commission shall set the fees in an amount that recovers the state's costs in providing the access to a political subdivision.

(f) [~~(e)~~] Before developing a contract for the procurement of a good or service, a state agency shall [~~may~~] use the electronic procurement marketplace as prescribed by this chapter and commission rules [~~to determine the most appropriate method for acquiring the good or service~~].

(g) [~~(f)~~] The marketplace may contain:

- (1) information relevant to the state's standard procurement specifications for goods and services;
- (2) information about vendors, including [~~information from the centralized master bidders list and~~] vendor performance information;
- (3) information about products, including product testing results; ~~and~~
- (4) historical purchasing information, qualified purchase lists, and trends.

(h) [~~(g)~~] The ~~department~~ or commission may require information from a state agency for inclusion in the electronic procurement marketplace.

#### SUBCHAPTER C. ELECTRONIC COMMERCE NETWORK

Sec. 2177.101. EXCEPTIONS. (a) This subchapter does not apply to procurements for major construction projects, as defined by the commission in consultation with the department, such as procurements made under Chapter 223, Transportation Code. In defining a major construction project, the commission shall base its decision on whether the nature of the project, any related contract or specifications, or other considerations are of a type that would make electronic procurement inappropriate.

(b) The exceptions listed under Section 2166.003(a) apply as exceptions to this subchapter.

Sec. 2177.102 [2177.002]. ELECTRONIC COMMERCE NETWORK. (a) The department shall establish and manage the electronic infrastructure of an electronic commerce network. The commission shall ~~[establish and]~~ manage and administer the content of the electronic commerce network. The ~~[an]~~ electronic commerce network, to the extent feasible, shall allow [under which] the state's purchasing transactions with vendors ~~to [can]~~ be accomplished electronically by means of facsimile transmissions and on-line transmission of necessary information. ~~[The commission shall comply with applicable rules of the Department of Information Resources to the extent that they are based on the standard data protocol developed by the American National Standards Institute known as electronic data interchange or on other efficient standards as determined by the commission.]~~

(b) The department or commission, as appropriate, may enter into contracts with one or more public or private entities to establish or support various elements of the network. The department or commission, as appropriate, shall procure all goods and services related to the network through the competitive selection process appropriate for the good or service being acquired.

(c) The department, in consultation with the commission, may provide for a gateway between the electronic procurement marketplace and the electronic commerce network so that the elements of a procurement transaction that are within state government and the elements of a procurement transaction that involve communication with a vendor may all be accomplished electronically.

(d) Each state agency ~~[that is capable of participating in the electronic commerce network]~~ must participate in the network and participate in contracts entered into by the ~~department or the~~ commission for the establishment or support of the network. The department [commission] shall charge an agency a fee for network services provided to the agency by the ~~department [commission]~~ or by a contractor so that the cost of providing network services to an agency is paid by the agency.

(e) The commission may allow political subdivisions and other public entities that are members of the commission's cooperative purchasing program to participate in the electronic commerce network. The department [commission] shall require that a participating political subdivision or other entity is charged a fee for the network services in the same manner that participating state agencies are charged fees under Subsection (d).

(f) The department [commission] may also charge private businesses a fee for accessing the network.

(g) The department may adopt rules to administer this section that concern the technical requirements of the network. The commission may:

(1) adopt rules relating to the use of the network for its intended purpose [to administer this section]; and

(2) require participating state agencies, political subdivisions, and other public entities to designate a network coordinator.

(h) The department and the commission shall consult in adopting rules under this section.

(i) The requirements of this subchapter [section and Section 2177.003] are in addition to the requirements of other law relating to the solicitation of bids, proposals, or expressions of interest for a procurement by the commission or another state

agency. This subchapter does ~~[section and Section 2177.003 do]~~ not affect any other law that requires the commission or another state agency to award a procurement contract through competitive bidding, competitive sealed proposals, or another method.

Sec. ~~2177.103~~ ~~[2177.003]~~. PARTICIPATION BY STATE AGENCIES IN ELECTRONIC COMMERCE NETWORK. (a) Each state agency shall send to the commission for posting on the electronic commerce network information on each procurement contract ~~the commission, in consultation with the department, determines is appropriate for electronic procurement~~ ~~[the value of which will exceed the amount of the agency's delegated purchasing authority under Section 2155.132]:~~

(1) without regard to the source of funds the agency will use for the procurement; and

(2) including a procurement that is:

(A) a procurement by a state agency that is otherwise exempt from the commission's purchasing authority;

(B) made under delegated purchasing authority under Section 2155.131; or

(C) ~~[related to a construction project; or~~

~~[(D)]~~ a procurement of professional or consulting services.

(b) The commission and each state agency shall include in the information placed on the electronic commerce network ~~[-, to the extent it is feasible,]~~ the following information for each procurement that the commission will make or that another state agency will make under Subsection (a):

(1) a description of the goods or services to be procured;

(2) the estimated quantity of the goods or services to be procured;

(3) if applicable, the previous price paid by the commission or another state agency for the same or similar goods or services;

(4) the estimated date on which the goods or services to be procured will be needed; and

(5) the name, business mailing address, and business telephone number of the commission employee or other state agency employee a person can contact to obtain all necessary information relating to making a bid or proposal or other applicable expression of interest for the procurement contract.

(c) The commission shall also post on the electronic commerce network other information relating to the business activity of the state that the commission considers to be of interest to the public. Each state agency shall provide the commission with information the commission requires for purposes of this subsection in a format prescribed by the commission.

(d) Each state agency that will award a contract that has been placed on the electronic commerce network under Subsection (a) shall place notification of the awarding of the contract on the electronic commerce network.

SECTION 7.07. Subsection (b), Section 2155.083, Government Code, is repealed.

SECTION 7.08. On October 1, 2001:

(1) all functions and activities performed by the Texas Department of Economic Development relating to the business daily under Chapter 2155, Government Code, or other law immediately before that date are transferred to the Texas Building and Procurement Commission;

(2) a rule or form adopted by the Texas Department of Economic Development that relates to the business daily under Chapter 2155, Government Code, or other law is a rule or form of the Texas Building and Procurement Commission and remains in effect until altered by the commission;

(3) a reference in law to the Texas Department of Economic Development that relates to the business daily under Chapter 2155, Government Code, or other law means the Texas Building and Procurement Commission;

(4) all rights and obligations of the Texas Department of Economic Development related to the business daily under Chapter 2155, Government Code, or other law are transferred to the commission; and

(5) all property, including records, in the custody of the Texas Department of Economic Development related to the business daily under Chapter 2155, Government Code, or other law is transferred to the Texas Building and Procurement Commission.

SECTION 7.09. The Department of Information Resources shall have the online reservation and ticketing capability created under Section 2171.0521, Government Code, as added by this Act, fully operational by September 1, 2002.

#### ARTICLE 8. STATE CEMETERY

SECTION 8.01. Subsection (a), Section 2165.256, Government Code, is amended to read as follows:

(a) The State Cemetery Committee shall oversee all operations of the State Cemetery. The committee shall develop a budget for the operations of the commission relating to the State Cemetery and determine the salary of employees of the commission whose duties primarily relate to the operation of the State Cemetery.

SECTION 8.02. Section 2165.2561, Government Code, is amended by amending Subsections (a), (k), and (l) and adding Subsections (n) through (u) to read as follows:

(a) The State Cemetery Committee is composed of:

(1) three voting members appointed as follows:

(A) one member of the general public appointed by the governor;

(B) one member of the general public appointed by the governor from a list submitted by the lieutenant governor; and

(C) one member of the general public appointed by the governor from a list submitted by the speaker of the house of representatives; and

(2) three nonvoting advisory members appointed as follows:

(A) one employee of the Texas Historical Commission appointed by the executive director of the Texas Historical Commission;

(B) one employee of the Texas Building and Procurement [General Services] Commission appointed by the executive director of the Texas Building and Procurement [General Services] Commission; and

(C) one employee of the Parks and Wildlife Department appointed by the executive director of the Parks and Wildlife Department.

(k) The legislature shall separately appropriate money to the committee within the appropriations to the Texas Building and Procurement Commission for all matters relating to the operation of the State Cemetery. [At the direction of the committee, the General Services Commission shall spend money appropriated to or budgeted by the General Services Commission for State Cemetery purposes.] Activities relating to maintenance of the State Cemetery grounds and monuments shall conform to guidelines for historic preservation submitted to the committee by the Texas Historical Commission.

(l) Funds appropriated to the Texas Building and Procurement [General Services] Commission may be transferred by interagency contract for the performance of, at the direction of the committee, an act related to the State Cemetery.

(n) It is a ground for removal from the committee that a member:

(1) does not have at the time of taking office the qualifications required by Subsection (a);

(2) does not maintain during service on the committee the qualifications required by Subsection (a);

(3) is ineligible for membership under Subsection (g) or (h);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

(o) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(p) If the executive director of the commission has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(q) The executive director of the commission or the executive director's designee shall provide to members of the committee, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

(r) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this subsection. The training program must provide the person with information regarding:

(1) the legislation that created the State Cemetery and the State Cemetery Committee;

(2) the programs operated by the committee;

(3) the role and functions of the committee;

(4) the rules of the committee, with an emphasis on any rules that relate to disciplinary and investigatory authority;

(5) the current budget for the committee;

(6) the results of the most recent formal audit of cemetery operations;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

(D) other laws relating to public officials, including conflict-of-interest

laws; and

(8) any applicable ethics policies adopted by the commission, the committee, or the Texas Ethics Commission.

(s) A person appointed to the committee is entitled to reimbursement, as provided by Chapter 660 and 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.

(t) The committee shall develop and implement policies that clearly separate the policymaking responsibilities of the committee and the management responsibilities of the executive director of the commission and staff of the cemetery.

(u) The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee.

SECTION 8.03. (a) The changes in law made by this Act in the prohibitions and qualifications applying to members of the State Cemetery Committee do not affect the entitlement of a member serving on the committee immediately before September 1, 2001, to continue to serve and function as a member of the committee for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 2001. This Act does not prohibit a person who is a member of the State Cemetery Committee immediately before September 1, 2001, from being reappointed as a committee member if the person has the qualifications required for the position under Chapter 2165, Government Code, as amended by this Act.

(b) Subsection (r), Section 2165.2561, Government Code, as added by this Act, does not apply to a member of the State Cemetery Committee until March 1, 2002.

SECTION 8.04. The changes in law made by this Act to Subsection (k), Section 2165.2561, Government Code, apply beginning with the fiscal year beginning on September 1, 2003.

#### ARTICLE 9. CONTRACTING METHODS FOR CONSTRUCTION OF STATE FACILITIES

SECTION 9.01. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2511 to read as follows:

Sec. 2166.2511. DEFINITIONS. In this subchapter:

(1) "Architect" means an individual registered as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(2) "Contractor" in the context of a contract for a project means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the project at the contracted price.

(3) "Engineer" means an individual registered as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

(4) "Facility" means buildings or structures the design and construction of which is governed by accepted building codes. The term does not include:

(A) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(B) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(5) "Fee" in the context of a contract for a project means the payment a construction manager receives for its overhead and profit in performing its services.

(6) "General conditions" in the context of a contract for a project means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

SECTION 9.02. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2525 to read as follows:

Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The commission shall adopt rules that determine the circumstances for use of each method of contracting allowed under this subchapter for design and construction services. In developing the rules, the commission shall solicit advice and comment from design and construction professionals regarding the criteria the commission will use in determining which contracting method is best suited for a project.

SECTION 9.03. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2526 to read as follows:

Sec. 2166.2526. EVALUATION OF BIDS AND PROPOSALS FOR CONSTRUCTION SERVICES. (a) For each project, the commission must, before advertising, establish which method of contracting provides the best value for the commission or using agency.

(b) Under each method of contracting, the commission shall base its selection among the offerors on criteria established by the commission. The commission shall publish in the request for bids, proposals, or qualifications all of the criteria that will be used to evaluate the offerors.

(c) The commission shall document the basis of its selection of an offeror and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

SECTION 9.04. Section 2166.253, Government Code, is amended to read as follows:

Sec. 2166.253. LOWEST AND BEST BID METHOD [BIDDING PROCEDURES]. (a) The commission may use the lowest and best bid method for a project. In using that method, the commission shall follow the procedures provided by Subsections (b)-(g).

(b) After final approval of a project's working plans and specifications and their acceptance by a using agency, the commission shall advertise in one newspaper of general circulation and the Texas Register for bids or proposals for the construction of and related work on the project.

(c) [(b)] Except as provided by Subsection (d) [(c)], the commission shall allow bidders not less than 30 days after the date the commission issues the bid documents to respond to an invitation to bid.

(d) [(c)] The commission shall allow bidders for small construction projects not less than 14 days after the date the commission issues the bid documents to respond to an invitation to bid.

(e) [(d)] The commission may shorten the time for response to prevent undue additional costs to a state agency or, for emergency projects, to prevent or remove a hazard to life or property.

(f) A contract shall be awarded to the qualified bidder making the lowest and best bid in accordance with the law on awarding a state contract.

(g) The commission may reject all bids.

SECTION 9.05. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2531 to read as follows:

Sec. 2166.2531. DESIGN-BUILD METHOD. (a) In this section:

(1) "Design-build contract" means a single contract with a design-build firm for the design and construction of a facility.

(2) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and a builder qualified to engage in building construction in this state.

(3) "Design criteria package" means a set of documents that provides sufficient information to permit a design-build firm to prepare a response to the commission's request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify criteria the commission considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

(b) The commission may use the design-build method for a project. In using that method and in entering into a contract for the services of a design-build firm, the commission and the design-build firm shall follow the procedures provided by Subsections (c)-(k).

(c) The commission shall designate an engineer or architect to act as its representative. If the commission's engineer or architect is not a full-time employee of the commission, any engineer or architect designated shall be selected on the basis of demonstrated competence and qualifications in accordance with Subchapter A, Chapter 2254.

(d) The commission shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The commission shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or the practice of architecture within the meaning of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), those services shall be provided in accordance with the applicable law.

(e) The commission or its representative shall publish the request for qualifications in a manner prescribed by the commission.

(f)(1) The commission or its representative shall evaluate statements of qualifications and select a design-build firm in two phases.

(2) In phase one, the commission or its representative shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors

are not permitted. Each offeror must certify to the commission that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications. The commission or its representative shall qualify a maximum of five offerors to submit additional information and, if the commission or its representative chooses, to interview for final selection.

(3) In phase two, the commission or its representative shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The commission or its representative may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The commission or its representative may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The commission or its representative shall rank each proposal submitted on the basis of the criteria specified in the request for qualifications. The commission or its representative shall select the design-build firm that submits the proposal offering the best value for the commission or using agency on the basis of the published selection criteria and on its ranking evaluations. The commission or its representative shall first attempt to negotiate a contract with the selected offeror. If the commission or its representative is unable to negotiate a satisfactory contract with the selected offeror, the commission shall, formally and in writing, end all negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(g) Following selection of a design-build firm under Subsection (f), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance by the commission's engineer or architect before or concurrently with the beginning of construction.

(h) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes). An architect shall have responsibility for compliance with the requirements of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(i) The commission shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the commission. The commission shall select those services for which it contracts in accordance with Section 2254.004.

(j) The design-build firm shall supply a signed and sealed set of construction documents for the project to the commission at the conclusion of construction.

(k) A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this section that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the commission shall each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid

bond or other financial security acceptable to the commission to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

SECTION 9.06. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2532 to read as follows:

Sec. 2166.2532. CONSTRUCTION MANAGER-AT-RISK METHOD. (a) The commission may use the construction manager-at-risk method for a project. In using that method and in entering into a contract for the services of a construction manager-at-risk, the commission shall follow the procedures prescribed by this section.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the commission regarding construction during and after the design of the facility.

(c) Before or concurrently with selecting a construction manager-at-risk, the commission shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the commission, the commission shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004. The commission's engineer or architect for a project may not serve, alone or in combination with another, as the construction manager-at-risk.

(d) The commission shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the commission. The commission shall select those services for which it contracts in accordance with Section 2254.004.

(e) The commission shall select the construction manager-at-risk in either a one-step or two-step process. The commission shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one-step or two-step process; and other information that may assist the commission in its selection of a construction manager-at-risk. The commission shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the commission may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the commission may not request fees or prices in step one. In step two, the commission may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(f) The commission shall publish the request for qualifications in a manner prescribed by the commission.

(g) At each step, the commission shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the commission shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Within 45 days after the date of opening the proposals, the commission or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(h) The commission or its representative shall select the offeror that submits the proposal that offers the best value for the commission or using agency based on the published selection criteria and on its ranking evaluation. The commission or its representative shall first attempt to negotiate a contract with the selected offeror. If the commission or its representative is unable to negotiate a satisfactory contract with the selected offeror, the commission or its representative shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(i) A construction manager-at-risk shall publicly advertise, in the manner prescribed by the commission, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the commission determines that the construction manager-at-risk's bid or proposal provides the best value for the commission or using agency.

(j) The construction manager-at-risk and the commission or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or commission. All bids or proposals shall be made public after the award of the contract or within seven days after the date of final selection of bids and proposals, whichever is later.

(k) If the construction manager-at-risk reviews, evaluates, and recommends to the commission a bid or proposal from a trade contractor or subcontractor but the commission requires another bid or proposal to be accepted, the commission shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the commission's requirement that another bid or proposal be accepted.

(l) If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(m) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the commission must each be in an amount equal to the

project budget, as set forth in the request for qualifications. The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the commission to ensure that the construction manager-at-risk will furnish the required performance and payment bonds when a guaranteed maximum price is established.

SECTION 9.07. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.2533 to read as follows:

Sec. 2166.2533. COMPETITIVE SEALED PROPOSAL METHOD. (a) The commission may select a contractor for a project using the competitive sealed proposal method prescribed by this section.

(b) The commission shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the commission, the commission shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

(c) The commission shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the commission. The commission shall select those services for which it contracts in accordance with Section 2254.004 and shall identify them in the request for proposals.

(d) The commission shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request. The commission shall state in the request for proposals all of the selection criteria that will be used in selecting the successful offeror.

(e) The commission shall publish notice of the request for proposals in a manner prescribed by the commission.

(f) The commission shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Within 45 days after the date of opening the proposals, the commission shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(g) The commission shall select the offeror that offers the best value for the commission or using agency based on the published selection criteria and on its ranking evaluation. The commission shall first attempt to negotiate a contract with the selected offeror. The commission and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the commission is unable to reach a contract with the selected offeror, the commission shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(h) In determining the best value for the commission or using agency, the commission is not restricted to considering price alone but may consider any other factor stated in the selection criteria.

SECTION 9.08. Section 2166.255, Government Code, is amended to read as follows:

Sec. 2166.255. AMOUNT [AWARD] OF CONTRACT. ~~[(a) A contract shall be awarded to the qualified bidder making the lowest and best bid in accordance with the law on awarding a state contract.~~

~~[(b) The commission may reject all bids.~~

~~[(c)] A contract may not be awarded for an amount greater than the amount that the comptroller certifies to be available for the project.~~

SECTION 9.09. Section 2166.258, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as provided by Subsection (c), notwithstanding ~~[Notwithstanding]~~ Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code), the commission or other agency may require a contractor or subcontractor to meet part or all of the bonding or insurance requirements for the project under the arrangement negotiated by the commission or other agency.

(c) To assist historically underutilized businesses, small businesses, or any other businesses, if an agency by rule requires a proposal guaranty as a condition for bidding on a contract, the guaranty may be in the form of a:

(1) cashier's check or money order drawn on an account with a financial entity determined by the agency;

(2) bid bond issued by a surety authorized to do business in this state; or

(3) any other method approved by the agency.

SECTION 9.10. (a) The changes in law made by this Act to the General Services Commission's contract procedures apply only to a construction project for which the General Services Commission or the Texas Building and Procurement Commission first advertises or otherwise solicits bids, proposals, offers, or qualifications, as applicable, on or after September 1, 2001.

(b) A construction project for which the General Services Commission first advertised or otherwise solicited bids, proposals, offers, or qualifications, as applicable, before September 1, 2001, 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 10. LEASING OF STATE OFFICE SPACE

SECTION 10.01. Subchapter A, Chapter 2167, Government Code, is amended by adding Section 2167.0021 to read as follows:

Sec. 2167.0021. BEST VALUE STANDARD FOR LEASE OF SPACE.

(a) The commission shall lease space for the use of a state agency on the basis of obtaining the best value for the state.

(b) The commission shall adopt rules establishing guidelines for the determination of best value in a lease contract. In determining the best value, the commission may consider:

(1) the cost of the lease contract;

(2) the condition and location of lease space;

(3) utility costs;

(4) access to public transportation;

(5) parking availability;

(6) security;

(7) telephone service availability;

(8) indicators of probable lessor performance under the contract, such as the lessor's financial resources and the lessor's experience;

(9) compliance with the architectural barriers law, Article 9102, Revised Statutes; and

(10) other relevant factors.

(c) This section does not prohibit the commission from leasing space from the offeror that offers the space at the lowest cost if the commission determines that doing so obtains the best value for the state.

SECTION 10.02. Section 2167.003, Government Code, is amended to read as follows:

Sec. 2167.003. FIRST CONSIDERATION TO HISTORIC STRUCTURE.

(a) In leasing space for the use of a state agency, the commission or the private brokerage or real estate firm assisting the commission shall give first consideration to a building that is designated as a historic structure under Section 442.001 or to a building that has been designated a landmark by a local governing authority, if:

(1) the building meets requirements and specifications; and

(2) the cost is not substantially higher than the cost for other available buildings that meet requirements and specifications.

(b) When it considers leasing space for a state agency, the commission or the private brokerage or real estate firm assisting the commission shall notify each individual and organization that is:

(1) on a list furnished to the commission by the Texas Historical Commission under Section 442.005; and

(2) in the county in which the commission is considering leasing space.

(c) At the end of a biennium, the commission shall report to the legislature the commission's reasons for rejecting during the biennium the lease of any historic structure that was offered as [in a bid to] lease space to the state.

SECTION 10.03. Section 2167.005, Government Code, is amended to read as follows:

Sec. 2167.005. DELEGATION OF AUTHORITY TO STATE AGENCIES [INSTITUTIONS OF HIGHER EDUCATION]. (a) The commission may delegate to a state agency, including an institution of higher education, the authority to enter into lease contracts for space [for which payments are not made from money appropriated from the general revenue fund].

(b) Any reports on the lease contracts made [by an institution of higher education] under this delegated authority shall be required annually.

SECTION 10.04. Subsection (b), Section 2167.006, Government Code, is amended to read as follows:

(b) A state agency, including an [An] institution of higher education, may not enter a lease contract under Section 2167.005 unless the agency [institution] complies with the architectural barriers law, Article 9102, Revised Statutes.

SECTION 10.05. Section 2167.052, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Space may be leased from a private source through:

(1) competitive bidding; ~~or~~

(2) competitive sealed proposals under Section 2167.054; or

(3) direct negotiation.

(c) The commission shall use the method for leasing space that provides the best value for the state.

SECTION 10.06. Subsections (a) and (c), Section 2167.053, Government Code, are amended to read as follows:

(a) When space is leased through competitive bidding, the commission shall determine the ~~[lowest and best]~~ bid that provides the best value for the state after considering moving costs, the cost of time lost in moving, the cost of telecommunications services, and other relevant factors.

(c) If, after review of the bids and evaluation of all relevant factors, the leasing state agency's opinion is that the bid selected by the commission is not the ~~[lowest and best]~~ bid that provides the best value for the state, it may file with the commission a written recommendation that the award be made to a bidder other than the commission's recommended bidder. The leasing state agency's recommendation must contain the agency's justification for its recommendation and a complete explanation of all factors it considered.

SECTION 10.07. Subsections (a), (g), and (i), Section 2167.054, Government Code, are amended to read as follows:

(a) The commission may lease space using competitive sealed proposals ~~[if the commission first determines that competitive bidding is not practical or is disadvantageous to the state]~~.

(g) The commission shall make a written award of a lease to the offeror whose proposal provides the best value for ~~[is the most advantageous to]~~ the state, considering price and the evaluation factors in the request for proposals. ~~[The commission may not use other factors or criteria in its evaluation.]~~ The commission shall state in writing in the contract file the reasons for which an award is made.

(i) If the competitive sealed proposal procedure for leasing space is used by a state agency ~~[an institution of higher education]~~ that has been delegated leasing authority under Section 2167.005, the agency ~~[institution]~~:

~~[(1) must first determine that competitive bidding is not practical or is disadvantageous to the state; and~~

~~[(2)] shall follow the procedures outlined by this section and any rules adopted by the commission.~~

SECTION 10.08. Subchapter B, Chapter 2167, Government Code, is amended by adding Section 2167.0541 to read as follows:

Sec. 2167.0541. USE OF PRIVATE FIRMS TO OBTAIN SPACE. (a) The commission may contract with one or more private brokerage or real estate firms to assist the commission in obtaining lease space for state agencies on behalf of the commission under this chapter.

(b) A private brokerage or real estate firm with which the commission contracts under Subsection (a) may assist the commission in leasing facilities under this chapter.

SECTION 10.09. Subsection (b), Section 2167.055, Government Code, is amended to read as follows:

(b) A ~~[The]~~ lease contract entered into under Section 2167.053 or 2167.054 must reflect the provisions contained in the invitation for bids or request for proposals, the successful bid or proposal, and the award of the contract.

SECTION 10.10. Subchapter C, Chapter 2167, Government Code, is amended by adding Sections 2167.105, 2167.106, and 2167.107 to read as follows:

Sec. 2167.105. REPORT ON NONCOMPLIANCE. If the commission determines that a state agency has not complied with the commission's rules or with other state law related to leasing requirements, the commission shall report the noncompliance to the members of the state agency's governing body and to the governor, lieutenant governor, and speaker of the house of representatives. The commission shall include in its report an estimate of the fiscal impact resulting from the noncompliance.

Sec. 2167.106. ANNUAL REPORT. The staff of the commission shall annually submit a report to the commission regarding opportunities for delegating leasing authority to state agencies with statewide operations. The report must include comments from state agencies with statewide operations.

Sec. 2167.107. WAREHOUSE SPACE USE STUDY. (a) The commission shall evaluate the operation of the first four state-leased warehouses in Austin for which the leases expire after October 1, 2001. The commission shall work with the state agency that operates the warehouse to reduce inefficient warehouse space use and adopt practices that can reduce the agency's need for warehouse space and eliminate warehouse leases.

(b) The commission and the state agency shall:

(1) identify excess inventory;

(2) determine the most appropriate ways to eliminate excess inventory; and

(3) determine the extent to which the state agency uses the following

management principles in operating the warehouse:

(A) automated order processing;

(B) training customers how to use the supply system;

(C) changing relationships with suppliers to reduce inventory

maintained by the state agency;

(D) establishing supplier support agreements to reduce the time for delivery from a supplier;

(E) training supply staff to use information to manage supplies; and

(F) reducing administrative cycle times through automation.

(c) The commission shall assist the state agency operating the warehouse in developing a plan to reduce the need for warehouse space by reducing inventory, selling surplus property, and efficiently managing warehouse operations. Each agency shall include the plan as part of its strategic plan submitted under Chapter 2056 during calendar year 2002.

(d) This section expires September 1, 2003.

SECTION 10.11. A lease contract entered into by the General Services Commission before September 1, 2001, under Chapter 2167, Government Code, is governed during the remaining term of the lease by Chapter 2167, Government Code, as it existed immediately before September 1, 2001, and the prior law is continued in effect for this purpose. Chapter 2167, Government Code, as amended by this Act, applies to the renewal of a lease described by this section.

#### ARTICLE 11. SURPLUS PROPERTY

SECTION 11.01. Subdivision (1), Section 2175.001, Government Code, is amended to read as follows:

(1) "Assistance organization" means:

(A) a nonprofit organization that provides educational, health, or human services or assistance to homeless individuals;

(B) a nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;

(C) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agency for International Development; ~~and~~

(D) a group, including a faith-based group, that enters into a financial or nonfinancial agreement with a health or human services agency to provide services to that agency's clients;

(E) a nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters; and

(F) the Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Agriculture Code.

SECTION 11.02. Section 2175.065, Government Code, is amended to read as follows:

Sec. 2175.065. DELEGATION OF AUTHORITY TO STATE AGENCY. (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 Subchapters C and E in a manner that results in cost savings to the state, under commission rules adopted under this chapter.

(b) The commission shall establish by rule the criteria for determining that a delegation of authority to a state agency results in cost savings to the state.

SECTION 11.03. Subchapters C and D, Chapter 2175, Government Code, are amended to read as follows:

SUBCHAPTER C. DIRECT TRANSFER OR OTHER DISPOSITION OF SURPLUS OR SALVAGE PROPERTY BY STATE AGENCY

Sec. 2175.121. APPLICABILITY. This subchapter applies only to surplus or salvage property to which Subchapter D does not apply.

Sec. 2175.122. STATE AGENCY NOTICE TO COMMISSION. A state agency that determines it has surplus or salvage property shall inform the commission of the property's kind, number, location, condition, original cost or value, and date of acquisition.

Sec. 2175.123. DETERMINING METHOD OF DISPOSAL. (a) Based on the condition of the property, a state agency shall determine whether the property is:

(1) surplus property that should be offered for transfer under Section 2175.125 or sold to the public; or

(2) salvage property.

(b) The state agency shall inform the commission and the comptroller of its determination.

Sec. 2175.124 [2175.122]. COMMISSION NOTICE TO OTHER ENTITIES. After a determination that [On receiving notice from] a state agency [that the agency] has surplus [or salvage] property, 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 [the property's kind, number, location, and condition].

Sec. 2175.1245. ADVERTISING ON COMPTROLLER WEBSITE. Not later than the second day after the date the comptroller receives notice from a state agency that the agency has surplus property, the comptroller shall advertise the property's kind, number, location, and condition on the comptroller's website.

Sec. 2175.125 [2175.123]. DIRECT TRANSFER. During the 10 business [30] days after the date the property is posted on the comptroller's website [following dissemination of information under Section 2175.122], a state agency, political subdivision, or assistance organization may coordinate directly with the reporting state agency for a transfer of the property at a price established by the reporting agency.

Sec. 2175.126 [2175.124]. NOTICE OF TRANSFER TO COMPTROLLER; ADJUSTMENT OF APPROPRIATIONS AND PROPERTY ACCOUNTING

RECORDS; REMOVAL FROM WEBSITE. (a) If property is transferred to a state agency, the participating agencies shall report the transaction to the comptroller.

- (b) On receiving notice under this section, the comptroller shall, if necessary:
- (1) debit and credit the proper appropriations; and
  - (2) adjust state property accounting records.

(c) Not later than the second day after the date the comptroller receives notice under Subsection (a), the comptroller shall remove the property from the list of surplus property for sale on the comptroller's website.

Sec. 2175.127 [2175.125]. PRIORITY FOR TRANSFER TO STATE AGENCY. During the 10 business [30] days after the date the property is posted on the comptroller's website [of notice under Section 2175.122], a transfer to a state agency has priority over any other transfer under rules adopted by the commission.

Sec. 2175.128 [2175.126]. 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 2175.125 or 2175.184 [this subchapter], the state agency shall transfer the equipment to the Texas Department of Criminal Justice. The state agency may not collect a fee or other reimbursement from the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

(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 the Texas Department of Criminal Justice. The institution or agency may not collect a fee or other reimbursement from the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

[SUBCHAPTER D. DISPOSITION OF SURPLUS OR SALVAGE PROPERTY BY COMPETITIVE BIDDING]

Sec. 2175.129 [2175.181]. DISPOSITION BY COMPETITIVE BIDDING, [OR] AUCTION, OR DIRECT SALE. (a) If a disposition of a state agency's surplus [or salvage] property is not made under Section 2175.125 [Subchapter C], the commission shall:

(1) sell the property by competitive bid, [or] auction, or direct sale to the public, including a sale using an Internet auction site; or

(2) delegate to the state agency authority to sell the property by competitive bid, auction, or direct sale to the public, including a sale using an Internet auction site [bidding].

(b) The commission or a state agency to which authority is delegated under Subsection (a)(2) or under Section 2175.065 shall determine which method of sale shall be used based on the method that is most advantageous to the state under the circumstances. The commission shall adopt rules establishing guidelines for making that determination.

(c) In using an Internet auction site to sell surplus property under this section, the commission or state agency shall post the property on the site for at least 10 days.

Sec. 2175.130. DISPOSITION BY DIRECT SALE TO PUBLIC. (a) If the commission or a state agency to which authority is delegated under Section 2175.129(a)(2) or 2175.065 determines that selling the property by competitive bid or auction, including a sale using an Internet auction site, would not maximize the resale value of the property to the state, the commission or agency may sell surplus or salvage property directly to the public.

(b) The commission, in cooperation with the state agency that declared the property as surplus, or a state agency to which authority is delegated under Section 2175.129(a)(2) or 2175.065 shall set a fixed price for the property.

Sec. 2175.131 [2175.182]. PURCHASER'S FEE. (a) The commission or a state agency disposing of property by a method other than direct transfer under this subchapter shall collect a fee from the purchaser.

(b) The commission or state agency shall set the fee at an amount that is:

- (1) sufficient to recover costs associated with the sale; and
- (2) at least two percent but not more than 12 percent of sale proceeds.

Sec. 2175.132 [2175.183]. ADVERTISEMENT OF SALE. If the value of an item or a lot of property to be sold is estimated to be more than \$5,000, the commission or the state agency authorized to sell the property shall advertise the sale at least once in at least one newspaper of general circulation in the vicinity in which the property is located.

Sec. 2175.133 [2175.184]. REPORTING SALE; PROPERTY ACCOUNTING ADJUSTMENT. (a) On the sale by the commission of surplus or salvage property, the commission shall report the property sold and the sale price to the state agency that declared the property as surplus or salvage.

(b) A state agency for which surplus or salvage property is sold or that sells surplus or salvage property under authority of the commission shall report the sale and amount of sale proceeds to the comptroller.

(c) If property reported under this section is on the state property accounting system, the comptroller shall remove the property from the property accounting records.

Sec. 2175.134 [2175.185]. PROCEEDS OF SALE. (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, and the amount of the fee collected under Section 2175.131 [2175.182], shall be deposited to the credit of the appropriate appropriation item of the state agency for which the sale was made.

(b) The portion of sale proceeds equal to the cost of advertising the sale and the cost of selling the surplus or salvage property, including the cost of auctioneer services, shall be deposited in the state treasury to the credit of the appropriation item of the commission or other state agency from which the costs were paid.

Sec. 2175.135 [2175.186]. PURCHASER'S TITLE. A purchaser of surplus [or salvage] property at a sale conducted under Section 2175.129 or 2175.130 [this subchapter] obtains good title to the property if the purchaser has in good faith complied with:

- (1) the conditions of the sale; and
- (2) applicable commission rules.

#### SUBCHAPTER D. DISPOSITION OF SURPLUS OR SALVAGE PROPERTY BY COMMISSION

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 does not apply to a state agency delegated the authority to dispose of surplus or salvage property under Section 2175.065.

Sec. 2175.1815. ALTERNATIVE APPLICABILITY. (a) Notwithstanding Section 2175.181, until January 1, 2003, this subchapter applies only to a state agency selected by the commission to participate in the disposal process created under this subchapter.

(b) Subchapter C applies to a state agency that is not selected by the commission to participate under this subchapter.

(c) This section expires January 1, 2003.

Sec. 2175.182. STATE AGENCY TRANSFER OF PROPERTY TO COMMISSION. (a) The commission is responsible for the disposal of surplus or salvage property under this subchapter. The commission may take physical possession of the property. A state agency maintains ownership of property throughout the disposal process.

(b) Based on the condition of the property, the commission 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) The commission shall inform the comptroller's office of the property's kind, number, location, condition, original cost or value, and date of acquisition.

Sec. 2175.1825. ADVERTISING ON COMPTROLLER WEBSITE. Not later than the second day after the date the comptroller receives notice from the commission under Section 2175.182(c), the comptroller shall advertise the property's kind, number, location, and condition on the comptroller's website.

Sec. 2175.183. COMMISSION NOTICE TO OTHER ENTITIES. 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.

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 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.

Sec. 2175.185. NOTICE OF TRANSFER TO COMPTROLLER; ADJUSTMENT OF APPROPRIATIONS AND PROPERTY ACCOUNTING RECORDS; REMOVAL FROM WEBSITE. (a) If property is transferred to a state agency under Section 2175.184, the participating agencies shall report the transaction to the comptroller.

(b) On receiving notice under this section, the comptroller shall, if necessary:

(1) debit and credit the proper appropriations; and

(2) adjust state property accounting records.

(c) Not later than the second day after the date the comptroller receives notice under Subsection (a), the comptroller shall remove the property from the list of surplus property for sale on the comptroller's website.

Sec. 2175.186. DISPOSITION BY COMPETITIVE BIDDING, AUCTION, OR DIRECT SALE. (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.

(b) The commission shall determine which method of sale shall be used based on the method that is most advantageous to the state under the circumstances. The commission shall adopt rules establishing guidelines for making that determination.

(c) In using an Internet auction site to sell surplus property under this section, the commission shall post the property on the site for at least 10 days.

Sec. 2175.187. DISPOSITION BY DIRECT SALE TO PUBLIC. (a) If the commission determines that selling the property by competitive bid or auction, including a sale using an Internet auction site, would not maximize the resale value of the property to the state, the commission may sell surplus property directly to the public.

(b) The commission shall set a fixed price for the property in cooperation with the state agency that owns the property.

Sec. 2175.188. PURCHASER'S FEE. (a) For property that is sold under Section 2175.186 or 2175.187, the commission shall collect a fee from the purchaser.

(b) The commission shall set the fee at an amount that is:

(1) sufficient to recover costs associated with the sale; and

(2) at least two percent but not more than 12 percent of sale proceeds.

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 \$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.

Sec. 2175.190. REPORTING SALE; PROPERTY ACCOUNTING ADJUSTMENT. (a) On the sale by the commission of surplus or salvage property, the commission shall report the property sold and the sale price to the state agency that owned the property and to the comptroller.

(b) If property reported under this section is on the state property accounting system, the comptroller shall remove the property from the property accounting records.

Sec. 2175.191. PROCEEDS OF SALE. (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, and the amount of the fee collected under Section 2175.188, shall be deposited to the credit of the appropriate appropriation item of the state agency for which the sale was made.

(b) The portion of sale proceeds equal to the cost of advertising the sale and the cost of selling the surplus or salvage property, including the cost of auctioneer services, if any, shall be deposited in the state treasury to the credit of the appropriation item of the commission.

Sec. 2175.192. PURCHASER'S TITLE. A purchaser of surplus property at a sale conducted under Section 2175.186 or 2175.187 obtains good title to the property if the purchaser has in good faith complied with:

(1) the conditions of the sale; and

(2) applicable commission rules.

Sec. 2175.193. CONTRACTS FOR DESTRUCTION OF PROPERTY. The commission shall contract for the disposal of property under Subchapter E in a manner that maximizes value to the state.

SECTION 11.04. This article takes effect January 1, 2002.

## ARTICLE 12. PAPER RECYCLING PROGRAM

SECTION 12.01. Section 2175.902, Government Code, is amended to read as follows:

Sec. 2175.902. MANDATORY PAPER RECYCLING PROGRAM. (a) The commission shall establish a mandatory recycling program for a state agency that occupies a building [and maintain in each building] under its control [procedures for collecting separately from other wastes all paper for recycling disposed of in that building]. By rule, the commission shall:

(1) establish guidelines and procedures for collecting and recycling of paper;  
(2) set recycling goals and performance measures;  
(3) require state agencies to designate a recycling coordinator;  
(4) provide employee and custodial education and training;  
(5) provide feedback and recognition to state agencies when appropriate; and

(6) inform state agencies when proper recycling methods are not used.

(b) If the commission finds that a state agency's recycling program meets or exceeds the standards created under Subsection (a), the [The] commission may delegate its responsibility under this section [subsection] to a state agency located in a [each] building under its control.

(c) ~~(b)~~ The commission or a state agency with delegated responsibility under Subsection (b) ~~(a)~~ shall sell the paper for recycling to the highest bidder.

(d) The commission may enter into an interagency agreement to provide recycling services to a state agency otherwise excluded from the program.

ARTICLE 13. HISTORICALLY  
UNDERUTILIZED BUSINESSES

SECTION 13.01. Section 2161.061, Government Code, is amended to read as follows:

Sec. 2161.061. COMMISSION CERTIFICATION OF HISTORICALLY UNDERUTILIZED BUSINESSES~~[, MUNICIPAL CERTIFICATION]~~. (a) The commission shall certify historically underutilized businesses.

(b) As one of its certification procedures, the commission may:

(1) approve the certification program of one or more local governments or nonprofit organizations in this state that certify historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises under substantially the same definition, to the extent applicable, used by Section 2161.001, if the local government or nonprofit organization meets or exceeds the standards established by the commission; and

(2) certify a business that is certified by a [under the] local government or by a nonprofit organization [program] as a historically underutilized business under this chapter.

(c) To maximize the number of certified historically underutilized businesses, the commission shall enter into agreements with local governments in this state that conduct certification programs described by Subsection (b) and with nonprofit organizations. The commission may terminate an agreement if a local government or nonprofit organization fails to meet the standards established by the commission for certifying historically underutilized businesses. The agreements must take effect immediately and:

(1) allow for automatic certification of businesses certified by [under] the local government or nonprofit organization [program];

(2) provide for the efficient updating of the commission database containing information about historically underutilized businesses and potential historically underutilized businesses; and

(3) provide for a method by which the commission may efficiently communicate with businesses certified by [under] the local government or nonprofit organization [program] and provide those businesses with information about the state historically underutilized business program.

(d) A local government or a nonprofit organization that certifies historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises as described in Subsections (b) and (c) shall complete the certification of an applicant or provide an applicant with written justification of its certification denial within the period established by the commission in its rules for certification activities.

SECTION 13.02. Subsection (a), Section 2161.253, Government Code, is amended to read as follows:

(a) When a state agency requires a historically underutilized business subcontracting plan under Section 2161.252, the awarded contract shall contain, as a provision of the contract that must be fulfilled, the plan that the contractor submitted in its bid, proposal, offer, or other applicable expression of interest for the contract. The contractor shall make good faith efforts to implement the plan. A contractor's participation in a mentor-protege program under Section 2161.065 and submission of a protege as a subcontractor in the contractor's historically underutilized business subcontracting plan constitutes a good faith effort under this section for the particular area of the subcontracting plan involving the protege.

#### ARTICLE 14. MISCELLANEOUS PROVISIONS

SECTION 14.01. Section 2054.022, Government Code, is amended to read as follows:

Sec. 2054.022. CONFLICT OF INTEREST. (a) A member of the board or the executive director [an employee of the department] may not:

(1) be a person required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry;

(2) be an officer, employee, or paid consultant of a business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government;

(3) own, control, or have, directly or indirectly, more than a 10 percent interest in a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

(4) receive more than 25 percent of the individual's income from a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

(5) be interested in or connected with a contract or bid for furnishing a state agency with information resources technologies;

(6) be employed by a state agency as a consultant on information resources technologies; or

(7) accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise.

(b) A person who is the spouse of an officer, employee, or paid consultant of a business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government may not be[:

~~[(1)] a member of the board or the executive director[; or~~

~~[(2) an employee of the department who:~~

~~[(A) is exempt from the state's position classification plan; or~~

~~[(B) is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule].~~

(c) An employee of the department, other than the executive director:

(1) may not participate in the department's bidding process, including the proposal development related to a contract and the negotiation of a contract, if:

(A) the employee receives more than five percent of the employee's income from any likely bidder on the contract; or

(B) the employee's spouse is employed by any likely bidder on the contract; and

(2) may not:

(A) be a person required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry; or

(B) be employed by a state agency as a consultant on information resources technologies.

(d) For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined 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.

(e) ~~[(1)]~~ The executive director shall dismiss an employee of the department who violates a prohibition under Subsection (c) ~~[(1)]~~, and the board shall remove the executive director if the executive director violates a prohibition under Subsection (a).

SECTION 14.02. Section 552.010, Government Code, is amended to read as follows:

Sec. 552.010. STATE GOVERNMENTAL BODIES: FISCAL AND OTHER INFORMATION RELATING TO MAKING INFORMATION ACCESSIBLE.

(a) Each state governmental body shall report to the Texas Building and Procurement Commission ~~[Legislative Budget Board]~~ the information the commission ~~[board]~~ requires regarding:

(1) the number and nature of requests for information the state governmental body processes under this chapter in the period covered by the report; and

(2) the cost to the state governmental body in that period in terms of capital expenditures and personnel time of:

(A) responding to requests for information under this chapter; and  
(B) making information available to the public by means of the Internet or another electronic format.

(b) The Texas Building and Procurement Commission [~~Legislative Budget Board~~] shall design and phase in the reporting requirements in a way that:

(1) minimizes the reporting burden on state governmental bodies; and  
(2) allows the legislature and state governmental bodies to estimate the extent to which it is cost-effective for state government, and if possible the extent to which it is cost-effective or useful for members of the public, to make information available to the public by means of the Internet or another electronic format as a supplement or alternative to publicizing the information only in other ways or making the information available only in response to requests made under this chapter.

(c) The open records steering committee and the state auditor, at the request of the Texas Building and Procurement Commission [~~Legislative Budget Board~~], shall assist the commission [~~board~~] in designing its reporting requirements under this section. The commission [~~board~~] shall share the information reported under this section with the open records steering committee.

SECTION 14.03. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.449 to read as follows:

Sec. 2155.449. PREFERENCE TO PRODUCTS AND SERVICES FROM ECONOMICALLY DEPRESSED OR BLIGHTED AREA. (a) In this section, "economically depressed or blighted area" means an area that:

(1) is an economically depressed or blighted area as defined by Section 2306.004; or

(2) meets the definition of a historically underutilized business zone as defined by 15 U.S.C. Section 632(p).

(b) The commission and all state agencies procuring goods or services shall give preference to goods or services produced in an economically depressed or blighted area if:

(1) the goods or services meet state specifications regarding quantity and quality; and

(2) the cost of the good or service does not exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area.

SECTION 14.04. Subdivision (1), Section 2258.001, Government Code, is amended to read as follows:

(1) "Locality in which the work is performed" means:

(A) for a contract for a public work awarded by the state, the political subdivision of the state in which the public work is located;

(i) [;] which may include a county, municipality, county and municipality, or district, except as provided by Subparagraph (ii); and

(ii) which, in a municipality with a population of 500,000 or more, may only include the geographic limits of the municipality; or

(B) for a contract for a public work awarded by a political subdivision of the state, the geographical limits of the political subdivision.

SECTION 14.05. Section 2258.022, Government Code, is amended to read as follows:

## Sec. 2258.022. DETERMINATION OF PREVAILING WAGE RATES.

(a) For a contract for a public work awarded by a political subdivision of the state, the [A] public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

(1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed; or

(2) using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work.

(b) This subsection applies only to a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. For a contract for a public work awarded by the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work as follows. The public body shall conduct a survey of the wages received by classes of workers employed on projects of a character similar to the contract work both statewide and in the political subdivision of the state in which the public work is to be performed. The public body shall also consider the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, but only if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work. The public body shall determine the general prevailing rate of per diem wages in the locality based on the higher of:

(1) the rate determined from the survey conducted in the political subdivision;

(2) the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined from the statewide survey; and

(3) if applicable, the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined by the United States Department of Labor.

(c) The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.

(d) [↔] A public body shall specify in the call for bids for the contract and in the contract itself the wage rates determined under this section.

(e) [↔] The public body's determination of the general prevailing rate of per diem wages is final.

SECTION 14.06. The changes made to Sections 2258.001 and 2258.022, Government Code, by this Act apply only to determining the general prevailing rate of per diem wages in connection with a contract for constructing a public work awarded by the state if the state first requests bids or proposals for its contract on or after the effective date of this Act.

SECTION 14.07. Section 2260.002, Government Code, is amended to read as follows:

Sec. 2260.002. APPLICABILITY. This chapter does not apply to:

(1) a claim for personal injury or wrongful death arising from the breach of a contract; or

(2) a contract executed or awarded on or before August 30, 1999.

SECTION 14.08. Subsection (a), Section 2260.003, Government Code, is amended to read as follows:

(a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed an amount equal to the sum of:

(1) the balance due and owing on the contract price; and

(2) the amount or fair market value of orders or requests~~[, including orders]~~ for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed.

SECTION 14.09. Section 2260.005, Government Code, is amended to read as follows:

Sec. 2260.005. EXCLUSIVE PROCEDURE. Subject to Section 2260.007, the ~~[The]~~ procedures contained in this chapter are exclusive and required prerequisites to suit in accordance with Chapter 107, Civil Practice and Remedies Code.

SECTION 14.10. Subchapter A, Chapter 2260, Government Code, is amended by adding Section 2260.007 to read as follows:

Sec. 2260.007. LEGISLATIVE PERMISSION TO SUE. (a) Notwithstanding Section 2260.005, the legislature retains the authority to deny or grant a waiver of immunity to suit against a unit of state government by statute, resolution, or any other means the legislature may determine appropriate.

(b) This chapter does not and may not be interpreted to:

(1) divest the legislature of the authority to grant permission to sue a unit of state government on the terms, conditions, and procedures that the legislature may specify in the measure granting the permission;

(2) require that the legislature, in granting or denying permission to sue a unit of state government, comply with this chapter; or

(3) limit in any way the effect of a legislative grant of permission to sue a unit of state government unless the grant itself provides that this chapter may have that effect.

SECTION 14.11. (a) Except for Section 2260.002(2), Government Code, as amended by this Act, which applies according to its own terms, the changes made to Sections 2260.002, 2260.003, and 2260.005, Government Code, as amended by this Act, and Section 2260.007, Government Code, as added by this Act, apply only to a contract executed on or after the effective date of this Act. A contract executed before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Notwithstanding Subsection (a) of this section, a waiver of sovereign immunity to suit granted by a concurrent resolution passed by the 77th Legislature that applies to a contract entered into before the effective date of this Act shall be effective according to its terms.

SECTION 14.12. Subsection (f), Section 2165.005, Government Code, is amended to read as follows:

(f) A building that ~~which~~ will be used as a state or regional headquarters for a state agency, other than a university building, a secure correctional facility operated by the Texas Youth Commission, or a prison, may bear the name of a person only if the person is deceased and was significant in the state's history.

SECTION 14.13. The Texas Building and Procurement Commission shall rename the Jefferson County State School for the Honorable Al Price.

SECTION 14.14. None of the changes in law made by this Act are intended to weaken provisions of law favorable to small businesses or historically underutilized businesses. None of the changes in law made by this Act may be construed in such a way as to weaken provisions of law favorable to small businesses or historically underutilized businesses.

SECTION 14.15. The maximum annual salary of the executive director of the State Preservation Board during the state fiscal biennium beginning September 1, 2001, is equal to the maximum annual salary set for the executive director of the General Services Commission prescribed by the General Appropriations Act for the biennium.

SECTION 14.16. Subsection (b), Section 2155.074, Government Code, is amended to read as follows:

(b) In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the commission or other state agency may, subject to Subsection (c) and Section 2155.075, consider other relevant factors, including:

- (1) installation costs;
- (2) life cycle costs;
- (3) the quality and reliability of the goods and services;
- (4) the delivery terms;
- (5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
- (6) the cost of any employee training associated with a purchase;
- (7) the effect of a purchase on agency productivity; ~~and~~
- (8) the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment; and
- (9) other factors relevant to determining the best value for the state in the context of a particular purchase.

SECTION 14.17. Subchapter Z, Chapter 2252, Government Code, is amended by adding Section 2252.902 to read as follows:

Sec. 2252.902. INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACTS. (a) In this section, "construction contract" means a contract or agreement made and entered into by a state governmental entity, contractor, construction manager, subcontractor, supplier, or equipment lessor, concerning the construction, alteration, or repair, of a state public building or carrying out or completing any state public work.

(b) Except as proved by Subsection (c), a covenant, promise, or agreement contained in a construction contract, or in an agreement collateral to or affecting a

construction contract, is void and unenforceable to the extent that it indemnifies a person against all or any portion of loss or liability for damage that:

(1) is caused by or results from the sole, joint, or concurrent negligence of the indemnitee, its agent, employee, or another independent contractor directly responsible to the indemnitee; and

(2) arises from:

(A) personal injury or death;

(B) property damage;

(C) a fine, penalty, administrative action, or other action assessed by a governmental entity directly against the indemnitee, its agent or employee, or an independent contractor directly responsible to the indemnitee; or

(D) any other loss, damage, or expense that arises from an occurrence described by Paragraphs (A), (B), or (C).

(c) A covenant, promise, or agreement, contained in a construction contract, or in an agreement collateral to or affecting a construction contract, may provide for a person to indemnify, hold harmless, or defend another person against loss or liability for damage that is caused by or results from the sole, joint, or concurrent negligence of the indemnitee or its agent or employee and arises from the bodily injury or death of an employee of:

(1) the indemnitor;

(2) the indemnitor's subcontractor, supplier, or equipment lessor;

(3) any lower-tier subcontractor, supplier, or equipment lessor of the indemnitor's subcontractor; or

(4) any independent contractor directly responsible to a person described in Subdivisions (1)-(3).

(d) This chapter does not affect the validity and enforceability of:

(1) an insurance contract;

(2) benefits and protections under the workers' compensation laws of this state; or

(3) any statutory right of contribution.

(e) This section may not be waived by contract or otherwise.

#### ARTICLE 15. EFFECTIVE DATE

SECTION 15.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2061**

Senator Cain submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 2061** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

CAIN	WILSON
ZAFFIRINI	OLIVO
OGDEN	GIDDINGS
BROWN	LUNA
WEST	GOOLSBY
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 588**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 588** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON	GARCIA
DUNCAN	ALLEN
WEST	HINOJOSA
CAIN	DUTTON
	SOLIS
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1862**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1862** have had the same

under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE  
HARRIS  
CARONA  
LUCIO

EILAND  
SMITHEE  
G. LEWIS  
JANEK  
ISETT

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 6**

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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.

BIVINS  
ARMBRISTER  
NELSON  
SHAPIRO  
STAPLES

DUNNAM  
SADLER  
HARDCASTLE  
OLIVO

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 409**

Senator Cain submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 409** 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.

CAIN  
SHAPIRO  
MADLA  
CARONA  
ARMBRISTER

BOSSE  
MCCALL  
Y. DAVIS  
GALLEGO

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the powers and duties of the Texas Turnpike Authority division of the Texas Department of Transportation, including the power of eminent domain.

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

SECTION 1. Subdivision (4), Section 361.001, Transportation Code, is amended to read as follows:

(4) "Turnpike project" means a toll highway constructed, maintained, or operated under this chapter as part of the state highway system and any improvement, extension, or expansion to the highway and includes:

(A) a facility to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;

(C) an administration, storage, or other building the authority considers necessary to operate the project; ~~and~~

(D) property rights, easements, and interests the authority acquires to construct or operate the project;

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the authority considers necessary, useful, or beneficial for the operation of a turnpike project; and

(F) a toll-free facility that is appurtenant to and necessary for the efficient operation of a turnpike project, including a service road, access road, ramp, interchange, bridge, or tunnel.

SECTION 2. Section 361.004, Transportation Code, is amended to read as follows:

Sec. 361.004. CONSTRUCTION COSTS. (a) The cost of acquisition, construction, improvement, extension, or expansion of a turnpike project under this chapter includes the cost of:

(1) the actual acquisition, construction, improvement, extension, or expansion of the project;

(2) acquisition of real property, rights-of-way, property rights, easements, and interests;

(3) machinery and equipment;

(4) interest before, during, and for one year after construction, improvement, extension, or expansion;

(5) traffic estimates, engineering and legal services, plans, specifications, surveys, appraisals, cost and revenue estimates, and other expenses necessary or incident to determining the feasibility of the construction, improvement, extension, or expansion;

(6) necessary or incidental administrative, legal, and other expenses;  
(7) financing; and  
(8) placement of the project in operation and expenses related to the initial operation of the turnpike project.

(b) Costs attributable to a turnpike project for which bonds are issued that are incurred before the issuance of the bonds may be reimbursed from the proceeds of the sale of the bonds.

SECTION 3. Subsections (b) through (g), Section 361.031, Transportation Code, are amended to read as follows:

(b) The authority may perform, procure from other divisions of the department with the consent of the department, or procure from outside service providers any portion of the services the authority requires for:

- (1) right-of-way acquisition;
- (2) roadway finance, design, and construction;
- (3) environmental affairs; ~~[or]~~
- (4) legal services;
- (5) roadway maintenance;
- (6) toll revenue collection; or
- (7) traffic operations.

~~(c) [With the approval of the commission, the authority may perform, procure from other divisions of the department with the consent of the department, or procure from outside service providers any portion of the services the authority requires for roadway maintenance, toll revenue collection, or traffic operations.]~~

~~[(d)]~~ To perform its functions under this chapter, the authority may use the facilities and personnel of the department in the same manner as other divisions of the department.

~~(d) [(e)]~~ If the comptroller assigns numbers to state agencies for accounting purposes, the comptroller shall assign a separate agency number to the authority.

~~(e) [(f)]~~ The exercise by the authority of the powers conferred by this chapter in the construction, operation, and maintenance of a turnpike project is:

(1) in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions and public safety; and

(2) an essential governmental function of the state.

~~(f) [(g)]~~ The commission shall employ a director of the authority who serves as the authority's chief administrative officer. The director serves at the pleasure of the commission.

SECTION 4. Subsection (b), Section 361.042, Transportation Code, is amended to read as follows:

(b) The authority may:

(1) construct, maintain, repair, and operate turnpike projects in this state;  
(2) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(3) with the approval of the governor and the commission, enter into contracts or operating agreements with similar authorities or agencies of another state, including a state of the United Mexican States;

(4) enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;

(5) employ consulting engineers, accountants, construction and financial experts, superintendents, managers, and other employees and agents the authority considers necessary and set their compensation;

(6) employ attorneys to advance or defend legal actions pertaining to the division's activities, notwithstanding any other law to the contrary, including Section 402.0212, Government Code;

(7) receive grants for the construction of a turnpike project and receive contributions of money, property, labor, or other things of value from any source to be used for the purposes for which the grants or contributions are made;

(8) adopt and enforce rules~~[-if the commission concurs;]~~ not inconsistent with this chapter for the use of any turnpike project, including rules establishing speed limits and maximum allowable vehicle and load weight limits for turnpike projects; ~~[and]~~

(9) engage in marketing, advertising, and other activities to promote the development and use of turnpike projects and may enter into contracts or agreements necessary to procure marketing, advertising, or other promotional services from outside service providers;

(10) with the concurrence of the commission, form, develop, or utilize a corporation created under Chapter 431 for the promotion and development of turnpike projects; and

(11) do all things necessary or appropriate to carry out the powers expressly granted by this chapter.

SECTION 5. Section 361.054, Transportation Code, is amended to read as follows:

Sec. 361.054. AUDIT. Notwithstanding any other law to the contrary, the [The] authority shall have an independent [a] certified public accountant audit the authority's books and accounts at least annually. The cost of the audit may be treated as part of the cost of construction or operation of a turnpike project. This section does not affect the ability of a state agency to audit the authority's books and accounts.

SECTION 6. Section 361.131, Transportation Code, is amended to read as follows:

Sec. 361.131. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. Except as otherwise provided by this chapter, the authority, acting by and through the board, has the same powers and may use the same procedures as the commission or the department in acquiring property.

SECTION 7. Subsections (a) and (c), Section 361.132, Transportation Code, are amended to read as follows:

(a) The authority [board] may acquire, in the name of the state, public or private real property it determines necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of a turnpike project or for otherwise carrying out this chapter.

(c) The authority [board] may acquire the real property by any method, including purchase and condemnation. The authority [board] may purchase public or private real property on the terms and at the price the authority [board] and the owner consider reasonable.

SECTION 8. Subsection (b), Section 361.135, Transportation Code, is amended to read as follows:

(b) The board, with the concurrence of the commission, may condemn real property that the authority determines is:

(1) necessary or appropriate to construct or to efficiently operate a turnpike project;

(2) necessary to restore public or private property damaged or destroyed, including property necessary or convenient to mitigate an environmental effect that directly results from the construction, operation, or maintenance of a turnpike project;

(3) necessary for access, approach, service, and interchange roads; ~~or~~

(4) necessary to provide proper drainage and ground slope for a turnpike project; or

(5) necessary otherwise to carry out this chapter.

SECTION 9. Section 361.137, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) After a declaration of taking is filed, the case shall proceed as any other case in eminent domain under Chapter 21, Property Code.

SECTION 10. Subsection (a), Section 361.141, Transportation Code, is amended to read as follows:

(a) The authority may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, except for:

(1) parks and playgrounds; and

(2) property acquired under restrictions and limitations requiring payment of compensation.

SECTION 11. Section 361.171, Transportation Code, is amended by adding Subsection (g) to read as follows:

(g) In addition to other permitted uses, the proceeds of a bond issue may be used to pay costs incurred before the issuance of the bonds, including costs of environmental review, design, planning, acquisition of property, relocation assistance, construction, and operation.

SECTION 12. Subsection (a), Section 361.179, Transportation Code, is amended to read as follows:

(a) The authority may:

(1) impose tolls for the use of each turnpike project and the different parts or sections of each turnpike project; and

(2) notwithstanding anything in Chapter 202 to the contrary, contract with a person for the use of part of a turnpike project or lease or sell part of a turnpike project, including the right-of-way adjoining the paved portion, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, railroad tracks, telephone line, telecommunication line, telecommunications facilities and equipment, and electric line, and set the terms for the use, lease, or sale.

SECTION 13. Subsection (a), Section 361.181, Transportation Code, is amended to read as follows:

(a) Notwithstanding Section 361.179 or any other provision of this chapter to the contrary, the authority may pay the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of a proposed turnpike project by:

(1) using available revenue derived from an existing turnpike project;

(2) borrowing money and issuing interest-bearing evidences of indebtedness or entering into a loan agreement payable out of available revenue anticipated to be derived from the operation of an existing turnpike project; ~~and~~

(3) pledging available revenue anticipated to be derived from the operation of an existing turnpike project; and

(4) using money received from the department for feasibility studies undertaken at the request of the commission.

SECTION 14. Section 361.182, Transportation Code, is amended by adding Subsection (i) to read as follows:

(i) The commission may request that the authority conduct a feasibility study for any proposed turnpike project. The expenses of a study requested by the commission shall be paid for by the department. If the turnpike project is constructed, the department shall be reimbursed for money paid to the authority from the proceeds of turnpike revenue bonds issued for, or other proceeds that may be used for, the construction, improvement, extension, expansion, or operation of the project.

SECTION 15. Subsection (c), Section 361.232, Transportation Code, is amended to read as follows:

(c) If feasible, the [The] authority shall provide access to properties previously abutting [move and replace, with an equal or better facility,] a county or other public road that is taken for a turnpike project and [affects or severs. The authority] shall pay abutting property owners the expenses or [and] any resulting damages for denial of access to the road.

SECTION 16. Subsections (d), (e), and (f), Section 361.234, Transportation Code, are amended to read as follows:

(d) The authority and the public utility shall have 90 days from the date the authority provides written notice to the public utility of the need for relocation of utility facilities to reach an agreement concerning the period for completion of the relocation. The 90-day period may be extended by mutual written agreement. If the parties are unable to reach an agreement for the period for completion of the relocation, the authority may specify a reasonable period. The authority may reduce the total costs to be paid by the authority by 10 percent for each 30-day period or portion of a 30-day period that the relocation exceeds the period specified by agreement between the authority and public utility or as reasonably specified by the authority if no agreement is reached, unless the public utility's failure to timely perform results from a material action or inaction by the authority or from conditions that were beyond the reasonable control of the utility. If an owner or operator of a public utility facility does not timely remove or relocate the facility as required under Subsection (b) and the authority relocates the facility, the authority shall relocate the facility in a safe manner that complies with applicable law and utility construction standards recognized by the authority and that minimizes disruption of utility service and shall notify the public utility and other appropriate regulatory agencies of the relocation. A public utility shall reimburse the authority for expenses reasonably incurred for the relocation of a public utility facility unless the failure of the public utility to timely relocate the facility was the result of circumstances beyond the control of the utility, in which case the authority shall pay the cost of the relocation.

(e) Notwithstanding anything in this chapter to the contrary:

(1) Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of pipes, mains, conductors, and other facilities used for conducting gas by a gas utility described in that subchapter through, under, along, across, and over a turnpike project constructed by the authority; and

(2) the authority has the powers and duties assigned to the commission by Subchapter B, Chapter 181, Utilities Code.

(f) Notwithstanding anything in this chapter to the contrary, Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of lines and poles owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a turnpike project constructed by the authority. The authority has the powers and duties delegated to the commission by Subchapter C, Chapter 181, Utilities Code.

(g) [(e)] Notwithstanding anything in this chapter to the contrary, the laws of this state applicable to the use of public roads, streets, and waters of this state by a telephone and telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone and telegraph corporation over, under, across, on, and along a turnpike project constructed by the authority.

(h) [(f)] In this section, "public utility facility" means a track, pipe, main, conduit, cable, wire, tower, pole, or other item of equipment or an appliance of a public utility or other person.

SECTION 17. Subsection (a), Section 361.306, Transportation Code, is amended to read as follows:

(a) The authority shall adopt rules, procedures, and guidelines governing negotiations to promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts and may authorize the authority to impose a fee for reviewing proposals for private involvement in a turnpike project.

SECTION 18. Subsections (e), (f), and (g), Section 545.354, Transportation Code, are amended to read as follows:

(e) [~~Sections 545.353 and 545.355 to 545.359 do not apply to any part of a turnpike project constructed and maintained by the authority and covered under Subsection (d) unless a turnpike constructed by the authority becomes part of the state highway system, in which event the Texas Transportation Commission has the sole authority to alter prima facie speed limits on the turnpike project.~~]

[(f)] The authority may not:

- (1) alter the general rule established by Section 545.351(a); or
- (2) establish a speed limit of more than 70 miles per hour.

(f) [(g)] The authority, in conducting the engineering and traffic investigation specified by Subsection (a), shall follow the procedure for establishing speed zones adopted by the Texas Department of Transportation.

SECTION 19. Section 621.102, Transportation Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) Except as provided by Subsection (h), the [The] commission may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge or culvert along the road. A maximum weight or load set under this subsection may not exceed the maximum set by statute for that weight or load.

(h) The Texas Turnpike Authority may set, in the same manner as the commission under this section, the maximum gross weight of a vehicle and its load, the maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a turnpike project as defined by Section 361.001.

SECTION 20. 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, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1320**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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.

STAPLES	BRIMER
HAYWOOD	Y. DAVIS
VAN DE PUTTE	DUKES
FRASER	
MADLA	

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to filings made with the secretary of state by business organizations.

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

SECTION 1. Article 2.04, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended by adding Section D to read as follows:

D. Any person for whom a specified company name has been reserved pursuant to Section B of this article may, during the period for which such name is reserved, terminate such reservation by filing with the Secretary of State an application for cancellation of reservation of company name, together with the applicable fee.

SECTION 2. Section B, Article 3.06, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

B. The articles of amendment shall set forth:

(1) The name of the limited liability company.

(2) If the amendment alters any provision of the original or amended articles of organization an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of organization a statement of that fact and the text of each provision added.

(3) A statement that the amendment was approved in accordance with Section ~~D or~~ G or H of Article 2.23 of this Act or as otherwise provided in the articles of organization or regulations and the date of the approval.

SECTION 3. Section D, Article 3.09, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

D. Restated articles of organization must be executed on behalf of the limited liability company by an authorized manager or member unless capital has not been paid into the limited liability company and the restated articles of organization have been adopted by action of a majority of the initial managers or a majority of the initial members named in the articles of organization as provided by Article 2.23 of this Act ~~[the organizer]~~, in which case the restated articles of organization may be executed on behalf of the limited liability company by a majority of the persons adopting such restated articles ~~[the organizer]~~. The original and a copy of the restated articles of organization shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of organization conform to law, and the appropriate filing fee is paid as required by law, the Secretary of State shall:

(1) endorse on the original and the copy the word "Filed" and the month, day, and year of filing;

(2) file the original in the Secretary of State's office; and

(3) issue a restated certificate of organization and affix the copy to the restated certificate of organization.

SECTION 4. Section A, Article 6.07, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. If voluntary dissolution proceedings have not been revoked, then, when all liabilities and obligations of the limited liability company have been paid or discharged, or adequate provision has been made therefor, or in case its property and assets are not sufficient to satisfy and discharge all the limited liability company's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the limited liability company's liabilities and obligations, and all of the remaining property and assets of the limited liability have been distributed to its members according to their respective rights and interest, articles of dissolution shall be executed on behalf of the limited liability company by a manager or authorized member, or in accordance with Section G, Article 2.23, of this Act ~~[the case of a dissolution by action of the organizer of the limited liability company, by the organizer]~~, which shall set forth:

(1) The name of the limited liability company.

(2) The names and respective addresses of its managers, if any.

(3) That all debts, obligations, and liabilities of the limited liability company have been paid or discharged or that adequate provision has been made therefor, or, in case the limited liability company's property and assets were not sufficient to satisfy and discharge all its debts, liabilities, and obligations, that all property and assets have

been applied so far as they will go to the payment thereof in a just and equitable manner and that no property or assets remain available for distribution among its members, or, that the limited liability company has not acquired any debts, obligations, or liabilities.

(4) That all remaining property and assets of the limited liability company have been distributed among its members in accordance with their respective rights and interest or that no property remained for distribution to members after applying it as far as it would go to the just and equitable payment of the debts, liabilities, and obligations of the limited liability company, or that the limited liability company has not acquired any property or assets and therefore distributions to members were not required.

(5) If capital has not been paid into the limited liability company, [~~a copy of the resolution to dissolve, together with~~] a statement that the resolution was adopted by the act of a majority of the initial managers or a majority of the initial members named in the articles of organization in accordance with Section G, Article 2.23, of this Act [~~the organizer or the managers of the limited liability company~~] and of the date of adoption.

(6) If the limited liability company elected to dissolve by action of its members, [~~a copy of the resolution to dissolve, together with~~] a statement that the resolution was adopted in accordance with Section D, Article 2.23, of this Act or as otherwise provided in the articles of incorporation or the regulations and the date of adoption.

SECTION 5. Section E, Article 7.11, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

E. Any foreign limited liability company whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 [~~24~~] months from the date of revocation, upon approval of an application for reinstatement signed by a manager or member of the foreign limited liability company. Such application shall be filed by the Secretary of State whenever it is established to the Secretary of State's satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the foreign limited liability company certificate not been revoked. A reinstatement filing fee of \$50 shall accompany the application for reinstatement.

Reinstatement shall not be authorized if the foreign limited liability company name is the same as or deceptively similar to a foreign limited liability company, corporation or limited partnership name already on file or reserved or registered, unless the foreign limited liability company being reinstated contemporaneously amends its certificate of authority to change its name.

When the application for reinstatement is approved and filed by the Secretary of State, the foreign limited liability company's authority to do business in Texas shall be deemed to have continued without interruption from the date of revocation, except that reinstatement shall have no effect upon any issue of personal liability of the manager or member, or agents of the foreign limited liability company during the period between revocation and reinstatement.

SECTION 6. Section A, Article 10.03, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. After a plan of merger has been approved by each of the limited liability companies or other entities that is a party to the plan of merger, articles of merger shall be executed on behalf of each domestic limited liability company that is a party to the plan of merger by at least one member, manager, officer, or other agent or representative of the limited liability company who is authorized to execute articles of merger by the articles of organization or regulations or shall be approved by authorizing resolutions adopted by the act of the members. At least one authorized representative of each other foreign limited liability company or other entity that is a party to the plan of merger shall also execute the articles of merger. The articles of merger must include:

(1) the plan of merger or statement certifying the following:

(a) the name and state of incorporation or organization of each domestic or foreign limited liability company or other entity that is a party to the plan of merger or that is to be created thereby;

(b) that a plan of merger has been approved;

(c) such amendments or changes in the articles of organization of each domestic surviving limited liability company, or if no such amendments are desired to be effected by the merger, a statement to that effect;

(d) that the articles of organization of each new domestic limited liability company to be created pursuant to the terms of the plan of merger are being filed with the Secretary of State with the articles of merger;

(e) that an executed plan of merger is on file at the principal place of business of each surviving or new domestic or foreign limited liability company or other entity, stating the address thereof; and

(f) that a copy of the plan of merger will be furnished by each surviving or new domestic or foreign limited liability company or other entity, on written request and without cost, to any member of each domestic limited liability company that is a party to or created by the plan of merger and, in the case of a merger with multiple surviving domestic or foreign limited liability companies or other entities, to any creditor or obligee of the parties to the merger at the time of the merger if such obligation is then outstanding; and

(2) as to each domestic or foreign limited liability company or other entity that is a party to the plan of merger, a statement that the plan of merger was authorized by all action required by the laws under which it was formed or organized or by its constituent documents.

SECTION 7. Section A, Article 11.01, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), as amended by Chapters 813 and 1245, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

A. (1) One or more persons may organize a professional limited liability company by filing articles of organization with the Secretary of State in accordance with Part Three of this Act. In addition to other provisions required or permitted by law, the articles of organization of a professional limited liability company must include a statement:

(a) that the limited liability company is a professional limited liability company; and

(b) describing the specific kind of professional service to be rendered by the limited liability company.

(2) Except as provided by Subdivisions [~~Subdivision~~] (3) and (4) of this subsection, a professional limited liability company:

(a) may be organized under this Act only for the purpose of rendering one specific type of professional service and ancillary services; and

(b) may not render more than one kind of professional service.

(3) Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may organize a professional limited liability company that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When doctors of medicine, osteopathy, and podiatry organize a professional limited liability company that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The Texas State Board of Medical Examiners and the Texas State Board of Podiatric Medical Examiners continue to exercise regulatory authority over their respective licenses.

(4) [~~(3)~~] Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may organize a professional limited liability company that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When mental health professionals organize a professional limited liability company that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioner, and none can exercise control over the others' clinical authority granted by their respective licenses, whether through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by a practitioner. The state agencies exercising regulatory control over professions to which this subdivision applies continue to exercise regulatory authority over their respective licenses.

SECTION 8. Section A, Article 6.05, Texas Non-Profit Corporation Act (Article 1396-6.05, Vernon's Texas Civil Statutes), is amended to read as follows:

A. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, or, in case its property and assets are not sufficient to satisfy and discharge all the corporation's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the corporation's liabilities and obligations, and all of the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act, articles of dissolution shall be signed on behalf of the corporation by an officer and shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received

at least two-thirds (2/3) of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds (2/3) of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor, or, in case the corporation's property and assets were not sufficient to satisfy and discharge all its liabilities and obligations, that all the property and assets have been applied so far as they would go to the payment thereof in a just and equitable manner and that no property or assets remained available for distribution among its members.

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act; provided, however, that if assets were received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, there shall also be set forth a statement that a [copy of the] plan of distribution has been adopted as provided in this Act for the distribution of such assets, and a statement that distribution has been effected in accordance with such plan.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

SECTION 9. Section E, Article 7.01, Texas Non-Profit Corporation Act (Article 1396-7.01, Vernon's Texas Civil Statutes), is amended to read as follows:

E. Any corporation dissolved by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 [~~12~~] months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the dissolved corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the dissolution, or whenever the neglect, omission or delinquency resulting in dissolution has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the dissolution plus an amount equal to the total taxes from the date of dissolution to the date of reinstatement which would have been payable had the corporation not been dissolved. A reinstatement filing fee of \$25.00 shall accompany the application for reinstatement.

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or registered, unless the corporation being reinstated contemporaneously amends the articles of incorporation to change its name.

When the application for reinstatement is approved and filed by the Secretary of State, the corporate existence shall be deemed to have continued without interruption from the date of dissolution except the reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between dissolution and reinstatement.

SECTION 10. Section E, Article 8.15, Texas Non-Profit Corporation Act (Article 1396-8.15, Vernon's Texas Civil Statutes), is amended to read as follows:

E. Any corporation whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 [~~12~~] months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the corporation's certificate not been revoked. A reinstatement filing fee of \$25.00 shall accompany the application for reinstatement.

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or registered, unless the corporation being reinstated contemporaneously amends its certificate of authority to change its name.

When the application for reinstatement is approved and filed by the Secretary of State, the corporate authority to do business in Texas shall be deemed to have continued without interruption from the date of revocation, except that reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between revocation and reinstatement.

SECTION 11. Subsection (i), Section 1.06, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) The statement required by Subsection (h) of this section must be signed [~~and verified~~] by the registered agent or, if the registered agent is a corporation, by an officer of the corporation. If the registered agent is simultaneously filing statements for more than one limited partnership, each statement may contain a facsimile signature in the execution. If the secretary of state finds that the statement conforms to this section, the secretary of state, on receipt of the filing fee, shall file it in accordance with Subsection (a) of Section 2.07 of this Act as if it were a certificate of amendment. The address of the registered office of the limited partnership is changed on the filing of the statement by the secretary of state. Filing of the statement amends the certificate of limited partnership or registration as a foreign limited partnership regarding the information required by Subdivision (2) of Subsection (a) of Section 2.01 or Subdivision (4) of Subsection (a) of Section 9.02 of this Act, as appropriate, and no further action is required under Section 2.02 of this Act.

SECTION 12. Section 12.01, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12.01. FEES. The secretary of state shall collect for the use of the state:

(1) for filing a certificate of limited partnership under Section 2.01 of this Act, or an application for registration as a foreign limited partnership under Section 9.02 of this Act, a fee of \$750;

(2) for filing a certificate of amendment under Section 2.02 of this Act, a certificate of cancellation under Section 2.03 of this Act, a restated certificate of limited partnership under Section 2.10 of this Act, a certificate of merger under Section 2.11 of this Act, a certificate of correction under Section ~~2.13~~ [2-12] of this Act, a certificate of conversion under Section 2.15 of this Act, a certificate under Section 9.05 of this Act, or a certificate of cancellation under Section 9.06 of this Act, a fee of \$200;

(3) for filing an application for registration of name or an application for renewal of registration of name under Section 1.05 of this Act, a fee of \$75;

(4) for filing a statement for change of registered office, registered agent, or both, under Subsection (b) of Section 1.06 of this Act, or a statement for change of location of registered office under Subsection (h) of Section 1.06 of this Act, a fee of \$50, except that the maximum fee for simultaneous filings by a registered agent for more than one limited partnership may not exceed \$2,500;

(5) for the filing of an application for reservation of name under Subsection (b) of Section 1.04 of this Act, a notice of transfer of reservation under Subsection (b) of Section 1.04 of this Act, or for preclearance of any document for filing, a fee of \$50; and

(6) for filing any instrument under this Act not expressly provided for above, a fee of \$25.

SECTION 13. Section 6.01, Texas Revised Partnership Act (Article 6132b-6.01, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) EVENT OF WITHDRAWAL. An event of withdrawal of a partner occurs on:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner on the date of receipt of the notice or on a later date specified in the notice;

(2) an event specified in the partnership agreement as causing the partner's withdrawal;

(3) the partner's expulsion as provided in the partnership agreement;

(4) the partner's expulsion by the vote of a majority-in-interest of the other partners if:

(A) it is unlawful to carry on the partnership business with that partner;

(B) there has been a transfer of all or substantially all of that partner's partnership interest, other than:

(i) a transfer for security purposes that has not been foreclosed; or

(ii) the substitution of a successor trustee or successor personal representative;

(C) within 90 days after the date the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution is not revoked or its charter or its right to conduct business is not reinstated; or

(D) an event requiring a winding up has occurred with respect to a partnership that is a partner;

(5) application by the partnership or another partner for the partner's expulsion by judicial decree because:

(A) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(B) the partner wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 4.04; or

(C) the partner engaged in conduct relating to the partnership business that made it not reasonably practicable to carry on the business in partnership with that partner;

(6) the partner:

(A) becoming a debtor in bankruptcy;

(B) executing an assignment for the benefit of creditors;

(C) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(D) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the date of expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(A) the partner's death;

(B) the appointment of a guardian or general conservator for the partner; or

(C) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) termination of a partner's existence;

(9) in the case of a partner that has transferred all of the partner's partnership interest, redemption of the transferee's interest under Sections 7.01(n)-(r); [or]

(10) an agreement to continue the partnership under Section 8.01(g) if the partnership has received a notice from the partner under Section 8.01(g) requesting that the partnership be wound up; or

(11) a conversion of the partnership if the partner:

(A) did not consent to the conversion; and

(B) failed to notify the partnership in writing of the partner's desire not to withdraw within 60 days after the later of:

(i) the effective date of the conversion; or

(ii) the date the partner receives actual notice of the conversion.

(c) WITHDRAWAL ON CONVERSION. A withdrawal of a partner under the circumstances described in Subsection (b)(11) of this section is effective immediately before the effective date of the conversion and is not considered a wrongful withdrawal.

SECTION 14. Subsection (a), Section 7.01, Texas Revised Partnership Act (Article 6132b-7.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) REDEMPTION. If an event of withdrawal occurs under Sections 6.01(b)(1)-(9) and an event requiring a winding up does not occur within 60 days after the date of the withdrawal, or on a partner's withdrawal under Section 6.01(b)(10) or Section 6.01(b)(11), the partnership interest of the withdrawn partner automatically is redeemed by the partnership as of the date of withdrawal in accordance with this section.

SECTION 15. Subsection (i), Section 10.05, Texas Revised Partnership Act (Article 6132b-10.05, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) The statement required by Subsection (h) must be signed [~~and verified~~] by the registered agent or, if the registered agent is a corporation, by an officer of the corporation. If the registered agent is simultaneously filing statements for more than one foreign limited liability partnership, each statement may contain a facsimile signature in the execution. If the secretary of state finds that the statement conforms to this section, the secretary of state, on receipt of the filing fee, shall file it in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification. The address of the registered office of the foreign limited liability partnership is changed on the filing of the statement by the secretary of state. Filing of the statement amends the statement of foreign qualification regarding the information required by Section 10.02(a)(5) and no further action is required under Section 10.02(k).

SECTION 16. Article 9.07, Texas Business Corporation Act, is amended to read as follows:

Art. 9.07. TIME FOR FILING DOCUMENTS IN THE OFFICE OF THE SECRETARY OF STATE. A. Except as provided by Section B of this article, if a [~~Whenever any~~] document is required to be filed in the office of the Secretary of State by any provision of this Act, ~~that [the]~~ requirement [~~of the statute~~] shall be construed to include [~~involve~~] the requirement that the document [same] be [~~so~~] filed with reasonable promptness.

B. A person required under this Act to file with the Secretary of State a change of registered office or agent, an application or certificate of withdrawal or termination, or articles of dissolution commits an offense if the person does not file the required filing with the Secretary of State before the earlier of:

- (1) the 30th day after the date of the change, withdrawal, or termination; or
- (2) the date the filing is otherwise required by law.

C. A person who violates Section B of this article is liable to the state for a civil penalty in an amount not to exceed \$2,500 for each violation. In determining the amount of a penalty under this section, the court shall consider all the circumstances giving rise to the offense. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring suit to recover the civil penalty imposed under this article.

D. The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating Section B of this article.

E. In an action or proceeding brought against a person who has not complied with Section B of this article, the plaintiff or other party bringing the suit or proceeding may recover, at the court's discretion, reasonable costs and attorney's fees incurred by locating and effecting service of process on the person. Any damages recovered must be in conjunction with a pending action or proceeding and shall be awarded as costs under the Texas Rules of Civil Procedure. This section does not create a private independent cause of action for failure to comply with Section B of this article.

F. A person who is entitled to recover damages under Section E of this article may request from the attorney general nonconfidential information on the other person for the purpose of effecting service of process. The attorney general shall comply with a request made under this section to the extent practicable.

SECTION 17. Section 18, Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes), is repealed.

SECTION 18. This Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1323**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1323** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

STAPLES	SHIELDS
ARMBRISTER	DUTTON
FRASER	GARCIA
SHAPIRO	HINOJOSA
VAN DE PUTTE	TALTON
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1210**

Senator West submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1210** 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	DUNNAM
DUNCAN	CAPELO
SHAPIRO	SOLIS
JACKSON	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to certain attorneys and law clerks employed by a court.

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

SECTION 1. Subtitle D, Title 2, Government Code, is amended by adding Chapter 57 to read as follows:

CHAPTER 57. STAFF ATTORNEYS AND LAW CLERKS;  
CONFLICT OF INTEREST

Sec. 57.001. APPLICABILITY OF CHAPTER. This chapter applies only to an attorney or law clerk employed by a court of this state for a specified and limited term.

Sec. 57.002. DISCLOSURE. (a) An attorney or law clerk subject to this chapter who has entered into an agreement for employment with or accepted a benefit from a law firm or another private entity shall file a statement with the clerk of the court or a public information officer designated by the court. The statement must include:

- (1) the name of the attorney or law clerk;
- (2) the name of the law firm or other private entity;
- (3) any benefit the attorney or law clerk has received or anticipates receiving from the law firm or other private entity in connection with the employment; and
- (4) any other information required by court rule.

(b) Information filed under this section is a public record and shall be made available to any person on request.

Sec. 57.003. REQUIRED RECUSAL. (a) An attorney or law clerk subject to this chapter who, in accordance with Section 57.003 and the requirements of the supreme court, entered into an agreement for employment with or accepted a benefit from a law firm or another private entity may not participate during the employment with the court in any matter before the court that involves the law firm or private entity.

(b) After the termination of employment with the court, the attorney or law clerk may not:

- (1) participate on behalf of the law firm or private entity in any matter that was pending before the court during the period the attorney or law clerk was employed by the court; and
- (2) until the first anniversary of the date of the termination of employment, plead or appear on behalf of the law firm or private entity in any matter before the court that employed the attorney or law clerk.

(c) A recusal from participation in a matter under Subsection (a) or (b) must be made by public order of the court.

Sec. 57.004. SANCTIONS. An attorney who violates this chapter is subject to sanctions by the State Bar of Texas.

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, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1839**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 1839** 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.

MONCRIEF  
CARONA  
DUNCAN  
ELLIS  
OGDEN

EILAND  
NAISHTAT  
SMITHEE

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to certain long-term care facilities.

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

ARTICLE 1. SHORT TITLE; PURPOSE

SECTION 1.01. SHORT TITLE. This Act may be cited as the Long-Term Care Facility Improvement Act.

SECTION 1.02. LEGISLATIVE INTENT; PURPOSE. (a) The legislature specifically acknowledges an existing crisis confronting long-term care facilities in Texas and the critical importance of the services provided to Texans by these facilities, and in particular to the growing population of older Texans.

(b) In response to this crisis, this Act is intended to ensure that long-term care facilities continue to be available to provide care to Texans, that this care be of the highest quality, and that the residents of these facilities be financially protected by available and affordable professional liability insurance.

(c) This Act includes extraordinary measures that are necessary to address an emergency in long-term care in this state. These measures are intended as temporary solutions that will facilitate the efficient recovery of both for-profit and not-for-profit private long-term care facilities so that, in the future, these facilities will be financially sound and capable of providing high-quality care.

(d) With respect to the legal concepts incorporated in the measures contained in this Act, the legislature does not intend for these concepts to be applied outside the realm of long-term care. Because the application of the measures contained in this Act in relation to these legal concepts is temporary and because of the extraordinary complexity and uniqueness of the crisis facing nursing homes, these measures should

not be construed as the legislature's interpretation of the current law applicable to these legal concepts. In enacting the extraordinary measures contained in this Act, the legislature specifically rejects any suggestion that these measures represent solutions that are appropriate for any area involving liability insurance, insurance practices, or medical care other than long-term care facilities.

ARTICLE 2. NOTICE OF EXEMPLARY DAMAGES  
IN CERTAIN ACTIONS

SECTION 2.01. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.051 to read as follows:

Sec. 242.051. NOTIFICATION OF AWARD OF EXEMPLARY DAMAGES.

(a) If exemplary damages are awarded under Chapter 41, Civil Practice and Remedies Code, against an institution or an officer, employee, or agent of an institution, the court shall notify the department.

(b) If the department receives notice under Subsection (a), the department shall maintain the information contained in the notice in the records of the department relating to the history of the institution.

SECTION 2.02. This article applies only to an award of exemplary damages in a cause of action that accrues on or after September 1, 2001.

ARTICLE 3. ADMISSIBILITY OF CERTAIN EVIDENCE  
IN CIVIL ACTION

SECTION 3.01. Subsections (i) and (k), Section 32.021, Human Resources Code, are amended to read as follows:

(i) A record of the department, including a record of [Except as provided by Subsections (j) and (k);] a department survey, complaint investigation, incident investigation, or survey report, that relates to [documents that] an institution, including an intermediate care facility for the mentally retarded, may be introduced into evidence in a civil action, enforcement action, or related proceeding if the record is admissible under the Texas Rules of Evidence [has violated a standard for participation in the state Medicaid program, or the assessment of a monetary penalty by the department or the payment of a monetary penalty by the institution, is not admissible as evidence in a civil action to prove that the institution has committed a violation].

(k) A department surveyor or investigator may testify in a civil action as to observations, factual findings, conclusions, or violations of requirements for licensure or for certification for participation in the state Medicaid program that were made in the discharge of official duties for the department, if the testimony is admissible under [in accordance with] the Texas Rules of [Civil] Evidence.

SECTION 3.02. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.050 to read as follows:

Sec. 242.050. ADMISSIBILITY OF CERTAIN DOCUMENTS OR TESTIMONY. Sections 32.021(i) and (k), Human Resources Code, govern the admissibility in a civil action against an institution of:

(1) a record of the department described by Section 32.021(i), Human Resources Code; or

(2) the testimony of a department surveyor or investigator described by Section 32.021(k), Human Resources Code.

SECTION 3.03. Subchapter B, Chapter 252, Health and Safety Code, is amended by adding Section 252.045 to read as follows:

Sec. 252.045. ADMISSIBILITY OF CERTAIN DOCUMENTS OR TESTIMONY. Sections 32.021(i) and (k), Human Resources Code, govern the admissibility in a civil action against a facility of:

(1) a record of the department described by Section 32.021(i), Human Resources Code; or

(2) the testimony of a department surveyor or investigator described by Section 32.021(k), Human Resources Code.

SECTION 3.04. Subsection (j), Section 32.021, Human Resources Code, is repealed.

SECTION 3.05. This article applies only to a civil action, enforcement action, or related proceeding that is commenced on or after the effective date of this Act. A civil action, enforcement action, or related proceeding that is commenced before the effective date of this Act is governed by the law applicable to the action or proceeding immediately before the effective date of this Act, and that law is continued in effect for that purpose.

#### ARTICLE 4. DATA REPORTING FOR CERTAIN LIABILITY INSURANCE COVERAGE

SECTION 4.01. Chapter 38, Insurance Code, is amended by adding Subchapter F to read as follows:

##### SUBCHAPTER F. DATA REPORTING BY CERTAIN LIABILITY INSURERS

Sec. 38.251. INSURER DATA REPORTING. (a) Each insurer that writes professional liability insurance policies for nursing institutions licensed under Chapter 242, Health and Safety Code, including an insurer whose rates are not regulated, shall, as a condition of writing those policies in this state, comply with a request for information from the commissioner under this section.

(b) The commissioner may require information in rate filings, special data calls, or informational hearings or by any other means consistent with this code applicable to the affected insurer that the commissioner believes will allow the commissioner to:

(1) determine whether insurers writing insurance coverage described by Subsection (a) are passing to insured nursing institutions on a prospective basis the savings that accrue as a result of the reduction in risk to insurers writing that coverage that will result from legislation enacted by the 77th Legislature, Regular Session, including legislation that:

(A) amended Article 5.15-1 to limit the exposure of an insurer to exemplary damages for certain claims against a nursing institution; and

(B) amended Sections 32.021(i) and (k), Human Resources Code, added Section 242.050, Health and Safety Code, and repealed Section 32.021(j), Human Resources Code, to clarify the admissibility of certain documents in a civil action against a nursing institution; or

(2) prepare the report required of the commissioner under Section 38.252 or any other report the commissioner is required to submit to the legislature in connection with the legislation described by Subdivision (1).

(c) Information provided under this section is privileged and confidential to the same extent as the information is privileged and confidential under this code or any other law governing an insurer described by Subsection (a). The information remains privileged and confidential unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction.

Sec. 38.252. RECOMMENDATIONS TO LEGISLATURE. The commissioner shall assemble information and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of the legislation described by Section 38.251 and shall report the commissioner's findings and recommendations to the legislature.

ARTICLE 5. AVAILABILITY OF AND COVERAGE UNDER  
CERTAIN PROFESSIONAL LIABILITY INSURANCE

SECTION 5.01. Subdivision (2), Section 2, Article 5.15-1, Insurance Code, is amended to read as follows:

(2) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, chiropractor, optometrist, pharmacist, veterinarian, not-for-profit kidney dialysis center, blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, for-profit nursing home or not-for-profit nursing home, or an officer, employee, or agent of any of them acting in the course and scope of his employment.

SECTION 5.02. Section 8, Article 5.15-1, Insurance Code, is amended to read as follows:

Sec. 8. EXEMPLARY [~~PUNITIVE~~] DAMAGES UNDER MEDICAL PROFESSIONAL LIABILITY INSURANCE. No policy of medical professional liability insurance issued to or renewed for a health care provider or physician in this state may include coverage for exemplary [~~punitive~~] damages that may be assessed against the health care provider or physician; provided, however, that the commissioner may approve an endorsement form that provides for coverage for exemplary [~~punitive~~] damages to be used on a policy of medical professional liability insurance issued to a hospital, as the term "hospital" is defined in this article, or to a for-profit or not-for-profit nursing home.

SECTION 5.03. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.15-4 to read as follows:

Art. 5.15-4. BEST PRACTICES FOR NURSING HOMES. (a) The commissioner shall adopt best practices for risk management and loss control that may be used by for-profit and not-for-profit nursing homes.

(b) In determining rates for professional liability insurance applicable to a for-profit or not-for-profit nursing home, an insurance company or the Texas Medical Liability Insurance Underwriting Association may consider whether the nursing home adopts and implements the best practices adopted by the commissioner under Subsection (a) of this article.

(c) In developing or amending best practices for for-profit and not-for-profit nursing homes, the commissioner shall consult with the Health and Human Services Commission and a task force appointed by the commissioner. The task force must be composed of representatives of:

(1) insurance companies that write professional liability insurance for nursing homes;

(2) the Texas Medical Liability Insurance Underwriting Association;

(3) nursing homes; and

(4) consumers.

(d) The best practices for risk management and loss control adopted under this article do not establish standards of care for nursing homes applicable in a civil action against a nursing home.

SECTION 5.04. Subdivision (6), Section 2, Article 21.49-3, Insurance Code, is amended to read as follows:

(6) "Health care provider" means:

(A) any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as defined in Section 1.03(a)(2) [~~1.03(2)~~], Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), as:

(i) a registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, or optometrist;

(ii) a ~~for-profit~~ or not-for-profit nursing home;

(iii) ~~or~~ a radiation therapy center that is independent of any other medical treatment facility and which is licensed by the Texas Department of Health in that agency's capacity as the Texas [~~State~~] Radiation Control Agency pursuant to the provisions of Chapter 401, Health and Safety Code, and which is in compliance with the regulations promulgated under that chapter;

(iv) [~~by the Texas State Radiation Control Agency,~~] a blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks;

(v) [~~;~~] a nonprofit corporation which is organized for the delivery of health care to the public and which is certified under Chapter 162, Occupations Code; [Article 4509a, Revised Civil Statutes of Texas, 1925,] or

(vi) a [~~migrant~~] health center as defined by 42 U.S.C. Section 254b [P.L. 94-63], as amended; [~~(42 U.S.C. Section 254b), or a community health center as defined by P.L. 94-63, as amended (42 U.S.C. Section 254c), that is receiving federal funds under an application approved under either Title IV, P.L. 94-63, as amended (42 U.S.C. Section 254b), or Title V, P.L. 94-63, as amended (42 U.S.C. Section 254c);]~~ or

(B) an officer, employee, or agent of any of them acting in the course and scope of that person's [~~his~~] employment.

SECTION 5.05. Section 3A, Article 21.49-3, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) A for-profit or not-for-profit nursing home not otherwise eligible under this section for coverage from the association is eligible for coverage if the nursing home demonstrates, in accordance with the requirements of the association, that the nursing home made a verifiable effort to obtain coverage from authorized insurers and eligible surplus lines insurers and was unable to obtain substantially equivalent coverage and rates.

SECTION 5.06. Subsection (b), Section 4, Article 21.49-3, Insurance Code, is amended by amending Subdivisions (1) and (3) and adding Subdivision (6) to read as follows:

(1) Subject to Subdivision (6) of this subsection, the [~~The~~] rates, rating plans, rating rules, rating classification, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto shall be subject to Subchapter B of Chapter 5 of the Insurance Code, as amended, giving due consideration to the past and prospective loss and expense experience for medical professional liability insurance within and without this state of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner

[board] may require; provided, that if any article of the above subchapter is in conflict with any provision of this Act, this Act shall prevail. For purposes of this article, rates, rating plans, rating rules, rating classifications, territories, and policy forms for for-profit nursing homes are subject to the requirements of Article 5.15-1 of this code to the same extent as not-for-profit nursing homes.

(3) Any deficit sustained by the association with respect to physicians and health care providers, other than for-profit and not-for-profit nursing homes, or by for-profit and not-for-profit nursing homes in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect, by one or more of the following procedures in this sequence:

First, a contribution from the policyholder's stabilization reserve fund for physicians and health care providers, other than for-profit and not-for-profit nursing homes, established under Section 4A of this article or from the stabilization reserve fund for for-profit and not-for-profit nursing homes, established under Section 4B of this article, as appropriate, until the respective fund [same] is exhausted;

Second, an assessment upon the policyholders pursuant to Section 5(a) of this article;

Third, an assessment upon the members pursuant to Section 5(b) of this article. To the extent a member has paid one or more assessments and has not received reimbursement from the association in accordance with Subdivision (5) of this subsection, a credit against premium taxes under Article 4.10 of this code [7064, Revised Civil Statutes of Texas, 1925], as amended, shall be allowed. The tax credit shall be allowed at a rate of 20 percent per year for five successive years following the year in which said deficit was sustained and at the option of the insurer may be taken over an additional number of years.

(6) The rates applicable to professional liability insurance provided by the association that cover nursing homes that are not for profit must reflect a discount of 30 percent from the rates for the same coverage provided to others in the same category of insureds. The commissioner shall ensure compliance with this subdivision.

SECTION 5.07. Section 4A, Article 21.49-3, Insurance Code, is amended to read as follows:

Sec. 4A. POLICYHOLDER'S STABILIZATION RESERVE FUND FOR PHYSICIANS AND HEALTH CARE PROVIDERS OTHER THAN FOR-PROFIT AND NOT-FOR-PROFIT NURSING HOMES. (a) There is hereby created a policyholder's stabilization reserve fund for physicians and health care providers, other than for-profit and not-for-profit nursing homes, which shall be administered as provided herein and in the plan of operation of the association. The stabilization reserve fund created by this section is separate and distinct from the stabilization reserve fund for for-profit and not-for-profit nursing homes created by Section 4B of this article.

(b) Each policyholder shall pay annually into the stabilization reserve fund a charge, the amount of which shall be established annually by advisory directors chosen by health care providers, other than for-profit and not-for-profit nursing homes, and physicians eligible for insurance in the association in accordance with the plan of operation. The charge shall be in proportion to each premium payment due for liability insurance through the association. Such charge shall be separately stated in the policy, but shall not constitute a part of premiums or be subject to premium taxation, servicing fees, acquisition costs, or any other such charges.

(c) The ~~[policyholder's]~~ stabilization reserve fund shall be collected and administered by the association and shall be treated as a liability of the association along with and in the same manner as premium and loss reserves. The fund shall be valued annually by the board of directors as of the close of the last preceding year.

(d) Collections of the stabilization reserve fund charge shall continue until such time as the net balance of the stabilization reserve fund is not less than the projected sum of premiums for physicians and health care providers, other than for-profit and not-for-profit nursing homes, to be written in the year following valuation date.

(e) The stabilization reserve fund shall be credited with all stabilization reserve fund charges collected from physicians and health care providers, other than for-profit and not-for-profit nursing homes, [policyholders] and shall be charged with any deficit sustained by physicians and health care providers, other than for-profit and not-for-profit nursing homes, from the prior year's operation of the association.

SECTION 5.08. Article 21.49-3, Insurance Code, is amended by adding Sections 4B and 4C to read as follows:

Sec. 4B. STABILIZATION RESERVE FUND FOR FOR-PROFIT AND NOT-FOR-PROFIT NURSING HOMES. (a) There is hereby created a stabilization reserve fund for for-profit and not-for-profit nursing homes that shall be administered as provided in this section and in the plan of operation of the association. The stabilization reserve fund created by this section is separate and distinct from the policyholder's stabilization reserve fund for physicians and health care providers, other than for-profit and not-for-profit nursing homes, created by Section 4A of this article.

(b) Each policyholder shall pay annually into the stabilization reserve fund a charge, the amount of which shall be established annually by advisory directors chosen by for-profit and not-for-profit nursing homes eligible for insurance in the association in accordance with the plan of operation. The charge shall be in proportion to each premium payment due for liability insurance through the association. The charge shall be separately stated in the policy, but shall not constitute a part of premiums or be subject to premium taxation, servicing fees, acquisition costs, or any other similar charges.

(c) The stabilization reserve fund shall be collected and administered by the association and shall be treated as a liability of the association along with and in the same manner as premium and loss reserves. The fund shall be valued annually by the board of directors as of the close of the last preceding year.

(d) Collections of the stabilization reserve fund charge shall continue only until such time as the net balance of the stabilization reserve fund is not less than the projected sum of premiums for for-profit and not-for-profit nursing homes to be written in the year following the valuation date.

(e) The stabilization reserve fund shall be credited with all stabilization reserve fund charges collected from for-profit and not-for-profit nursing homes and the net earnings on liability insurance policies issued to for-profit and not-for-profit nursing homes and shall be charged with any deficit sustained by for-profit and not-for-profit nursing homes from the prior year's operation of the association.

(f) The stabilization reserve fund established under this section, and any earnings of the fund, are state funds and shall be held by the comptroller outside the state treasury on behalf of, and with legal title in, the department. No part of the fund, or the earnings of the fund, may inure to the benefit of a member of the association, a

policyholder, or any other individual, and the assets of the fund may be used in accordance with the association's plan of operation only to implement this article and for the purposes of the association, including making payment to satisfy, in whole or in part, the liability of the association regarding a claim made on a policy written by the association.

(g) Notwithstanding Sections 11, 12, and 13 of this article, the stabilization reserve fund established under this section may be terminated only by law.

(h) Notwithstanding Section 11 of this article, on termination of the stabilization reserve fund established under this section, all assets of the fund shall be transferred to the general revenue fund to be appropriated for purposes related to ensuring the kinds of liability insurance coverage that may be provided by the association under this article for for-profit and not-for-profit nursing homes.

#### Sec. 4C. LIABILITY FOR EXEMPLARY DAMAGES: EXPIRATION.

(a) The association is not liable for exemplary damages under a professional liability insurance policy that covers a for-profit and not-for-profit nursing home and that excludes coverage for exemplary damages awarded in relation to a covered claim awarded under Chapter 41, Civil Practice and Remedies Code, or any other law. This subsection applies without regard to the application of the common law theory of recovery commonly known in Texas as the "Stowers Doctrine." This subsection does not affect the application of that doctrine to the liability of the association for compensatory damages.

(b) This section does not affect the contractual duties imposed under an insurance policy.

(c) This section does not prohibit a for-profit or not-for-profit nursing home from purchasing a policy to cover exemplary damages.

(d) This section applies only to the liability of the association for exemplary damages under an insurance policy delivered, issued for delivery, or renewed by the association to a for-profit or not-for-profit nursing home on or after January 1, 2002, and applies only to coverage provided under the policy for any portion of the term of the policy that occurs before January 1, 2006. This section applies only to the liability of the association for exemplary damages with respect to a claim for which a notice of loss or notice of occurrence was made, or should have been made, in accordance with the terms of the policy, on or after January 1, 2002, but before January 1, 2006.

(e) This section expires January 1, 2007.

SECTION 5.09. Section 5, Article 21.49-3, Insurance Code, is amended to read as follows:

Sec. 5. PARTICIPATION. (a) Each policyholder within the group of physicians and health care providers, other than for-profit and not-for-profit nursing homes, or within the group of for-profit and not-for-profit nursing homes shall have contingent liability for a proportionate share of any assessment of policyholders in the applicable group made under the authority of this article. Whenever a deficit, as calculated pursuant to the plan of operation, is sustained with respect to the group of physicians and health care providers, other than for-profit and not-for-profit nursing homes, or the group of for-profit and not-for-profit nursing homes [by the association] in any one year, its directors shall levy an assessment only upon those policyholders in the applicable group who held policies in force at any time within the two most recently completed calendar years in which the association was issuing policies preceding the date on which the assessment was levied. The aggregate amount of the

assessment shall be equal to that part of the deficit not recouped from the applicable stabilization reserve fund. The maximum aggregate assessment per policyholder in the applicable group shall not exceed the annual premium for the liability policy most recently in effect. Subject to such maximum limitation, each policyholder in the applicable group shall be assessed for that portion of the deficit reflecting the proportion which the earned premium on the policies of such policyholder bears to the total earned premium for all policies of the association in the applicable group in the two most recently completed calendar years.

(b) All insurers which are members of the association shall participate in its writings, expenses, and losses in the proportion that the net direct premiums, as defined herein, of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer that may be required by the board. No member shall be obligated in any one year to reimburse the association on account of its proportionate share in the deficits [deficit] from operations of the association in that year in excess of one percent of its surplus to policyholders and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subdivision, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficits [deficit]. In the event that the deficits [deficit] from operations allocated to all members of the association in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficits [deficit] shall be allocated to each member in accordance with the method of determining participation prescribed in this subdivision.

SECTION 5.10. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-3d to read as follows:

Art. 21.49-3d. REVENUE BOND PROGRAM AND PROCEDURES FOR CERTAIN LIABILITY INSURANCE

Sec. 1. LEGISLATIVE FINDING; PURPOSE. The legislature finds that the issuance of bonds to provide a method to raise funds to provide professional liability insurance through the association for nursing homes in this state is for the benefit of the public and in furtherance of a public purpose.

Sec. 2. DEFINITIONS. In this article:

(1) "Association" means the joint underwriting association established under Article 21.49-3 of this code.

(2) "Bond resolution" means the resolution or order authorizing the bonds to be issued under this article.

(3) "Board" means the board of directors of the Texas Public Finance Authority.

(4) "Insurer" means any insurer required to be a member of the association under Section 3, Article 21.49-3 of this code.

Sec. 3. BONDS AUTHORIZED; APPLICATION OF TEXAS PUBLIC FINANCE AUTHORITY ACT. (a) On behalf of the association, the Texas Public Finance Authority shall issue revenue bonds to:

(1) fund the stabilization reserve fund for for-profit and not-for-profit nursing homes established under Section 4B, Article 21.49-3 of this code;

(2) pay costs related to issuance of the bonds; and

(3) pay other costs related to the bonds as may be determined by the board.

(b) To the extent not inconsistent with this article, Chapter 1232, Government Code, applies to bonds issued under this article. In the event of a conflict, this article controls.

Sec. 4. APPLICABILITY OF OTHER STATUTES. The following laws apply to bonds issued under this article to the extent consistent with this article:

(1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371, Government Code; and

(2) Subchapter A, Chapter 1206, Government Code.

Sec. 5. LIMITS. The Texas Public Finance Authority may issue, on behalf of the association, bonds in a total amount not to exceed \$75 million.

Sec. 6. CONDITIONS. (a) Bonds may be issued at public or private sale.

(b) Bonds may mature not more than 10 years after the date issued.

(c) Bonds must be issued in the name of the association.

Sec. 7. ADDITIONAL COVENANTS. In a bond resolution, the board may make additional covenants with respect to the bonds and the designated income and receipts of the association pledged to their payment and may provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the bonds.

Sec. 8. SPECIAL ACCOUNTS. (a) A bond resolution may establish special accounts, including an interest and sinking fund account, reserve account, and other accounts.

(b) The association shall administer the accounts in accordance with Article 21.49-3 of this code.

Sec. 9. SECURITY. (a) Bonds are payable only from the surcharge fee established in Section 10 of this article or other sources the association is authorized to levy, charge, and collect in connection with paying any portion of the bonds.

(b) Bonds are obligations solely of the association. Bonds do not create a pledging, giving, or lending of the faith, credit, or taxing authority of this state.

(c) Each bond must include a statement that the state is not obligated to pay any amount on the bond and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments.

(d) Each bond issued under this article must state on its face that the bond is payable solely from the revenues pledged for that purpose and that the bond does not and may not constitute a legal or moral obligation of the state.

Sec. 10. SURCHARGE FEE. (a) A surcharge fee is assessed against:

(1) each insurer; and

(2) the association.

(b) The surcharge fee shall be set by the commissioner in an amount sufficient to pay all debt service on the bonds. The surcharge shall be paid by each insurer and the association as required by commissioner rule.

(c) The comptroller shall collect the surcharge fee and the department shall reimburse the comptroller in the manner described by Article 4.19 of this code.

(d) The commissioner, in consultation with the comptroller, may coordinate payment and collection of the surcharge fee with other payments made by insurers and collected by the comptroller.

(e) As a condition of engaging in the business of insurance in this state, an insurer agrees that if the company leaves the market for liability insurance in this state the insurer remains obligated to pay, until the bonds are retired, the insurer's share of the surcharge fee assessed under this section in an amount proportionate to that insurer's share of the market for liability insurance, including motor vehicle liability insurance, in this state as of the last complete reporting period before the date on which the insurer ceases to engage in that insurance business in this state. The proportion assessed against the insurer shall be based on the insurer's gross premiums for liability insurance, including motor vehicle liability insurance, for the insurer's last reporting period. However, an insurer is not required to pay the proportionate amount in any year in which the surcharge fee assessed against insurers continuing to write liability insurance in this state is sufficient to service the bond obligation.

Sec. 11. TAX EXEMPT. The bonds issued under this article, and any interest from the bonds, and all assets pledged to secure the payment of the bonds are free from taxation by the state or a political subdivision of this state.

Sec. 12. AUTHORIZED INVESTMENTS. The bonds issued under this article constitute authorized investments under Article 2.10 and Subpart A, Part I, Article 3.39, of this code.

Sec. 13. STATE PLEDGE. The state pledges to and agrees with the owners of any bonds issued in accordance with this article that the state will not limit or alter the rights vested in the association to fulfill the terms of any agreements made with the owners of the bonds or in any way impair the rights and remedies of those owners until the bonds, any premium or interest, and all costs and expenses in connection with any action or proceeding by or on behalf of those owners are fully met and discharged. The association may include this pledge and agreement of the state in any agreement with the owners of the bonds.

Sec. 14. ENFORCEMENT BY MANDAMUS. A writ of mandamus and all other legal and equitable remedies are available to any party at interest to require the association and any other party to carry out agreements and to perform functions and duties under this article, the Texas Constitution, or a bond resolution.

SECTION 5.11. Not later than December 1, 2001, the commissioner of insurance shall adopt the initial best practices for for-profit and not-for-profit nursing homes adopted as required by Article 5.15-4, Insurance Code, as added by this article.

SECTION 5.12. Sections 2, 3A, and 4, Article 21.49-3, Insurance Code, as amended by this article, apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2002. A policy delivered, issued for delivery, or renewed before January 1, 2002, 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 6. MANDATORY LIABILITY INSURANCE FOR NURSING INSTITUTIONS

SECTION 6.01. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.0372 to read as follows:

Sec. 242.0372. LIABILITY INSURANCE COVERAGE. (a) In this section, "health care liability claim" has the meaning assigned by the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes).

(b) To hold a license under this chapter, an institution must maintain professional liability insurance coverage against the liability of the institution for a health care liability claim.

(c) The insurance coverage maintained by an institution under this section must:  
(1) provide coverage annually in the minimum amount of \$1 million per occurrence and \$3 million aggregate, except as provided by Subsection (d);

(2) be written on a claims-made basis;

(3) be issued by:

(A) an admitted insurer authorized to write professional liability insurance in this state;

(B) the Texas Medical Liability Insurance Underwriting Association established under Article 21.49-3, Insurance Code; or

(C) an eligible surplus lines insurer in accordance with Article 1.14-2, Insurance Code; and

(4) be in a form acceptable to the department.

(d) For an institution that is owned and operated by a governmental unit, as that term is defined by Section 101.001, Civil Practice and Remedies Code, the insurance coverage maintained by the institution must provide coverage only to the extent of the governmental unit's liability under Section 101.023, Civil Practice and Remedies Code.

(e) To the extent permitted by federal law and applicable state and federal rules, the cost of insurance coverage required to be maintained under this section is an allowable cost for reimbursement under the state Medicaid program.

SECTION 6.02. This Article takes effect September 1, 2003.

#### ARTICLE 7. SURVEYS AND RELATED PROCESSES

SECTION 7.01. Chapter 22, Human Resources Code, is amended by adding Section 22.037 to read as follows:

Sec. 22.037. TRAINING AND CONTINUING EDUCATION RELATED TO CERTAIN LONG-TERM CARE FACILITIES. (a) In this section:

(1) "Long-term care facility" means a nursing institution, an assisted living facility, or an intermediate care facility for the mentally retarded licensed under Chapter 242, 247, or 252, Health and Safety Code.

(2) "Provider" means an employee or agent of a long-term care facility.

(3) "Surveyor" means an employee or agent of the department or another state agency responsible for licensing, inspecting, surveying, or investigating a long-term care facility in relation to:

(A) licensing under Chapter 242, 247, or 252, Health and Safety Code; or

(B) certification for participation in the medical assistance program in accordance with Chapter 32.

(b) The department shall require a surveyor to complete a basic training program before the surveyor inspects, surveys, or investigates a long-term care facility. The training must include observation of the operations of a long-term care facility unrelated to the survey, inspection, or investigation process for a minimum of 10 working days within a 14-day period.

(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 under federal or state law.

(d) Except as provided by Subsection (e), a surveyor who is a health care professional licensed under the laws of this state must receive a minimum of 50 percent of the professional's required continuing education credits, if any, in gerontology or care for individuals with cognitive or physical disabilities, as appropriate.

(e) A surveyor who is a pharmacist must receive a minimum of 30 percent of the pharmacist's required continuing education credits in gerontology or care for individuals with cognitive or physical disabilities, as appropriate.

SECTION 7.02. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.056 and 531.058 to read as follows:

Sec. 531.056. REVIEW OF SURVEY PROCESS IN CERTAIN INSTITUTIONS AND FACILITIES. (a) The commission shall adopt procedures to review:

(1) citations or penalties assessed for a violation of a rule or law against an institution or facility licensed under Chapter 242, 247, or 252, Health and Safety Code, or certified in accordance with Chapter 32, Human Resources Code, considering:

(A) the number of violations by geographic region;

(B) the patterns of violations in each region; and

(C) the outcomes following the assessment of a penalty or citation; and

(2) the performance of duties by employees and agents of the Texas Department of Human Services or another state agency responsible for licensing, inspecting, surveying, or investigating institutions and facilities licensed under Chapter 242, 247, or 252, Health and Safety Code, or certified in accordance with Chapter 32, Human Resources Code, related to:

(A) complaints received by the commission; or

(B) any standards or rules violated by an employee or agent of a state agency.

(b) The commission shall annually report to the speaker of the house of representatives, the lieutenant governor, and the governor on the findings of the review conducted under Subsection (a).

Sec. 531.058. INFORMAL DISPUTE RESOLUTION FOR CERTAIN LONG-TERM CARE FACILITIES. (a) The commission by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the Texas Department of Human Services under Section 32.021(d), Human Resources Code, or Chapter 242, 247, or 252, Health and Safety Code. The informal dispute resolution process must require:

(1) the institution or facility to request informal dispute resolution not later than the 10th calendar day after notification by the department of the violation of a standard or standards;

(2) the commission to complete the process not later than the 30th calendar day after receipt of a request from the institution or facility for informal dispute resolution; and

(3) any individual representing an institution or facility in an informal dispute resolution process to register with the commission and disclose the following:

(A) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(B) ownership, including the identity of the controlling person or persons, of the institution or facility the individual is representing before the commission; and

(C) the identity of other entities the individual represents or has represented before the commission during the previous 24 months.

(b) The commission shall adopt rules to adjudicate claims in contested cases.

(c) The commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SECTION 7.03. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 255 to read as follows:

CHAPTER 255. QUALITY ASSURANCE

EARLY WARNING SYSTEM FOR

LONG-TERM CARE FACILITIES; RAPID RESPONSE TEAMS

Sec. 255.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Human Services.

(2) "Long-term care facility" means a nursing institution, an assisted living facility, or an intermediate care facility for the mentally retarded licensed under Chapter 242, 247, or 252, or certified under Chapter 32, Human Resources Code.

(3) "Quality-of-care monitor" means a registered nurse, pharmacist, or nutritionist who:

(A) is employed by the department;

(B) is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of patient care; and

(C) functions independently of other divisions of the department.

Sec. 255.002. EARLY WARNING SYSTEM. The department shall establish an early warning system to detect conditions that could be detrimental to the health, safety, and welfare of residents. The early warning system shall include analysis of financial and quality-of-care indicators that would predict the need for the department to take action.

Sec. 255.003. QUALITY-OF-CARE MONITORS. (a) The department shall establish regional offices with one or more quality-of-care monitors, based on the number of long-term care facilities in the region, to monitor the facilities in the region on a regular, unannounced, aperiodic basis, including nights, evenings, weekends, and holidays.

(b) Priority for monitoring visits shall be given to long-term care facilities with a history of patient care deficiencies.

(c) Quality-of-care monitors may not be deployed by the department as a part of the regional survey team in the conduct of routine, scheduled surveys.

(d) A quality-of-care monitor may not interfere with, impede, or otherwise adversely affect the performance of the duties of a surveyor, inspector, or investigator of the department.

(e) Quality-of-care monitors shall assess:

(1) the overall quality of life in the long-term care facility; and

(2) specific conditions in the facility directly related to patient care.

(f) The quality-of-care monitor shall include in an assessment visit:

(1) observation of the care and services rendered to residents; and

(2) formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a human rights advocacy committee.

(g) The identity of a resident or a family member of a resident interviewed by a quality-of-care monitor as provided by Subsection (f)(2) shall remain confidential and may not be disclosed to any person under any other provision of this section.

(h) The findings of a monitoring visit, both positive and negative, shall be provided orally and in writing to the long-term care facility administrator or, in the absence of the facility administrator, to the administrator on duty or the director of nursing.

(i) The quality-of-care monitor may recommend to the long-term care facility administrator procedural and policy changes and staff training to improve the care or quality of life of facility residents.

(j) Conditions observed by the quality-of-care monitor that create an immediate threat to the health or safety of a resident shall be reported immediately to the regional office supervisor for appropriate action and, as appropriate or as required by law, to law enforcement, adult protective services, other divisions of the department, or other responsible agencies.

Sec. 255.004. RAPID RESPONSE TEAMS. (a) The department shall create rapid response teams composed of health care experts that can visit long-term care facilities identified through the department's early warning system.

(b) Rapid response teams may visit long-term care facilities that request the department's assistance. A visit under this subsection may not occur before the 60th day after the date of an exit interview following an annual or follow-up survey or inspection.

(c) The rapid response teams may not be deployed for the purpose of helping a long-term care facility prepare for a regular inspection or survey conducted under Chapter 242, 247, or 252 or in accordance with Chapter 32, Human Resources Code.

Sec. 255.005. REPORT. The department shall assess and evaluate the effectiveness of the quality assurance early warning system and shall report its findings annually to the governor, the lieutenant governor, and the speaker of the house of representatives.

SECTION 7.04. Subsection (d), Section 32.021, Human Resources Code, is amended to read as follows:

(d) The department shall include in its contracts for the delivery of medical assistance by nursing facilities provisions for monetary penalties to be assessed for violations as required by 42 U.S.C. Section 1396r, including without limitation the Omnibus Budget Reconciliation Act (OBRA), P.L. 100-203, Nursing Home Reform Amendments of 1987, provided that the department shall:

(1) provide for an informal dispute resolution process in the Health and Human Services Commission as provided by Section 531.058, Government Code [department's central office; the informal dispute resolution process shall:

~~[(A) require the institution to request informal dispute resolution no later than the 10th calendar day after notification by the department of a violation of a standard or standards;~~

~~[(B) require the department to complete the process no later than the 30th calendar day after receipt of a request from the institution for informal dispute resolution; and~~

~~[(C) require any individual representing an institution in an informal dispute resolution process to register with the department and disclose the following:~~

~~[(i) the individual's five-year employment history during the preceding five years, including employment in regulatory agencies of this state and other states;~~

~~[(ii) ownership, including the identity of the controlling person or persons, of the institution the person is representing before the department; and~~

~~[(iii) the identity of other entities the person represents or has represented before the agency during the previous 24 months]; and~~

(2) develop rules to adjudicate claims in contested cases, including claims unresolved by the informal dispute resolution process of the Health and Human Services Commission.

SECTION 7.05. (a) Section 242.0335, Health and Safety Code, as added by S.B. No. 772, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Subsection (d) to read as follows:

(d) Subsection (c) applies only to a license holder designated as eligible for and placed on the list maintained under Subsection (a).

(b) This section takes effect only if S.B. No. 772, as enacted by the 77th Legislature, Regular Session, 2001, becomes law. If S.B. No. 772 does not become law, this section has no effect.

SECTION 7.06. Not later than January 1, 2002, the commissioner of health and human services shall adopt any rules necessary to implement Sections 531.056 and 531.058, Government Code, as added by this article.

SECTION 7.07. Not later than January 1, 2002, the Texas Board of Human Services shall adopt any rules necessary to implement Chapter 255, Health and Safety Code, as added by this article.

SECTION 7.08. Not later than January 1, 2002, the Texas Department of Human Services shall develop training necessary to implement Section 22.037, Human Resources Code, as added by this article.

SECTION 7.09. Effective January 1, 2002:

(1) all property and records in the custody of the Texas Department of Human Services related to the informal dispute resolution function under Subsection (d), Section 32.021, Human Resources Code, as it existed before amendment by this article, and all funds appropriated by the legislature to the Texas Department of Human Services for the function are transferred to the Health and Human Services Commission;

(2) a rule or form adopted by the Texas Department of Human Services that relates to the informal dispute resolution function under Subsection (d), Section 32.021, Human Resources Code, as it existed before amendment by this article, is a rule or form of the Health and Human Services Commission and remains in effect until altered by that agency;

(3) the assumption of the informal dispute resolution function by the Health and Human Services Commission does not affect or impair any act done, any obligation, right, order, license, permit, rule, criterion, standard, or requirement existing, any investigation begun, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters; and

(4) an action brought or proceeding commenced before the assumption by the Health and Human Services Commission of the informal dispute resolution function under this article is effected, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the date of the assumption of the function by the Health and Human Services Commission.

#### ARTICLE 8. AMELIORATION OF VIOLATIONS

SECTION 8.01. Section 242.071, Health and Safety Code, is amended to read as follows:

Sec. 242.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding ordering] payment of an [the] administrative penalty assessed under Section 242.066

[242.069], the commissioner may, in accordance with this section, allow [require] the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident.

(c) The department may not offer amelioration to a person if:

(1) the person has been charged with a violation which is subject to correction under Section 242.0665; or

(2) the department determines that the charged violation constitutes immediate jeopardy to the health and safety of an institution resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 242.068.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 242.068 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the institution that will improve services to or quality of care of residents of the institution;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the institution;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 242.067(d).

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(j) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the institution's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the institution.

SECTION 8.02. Section 252.071, Health and Safety Code, is amended to read as follows:

Sec. 252.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding [ordering] payment of an administrative penalty authorized by this subchapter, the department may allow [require] a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a facility resident.

(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 252.067 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents of the facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 252.066(b).

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(j) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

SECTION 8.03. This article applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before that date is covered by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

## ARTICLE 9. QUALITY ASSURANCE FEE

SECTION 9.01. Chapter 252, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. QUALITY ASSURANCE FEE

Sec. 252.201. DEFINITION. In this subchapter, "gross receipts" means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to a facility.

Sec. 252.202. COMPUTING QUALITY ASSURANCE FEE. (a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034 and on each facility owned by a community mental health and mental retardation center, as described by Subchapter A, Chapter 534. The fee:

(1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;

(2) is payable monthly; and

(3) is in addition to other fees imposed under this chapter.

(b) The Health and Human Services Commission or the department at the direction of the commission shall set the quality assurance fee for each day in the amount necessary to produce annual revenues equal to an amount that is not more than six percent of the facility's total annual gross receipts in this state. The fee is subject to a prospective adjustment as necessary.

(c) The amount of the quality assurance fee must be determined using patient days and gross receipts reported to the department and covering a period of at least six months.

(d) The quality assurance fee is an allowable cost for reimbursement under the Medicaid program.

Sec. 252.203. PATIENT DAYS. For each calendar day, a facility shall determine the number of patient days by adding the following:

(1) the number of patients occupying a facility bed immediately before midnight of that day;

(2) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is in a hospital; and

(3) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutic home leave.

Sec. 252.204. REPORTING AND COLLECTION. (a) The Health and Human Services Commission or the department at the direction of the commission shall collect the quality assurance fee.

(b) Each facility shall:

(1) not later than the 10th day after the last day of a month file a report with the Health and Human Services Commission or the department, as appropriate, stating the total patient days for the month; and

(2) not later than the 30th day after the last day of the month pay the quality assurance fee.

Sec. 252.205. RULES; ADMINISTRATIVE PENALTY. (a) The Health and Human Services Commission shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The Health and Human Services Commission may not adopt rules granting any exceptions from the quality assurance fee.

(c) An administrative penalty assessed under this subchapter in accordance with Section 252.065 may not exceed one-half of the amount of the outstanding quality assurance fee or \$20,000, whichever is greater.

Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality assurance fund is a fund outside the state treasury held by the Texas Treasury Safekeeping Trust Company. Notwithstanding any other law, the comptroller shall deposit fees collected under this subchapter to the credit of the fund.

(b) The quality assurance fund is composed of:

(1) fees deposited to the credit of the fund under this subchapter; and

(2) the earnings of the fund.

(c) Money deposited to the quality assurance fund remains the property of the fund and may be used only for the purposes of this subchapter.

(d) Subject to legislative appropriation and this subchapter, quality assurance fees collected under this subchapter, combined with federal matching funds, will support or maintain an increase in Medicaid reimbursement for facilities. The Health and Human Services Commission, after reimbursement rates have been established for the biennium and money is allocated from the fund for that purpose, may allocate any money remaining in the fund to the Home and Community-Based Services and Mental Retardation Local Authority waiver programs for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c).

Sec. 252.207. REIMBURSEMENT OF FACILITIES. (a) The Health and Human Services Commission shall use money in the quality assurance fund, together with any federal money available to match that money, to:

(1) offset allowable expenses to administer the fee under this chapter under the Medicaid program; or

(2) increase reimbursement rates paid under the Medicaid program to facilities, subject to Section 252.206(d).

(b) The Health and Human Services Commission or the department at the direction of the commission shall by rule adopt the formula by which amounts received under this section increase the reimbursement rates paid to facilities and Home and Community-Based Services and Mental Retardation Local Authority waiver programs under the Medicaid program.

(c) The Health and Human Services Commission shall ensure that the formula devised under Subsection (b) provides incentives to increase direct care staffing and direct care wages and benefits.

(d) The increased Medicaid reimbursement paid to a facility under this section may not be based solely on the amount of the quality assurance fee paid by that facility unless authorized by 42 C.F.R. Section 433.68 or other federal law.

Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the Health and Human Services Commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commission shall stop collection of the quality assurance fee and shall return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the facilities that paid the fees in proportion to the total amount paid by those facilities.

Sec. 252.209. LEGISLATIVE REVIEW; EXPIRATION. The 79th Legislature shall review the operation and effectiveness of this subchapter. Unless continued in effect by the 79th Legislature, this subchapter expires September 1, 2005.

SECTION 9.02. Notwithstanding Section 252.202, Health and Safety Code, as added by this article, the quality assurance fee imposed under Subchapter H, Chapter 252, Health and Safety Code, as added by this article, that is effective for the first month following the effective date of this Act is equal to \$5.25 multiplied by the number of patient days as determined under that subchapter. The quality assurance fee established under this section remains in effect until the Health and Human Services Commission, or the Texas Department of Human Services at the direction of the commission, obtains the information necessary to set the fee under Section 252.202, Health and Safety Code, as added by this article.

SECTION 9.03. As soon as practicable after the effective date of this Act, the Health and Human Services Commission shall adopt rules as necessary to implement Subchapter H, Chapter 252, Health and Safety Code, as added by this article.

SECTION 9.04. If before implementing any provision of this article a state agency determines 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.

#### ARTICLE 10. RATES PAID FOR NURSING HOME SERVICES

SECTION 10.01. Section 32.028, Human Resources Code, is amended by adding Subsection (g) to read as follows:

(g) The Health and Human Services Commission shall ensure that the rules governing the determination of rates paid for nursing home services improve the quality of care by:

(1) providing incentives for increasing direct care staff and direct care wages and benefits; and

(2) if appropriated funds are available after money is allocated for payment of incentive-based rates under Subdivision (1), providing incentives that incorporate the use of a quality of care index, a customer satisfaction index, and a resolved complaints index developed by the commission.

#### ARTICLE 11. TEXAS DEPARTMENT OF INSURANCE STUDY AND REPORT

SECTION 11.01. DEFINITIONS. In this article:

- (1) "Commissioner" means the commissioner of insurance.
- (2) "Department" means the Texas Department of Insurance.

SECTION 11.02. STUDY. The department shall study the implementation of Articles 3, 5, and 6 of this Act and, in particular, shall study:

- (1) the effect of the changes in law made by Articles 5 and 6 of this Act on:
  - (A) fostering the development of a competitive market for professional liability insurance for nursing institutions; and
  - (B) improving the availability and affordability of professional liability insurance for nursing institutions;
- (2) whether the Medicaid rate component applicable to institutions' reimbursement for professional liability insurance costs is adequate; and

(3) the impact of awards of exemplary damages on rates for professional liability insurance for nursing homes.

SECTION 11.03. REPORTS. (a) Not later than December 1, 2002, the commissioner shall submit an interim report on the study conducted under Section 11.02 of this Act to the governor, the lieutenant governor, and the speaker of the house of representatives.

(b) Not later than December 1, 2004, the commissioner shall submit a final report on the study to the governor, the lieutenant governor, and the speaker of the house of representatives.

SECTION 11.04. EXPIRATION. This article expires September 1, 2005.

#### ARTICLE 12. EFFECT OF ACT; EFFECTIVE DATE

SECTION 12.01. To the extent of any conflict, this Act prevails over any other Act of the 77th Legislature, Regular Session, 2001, regardless of the relative dates of enactment, including an Act that purports to:

(1) affect the admissibility in a civil action, enforcement action, or related proceeding of evidence subject to Subsections (i) and (k), Section 32.021, Human Resources Code, as amended by this Act, or Sections 242.050 or 252.045, Health and Safety Code, as added by this Act;

(2) affect coverage for for-profit or not-for-profit nursing homes under Articles 5.15-1 and 21.49-3, Insurance Code, or funding for the joint underwriting association under Article 21.49-3, Insurance Code;

(3) affect the liability of the joint underwriting association established under Article 21.49-3, Insurance Code, for exemplary damages awarded under Chapter 41, Civil Practice and Remedies Code;

(4) require a nursing home to maintain liability insurance coverage;

(5) require training for surveyors of long-term care facilities, as described by Section 22.037, Human Resources Code, as added by this Act;

(6) require review of the survey process for certain long-term care facilities, as described by Section 531.056, Government Code, as added by this Act;

(7) establish a quality assurance early warning system for certain long-term care facilities, as described by Chapter 255, Health and Safety Code, as added by this Act;

(8) affect informal dispute resolution of disputes subject to Section 531.058, Government Code, as added by this Act;

(9) affect amelioration of violations subject to Sections 242.071 and 252.071, Health and Safety Code; or

(10) establish a quality assurance fee for certain facilities, as described by Subchapter H, Chapter 252, Health and Safety Code, as added by this Act.

SECTION 12.02. Except as provided by Section 6.02 of this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001, except as provided by Section 6.02 of this Act.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 8**

Senator Cain submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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.

CAIN	FARABEE
NELSON	GRAY
ZAFFIRINI	GOODMAN
VAN DE PUTTE	THOMPSON
On the part of the Senate	On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to discrimination in health care rates and reimbursement; providing administrative and civil penalties.

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

**SECTION 1. SHORT TITLE.** This Act may be cited as the Omnibus Women's Equal Health Care Act.

**SECTION 2. PURPOSE.** Historically, there has been widespread discrimination in compensation to providers of women's health care. Providers involved with female-specific medical procedures who devote the same amount of time, equivalent skill, and resources and who have similar or even greater risks of liability are paid less than when those providers or others perform comparable male-specific procedures. This discrimination creates an economic disincentive to invest funds in training doctors, in creating suitable hospital facilities, and in engaging in female-specific medical research that further results in unequal treatment of women in the health care field. It is the policy of this state that no such discrimination against women will be tolerated. To that end, this statute should be liberally construed to effectuate its purposes. The purpose of this Act is to remedy the unequal health care rates and payments by requiring that all third party payors shall pay providers of women's health services equal pay for equal work.

**SECTION 3. AMENDMENT.** Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.53N to read as follows:

Art. 21.53N. WOMEN'S EQUAL HEALTH CARE ACT

Sec. 1. DEFINITIONS. In this article:

(1) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine and surgery in this state.

(2) "Provider" means a hospital, nurse practitioner, registered nurse, physician assistant, home health aide, nurse midwife, surgery center, or other outpatient care center.

Sec. 2. APPLICABILITY OF ARTICLE. This article applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

- (1) an insurance company;
- (2) a group hospital service corporation operating under Chapter 20 of this code;
- (3) a fraternal benefit society operating under Chapter 10 of this code;
- (4) a stipulated premium insurance company operating under Chapter 22 of this code;
- (5) a reciprocal exchange operating under Chapter 19 of this code;
- (6) a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);
- (7) a multiple employer welfare arrangement that holds a certificate of authority under Article 3.95-2 of this code;
- (8) an approved nonprofit health corporation that holds a certificate of authority under Article 21.52F of this code; or
- (9) a small employer health benefit plan written under Chapter 26 of this code.

Sec. 3. REIMBURSEMENT FOR SERVICES. When reimbursing a physician or provider for reproductive health and oncology services provided to women, a health benefit plan must pay an amount not less than the annual average compensation per hour or unit as would be paid in the service area to a physician or provider for the same medical, surgical, hospital, pharmaceutical, nursing, or other similar resources, as applicable, that would be used in providing health services exclusively to men or to the general population.

Sec. 4. PENALTIES. (a) A health benefit plan as described by Section 2 of this article that is found to be in violation of or failing to comply with this article is subject to the sanctions authorized by Chapter 82 of this code. The commissioner may also use the cease and desist procedures authorized by Chapter 83 of this code and, in accordance with the provisions of that chapter, direct the plan to make complete restitution, which may include reasonable attorney's fees incurred by a person making a complaint under this article. Notwithstanding the provisions of this section, the commissioner may order the greater of complete or economic damages.

(b) In addition to imposing the sanctions authorized by Subsection (a) of this section, the commissioner may impose an administrative penalty in accordance with Chapter 84 of this code. Upon a finding that the plan knowingly violated the provisions of this article, the commissioner may impose an administrative penalty not to exceed \$25,000 in addition to the penalty authorized by Section 84.022 of this code.

(c) The commissioner shall make a determination of a violation of this article and impose the appropriate sanctions within 120 days of the date a complaint alleging a violation is filed.

(d) The procedural requirements established by Subchapter C, Chapter 84 of this code, shall govern the imposition of sanctions and administrative penalties under this article.

(e) In any proceeding relating to the imposition of a sanction or administrative penalty by the commissioner under this article, any person affected by an order of the commissioner, including a physician or provider, is entitled to intervene in the proceeding by filing with the commissioner a notice of intervention. The commissioner shall afford an affected person, including a physician or provider, a reasonable period in which to intervene. At the time the commissioner notifies the health benefit plan about the plan's opportunity for a hearing regarding an alleged violation, the commissioner shall provide a notice to each affected person, including a physician or provider, of all relevant information regarding the hearing. An affected person, including a physician or provider who intervenes under this subsection, has the right and powers of a party under Chapter 2001, Government Code.

Sec. 5. JUDICIAL REVIEW. (a) A person, including a person who intervenes under Section 4(e) of this article, affected by an order of the commissioner regarding a violation of this article may file an appeal in district court. The standard of review under this subsection is substantial evidence.

(b) If the commissioner fails to make a determination by order of a complaint within the time limit prescribed by Section 4(c) of this article, the person who initiated the complaint may bring an action in the district court for a violation of this article. The action must be commenced within 12 months after the date on which the time limit for the commissioner's determination expired.

(c) In a suit filed under Subsection (b) of this section, a court may impose the same or similar sanctions as provided under Section 4(a) of this article, including an additional civil penalty of \$25,000 if the trier of fact finds that the defendant knowingly violated the provisions of this article. In addition, if the claimant prevails in the action, the court may award reasonable attorney's fees and court costs, including any reasonable and necessary expert witness fees.

(d) On a finding by the court that an action under Subsection (b) of this section was groundless and brought in bad faith or brought for the purpose of harassment, the court shall award the defendant reasonable and necessary attorney's fees.

Sec. 6. LIMITATION OF REIMBURSEMENT REQUIREMENTS. This article does not require the issuer of a health benefit plan to provide reimbursement for an abortion as defined by the Family Code or related services.

SECTION 4. EFFECTIVE DATE; TRANSITION. (a) This Act takes effect September 1, 2001.

(b) The changes in law made by this Act apply only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2002. A policy delivered, issued for delivery, or renewed before January 1, 2002, 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.

(c) Not later than 90 days after the effective date of this Act, the Texas Board of Health, the Texas Board of Human Services, and the Texas Department of Insurance shall repeal any rules contrary to this Act and shall adopt rules necessary to implement this Act. The rules shall require that providers justify any disparity in reimbursement rates for provision of health care services and that any disparity accurately reflects the difference in time and resources expended to provide the health care services.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 273**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2001

Honorable Bill Ratliff  
President of the Senate

Honorable James E. "Pete" Laney  
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 273** 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.

ARMBRISTER  
CAIN  
STAPLES

TILLERY  
TELFORD  
GOODMAN  
RANGEL  
MARCHANT

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to systems and programs administered by the Teacher Retirement System of Texas; providing a penalty.

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

SECTION 1. Section 803.402, Government Code, is amended to read as follows:

Sec. 803.402. RECORDS. Except as provided by other law [~~Section 825.507~~], records of members and beneficiaries of a retirement system to which this chapter applies that are in the custody of any retirement system to which this chapter applies are confidential and not subject to disclosure and are exempt from the public access provisions of Chapter 552. The records or information in the records may be transferred between retirement systems to which this chapter applies to the extent necessary to administer the proportionate retirement program provided by this chapter.

SECTION 2. Section 821.103, Government Code, is amended to read as follows:

Sec. 821.103. CANCELLATION OF TEACHER CERTIFICATE. (a) After receiving notice from the board of trustees of an offense under Section 821.101 and after complying with Chapter 2001 and rules adopted by the State Board for Educator Certification [~~a hearing~~], the State Board for Educator Certification [~~state commissioner of education~~] may cancel the teacher certificate of a person if the State Board for Educator Certification [~~commissioner~~] determines that the person committed the offense.

(b) The executive director of the State Board for Educator Certification may enter into an agreed sanction [~~A person whose teacher certificate is canceled under this section may appeal the commissioner's decision to the State Board of Education~~].

(c) A criminal prosecution of an offender under Section 821.101 is not a prerequisite to action by the State Board for Educator Certification or its executive director [~~commissioner under this section~~].

SECTION 3. Section 822.002, Government Code, is amended to read as follows:

Sec. 822.002. EXCEPTIONS TO MEMBERSHIP REQUIREMENT. [~~(a)~~] An employee of the public school system is not permitted to be a member of the retirement system if the employee:

(1) [~~executed and filed a waiver of membership prior to the effective date of this subtitle and has not elected membership pursuant to Subsection (b);~~

[~~(2)~~] is eligible and elects to participate in the optional retirement program under Chapter 830;

[~~(2)~~] [~~(3)~~] is solely employed by a public institution of higher education that as a condition of employment requires the employee to be enrolled as a student in the institution; or

[~~(3)~~] [~~(4)~~] has retired under the retirement system and has not been reinstated to membership pursuant to Section [~~823.502;~~] 824.005[;] or 824.307.

[~~(b) An employee under Subsection (a)(1) may become a member of the retirement system at the beginning of a school year, but the employee will not be entitled to credit for waived service unless payment for the waived service is made under Section 823.202.~~]

SECTION 4. Section 822.006, Government Code, is amended to read as follows:

Sec. 822.006. RESUMPTION OF MEMBERSHIP AFTER TERMINATION. A person whose membership in the retirement system has been terminated and who resumes membership must enter the retirement system on the same terms as a person entering service for the first time and is not entitled to credit for previous or other terminated service unless it is reinstated under Section 823.501 [~~or 823.502~~].

SECTION 5. Subsection (a), Section 823.004, Government Code, is amended to read as follows:

(a) All credit for military service, out-of-state service, developmental leave, [~~service previously waived,~~] work experience in a career or technological field, and service transferred to the retirement system under Chapter 805 shall be computed on a September 1 through August 31 school year. Payments for service described by this section must be completed not later than the later of the member's retirement date or the last day of the month in which the member submits a retirement application.

SECTION 6. Subchapter E, Chapter 823, Government Code, is amended by adding Section 823.405 to read as follows:

Sec. 823.405. CREDIT PURCHASE OPTION. (a) A member may establish not more than three years of equivalent membership service credit under this section if the member has at least seven years of actual membership service.

(b) A member may establish service credit under this section by depositing with the retirement system, for each year of service credit, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section, based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees.

(c) After a member makes the deposits required by this section, the retirement system shall grant the member one year of equivalent membership service credit for each year of credit approved.

(d) The retirement system shall deposit the amount of the actuarial present value of the service credit purchased in the member's individual account in the employees saving account.

(e) The board of trustees may adopt rules to administer this section.

SECTION 7. Subsection (e), Section 824.002, Government Code, is amended to read as follows:

(e) Not later than the later of a member's retirement date or the last day of the month in which the member's application for retirement is submitted, a member applying for service retirement may reinstate withdrawn contributions,~~[;]~~ make deposits for ~~[service previously waived,]~~ military service~~;~~ and equivalent membership service,~~[;]~~ and receive service credit as provided by this subtitle.

SECTION 8. Subsection (a), Section 824.1012, Government Code, is amended to read as follows:

(a) As an exception to Section 824.101(c), a retiree who selected an optional service retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or an optional disability retirement annuity under Section 824.308(c)(1), (c)(2), or (c)(5) may revoke the designation of the beneficiary to receive the annuity on the death of the retiree, if a court in a divorce proceeding involving the retiree and beneficiary approves or orders the revocation in the divorce decree or acceptance of a property settlement or if the beneficiary is the spouse, a former spouse, or an adult child of the retiree and signs a notarized consent to the revocation. The revocation takes effect when the retirement system receives it.

SECTION 9. Section 824.203(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsections (c), (d), and (e), the standard service retirement annuity is an amount computed on the basis of the member's average annual compensation for the three years of service, whether or not consecutive, in which the member received the highest annual compensation, times 2.3 ~~[2.2]~~ percent for each year of service credit in the retirement system.

SECTION 10. Subsection (c), Section 824.304, Government Code, is amended to read as follows:

(c) Before the 31st day after the date on which the medical board certifies a member's disability, the member may reinstate withdrawn contributions and make deposits for ~~[service previously waived,]~~ military service~~;~~ and equivalent membership service and receive service credit as provided by this subtitle.

SECTION 11. Subsections (b), (c), and (d), Section 824.404, Government Code, are amended to read as follows:

(b) If the designated beneficiary is the spouse or a dependent parent of the decedent, the beneficiary may elect to receive for life a monthly benefit of \$250 ~~[\$200]~~, beginning immediately or on the date the beneficiary becomes 65 years old, whichever is later.

(c) If the designated beneficiary is the spouse of the decedent and has one or more children less than 18 years old or has custody of one or more children of the decedent who are less than 18 years old, the designated beneficiary may elect to receive:

(1) a monthly benefit of \$350 ~~[\$300]~~ payable until the youngest child becomes 18 years old; and

(2) when the youngest child has attained the age of 18, a monthly benefit for life of \$250 ~~[\$200]~~, beginning on the date the beneficiary becomes 65 years old.

(d) If the designated beneficiary or beneficiaries are the decedent's dependent children who are less than 18 years old, their guardian may elect to receive for them:

(1) a monthly benefit of \$350 [~~\$300~~], payable as long as two or more children are less than 18 years old; and

(2) a monthly benefit of \$250 [~~\$200~~], payable as long as only one child is less than 18 years old.

SECTION 12. Section 824.602, Government Code, is amended by amending Subsection (a) and adding Subsection (m) to read as follows:

(a) Subject to Section 825.506, the retirement system may not, under Section 824.601, withhold a monthly benefit payment if the retiree is employed in a Texas public educational institution:

(1) as a substitute only with pay not more than the daily rate of substitute pay established by the employer and, if the retiree is a disability retiree, the employment has not exceeded a total of 90 days in the school year;

(2) in a position, other than as a substitute, on no more than a one-half time basis for the month;

(3) in one or more positions on as much as a full-time basis, if the work occurs in not more than six months of a school year that begins after the retiree's effective date of retirement;

(4) in a position, other than as a substitute, on no more than a one-half time basis for no more than 90 days in the school year, if the retiree is a disability retiree; ~~or~~

(5) in a position as a classroom teacher on as much as a full-time basis, if the retiree has retired under Section 824.202(a) ~~[without reduction for retirement at an early age]~~, is certified under Subchapter B, Chapter 21, Education Code, to teach the subjects assigned, is teaching in an acute shortage area as ~~determined~~ defined by the ~~board of trustees of a school district as provided by Subsection (m) [commissioner of education]~~, and has been separated from service with all public schools for at least 12 months; ~~or~~

(6) as a bus driver for a school district on as much as a full-time basis, if the retiree has retired under Section 824.202(a).

(m) The board of trustees of a school district by rule shall determine, for purposes of Subsection (a), whether there are acute shortage areas in the district. A determination must be based on acute shortage area guidelines that are adopted by the commissioner of education. The guidelines adopted by the commissioner of education must include:

(1) a list of acute shortage areas;

(2) suggested criteria for identifying local acute shortage areas; and

(3) a requirement that a certified applicant for a position as a classroom teacher who is not a retiree be given preference in hiring.

SECTION 13. Section 824.603, Government Code, is amended to read as follows:

Sec. 824.603. EXCLUSION FROM CREDIT. Employment of a retiree described by Section 824.602(a) does not entitle a retiree to additional service credit, and the retiree so employed is not required to make contributions to the system from compensation for that employment. ~~[Such employment may not be considered in applying the provisions of Section 823.502.]~~

SECTION 14. Section 824.805(b), Government Code, is amended to read as follows:

(b) A member participating in the plan on September 1, 2001 [~~1999~~], may, before December 31, 2001 [~~September 1, 2000~~], elect to discontinue participation in the plan on a form prescribed by and filed with the retirement system. The retirement system shall make account transfers and change records for a member who elects under this subsection to discontinue participation in the plan as if the member had never participated in the plan.

SECTION 15. Section 825.307(a), Government Code, is amended to read as follows:

(a) The retirement system shall deposit in a member's individual account in the member savings account:

(1) the amount of contributions to the retirement system that is deducted from the member's compensation;

(2) the portion of a deposit made on or after resumption of membership that represents the amount of retirement benefits received;

(3) the portion of a deposit to reinstate service credit previously canceled that represents the amount withdrawn or refunded;

(4) [~~the portion of a deposit to establish membership service credit previously waived that is required by Section 823.202(b)(1);~~

~~[(5) the portion of a deposit to establish membership service credit for service performed after retirement that is required by Section 823.502(c)(3);~~

~~[(6) the portion of a deposit to establish military service credit required by Section 823.302(c);~~

(5) [(7)] the portion of a deposit to establish equivalent membership service credit required by Section 823.401(d), 823.402(e)(1) or (e)(2), 823.404(c), 823.405, or 823.3021(f)(1); and

(6) [(8)] interest earned on money in the account as provided by Subsections (b) and (c) and Section 825.313(c).

SECTION 16. Section 825.308, Government Code, is amended to read as follows:

Sec. 825.308. STATE CONTRIBUTION ACCOUNT. The retirement system shall deposit in the state contribution account:

(1) all state contributions to the retirement system required by Section 825.404;

(2) amounts from the interest account as provided by Section 825.313(b)(2) [~~825.313(b)(5)~~];

(3) retirement annuities waived or forfeited in accordance with Section 824.601 or 824.004;

(4) fees collected under Section 825.403(h);

(5) fees and interest for reinstatement of service credit or establishment of membership service credit as provided by Section [~~823.202;~~] 823.501 [~~or 823.502~~];

(6) the portion of a deposit required by Section 823.302 to establish military service credit that represents a fee; and

(7) the portion of a deposit required by Section 823.401(e) to establish out-of-state service credit that represents a fee.

SECTION 17. Section 825.408(a), Government Code, is amended to read as follows:

(a) An employing district that fails to remit, before the seventh [~~11th~~] day after the last day of a month, all member and employer deposits and documentation of the

deposits required by this subchapter to be remitted by the district for the month shall pay to the retirement system, in addition to the deposits, interest on the unpaid or undocumented amounts at an annual rate compounded monthly. The rate of interest is the rate established under Section 825.313(b)(1), plus two percent. Interest required under this section is creditable to the interest account. On request, the retirement system may grant a waiver of the deadline imposed by this subsection based on a district's financial or technological resources.

SECTION 18. The heading of Section 825.507, Government Code, is amended to read as follows:

Sec. 825.507. ~~RECORD CONFIDENTIALITY [OF INFORMATION ABOUT MEMBERS, RETIREES, ANNUITANTS, BENEFICIARIES, OR ALTERNATE PAYEES].~~

SECTION 19. Section 825.507, Government Code, is amended by amending Subsections (a) through (d) and adding Subsections (f) and (g) to read as follows:

(a) Records of a participant [Information contained in records] that are in the custody of the retirement system or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of the retirement system are [concerning an individual member, retiree, annuitant, beneficiary, or alternate payee is] confidential and not subject to public disclosure in a form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

(b) The retirement system may release records of a participant, including a participant to which Chapter 803 applies, to [under Section 552.101, and may not be disclosed in a form identifiable with a specific individual unless]:

(1) the participant or the participant's attorney or guardian or another person who the executive director determines is acting on behalf of the participant;

(2) ~~[the information is disclosed to:~~

~~[(A)] the [individual or the individual's attorney, guardian,] executor or [;] administrator of[, conservator, or other person who the executive director determines is acting in the interest of the individual or] the deceased participant's [individual's] estate, including information relating to the deceased participant's beneficiary;~~

~~(3) [(B)] a spouse or former spouse of the participant [individual] if the executive director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;~~

~~(4) an administrator, carrier, consultant, attorney, or agent acting on behalf of the retirement system;~~

~~(5) a governmental entity, an employer, or the designated agent of an employer, only to the extent the retirement system needs to share the information to perform the purposes of the retirement system, as determined by the executive director;~~

~~(6) [(C)] a governmental official or employee if the executive director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or~~

~~[(D)] a person authorized by the participant [individual] in writing to receive the information;~~

(7) a federal or state criminal law enforcement agency that requests a record for a law enforcement purpose;

(8) the attorney general to the extent necessary to enforce child support; or

(9) a party in response ~~[(2) the information is disclosed pursuant]~~ to a subpoena issued under applicable law if ~~[and]~~ the executive director determines that the participant ~~[individual]~~ will have a reasonable opportunity to contest the subpoena.

(c) The records of a participant remain confidential after release to a person as authorized by this section.

~~[(b)]~~ This section does not prevent the disclosure or confirmation, on an individual basis, of the status or identity of a participant ~~[an individual]~~ as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of the retirement system.

(d) [(e)] The executive director may designate other employees of the retirement system to make the necessary determinations under this section ~~[Subsection (a)]~~.

~~[(d)]~~ A determination and disclosure under this section ~~[Subsection (a)]~~ may be made without notice to the participant ~~[individual member, retiree, annuitant, beneficiary, or alternate payee]~~.

(f) This section does not authorize the retirement system to compile or disclose a list of participants' names, addresses, or social security numbers unless the executive director determines that a compilation or disclosure is necessary to administer the retirement system.

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system.

SECTION 20. Notwithstanding Section 824.601, Government Code, the Teacher Retirement System of Texas may not withhold a monthly benefit payment from a retiree who:

(1) before January 1, 2001, retired under Section 824.202, Government Code; and

(2) is employed by a school district or an open-enrollment charter school.

SECTION 21. Section 1, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), as amended by Chapters 1340 and 1341, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 1. (a) This section and Section 2 of this Act apply to:

(1) the governing boards ~~[Local Boards of Education of the Public Schools of this State, the Governing Boards]~~ of ~~[the]~~ state-supported institutions of higher education;

(2) [;] the Texas Higher Education Coordinating Board;

(3) [;] the Texas Education Agency;

(4) [;] the Texas School for the Deaf;

(5) [;] the Texas School for the Blind and Visually Impaired;

(6) [;] the Texas Department of Mental Health and Mental Retardation and the state schools, state hospitals, and other facilities and institutions under its jurisdiction;

(7) [;] the Texas Department of Health and facilities and institutions under its jurisdiction;

(8) [;] the Texas Youth Commission and facilities and institutions under its jurisdiction; [;] and

(9) the governing boards of Centers for Community Mental Health and Mental Retardation Services, county hospitals, city hospitals, city-county hospitals, hospital authorities, hospital districts, affiliated state agencies, and each of their political subdivisions.

(b) An entity described by Subsection (a) of this section [of each of them,] may enter into agreements with the entity's [their] employees for the purchase of annuities or for contributions to any type of investment for the entity's [their] employees as authorized in Section 403(b), [of the] Internal Revenue Code of 1986 [1954], and its subsequent amendments [as it existed on January 1, 1981].

SECTION 22. Section 2, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) If an employee of an [a governmental] entity covered by Section 1 of this Act is paid by the Comptroller of Public Accounts, the comptroller may take the action, in regard to that employee, that is authorized by Subsection (b) of this section. If an employee of an [a governmental] entity covered by Section 1 is not paid by the comptroller, the governing board of the [governmental] entity may take the action in regard to that employee.

(b) The comptroller or the governing board, as appropriate [the case may be], may:

(1) reduce the salary of participants when authorized by the participants and shall apply the amount of the reduction to the purchase of annuity contracts or to contributions to any type of investment authorized in Section 403(b), [of the] Internal Revenue Code of 1986 [1954], and its subsequent amendments [as it existed on January 1, 1981], the exclusive control of which will vest in the participants; and

(2) develop a system to allow or require participants to electronically authorize:

- (A) participation under this Act;
- (B) purchases of annuity contracts; and
- (C) contributions to investments.

[(c) The employee is entitled to designate any agent, broker, or company through which the annuity or investment is to be purchased.]

SECTION 23. Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended by adding Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 to read as follows:

Sec. 4. In this section and in Sections 5, 6, 7, 8, 9, 10, and 11 of this Act:

(1) "Board of trustees" means the board of trustees of the Teacher Retirement System of Texas.

(2) "Educational institution" means a school district or an open-enrollment charter school.

(3) "Eligible qualified investment" means a qualified investment product offered by a company that:

- (A) is certified to the board of trustees under Section 5 of this Act; or
- (B) is eligible to certify to the board of trustees under Section 8 of

this Act.

(4) "Employee" means an employee of an educational institution.

(5) "Qualified investment product" means an annuity or investment that:

(A) meets the requirements of Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;

(B) complies with applicable federal insurance and securities laws and regulations; and

(C) complies with applicable state insurance and securities laws and rules.

(6) "Retirement system" means the Teacher Retirement System of Texas.

(7) "Salary reduction agreement" means an agreement between an educational institution and an employee to reduce the employee's salary for the purpose of making direct contributions to or purchases of a qualified investment product.

Sec. 5. (a) An educational institution may enter into a salary reduction agreement with an employee of the institution only if the qualified investment product is an eligible qualified investment.

(b) A company may certify to the retirement system that the company offers a qualified investment product that is an annuity contract under this section if the company:

(1) is authorized to issue annuity contracts in this state at the time the application is filed;

(2) does not assess fees, costs, or penalties on an annuity contract that exceed the maximum amounts established by rules adopted by the retirement system; and

(3) complies with the standards adopted under Section 6 of this Act.

(c) A company that certifies under this section shall notify the retirement system if, at any time, the company is not in compliance with Subsection (b) of this section or if an investment product that the company offers under this Act is the subject of a salary reduction agreement and the investment product is not a qualified investment product.

(d) The retirement system shall establish and maintain a list of companies that have certified under this section. The list must be available on the retirement system's Internet website.

(e) An employee is entitled to designate any agent, broker, or company through which a qualified investment product may be purchased or contributions may be made.

(f) To the greatest degree possible, employers of employees who participate in the program offered under this section shall require that contributions to eligible qualified investments be made by automatic payroll deduction and deposited directly in the investment accounts.

Sec. 6. (a) A company is eligible to certify to the retirement system under Section 5 of this Act if the company satisfies the following financial strength criteria:

(1) the company's actuarial opinions required under Articles 1.11 and 3.28, Insurance Code, have not been adverse or qualified in the five years preceding the date the application is filed;

(2) the company is subject to the annual audit requirements of Article 1.15A, Insurance Code, and its most recent audit of financial strength conducted by an independent certified public accountant is timely filed and does not indicate the existence of any material adverse financial conditions in the company for the five years preceding the filing deadline for the audit;

(3) the company has not been the subject of an administrative or regulatory action by the Texas Department of Insurance under Article 1.32 or 21.28-A or Section 83.051, Insurance Code, in the five years preceding the date the application is filed;

(4) the company has maintained during the five years preceding the date the application is filed an average of at least 400 percent of the authorized control level, as calculated in accordance with the risk-based capital and surplus requirements established in rules adopted by the Texas Department of Insurance;

(5) the company has not fallen below 300 percent of the authorized control level, as calculated in accordance with the risk-based capital and surplus established in rules adopted by the Texas Department of Insurance, at any time in the five years preceding the date the application is filed; and

(6) the company has at least five years' experience in qualified investment products and has a specialized department dedicated to the service of qualified investment products.

(b) For purposes of Subsection (a)(4) of this section, the company must calculate the five-year average on the same date each year.

(c) After consultation with the Texas Department of Insurance and the State Securities Board, the retirement system may adopt rules only to administer this section and Sections 5, 7, 8, and 11 of this Act.

(d) The retirement system shall refer all complaints about qualified investment products to the appropriate division of the Texas Department of Insurance or the State Securities Board.

(e) The Texas Department of Insurance and the State Securities Board shall cooperate with the retirement system in the administration of this Act and shall notify the retirement system of any action or determination regarding a product or a company that violates Section 5 of this Act.

(f) The retirement system shall reject or revoke the certification of a company if the retirement system receives notice under Subsection (e) of this section or Section 5(c) of this Act of a violation regarding the company or the company's product. The company may recertify to the board of trustees.

(g) The retirement system shall prescribe the uniform notice required by Section 11 of this Act.

(h) A certification or recertification remains in effect for five years unless rejected or revoked.

(i) A company offering eligible qualified investments that are subject to salary reduction agreements must provide toll-free telephone transferring privileges each business day from 8 a.m. to 6 p.m. central standard time.

Sec. 7. (a) The retirement system may collect a fee, not to exceed the administrative cost to the retirement system, from a company that certifies or recertifies under Section 6 or 8 of this Act. The fee for certification or recertification may not exceed \$5,000.

(b) Fees collected under this section shall be deposited to the credit of the 403(b) administrative trust fund. The 403(b) administrative trust fund is created as a trust fund with the comptroller and shall be administered by the retirement system as a trustee on behalf of the participants in qualified investment products offered under this Act.

Sec. 8. (a) A company that offers qualified investment products other than annuity contracts may certify to the retirement system based on rules adopted by the board of trustees. The rules shall be based on reasonable factors, including:

(1) the financial strength of the companies offering products; and

(2) the administrative cost to employees.

(b) The retirement system shall establish and maintain a list of companies that provide certification under this section. The list must be available on the retirement system's Internet website.

Sec. 9. An educational institution may not:

(1) refuse to enter into a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction is an eligible qualified investment;

(2) require or coerce an employee's attendance at any meeting at which qualified investment products are marketed;

(3) limit the ability of an employee to initiate, change, or terminate a qualified investment product at any time the employee chooses;

(4) grant exclusive access to an employee by discriminating against or imposing barriers to any agent, broker, or company that provides qualified investment products under this Act;

(5) grant exclusive access to information about an employee's financial information, including information about an employee's qualified investment products, to a company or agent offering qualified investment products unless the employee consents in writing to the access;

(6) accept any benefit from a company or from an agent or affiliate of a company that offers qualified investment products; or

(7) use public funds to recommend a qualified investment product offered by a company or an agent of a company that offers a qualified investment product.

Sec. 10. (a) A person commits an offense if the person:

(1) sells or offers for sale a qualified investment product that is not an eligible qualified investment and that the person knows will be the subject of a salary reduction agreement;

(2) violates the licensing requirements of Subchapter A, Chapter 21, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement; or

(3) engages in activity described by Section 4, Article 21.21, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement.

(b) An offense under this section is a Class A misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes a criminal offense under the Insurance Code, the actor may be prosecuted under this section or under the Insurance Code, but not under both this section and the Insurance Code.

Sec. 11. (a) A person who offers to sell an annuity contract that is or will likely be the subject of a salary reduction agreement shall provide notice to a potential purchaser as provided by this section.

(b) The retirement system shall make the notice available on request and post the form of the notice on the retirement system's website.

(c) The notice required under this section must be uniform and:

(1) be in at least 14-point type;

(2) contain spaces for:

(A) the name, address, and telephone number of the agent and company offering the annuity contract for sale;

(B) the name, address, and telephone number of the company underwriting the annuity;

(C) the license number of the person offering to sell the product;

(D) the name of the state agency that issued the person's license;

(E) the name of the company account representative who has the authority to respond to inquiries or complaints; and

(F) with respect to fixed annuity products:

(i) the current interest rate or the formula used to calculate the current rate of interest;

(ii) the guaranteed rate of interest and the percentage of the premium to which the interest rate applies;

(iii) how interest is compounded;

(iv) the amount of any up-front, surrender, withdrawal, deferred sales, and market value adjustment charges or any other contract restriction that exceeds 10 years;

(v) the time, if any, the annuity is required to be in force before the purchaser is entitled to the full bonus accumulation value;

(vi) the manner in which the amount of the guaranteed benefit under the annuity is computed;

(vii) whether loans are guaranteed to be available under the annuity;

(viii) what restrictions, if any, apply to the availability of money attributable to the value of the annuity once the purchaser is retired or separated from the employment of the employer;

(ix) the amount of any other fees, costs, or penalties;

(x) whether the annuity guarantees the participant the right to surrender a percentage of the surrender value each year, and the percentage, if any; and

(xi) whether the annuity guarantees the interest rate associated with any settlement option; and

(3) state, in plain language:

(A) that the company offering the annuity must comply with Section 5 of this Act;

(B) that the potential purchaser may contact the retirement system or access its website to determine which companies are in compliance with Section 5 of this Act;

(C) the civil remedies available to the employee;

(D) that the employee may purchase any eligible qualified investment through a salary reduction agreement;

(E) the name and telephone number of the Texas Department of Insurance division that specializes in consumer protection; and

(F) the name and telephone number of the attorney general's division that specializes in consumer protection.

(d) A variable annuity must be accompanied by:

(1) a notice that includes any item listed in Subsection (c) of this section that is applicable to variable annuities;

(2) the prospectus; and

(3) any other purchasing information required by law.

(e) An equity-based index contract must state in plain language how the annuity contract will be credited with growth.

(f) If a notice and other information required under this section is not provided, any annuity contract for which the notice is required is voidable at the discretion of the purchaser. Not later than the 30th day after the date an employee notifies the seller in writing of the employee's election to void the contract, the seller shall refund to the employee:

(1) the amount of all consideration paid to the purchaser; and

(2) 10 percent interest up to the date the employee provides the notice to the seller.

(g) A seller who receives a refund request under this section is not required to make a refund otherwise required by this section if, not later than the 30th day after the date the seller receives a request for a refund from the employee, the seller provides a copy of the notice signed by the employee.

Sec. 12. A company that offers an eligible qualified investment that is subject to a salary reduction agreement shall demonstrate annually to the retirement system that each of its representatives are properly licensed and qualified, by training and continuing education, to sell and service the company's eligible qualified investments.

SECTION 24. Section 16(h), Article 3.50-4, Insurance Code, is amended to read as follows:

(h) An employing district that fails to remit, before the seventh [~~11th~~] day after the last day of the month, all member deposits required by this section to be remitted by the district for the month shall pay to the Texas public school retired employees group insurance fund, in addition to the deposits, interest on the unpaid amounts at the annual rate of six percent compounded monthly. On request, the trustee may grant a waiver of the deadline imposed by this subsection based on a district's financial or technological resources.

SECTION 25. Article 3.50-4a, Insurance Code, as added by Chapter 372, Acts of the 76th Legislature, Regular Session, 1999, is amended by adding Subsection (f) to read as follows:

(f) A premium or contribution on a policy, insurance contract, or agreement authorized as provided by this article is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

SECTION 26. Article 3.50-4a, Insurance Code, as added by Chapter 1540, Acts of the 76th Legislature, Regular Session, 1999, is amended by adding Section 6 to read as follows:

Sec. 6. EXEMPTION FROM STATE TAXES AND FEES. A premium or contribution on a policy, insurance contract, or agreement authorized as provided by this article is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

SECTION 27. Section 17.46(b), Business & Commerce Code, is amended to read as follows:

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1) passing off goods or services as those of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of facts;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) promoting a pyramid promotional scheme, as defined by Section 17.461;

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(22) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(23) the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

(24) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction; [or]

(25) taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

(A) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity; or

(26) selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act.

SECTION 28. Section 17.49, Business & Commerce Code, is amended by amending Subsection (c) and adding Subsection (h) to read as follows:

(c) Nothing in this subchapter shall apply to a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. This exemption does not apply to:

(1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;

(2) a failure to disclose information in violation of Section 17.46(b)(23);

(3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion; [or]

(4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion; or

(5) a violation of Section 17.46(b)(26).

(h) A person who violates Section 17.46(b)(26) is jointly and severally liable under that subdivision for actual damages, court costs, and attorney's fees. Subject to Chapter 41, Civil Practice and Remedies Code, exemplary damages may be awarded in the event of fraud or malice.

SECTION 29. The following sections of the Government Code are repealed:

- (1) Subchapter B, Chapter 823;
- (2) Section 823.202;
- (3) Section 823.502
- (4) Section 824.203(e); and
- (5) Section 824.306.

SECTION 30. (a) Monthly payments of a death or retirement benefit annuity by the Teacher Retirement System of Texas are increased in accordance with this section beginning with the payment due at the end of September 2001.

(b) The increase does not apply to payments under Section 824.304(a), 824.404, or 824.501, Government Code.

(c) For the purpose of computing the monthly payments of annuities for retirees who retired on or before August 31, 2000, the amount of the monthly payment is equal to the amount of the last monthly payment made before the effective date of this Act multiplied by 1.06.

(d) After making the computations required by Subsection (c) of this section, the Teacher Retirement System of Texas shall increase each annuity payable by the system beginning on September 1, 2001, other than an annuity under Section 824.304(a), 824.404, or 824.501, Government Code, by 4.5 percent, which is a benefit equivalent to the benefit provided by using a 2.3-percent multiplier for computing annuities.

SECTION 31. (a) The changes in law made to Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), by this Act do not apply to a contract between an employee of a school district or open-enrollment charter school and a company offering investments or annuities that was entered into or is entered into under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), before June 1, 2002.

(b) A contract described by Subsection (a) of this section 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. The Teacher Retirement System of Texas shall adopt rules required by Section 6, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), and prescribe the notice required by Section 6(g), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), not later than January 1, 2002.

SECTION 33. (a) A member of the Teacher Retirement System of Texas who was an employee of a public institution of higher education between March 31, 1969, and August 31, 1977, and, as a condition of that employment, was required to be enrolled as a student in the institution, may establish service credit for employment by the institution during that period if:

(1) the member made deposits to establish that service credit before September 1, 1978, and those deposits were subsequently withdrawn; and

(2) the member deposits, not later than September 1, 2002, with the Teacher Retirement System of Texas an amount computed under Section 823.501, Government Code.

(b) Section 825.410, Government Code, applies to the payment of deposits under Subsection (a) of this section, but all payments must be completed not later than September 1, 2002.

(c) Notwithstanding Subsection (e), Section 805.002, Government Code, service credit that is or was canceled by a termination of membership in the Teacher Retirement System of Texas may be reinstated by a member of the Employees Retirement System of Texas if the person reinstating the service purchases the service under Chapter 805, Government Code, not later than September 1, 2002.

(d) A member of the Employees Retirement System of Texas who has at least 20 years of service credit in that system and who was an employee of a public institution of higher education between September 1, 1969, and May 31, 1972, may establish not more than three years of service credit for employment by the institution during that period if:

(1) the person's part-time employment by the institution averaged at least 20 hours a week for any 20 weeks during each school year for which service credit may be established under this subsection;

(2) the person was not participating in the program provided by Chapter 830, Government Code, during that period, and the service is not credited in any other public retirement system provided by this or another state or a political subdivision of a state;

(3) the employment was not in a position that required the person to be enrolled as a student; and

(4) the person deposits, not later than September 1, 2002, with the Teacher Retirement System of Texas the amount required by the retirement system on May 1, 2001, to establish credit for unreported service.

(e) Service credit established under Subsection (d) of this section must be computed under 26 U.S.C. Section 415(n)(1)(A), Internal Revenue Code of 1986, and its subsequent amendments, and is not subject to Section 823.006, Government Code.

SECTION 34. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2001.

(b) The changes in law made by this Act to the following laws take effect June 1, 2002:

(1) Sections 9, 10, 11, and 12, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes);

(2) Section 17.46, Business & Commerce Code; and

(3) Section 17.49, Business & Commerce Code.

(c) The changes in law made by this Act to the following laws take effect September 1, 2002:

(1) Section 825.408(a), Government Code; and

(2) Section 16(h), Article 3.50-4, Insurance Code.

(d) The changes in law made by this Act to Section 824.602, Government Code, apply beginning with the 2001-2002 school year. Section 824.602, Government Code, as amended by this Act, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 824.602, Government Code, as amended by this Act, takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

## RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

### Memorial Resolutions

- SR 1233** by Truan, In memory of George G. "Harry" Edwards of Corpus Christi.
- SR 1235** by Truan, In memory of Blossie Mae Flemmings of Corpus Christi.
- SR 1236** by Truan, In memory of the life of Janet Frey Harte of Corpus Christi.
- SR 1237** by Truan, In memory of Ronchester Manangan Santiago of Kingsville.
- SR 1238** by Truan, In memory of Quirino W. Saldana, Jr., of Corpus Christi.
- SR 1239** by Truan, In memory of Lanette Nolte of Port Aransas.
- SR 1240** by Truan, In memory of Herbert A. Train of Corpus Christi.
- SR 1241** by Truan, In memory of Luis Leonel Garcia, Jr., of Corpus Christi.
- SR 1242** by Truan, In memory of Julian "Juju" Michael Gonzales of Corpus Christi.
- SR 1243** by Truan, In memory of Margarito Tijerina of Kingsville.

### Congratulatory Resolutions

- SR 1220** by Zaffirini, Acknowledging the role of Spain and Spanish America in the United States War for Independence.
- SR 1221** by Nelson, Congratulating John South of Tarrant County.
- SR 1223** by Nelson, Shapiro, Van de Putte, and Zaffirini, Commending the members of the Girl Scouts of the United States of America.
- SR 1224** by West and Ogden, Commending the members of the Williams-Livingston family.
- SR 1225** by West and Ogden, Congratulating Aaron Ananias and Cathelyn Francis Butcher.
- SR 1229** by Zaffirini, Congratulating the Most Reverend James A. Tamayo, D.D., of Laredo.
- SR 1234** by Truan, Congratulating Vann Kennedy of Corpus Christi.
- HCR 123** (Moncrief), Honoring LaDainian Tomlinson on his receipt of the 2000 Doak Walker Award.
- HCR 238** (Duncan), In honor of the retirement of Texas Tech University head football coach Spike Dykes.
- HCR 278** (Moncrief), Congratulating the Texas Christian University Lady Frogs basketball team on winning their first Western Athletic Conference championship.
- HCR 289** (Ogden), Honoring Marshall Herklotz of Huntsville on his retirement from the Texas Department of Criminal Justice.

**HCR 306** (Ogden), Congratulating David P. McNutt of Huntsville on his retirement from the Texas Department of Criminal Justice.

**HCR 310** (President Ratliff), Congratulating L. C. Stout on his retirement as superintendent of the Prairiland Independent School District.

### **Designation Resolutions**

**SR 1226** by Sibley, Proclaiming June 1, 2001, as Purple Heart Recognition Day in the State of Texas.

**HCR 2** (Shapleigh), Recognizing February 6-7, 2001, as El Paso Days at the State Capitol.

**HCR 292** (Zaffirini), Declaring June 2001 to be "Falun Dafa Awareness Month" in Texas.

### **ADJOURNMENT**

On motion of Senator Truan, the Senate at 4:52 p.m. adjourned until 1:00 p.m. tomorrow.

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### **APPENDIX**

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### **SENT TO SECRETARY OF STATE**

May 26, 2001

**SJR 49**

### **SENT TO GOVERNOR**

May 26, 2001

**SB 4, SB 5, SB 113, SB 192, SB 217, SB 224, SB 393, SB 450, SB 563, SB 577, SB 583, SB 609, SB 616, SB 654, SB 965, SB 1047, SB 1074, SB 1091, SB 1125, SB 1164, SB 1212, SB 1268, SB 1282, SB 1308, SB 1467, SB 1684, SB 1763, SB 1797, SCR 59, SCR 62, SCR 66, SCR 70**

### **SIGNED BY GOVERNOR**

May 26, 2001

**SB 24, SB 38, SB 79, SB 141, SB 187, SB 188, SB 203, SB 243, SB 297, SB 324, SB 532, SB 539, SB 553, SB 561, SB 569, SB 645, SB 650, SB 664, SB 694, SB 834, SB 916, SB 968, SB 1045, SB 1158, SB 1189, SB 1194, SB 1236, SB 1272, SB 1352, SB 1386, SB 1421, SB 1429, SB 1497, SB 1600, SB 1737, SCR 70**

**VETOED BY GOVERNOR**May 26, 2001**SB 424**OFFICIAL MEMORANDUM  
STATE OF TEXAS  
OFFICE OF THE GOVERNORAustin, Texas  
May 26, 2001

## MESSAGE

TO THE MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES OF  
THE SEVENTY-SEVENTH TEXAS LEGISLATURE, REGULAR SESSION:

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove and veto Senate Bill No. 424 of the 77th Legislature, Regular Session, due to the following objections:

Senate Bill No. 424 requires the development of a statewide strategic health plan; however, the specific directions in this bill relate only to border health issues. I concur that these are issues that need the attention of the state. However, effective solutions should also involve the cooperation and the commitment of the United Mexican States. My disapproval of this bill is based upon the limited directives for the development of a strategic health plan and the failure to include a binational approach to developing the plan.

During the next fiscal year the Texas Department of Health will be undergoing a major reorganization. I will direct the department to develop proposals for the development of a state strategic health plan. The collection of the data directed in this bill is already a function of the respective agencies and should continue.

Since you remain gathered in regular session and continue to conduct formal business, I am delivering this disapproval message directly to you along with the official enrolled copy of the bill.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 26th day of May, 2001.

/s/Rick Perry  
Governor of Texas

ATTESTED BY:

/s/Henry Cuellar, Ph.D.  
Secretary of State