SEVENTY-NINTH DAY
(Sunday, May 26, 1985)

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

The roll was called and the following Senators were present: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

A quorum was announced present.

Senator Chet Edwards offered the invocation as follows:

Would you please bow your heads with me for the prayer written by Saint Francis of Assisi.

Lord, make me an instrument of Thy peace. Where there is hatred, let me sow love; where there is injury, pardon; where there is doubt, faith; where there is despair, hope; where there is darkness, light; and where there is sadness, joy. Amen.

On motion of Senator Mauzy 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 HOUSE

House Chamber
May 26, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1187, Relating to the prohibition of the municipal regulation of firearms, ammunition, and firearm supplies.

S.B. 1452, Relating to a transfer of funds and a supplemental appropriation for disasters and emergencies. (Amended)

S.B. 1125, Relating to the calculation and adoption of property tax rates; giving private right of action. (Amended)

S.B. 463, Relating to the final payment, acceptance, certification, or charge of items by payor banks; amending Sections 4.213 and 4.303 and repealing Section 4.109, Business & Commerce Code.

S.B. 718, Relating to the prohibition of the provision of financial services by banking organizations having limited banking powers.

S.B. 1350, Relating to the conveyance of certain state-owned real property in Williamson County and disposition and appropriation of the proceeds. (Amended)

S.B. 746, Relating to the operation in the state of certain foreign bank agencies. (Amended)

S.B. 249, Relating to the organization, administration, powers, duties, jurisdiction and continuation of state water agencies; creating the River Authority Study Committee; transferring water and sewer utility regulation. (Amended)

S.B. 1355, Relating to the authority of the State Purchasing Services Commission to accept gifts for certain capital improvements. (Amended).

The House has concurred in Senate amendments to the following House Bills by a non-record vote:

H.B. 241
H.B. 1278
H.B. 1656
H.B. 44
H.B. 478
H.B. 1378
H.B. 48

The House adopts the Conference Committee Report on the following bills by a non-record vote:

H.B. 632
H.B. 433
S.B. 37
S.B. 1238

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1002**. House Conferees: Wallace, Chairman; Schlueter, Harris, Cavazos, Danburg.

The House refused to concur in Senate amendments to **H.B. 25** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Wilson, Chairman; Garfield Thompson, Hollowell, Laney, Patronella.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 540**. House Conferees: Green, Chairman; Wilson, Connelly, Wallace, Eckels.

The House refused to concur in Senate amendments to **H.B. 1743** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Emmett, Chairman; Perry, Hall, McWilliams, Williamson.

H.B. 1545, Relating to civil service status of certain city employees employed in specialized police divisions.

H.B. 244, Relating to the compensation for travel paid to directors of and delegates from a state soil and water conservation district.

H.B. 1658, Relating to creation of the Fifteenth and Sixteenth Supreme Judicial Districts.

H.B. 1431, Relating to certain procedures in suits affecting the parent-child relationship.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 410**. House Conferees: Lee, Chairman; Wright, Oliver, J. Harris, Madla.

The House has granted the request of the Senate for the appointment of Conference Committee on **S.B. 1435**. House Conferees: Gibson, Chairman; Williamson, Riley, Stiles, Adkisson.

The House refused to concur in Senate amendments to **H.B. 2403** and has requested the appointment of a Conference Committee to consider the differences

between the two houses. House Conferees: Craddick, Chairman; Geistweidt, Godwin, Roberts, Clark.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.J.R. 14**. House Conferees: Evans, Chairman; C. Harris, Jackson, T. Smith, Arnold.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 290**. House Conferees: Evans, Chairman; T. Smith, Criss, Harris, Jackson, Arnold.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

REPORT OF STANDING COMMITTEE

Senator Blake submitted the following report for the Committee on Administration:

S.R. 525
S.C.R. 185
C.S.S.R. 520
S.C.R. 179
H.C.R. 193
H.C.R 161
H.C.R 114
S.C.R. 183
S.R. 518

SENATE BILL 493 WITH HOUSE AMENDMENT

Senator Caperton called **S.B. 493** 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 - C. Evans

Substitute the following for **S.B. 493**:

A BILL TO BE ENTITLED
AN ACT

relating to management of public lands, to the continuation, administration, powers, and duties of the School Land Board, to the powers and duties of the commissioner of the General Land Office, to the authority of the Board of Regents of The University of Texas System to execute grants of easements on university land, to the powers and duties of boards for lease of land owned by the Texas Department of Parks and Wildlife and the Texas Department of Corrections, and to the abolition of certain boards for lease of state departments, boards, and agencies, including the Board for Lease of Eleemosynary and State Memorial Park Lands, and the transfer of those boards' leasing authority to the School Land Board; amending the following sections and subsections of the Natural Resources Code: 21.041, 21.072(b), 32.001(4), 32.018, 32.061, 32.062, 32.107(c), 34.002, 34.011, 34.051, 34.057, 34.064, 51.019, 51.121, 51.124, 51.125, 51.291, 51.296, 51.299, 51.302(a), 52.016, 52.131(c) and (e), 52.172, 52.321, 52.322, 52.324, and 53.163;

adding Subchapter E to Chapter 31 and Subchapter E to Chapter 32 and Subchapter I to Chapter 51 and the following Sections and Subsections 32.002, 32.003, 32.0121, 32.0122, 32.0123, 32.0171, 32.024, 32.025, 32.026, 32.064, 32.065, 32.066, 32.1071, 32.1072, 32.1073, 34.0131 through 34.0135, 34.0191, 34.0192, 34.065, 34.066, 51.131, 51.293(c), 52.131(f), (g), (h), and (i), 52.187, 52.297, and 53.155; and repealing Sections 31.101 through 31.108, 32.108, 34.058 through 34.063, 34.101 through 34.185, 51.055, and Chapters 35 and 36, and Section 4, Chapter 11, Acts of the 68th Legislature, 1983.

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

SECTION 1. Section 21.041, Natural Resources Code, is amended to read as follows:

"Section 21.041. FIELD NOTES OF A SURVEY OF PUBLIC LAND. The field notes of a survey of public land shall state:

"(1) the county in which the land is located;

"(2) the authority under which the survey is made and a true description of the survey;

"(3) the land by proper field notes with the necessary calls and connections for identification, observing the Spanish measurement by varas;

"(4) a diagram of the survey;

"(5) the State Plane Co-ordinates based on the Texas Co-ordinate System values for the beginning point on the survey with appropriate reference to zone, mapping angle, grid distances, acreage and the N.G.S. Station to which the survey is tied [~~variation at which the running was made~~];

"(6) the names of the field survey personnel [~~chain carriers~~];

"(7) the date the survey was made; and

"(8) the signature of the surveyor."

SECTION 2. Subsection (b), Section 21.072, Natural Resources Code, is amended to read as follows:

"(b) Except as provided in Section 21.041 of this code [~~Notwithstanding any other provisions of this subchapter~~], the use of the system is not required, and the provisions of this subchapter shall not be construed to set aside or disturb any corner or survey already established."

SECTION 3. Chapter 31, Natural Resources Code, is amended by adding Subchapter E to read as follows:

"SUBCHAPTER E. GRANTS

"Section 31.201. APPLICATION FOR GRANT. A lessee of land owned by the permanent school fund and used for grazing or agricultural purposes may apply to the commissioner for a grant to construct a permanent improvement on the leased property.

"Section 31.202. SOURCE OF GRANT MONEY. Grants under this subchapter shall be made from money collected for surface damages under Sections 52.297 and 53.155 of this code.

"Section 31.203. APPRAISAL REQUIRED. (a) Before a grant is made under Section 31.201 of this subchapter, an appraiser employed by the land office must appraise the effect of the improvement for which a grant is sought on the value of the permanent school fund property.

"(b) If the appraiser finds that the improvement will increase the value of the property in an amount at least equal to the amount the improvement will cost, the commissioner may authorize the disbursement of money to construct the improvement.

"Section 31.204. EVIDENCE OF EXPENDITURE REQUIRED. The commissioner shall require each lessee who receives a grant to provide copies of receipts, vouchers, or other evidence of expenditures for improvements.

"Section 31.205. IMPROVEMENTS ARE PROPERTY OF PERMANENT SCHOOL FUND. Any improvement constructed with money disbursed under this subchapter is the property of the permanent school fund.

"Section 31.206. MAINTENANCE. As a condition for any grant under this subchapter, the commissioner shall require the grantee to agree in writing to maintain the improvement in a manner that will protect the best interest of the permanent school fund.

"Section 31.207. RULES. The commissioner shall adopt any rules necessary to carry out this subchapter, including rules providing a procedure for applying for a grant under Section 31.201 of this subchapter and for monitoring the maintenance of the improvement."

SECTION 4. Subdivision (4), Section 32.001, Natural Resources Code, is amended to read as follows:

"(4) 'Land' means:

"(A) land dedicated to the permanent school fund and the asylum funds by the constitution and laws of this state;

"(B) [and] the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state;

"(C) [, and] the mineral estate in river beds and channels; and

"(D) land owned or held in trust for the use and benefit of a department, board, or agency of the state."

SECTION 5. Chapter 32, Natural Resources Code, is amended by adding Section 32.002 to read as follows:

"Section 32.002. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

"(1) land dedicated by the constitution or a law of this state to The University of Texas System, land donated by a will or instrument in writing or otherwise to The University of Texas System, as trustee, for a scientific, educational, or other charitable or public purpose, or any other land under the control of the Board of Regents of The University of Texas System;

"(2) land whose title is vested in the state for the use and benefit of any part of The Texas A&M University System or land under the control of the Board of Regents of The Texas A&M University System;

"(3) land subject to lease under Subchapter F, Chapter 52 of this code, commonly known as the Relinquishment Act;

"(4) land owned by the state that was acquired to construct or maintain a highway, road, street, or alley;

"(5) land owned by the state under the jurisdiction or control of the State Highway and Public Transportation Commission;

"(6) land owned by the Texas Parks and Wildlife Department; or

"(7) land owned by the Texas Department of Corrections.

"(b) Notwithstanding Subsection (a), the provisions of this chapter do apply to the leasing of the following types of land for the development of minerals other than oil and gas:

"(1) land owned by the state that was acquired to construct or maintain a highway, road, street, or alley; or

"(2) land owned by the state under the jurisdiction or control of the State Highway and Public Transportation Commission.

"(c) If title to land subject to Subchapter F, Chapter 52 of this code, commonly known as the Relinquishment Act, is acquired by a department, board, or agency of the state, the land shall be leased as provided by Chapter 52 of this code for the leasing of unsold public school land."

SECTION 6. Chapter 32, Natural Resources Code, is amended by adding Section 32.003 to read as follows:

"Section 32.003. APPLICATION OF SUNSET ACT. The School Land Board is subject to the Texas Sunset Act. Unless continued in existence as provided by that Act, the board is abolished effective September 1, 1997."

SECTION 7. Chapter 32, Natural Resources Code, is amended by adding Section 32.0121 to read as follows:

"Section 32.0121. APPOINTMENTS WITHOUT DISCRIMINATION. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees."

SECTION 8. Chapter 32, Natural Resources Code, is amended by adding Section 32.0122 to read as follows:

"Section 32.0122. DISQUALIFICATION OF LOBBYISTS. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), 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 9. Chapter 32, Natural Resources Code, is amended by adding Section 32.0123 to read as follows:

"Section 32.0123. CONFLICTS OF INTEREST PROHIBITED. An officer, employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry 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 statewide or national trade association in the oil and gas or mining industry be a member of the board or an employee of the board grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act."

SECTION 10. Chapter 32, Natural Resources Code, is amended by adding Section 32.0171 to read as follows:

"Section 32.0171. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

"(1) does not have at the time of appointment the qualifications required by Subsection (a) of Section 32.012 of this code for appointment to the board;

"(2) does not maintain during the service on the board the qualifications required by Subsection (a) of Section 32.012 of this code for appointment to the board;

"(3) violates a prohibition established by Section 32.0122 or 32.0123 of this code;

"(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

"(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

"(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

"(c) If the commissioner has knowledge that a potential ground for removal exists, he shall notify the governor that a potential ground for removal exists."

SECTION 11. Section 32.018, Natural Resources Code, is amended to read as follows:

"Section 32.018. EMPLOYMENT OF GEOLOGIST AND MINERALOGIST. The commissioner may employ a geologist and a mineralogist who shall be informed about minerals on [~~public school~~] land under the board's jurisdiction and activities under pending applications and previous leases and sales. The geologist and mineralogist shall report to the board any information relating to these subjects."

SECTION 12. Chapter 32, Natural Resources Code, is amended by adding Section 32.024 to read as follows:

"Section 32.024. FINANCIAL REPORT REQUIRED. The board shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The commissioner shall include the report as part of the report required by Section 31.060 of this code."

SECTION 13. Chapter 32, Natural Resources Code, is amended by adding Section 32.025 to read as follows:

"Section 32.025. AUDIT. The State Auditor shall audit the financial transactions of the board as part of each audit of the General Land Office."

SECTION 14. Chapter 32, Natural Resources Code, is amended by adding Section 32.026 to read as follows:

"Section 32.026. POLICIES ON PUBLIC HEARINGS. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board."

SECTION 15. Section 32.061, Natural Resources Code, is amended to read as follows:

"Section 32.061. BOARD'S GENERAL DUTIES. Except as provided by Subchapter G, Chapter 51 of this code, the [~~The~~] board shall:

"(1) set the dates for the sale [~~and lease~~] of surveyed land dedicated to the permanent school fund and for the lease of land for prospecting or exploring for, mining, producing, storing, caring for, transporting, preserving, selling, or disposing of oil, gas, or other minerals leased under this chapter;

"(2) determine the prices for which [~~surveyed and unsurveyed~~] land shall be sold and leased; [~~and~~]

"(3) consult with the president, chairman, or other head of the department, board, or agency, as applicable, or with the representative of the head, on each matter before the board that affects land owned or held in trust for the use and benefit of a department, board, or agency of the state; and

"(4) perform any other duties which may be required by law."

SECTION 16. Section 32.062, Natural Resources Code, is amended to read as follows:

"Section 32.062. ADOPTION OF RULES AND COLLECTION OF FEES. (a) The board shall adopt rules of procedure and rules for the sale and lease of land as provided [~~covered~~] by this chapter [~~which are not inconsistent with this chapter and laws relating to the sale and lease of school and asylum land and islands, lakes, and bays within tidewater limits and the bed of the sea which belong to the state, and the lease of the mineral estate in river beds and channels~~].

"(b) The board by rule shall adopt and shall collect reasonable fees necessary to carry out this chapter."

SECTION 17. Chapter 32, Natural Resources Code, is amended by adding Section 32.064 to read as follows:

"Section 32.064. SURVEY OR SUBDIVISION OF LAND. The board may have land surveyed or subdivided into tracts, lots, or blocks based on its determination of which method will be most conducive and convenient to facilitate the advantageous sale of land or oil, gas, or mineral leases."

SECTION 18. Chapter 32, Natural Resources Code, is amended by adding Section 32.065 to read as follows:

"Section 32.065. PERMITS FOR SURVEYS OR INVESTIGATIONS. If land other than public school land is not under a valid lease, the board may issue a permit for a geological, geophysical, or other survey or investigation of that land that will encourage the development of the land for oil, gas, or other minerals. The permit may be issued for the consideration and under the terms and conditions the board considers to be in the best interest of the state."

SECTION 19. Chapter 32, Natural Resources Code, is amended by adding Section 32.066 to read as follows:

"Section 32.066. EASEMENTS. (a) The board may grant easements of right-of-way on any land except:

"(1) unsold public school land;

"(2) the portion of the Gulf of Mexico within the jurisdiction of the state; and

"(3) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits.

"(b) The easements may be granted on terms and conditions the board considers to be in the best interest of the state.

"(c) This Section shall not apply to land owned by the State Department of Highways and Public Transportation."

SECTION 20. Subsection (c), Section 32.107, Natural Resources Code, is amended to read as follows:

"(c) The notice shall state that land is to be offered for sale or lease on a certain date and the method of the sale and shall give notice that lists describing the land may be obtained at the land office."

SECTION 21. Chapter 32, Natural Resources Code, is amended by adding Section 32.1071 to read as follows:

"Section 32.1071. LEASE SALES. (a) The sale of oil, gas, or other mineral leases shall be by sealed bid or at public auction or through a combination of public auction and sealed bid, as the board elects.

"(b) Sections 52.015 through 52.020 of this code apply to the sale of leases by sealed bid."

SECTION 22. Chapter 32, Natural Resources Code, is amended by adding Section 32.1072 to read as follows:

"Section 32.1072. MINIMUM ROYALTY, BONUS, AND RENTAL. The board may not accept a bid that offers:

"(1) a royalty of less than one-eighth of the gross production of oil, gas, or other minerals; or

"(2) a cash bonus of less than $10 an acre."

SECTION 23. Chapter 32, Natural Resources Code, is amended by adding Section 32.1073 to read as follows:

"Section 32.1073. FIXING ROYALTY, BONUS, AND RENTAL. In offering land for lease under this subchapter, the board may:

"(1) set the royalty and rental and provide for bidding on a basis of the highest cash bonus offered; or

"(2) set the cash bonus and rental and provide for bidding on the basis of the highest royalty offered."

SECTION 24. Chapter 32, Natural Resources Code, is amended by adding Subchapter E to read as follows:

"SUBCHAPTER E. CONDITIONS OF LEASES

"Section 32.151. TERM OF LEASE. Each lease shall be for a primary term of not to exceed five years and for as long thereafter as oil, gas, or other minerals covered by the lease are produced in paying quantities.

"Section 32.152. ASSIGNMENT AND TRANSFER. A lessee may transfer or assign his lease at any time in the manner provided by Section 52.026 of this code.

"Section 32.153. LEASE RELINQUISHMENT. A lessee may relinquish his lease to the state at any time in the manner provided by Section 52.027 of this code.

"Section 32.154. LEASES SUBJECT TO LAWS, ORDERS, AND RULES. Drilling or mining operations for oil, gas, or other minerals and the production of oil, gas, or other minerals under a lease issued under this chapter are subject to:

"(1) the laws of this state;

"(2) valid orders made by the Railroad Commission of Texas or any other regulatory authority controlling the development of leases for the production of oil, gas, or other minerals; and

"(3) rules the board adopts.

"Section 32.155. RENTAL AND ROYALTY PAYMENTS. (a) Each lessee or his assigns shall pay annual rentals and royalties as specified by the board.

"(b) Subchapter D, Chapter 52 of this code applies to a lease issued under this chapter.

"Section 32.156. FORFEITURE. Each lease is subject to forfeiture by the commissioner under the conditions and in the manner provided by Section 52.176 of this code."

SECTION 25. Section 34.002, Natural Resources Code, is amended to read as follows:

"Section 34.002. APPLICATION OF CHAPTER. (a) The provisions of this chapter [~~do not~~] apply to:

"(1) land owned by the Texas Parks and Wildlife Department [~~dedicated by the constitution and laws of the state to the public school fund~~];

"(2) land owned by the Texas Department of Corrections [~~dedicated by the constitution and laws of the state to The University of Texas, or land donated to the Board of Regents of The University of Texas System, as trustees, by a will, instrument in writing, or otherwise in trust for a scientific, educational, or other charitable or public purpose, or to any other land under the control of the Board of Regents of The University of Texas System;~~

"[~~(3) land whose title is vested in the state for use and benefit of any part of The Texas A&M University System, or land under the control of the Board of Regents of The Texas A&M University System;~~

"[~~(4) land subject to lease under the provisions of Subchapter F, Chapter 52, of this code, commonly known as the 'Relinquishment Act';~~

"[~~(5) land owned by the state that was acquired to construct or maintain a highway, road, street, or alley; or~~

"[~~(6) land owned by the state under the jurisdiction or control of the State Highway and Public Transportation Commission~~].

"(b) [~~Notwithstanding Subsection (a), the provisions of this chapter do apply to the leasing of the following types of land for the development of minerals other than oil and gas:~~

"[~~(1) land owned by the state that was acquired to construct or maintain a highway, road, street, or alley; or~~

"[~~(2) land owned by the state under the jurisdiction or control of the State Highway and Public Transportation Commission.~~

"[~~(c)~~] If title to land subject to the provisions of the Relinquishment Act is acquired by the Texas Parks and Wildlife Department or the Texas Department of Corrections [~~a department, board, or agency of the state~~], the land is not subject to lease by a board created under the provisions of this chapter but shall be leased in the manner provided for the leasing of unsold public school land."

SECTION 26. Section 34.011, Natural Resources Code, is amended to read as follows:

"Section 34.011. BOARDS FOR LEASE. Boards for lease are created to lease land owned by the Texas Department of Parks and Wildlife and the Texas Department of Corrections [~~a department, board, or agency of the State of Texas~~]."

SECTION 27. Chapter 34, Natural Resources Code, is amended by adding Sections 34.0131 through 34.0135, 34.0191, and 34.0192 to read as follows:

"Section 34.0131. APPOINTMENTS WITHOUT DISCRIMINATION. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

"Section 34.0132. DISQUALIFICATION OF LOBBYISTS. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), 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 34.0133. CONFLICTS OF INTEREST PROHIBITED. An officer, employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry 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 statewide or national trade association in the oil and gas or mining industry be a member of the board or an employee of the board grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

"Section 34.0134. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

"(1) does not have at the time of appointment the qualifications required by Subsection (a) of Section 34.013 of this code for appointment to the board;

"(2) does not maintain during the service on the board the qualifications required by Subsection (a) of Section 34.013 of this code for appointment to the board;

"(3) violates a prohibition established by Section 34.0132 or 34.0133 of this code;

"(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

"(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

"(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

"(c) If the commissioner has knowledge that a potential ground for removal exists, he shall notify the governor that a potential ground for removal exists.

"Section 34.0135. POLICIES ON PUBLIC HEARINGS. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board."

"Section 34.0191. FINANCIAL REPORT REQUIRED. The board shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year.

"Section 34.0192. AUDIT. The State Auditor shall audit the financial transactions of the board as part of each audit of the General Land Office."

SECTION 28. Section 34.051, Natural Resources Code, is amended to read as follows:

"Section 34.051. LAND SUBJECT TO LEASE. Land owned by or held in trust for the use and benefit of either [~~a department, board, or~~] agency may be leased by the appropriate board to any person under the provisions of this chapter for the purpose of prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, selling, and disposing of the oil, gas, or other minerals."

SECTION 29. Section 34.057, Natural Resources Code, is amended to read as follows:

"Section 34.057. ' [~~ADVERTISEMENT OF~~] LEASE PROVISIONS. (a) Leases shall be advertised and sold in the same manner and shall contain the same terms and conditions as leases issued by the School Land Board under Chapter 32 of this code.

"(b) A board may place any other terms and conditions in the lease it determines to be in the best interest of the state.

"(c) The special sales fee provided for in Section 32.110 of this code shall be collected on leases issued under this chapter.

"(d) The provisions of Chapter 32 of this code relating to payment of royalty, penalties and interest on delinquent payments, assignments, releases, and forfeiture shall apply to leases issued under this chapter. [~~A board shall insert an advertisement that leases will be offered for sale on a certain date in at least three issues of each of four daily newspapers 30 days in advance of the sale date. The advertisement shall give notice that lists describing the land to be leased may be obtained from the land office.~~]"

SECTION 30. Section 34.064, Natural Resources Code, is amended to read as follows:

"Section 34.064. EASEMENTS. (a) A board may grant easements of rights-of-way on the land covered by the provisions of this chapter [~~for irrigation canals, laterals, flumes and ditches, telephone, telegraph, and electric power lines, and pipelines for the gathering or transportation of oil, gas, water, and other fluids or substances, together with the devices, equipment, and appurtenances which may be necessary~~].

"(b) The easements may be granted on terms and conditions the board considers to be in the best interest of the state.

"(c) The provisions of this section do not apply to land owned by the state as a part of the penitentiary system and do not repeal Chapter 166, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 6203d, Vernon's Texas Civil Statutes)."

SECTION 31. Chapter 34, Natural Resources Code, is amended by adding Sections 34.065 and 34.066 to read as follows:

"Section 34.065. RULES. A board may adopt rules and collect fees necessary for the implementation of this chapter.

"Section 34.066. APPLICATION OF SUNSET ACT. The Boards for Lease are subject to the Texas Sunset Act. Unless continued in existence as provided by that Act, the board is abolished effective September 1, 1997."

SECTION 32. Section 51.019, Natural Resources Code, is amended to read as follows:

"Section 51.019. SPECIAL FEE. Each bidder on a mineral lease or land sale by the board shall remit by separate check a special sale fee in the amount and in the manner provided in Section 32.110 [~~34.061~~] of this code."

SECTION 33. Sections 51.121, 51.124, and 51.125, Natural Resources Code, are amended to read as follows:

"Section 51.121. LEASE OF UNSOLD LAND. (a) [~~Except as otherwise provided, unsold public school and asylum land may be leased for a term of not more than 10 years and for an amount of not less than five cents an acre, payable annually in advance, but the land that is leased but remains unsold is subject to sale or trade pursuant to the laws governing the sale or trade of unsold land.~~

"[~~(b)~~] Unsold public school and asylum land may be leased for agricultural, grazing, or commercial purposes under terms and conditions set by the commissioner [~~in tracts of not more than 50 acres for a term of not more than 50 years~~]. Commercial improvements on land under this subsection shall not become the property of the state and shall be taxed in the same manner as other private property.

"(b) [~~(c)~~] Commercial improvements on land leased under Subsection (a) [~~(b)~~] of this section [~~Section 51.121 of the Natural Resources Code~~] shall be removed prior to the expiration of the lease unless a renewal or an extension of the lease has been finalized prior to the expiration of the term of the lease. If commercial

improvements are not removed prior to the expiration of the lease and if there has been no renewal or extension prior to the expiration of the lease, then the commercial improvements on the land shall become property of the state.

"(c) [~~(d)~~] If escheated land that is a part of the permanent school fund is leased under this chapter for a purpose other than for grazing, the period of the lease may not exceed two years. The lessee shall pay rent under the lease in money."

"Section 51.124. AWARD OF LEASE. (a) A lease shall be awarded to the highest responsible bidder.

"(b) The lease shall be awarded under the rules and in the quantities the commissioner [~~board~~] considers to be in the best interest of the state and not inconsistent with the equities of the occupant.

"Section 51.125. REJECTION OF BID OR OFFER TO LEASE. Any bid or offer to lease may be rejected by the commissioner [~~board~~] for fraud, collusion, or other good and sufficient cause before the lease is signed."

SECTION 34. Chapter 51, Natural Resources Code, is amended by adding Section 51.131 to read as follows:

"Section 51.131. SOIL AND WATER CONSERVATION PLANS. (a) For each lease issued under this subchapter for agricultural or grazing purposes, the commissioner shall require the lessee to implement a soil and water conservation plan approved by the commissioner. The commissioner, in reviewing a plan, and the lessee, in implementing a plan, may be assisted by the United States Department of Agriculture Soil Conservation Service.

"(b) The commissioner by rule shall adopt a procedure for reviewing and approving soil and water conservation plans required by Subsection (a) of this section."

SECTION 35. Section 51.291, Natural Resources Code, is amended to read as follows:

"Section 51.291. GRANTS OF EASEMENTS. The commissioner may execute grants of easements for rights-of-way across unsold public school land, the portion of the Gulf of Mexico within the jurisdiction of the state, and all islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits for:

"(1) telephone, telegraph, electric transmission, and powerlines;

"(2) [~~,~~ ~~for~~] oil pipelines, including pipelines connecting the onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), gas pipelines, sulphur pipelines, and other electric lines and pipelines of any nature;

"(3) [~~, and for~~] irrigation canals, laterals, and water pipelines;

"(4) roads; and

"(5) any other purpose the commissioner considers to be in the best interest of the state."

SECTION 36. Section 51.293, Natural Resources Code, is amended by adding Subsection (c) to read as follows:

"(c) In addition to the purposes for which grants of easements may be executed under Subsections (a) and (b) of this section, the board of regents may execute grants of easements on university land for any other purpose it considers to be in the best interest of the permanent university fund land."

SECTION 37. Section 51.296, Natural Resources Code, is amended to read as follows:

"Section 51.296. TERM OF EASEMENTS. (a) Except as provided in Subsection (d) [~~(b)~~] of this section, no grant of easement or lease enumerated under Sections 51.291 through 51.293 of this code may be granted for a term that is longer than 10 years, but an easement may be renewed by the officials responsible for execution of grants of easement and leases under this subchapter.

"(b) The commissioner by rule shall set the amount of and shall collect money for damages to the surface of land dedicated to the permanent school fund.

"(c) Money collected for surface damages shall be deposited in the special fund account described in Section 52.297 of this code.

"(d) A right of way easement for a pipeline connecting onshore storage facilities with the offshore facilities of a deepwater port, as defined by the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), may be granted for a term coincident with the term of the license issued by the secretary of transportation pursuant to the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), and the easement may be renewed for additional terms of up to 10 years coincident with the term for each renewal of the license."

SECTION 38. Section 51.299, Natural Resources Code, is amended to read as follows:

"Section 51.299. FEES FOR CERTAIN FACILITIES. The rent to be charged for an easement or lease for an electric substation site, pumping station, loading rack, [or] tank farm, or road or for an easement for a purpose not specifically listed by Section 51.291, 51.292, or 51.293 of this code but granted in the best interest of the state or the permanent university fund land shall be an amount agreed to between the lessee and the board of regents with respect to university land and the commissioner with respect to other state land."

SECTION 39. Subsection (a), Section 51.302, Natural Resources Code, is amended to read as follows:

"(a) No person may construct any of the facilities listed in Sections 51.291 through 51.293 of this code or any other facility on or across any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and owned by the state, nor may any person who has not acquired a proper easement as provided in this subchapter and who owns or possesses any of the facilities listed in Sections 51.291 through 51.293 of this code or any other facility that is [are] now located on or across any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and owned by the state continue in possession of the land unless he obtains from the commissioner or the board of regents a grant of a right-of-way easement or other easement for the land on which the facility is to be constructed or is located."

SECTION 40. Chapter 51, Natural Resources Code, is amended by adding Subchapter I to read as follows:

"SUBCHAPTER I. ACQUISITION OF PUBLIC SCHOOL LAND

"Section 51.401. SPECIAL FUND ACCOUNT. (a) The board may designate money received from the sale of public school land under this chapter for deposit in a special fund account in the State Treasury to be used by the board to acquire fee or lesser interests in real property for the use and benefit of the permanent school fund, as provided by Section 51.402 of this subchapter.

"(b) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the available school fund.

"(c) Money received from the sale of a particular piece of land and designated for the acquisition of land under this subchapter must be used by the board not later than two years after the date of the sale of land from which the money is derived.

"(d) Any money from a specific sale that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

"Section 51.402. LAND ACQUISITION. (a) The board may use the money designated under Section 51.401 of this subchapter to acquire property for any of the following purposes:

"(1) to add to a tract of public school land to form a tract of sufficient size to be manageable;

"(2) to add contiguous land to public school land; or

"(3) to acquire, as public school land, property of unique biological, commercial, geological, cultural, or recreational value.

"(b) Before acquiring property under Subsection (a) of this section, the board must determine that the acquisition is in the best interest of the permanent school fund.

"Section 51.403. MARKET VALUE. (a) The board may not pay more than market value for any property acquired under this subchapter.

"(b) Market value shall be determined by an appraisal of the property performed by appraisers employed by the land office.

"Section 51.404. TITLE SECURITY. (a) Property acquired under this subchapter shall be conveyed to the state by warranty deed.

"(b) The board may purchase or acquire title insurance for any property purchased under this subchapter.

"Section 51.405. CONTRACTS FOR PURCHASE. The board may enter into contracts for the purchase of property under this subchapter.

"Section 51.406. DEDICATION TO PERMANENT SCHOOL FUND. Land acquired under this subchapter is dedicated to the permanent school fund and is subject to sale and lease in the same manner and under the same authority as any other real property dedicated to the permanent school fund.

"Section 51.407. RULES. The board shall adopt rules for the implementation of this subchapter."

SECTION 41. Section 52.016, Natural Resources Code, is amended to read as follows:

"Section 52.016. SPECIAL FEE. Each bidder on a lease under this subchapter shall remit by separate check a special sale fee in the amount and in the manner provided in Section 32.110 [~~34.061~~] of this code."

SECTION 42. Subsections (c) and (e), Section 52.131, Natural Resources Code, are amended to read as follows:

"(c) Royalty payments shall be accompanied by:

"(1) an affidavit of the owner, manager, or other authorized agent, completed in the form and manner required by the land office and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas;

"(2) a copy of all documents, records, or reports required by the land office, confirming the gross production, disposition, and market value, including gas meter readings, pipeline receipts, gas line receipts, and other checks or memoranda of amount produced and put into pipelines, tanks, pools, and gas lines or gas storage;

"(3) a check stub, schedule, summary, or other remittance advice showing by the assigned land office lease number the amount of royalty being paid on each lease; and

"(4) other reports or records that the land office may require to verify the gross production, disposition, and market value."

"(e) If any royalty is not paid when due but is paid before the 31st day after the date on which it is due, a penalty of five percent of the royalty due shall be added to the unpaid amount due. If the royalty is not paid before the 31st day after the date on which it is due, a penalty of an additional five percent of the royalty due shall be imposed. The minimum penalty under this section is $25. The penalty may not be imposed [~~Any royalty not paid or affidavits and supporting documents not filed when due shall become delinquent and a delinquency penalty of one percent for each 30-day period of delinquency or fractional part of that period shall be added to the amount owed, however, no penalty may be less than $5. Payment of this penalty in no way operates to prohibit the state's right of forfeiture as provided by~~

~~law and does not postpone the date on which royalties were originally due. The penalty does not apply~~] in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to fair market value."

SECTION 43. Section 52.131, Natural Resources Code, is amended by adding Subsections (f), (g), (h), and (i) to read as follows:

"(f) The commissioner shall add a penalty of 25 percent to any delinquent royalty if a part of the delinquency is due to fraud or an intent to evade the provisions of this chapter.

"(g) The annual interest rate on delinquent royalties is 12 percent. Interest accrues on delinquent royalties beginning 60 days after the date on which the royalty is due.

"(h) If any report, affidavit, supporting document, or any other instrument required to be filed under this chapter is not filed when due, the commissioner shall charge a reasonable penalty in an amount established by rule adopted by the commissioner.

"(i) Interest charged under Subsection (g) of this section or penalties under Subsection (e), (f), or (h) of this section are in addition to any other right, including forfeiture, that the commissioner may exercise for failure to submit a report or other instrument."

SECTION 44. Section 52.172, Natural Resources Code, is amended to read as follows:

"Section 52.172. SALE AND LEASE BY AGENT. The owner of said land is hereby authorized to sell or lease to any person, firm, or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for a delay rental during the primary term of less than 10 cents per acre per year plus royalty, and [~~the lessee or purchaser shall in every case pay the state 10 cents per acre per year of sales and rentals; and~~] in case of production, the lessee or purchaser shall pay the state the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil."

SECTION 45. Chapter 52, Natural Resources Code, is amended by adding Section 52.187 to read as follows:

"Section 52.187. ASSIGNMENTS TO THE OWNER OF THE SOIL. (a) An owner of the soil may acquire by assignment a lease which he executed on land subject to the Relinquishment Act, Subchapter F, Chapter 52 of this code; however, such an assignment is subject to the terms of this section.

"(b) When an owner of the soil seeks an assignment under Subsection (a) of this section, both the current lessee and the owner of the soil should notify the General Land Office of the proposed assignment. This notification must include proof of the consideration to be paid for the assignment. The land commissioner may then approve the assignment; if the commissioner does approve it, then both the current lessee and the owner of the soil will receive written notice of this approval. Such written approval shall also become part of the General Land Office's mineral file on this land.

"(c) A lease which has been assigned to an owner of the soil without the advance approval of the land commissioner may be forfeited by the commissioner at any time. In addition to forfeiting the lease, the land commissioner may also forfeit the agency powers of the owner of the soil, and the state will execute a subsequent lease pursuant to Section 52.175 of this code.

"(d) Whenever an owner of the soil is assigned a Relinquishment Act lease that he executed, he shall be accountable to the state for a portion of the consideration he receives upon assignment of the lease as follows:

"(1) If the lease was assigned to the owner of the soil without the advance approval of the commissioner, the owner of the soil must pay the state one-half of the entire consideration that he received upon subsequent assignment of the lease. Payment of this money in no way limits the forfeiture remedies outlined in Subsection (c) of this section.

"(2) When an assignment to an owner of the soil has the commissioner's advance approval and the owner of the soil subsequently assigns the lease within three years, the owner of the soil must pay the state one-half of his profit on the subsequent assignment. His profit is the difference between what he paid for his assignment and what he received for the subsequent assignment.

"(e) Under this section, an assignment will be treated as if it were made to the owner of the soil when:

"(1) the assignee is a nominee of the owner of the soil;

"(2) the assignee is a corporation or subsidiary in which the owner of the soil is a principal stockholder;

"(3) the assignee is a partnership in which the owner of the soil is a partner;

"(4) the assignee is a principal stockholder of the corporation which is the owner of the soil; or

"(5) the assignee is a partner in a partnership which is the owner of the soil."

SECTION 46. Chapter 52, Natural Resources Code, is amended by adding Section 52.297 to read as follows:

"Section 52.297. PAYMENT OF DAMAGES FOR USE OF SURFACE. (a) Leases issued under Subchapter B of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring the payment of damages for the use of the surface in prospecting for, exploring, developing, or producing the leased minerals.

"(b) The commissioner by rule shall set the amount of and shall collect money for damages to the surface of land dedicated to the permanent school fund.

"(c) Money collected for surface damages shall be deposited in a special fund account in the State Treasury to be used for conservation, reclamation, or permanent improvements on land that belongs to the permanent school fund.

"(d) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the available school fund.

"(e) Money collected under this section and designated for the construction of permanent improvements as provided by this section must be used not later than two years after the date on which the money is collected.

"(f) Any money that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

"(g) The payment of damages under this section is in addition to any bonus, rental, royalty, or other payment required by the lease."

SECTION 47. Sections 52.321, 52.322, and 52.324, Natural Resources Code, are amended to read as follows:

"Section 52.321. DEFINITIONS. In this subchapter:

"(1) 'Geophysical exploration' means a survey or investigation conducted to discover or locate oil and gas prospects using magnetic, gravity, seismic, and/or electrical techniques.

"(2) 'Geochemical exploration' means a survey or investigation conducted to discover or locate oil and gas prospects using techniques involving soil sampling and analysis.

"(3) 'Public school land' means land dedicated by the constitution or laws of this state to the permanent free school fund, and specifically includes [~~but does not include~~] land with a mineral classification under Subchapter F of this chapter in which the state has retained the oil and gas interest and[~~, nor does it include~~] areas within tidewater limits or the portion of the Gulf of Mexico that is under the jurisdiction of this state.

"(4) 'Areas within tidewater limits' means islands, saltwater lakes, bays, inlets, marshes, and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas.

"(5) 'Permit' means a license issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.

"(6) [~~(5)~~] 'Permittee' means the holder of a permit.

"Section 52.322. PERMIT REQUIRED FOR EXPLORATION. (a) Except for a person who has a valid oil and gas lease on public school land authorized by this chapter, a person may not conduct geophysical or geochemical exploration on public school land unless the person obtains a permit from the commissioner.

"(b) Every person who is authorized to conduct a geophysical or geochemical exploration on public school land shall comply with the commissioner's rules relating to such exploration. Any person with a valid oil and gas lease on land subject to this chapter must comply with the commissioner's rules concerning exploration.

"(c) Nothing in this title shall prohibit the conduct of airborne geophysical exploration."

"Section 52.324. AUTHORITY OF COMMISSIONER. (a) The commissioner:

"(1) as a condition of [~~before~~] issuing a permit, shall collect reasonable fees [~~a fee~~] from the applicant in an amount determined by the commissioner;

"(2) may require a permittee to furnish to the commissioner, upon the commissioner's request, copies of maps, plats, reports, data, and any other information in the possession of the permittee that relates to the progress or results of an exploration under a permit; provided however, the commissioner shall not require a permittee to furnish any of its interpretive data;

"(3) shall by rule require a permittee to restore land explored under the permit as nearly as is practicable to its condition immediately prior to the exploration; [~~and~~]

"(4) shall by rule set the amount of and shall collect money for damages to the surface of public school land except land with a mineral classification under Subchapter F of this chapter; and

"(5) may make any other rules relating to geophysical or geochemical explorations, permits, or permittees the commissioner considers appropriate.

"(b) Money collected for surface damages shall be deposited and used in the manner provided by Section 52.297 of this chapter.

"(c) In the case of areas within tidewater limits, the commissioner shall follow the recommendations of the Parks and Wildlife Department in making rules to prevent unnecessary pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

"(d) If a permittee violates a rule of the commissioner or a term of a permit, the commissioner may cancel the permit.

"(e) [~~(c)~~] If by authority of Subsection (a)(2) of this section the commissioner acquires information concerning a permittee's geophysical or geochemical exploration, the commissioner shall consider the information to be confidential and may not disclose it, except by authority of a court order, to the public or any other agency of this state."

SECTION 48. Chapter 53, Natural Resources Code, is amended by adding Section 53.155 to read as follows:

"Section 53.155. PAYMENT OF DAMAGES FOR USE OF SURFACE. (a) Leases issued under Subchapter B of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring the payment of damages for the use of the surface in prospecting for, exploring, developing, or producing the leased minerals.

"(b) The commissioner by rule shall set the amount of and shall collect money for damages to the surface of land dedicated to the permanent school fund.

"(c) Money collected for surface damages shall be deposited in a special fund account in the State Treasury to be used for conservation, reclamation, or constructing permanent improvements on land that belongs to the permanent school fund.

"(d) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the available school fund.

"(e) Money collected under this section and designated for the construction of permanent improvements as provided by this section must be used not later than two years after the date on which the money is collected.

"(f) Any money that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

"(g) The payment of damages under this section is in addition to any bonus, rental, royalty, or other payment required by the lease."

SECTION 49. Section 53.163, Natural Resources Code, is amended to read as follows:

"Section 53.163. LAWS APPLICABLE TO PERMITS. Permits for geophysical and geochemical exploration under this subchapter shall be issued in the same manner and under the same terms and conditions as permits for oil and gas under Subchapter I of Chapter 52 of this code."

SECTION 50. Chapter 32, Natural Resources Code, is amended by adding Section 32.157 to read as follows:

"Section 32.157. SPECIAL ACCOUNTS. (a) Special funds are created in the state treasury to be known as the Parks and Wildlife Department and the Texas Department of Corrections special mineral funds.

"(b) All monies collected as bonus, royalty, rental, payments for easements, and permit fees attributable to land covered by this chapter, other than land dedicated to the permanent school fund, shall be deposited in the special mineral fund of the department, board, or agency owning the land.

(c) To offset the costs of leasing and administering mineral leasing, all fees collected relating to leasing lands owned by boards, departments or agencies, including the sales fee and any penalties collected shall be credited to the same fund account in the treasury as those similar fees collected in the leasing of land dedicated to the permanent school fund.

SECTION 51. If **H.B. 918** pending before this Legislature is enacted into law, then any powers conferred on the board for lease of the department of highways and public transportation by **H.B. 918** shall be given to the School Land Board, and the School Land Board shall have the exclusive authority to lease highway rights of way in the manner prescribed by **H.B. 918**.

SECTION 52. Sections 31.101 through 31.108, 32.108, 34.058 through 34.063, 34.101 through 34.185, and 51.055 and Chapters 35 and 36, Natural Resources Code, and Section 4, Chapter 11, Acts of the 68th Legislature, 1983, are repealed.

SECTION 53. Section 40 of this Act takes effect on adoption of the constitutional amendment proposed by **S.J.R No. 21**, Acts of the 69th Legislature, Regular Session, 1985. If that amendment is not adopted, Section 40 of this Act has no effect.

SECTION 54. Except as provided by Section 51 of this Act, this Act takes effect September 1, 1985.

SECTION 55. (a) The boards for lease of state departments, boards, and agencies, including the Board for Lease of State Park Lands and the Board for Lease of Eleemosynary and State Memorial Park Lands, are abolished and the property, records, any appropriation, and special funds of the boards are transferred to the School Land Board.

(b) The abolition of those boards does not affect a lease entered into by any of the boards before the effective date of this Act, except that the School Land Board is considered the lessor under the lease.

SECTION 56. Sections 51.131, 52.297, and 53.155, Natural Resources Code, as added by this Act, apply only to a lease issued on or after the effective date of this Act. A lease issued before the effective date of this Act is governed by the law in effect at the time the lease was issued and that law is continued in effect for that purpose.

SECTION 57. Subsection (e), Section 52.131, Natural Resources Code, as amended by this Act, Subsections (f), (g), and (h), Section 52.131, Natural Resources Code, as added by this Act, apply only to interest charges or penalties for late payment of royalties or penalties for late filings of any report, affidavit, supporting document, or other instrument for those royalties or filings due on or after the effective date of this Act. Any interest charge or penalty for a royalty or filing due before the effective date of this Act is governed by the law in effect when the royalty or filing was due and that law is continued in effect for that purpose.

SECTION 58. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Caperton moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 261 WITH HOUSE AMENDMENT

Senator Caperton called **S.B. 261** 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 - C. Evans

Substitute the following for **S.B. 261**:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation, membership, operation, and powers and duties of the Board for Lease of University Lands and to requirements under certain leases issued by the Board of Regents of The University of Texas System; providing certain penalties; amending the Education Code, as amended, by amending Section 66.62, as amended, and Subdivision (4), Subsection (a), Section 66.74, as amended; adding Subdivisions (6), (7), (8), and (9) to Subsection (a), Section 66.74 and adding Sections 66.81, 66.82, 66.83, and 66.45.

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

SECTION 1. Section 66.62, Education Code, as amended, is amended to read as follows:

"Section 66.62. BOARD FOR LEASE. (a) The Board for Lease of University Lands is composed of the commissioner of the general land office, [~~and~~] two members of the board of regents of The University of Texas System selected by the board of regents of that system, and one member of the board of regents of The Texas A&M University System selected by the board of regents of that system. In the event that a regent member of the Board for Lease of University Lands is unable to attend any meeting of that board, the chairman of the board of regents of the applicable system shall appoint another member of the board of regents as a substitute member of the Board for Lease of University Lands to attend the meeting that the regular regent member is unable to attend. The substitute regent member of the Board for Lease of University Lands shall exercise all the powers, duties, and responsibilities of the absent regent member during the conduct of the meeting for which he was appointed. Any substitute regent member of the Board for Lease of University Lands is subject to the provisions of this subchapter.

"(b) A [~~Neither~~] regent member may not be directly or indirectly employed by, or be an officer of or an attorney for, an oil or gas company.

"(c) An officer, employee, or paid consultant of a trade association in the oil and gas industry 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 the oil and gas industry be a member of the board or an employee of the board grade 17 and over, incuding exempt employees, according to the position classification schedule under the General Appropriations Act.

"(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), 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.

"(e) Members of the board, other than the Commissioner of the General Land Office, serve two-year terms expiring February 1 of each odd-numbered year.

"(f) The Commissioner of the General Land Office serves as chairman of the board.

"(g) A majority of the board has the power to act for the board.

"(h) [~~(d)~~] The board shall perform the duties prescribed by this subchapter and shall keep a public record of all its proceedings.

"(i) It is a ground for removal from the board if a member:

"(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the board;

"(2) does not maintain during the service on the board the qualifications required by Subsection (a) of this section for appointment to the board;

"(3) violates a prohibition established by Subsection (c) or (d) of this section;

"(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

"(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

"(j) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

"(k) If the agency head has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of such ground. The chairman of the board shall then notify the governor that a potential ground for removal exists.

"(l) [~~(e)~~] The Board for Lease of University Lands is subject to the Texas Sunset Act. Unless[~~; and unless~~] continued in existence as provided by that Act the board is abolished effective September 1, 1997 [~~1985~~]."

SECTION 2. Subdivision (4), Subsection (a), Section 66.74, Education Code, as amended, is amended to read as follows:

(4) If any royalty is not paid when due, a penalty of one percent shall be added to the unpaid amount due. If the royalty is not paid within seven days after the due date, a penalty of an additional four percent of the royalty due is imposed. If the royalty is not paid within 30 days after the due date, a penalty of an additional five percent is imposed. The minimum penalty under this subdivision is $25. Penalty under this subdivision may not be added [~~Any royalty not paid or affidavits and supporting documents not filed when due shall become delinquent, and a delinquency penalty of one percent for each 30-day period of delinquency or fractional part of that period shall be added to the amount owed; however, no penalty may be less than $5 per month per lease. Payment of this penalty in no way operates to prohibit the state's right of forfeiture as provided by law and does not postpone the date on which royalties were originally due. The penalty does not apply~~] in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to fair market value. Except as provided in Subsection (g), Section 66.68 of this code, royalty payments shall be made in cash, by bank draft drawn on a state or national bank in Texas, by a post-office or express money order, or in any other form that the law may provide for making payments to the State Treasury and are payable to the Board of Regents of The University of Texas System."

SECTION 3. Subsection (a), Section 66.74, Education Code, as amended, is amended by adding Subdivisions (6) and (7), (8) and (9) to read as follows:

(6) Interest shall accrue on delinquent royalties beginning 60 days after the due date. The annual interest rate on delinquent royalties is 12 percent. Interest accrued under this subdivision shall be in addition to any delinquency penalty accrued under Subdivision 4 of this subsection.

(7) The Board of Regents of The University of Texas shall add a penalty of 25 percent to any delinquent royalties if the delinquency is due to fraud or an intent to evade the provisions of this subchapter on the part of the lessee, his agents, employees or assignees.

(8) If any report, affidavit supporting document or and other instrument required to be filed under this subsection is not filed when due, a penalty accrues in the amount of $10 per document or a higher amount established by the Board of Regents of The University of Texas, for each 30-day period of delinquency or fractional part of that period.

(9) Collection of penalty and interest charges under this subsection are in addition to any rights, including forfeiture, that the board may exercise for failure to pay a royalty or to submit a report or other instrument when due.

SECTION 4. Subchapter D, Chapter 66, Education Code, as amended, is amended by adding Section 66.81 to read as follows:

"Section 66.81. FINANCIAL REPORT REQUIRED. The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The form of the annual report shall be that provided in the General Appropriations Act. The report shall be distributed with the report required by Section 66.05 of this code."

SECTION 5. Subchapter D, Chapter 66, Education Code, as amended, is amended by adding Section 66.82 to read as follows:

"Section 66.82. AUDIT. The State Auditor shall audit the financial transactions of the board as part of each audit of The University of Texas System."

SECTION 6. Subchapter D, Chapter 66, Education Code, as amended, is amended by adding Section 66.83 to read as follows:

"Section 66.83. POLICIES ON PUBLIC HEARINGS. The board shall develop and implement policies which will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board."

SECTION 7. Subchapter C, Chapter 66, Education Code, as amended, is amended by adding Section 66.45 to read as follows:

"Section 66.45. SOIL AND WATER CONSERVATION PLANS. Under each lease issued under this subchapter for agricultural or grazing purposes, the lessee shall be required to implement a soil and water conservation plan reviewed and approved by the board of regents of The University of Texas System under procedures adopted by the board. The board, in reviewing a plan, and the lessee, in implementing a plan, may be assisted by the United States Department of Agriculture Soil Conservation Service."

SECTION 8. (a) The addition of members to the Board for Lease of University Lands under Section 66.62, Education Code, as amended by this Act, does not affect the validity of any action taken by the board as constituted before amendment of that section by this Act.

(b) A member of The Texas A&M University System Board of Regents shall be appointed to the board as soon as possible after the effective date of this Act for terms expiring February 1, 1987.

SECTION 9. Subsection (a), Section 66.74, as amended by this Act, applies only to interest charges for late payment of royalties or penalties for late filings of any report, affidavit, supporting document, or other instrument for those royalties or filings due on or after the effective date of this Act. Any interest charge or penalty for a royalty or filing due before the effective date of this Act is governed by the law in effect when the royalty or filing was due, and that law is continued in effect for that purpose.

SECTION 10. Section 66.45, Education Code, as added by this Act, applies only to a lease issued on or after the effective date of this Act. A lease issued before the effective date of this Act is governed by the law in effect at the time the lease was issued and that law is continued in effect for that purpose.

SECTION 11. This Act takes effect September 1, 1985.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Caperton moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 118 WITH HOUSE AMENDMENTS

Senator Edwards called **S.B. 118** 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 - Gibson

Substitute the following for **S.B. 118**:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and operation of the Texas Rehabilitation Commission, the administration of developmental disability services, the abolition of the Texas Commission for the Deaf, and the reorganization and continuation of the Texas Board of Physical Therapy Examiners and the Texas Advisory Board of Occupational Therapy as advisory boards to the rehabilitation commission.

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

SECTION 1. Section 111.013, Human Resources Code, is amended to read as follows:

Sec. 111.013. COMPOSITION OF BOARD; APPOINTMENT; QUALIFICATIONS; TERMS. (a) The board of the Texas Rehabilitation Commission is composed of nine [~~six~~] members appointed by the governor with the advice and consent of the senate. Members serve for staggered terms of six years with the terms of three [~~two~~] members expiring every two years.

(b) Six of the appointees [~~Appointees~~] must be outstanding citizens of the state who are members of the general public and have demonstrated a constructive interest in rehabilitation services. Three of the appointees must be handicapped individuals, including at least one individual who is deaf. Except as provided by this subsection, appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees. A person is not eligible for appointment as a board member if the person or the person's spouse: [~~No paid employee of an agency carrying on work for the commission is eligible for appointment, nor is a person who owns or is employed by an organization providing rehabilitation services or related services through the commission~~]

(1) is employed by or participates in the management of a business entity or other organization regulated by the agency or receiving funds from the commission;

(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the agency or receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

(c) The governor shall designate one board member as presiding officer. The presiding officer serves in that capacity at the will of the governor.

SECTION 2. Chapter 111, Human Resources Code, is amended by adding Section 111.0131 to read as follows:

Sec. 111.0131. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 111.013(b) of this code for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Section 111.013(b) for appointment to the board;

(3) violates a prohibition established by Section 111.025 of this code;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(c) If the commissioner has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of the ground. The chairman of the board shall then notify the governor that a potential ground for removal exists.

SECTION 3. Section 111.014, Human Resources Code, is amended to read as follows:

Sec. 111.014. MEETINGS. (a) The board shall meet quarterly in regular session and on call by the presiding officer when necessary for the transaction of agency business.

(b) The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

SECTION 4. Section 111.015, Human Resources Code, is amended to read as follows:

Sec. 111.015. PER DIEM AND EXPENSES. (a) Board members [~~serve without compensation but~~] are entitled to reimbursement for actual and necessary expenses incurred in the discharge of their official duties and the compensatory per diem authorized by the General Appropriations Act for each day at an official meeting as authorized by the board.

(b) A member of the board who is disabled and who, because of the disability, requires special aids or travel attendants is entitled to reimbursement for the cost of the special aids or travel attendants.

SECTION 5. Section 111.016, Human Resources Code, is amended to read as follows:

Sec. 111.016. CONSUMER ADVISORY COMMITTEE [~~COMMITTEES~~]. (a) The board shall [~~may~~] appoint a consumer [~~an~~] advisory committee to make recommendations for consideration by the board concerning any matter that the [~~advisory~~] committee believes to be pertinent to the purposes of this chapter or on any matter submitted to the committee by the board.

(b) The board shall adopt rules providing for the appointment of the consumer advisory committee and establishing for the committee the number of members, geographical representation, duties, powers, procedures, and times and manner of making recommendations to the board. The rules shall provide for an equitable representation of the major disability groups served by the commission [~~The advisory committee is composed of nine members appointed by the board. Committee members serve for staggered terms of three years with the terms of three members expiring each year~~].

(c) The consumer advisory committee shall meet as provided by the rules of the board and [~~at least once in each calendar quarter and may meet~~] on call of the board.

(d) The members of the consumer advisory committee [~~serve without compensation but~~] are entitled to compensatory per diem authorized by the General Appropriations Act for each day engaged in the performance of their duties as directed by the board and to reimbursement for actual and necessary expenses incurred in attending the official meetings of the consumer advisory committee.

(e) A member of the consumer advisory committee who is disabled and who, because of the disability, requires special aids or travel attendants is entitled to reimbursement for the cost of the special aids or travel attendants.

(f) To be eligible for appointment to the consumer advisory committee a person must have demonstrated an active and constructive interest in the rehabilitation of handicapped people.

[~~(f) The board may also create from time to time additional technical advisory committees necessary to achieve the purposes of this chapter. The members of the committees serve without compensation unless compensation is specifically provided for by appropriation.~~]

SECTION 6. Section 111.018, Human Resources Code, is amended to read as follows:

Sec. 111.018. ADMINISTRATIVE REGULATIONS AND POLICIES. (a) In carrying out his or her duties under this chapter, the commissioner shall, with the approval of the board, make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purposes of this chapter.

(b) The commissioner shall develop a career ladder program, one part of which must require the posting throughout the commission of all nonentry level positions concurrently with any public posting.

(c) The commissioner shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for employees must be based on the system established under this subsection.

(d) The board shall provide to its members and employees as often as is necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The board shall develop and implement policies that clearly separate the respective responsibilities of the board, the commissioner, and the other employees.

(f) The commissioner shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse, in the agency 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 underuse, in the agency work force, of all persons for whom federal or state guidelines encourage a more equitable balance.

(g) The policy statement required by Subsection (f) of this section shall be filed with the governor's office before November 1 of each year and shall cover the preceding annual period. The governor's office shall develop from the information submitted a biennial report to the legislature. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 7. Section 111.021, Human Resources Code, is amended to read as follows:

Sec. 111.021. REPORTS. (a) The commissioner shall prepare and submit to the board annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of funds required for carrying out the purposes of this chapter[~~, and, with the approval of the board, shall submit the reports to the governor and the legislature~~].

(b) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

SECTION 8. Chapter 111, Human Resources Code, is amended by adding Section 111.025 to read as follows:

Sec. 111.025. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT. (a) An officer, employee, or paid consultant of an organization that receives funds from the commission in payment for the provision of rehabilitation services 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 such an association 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.

(b) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities on behalf of a provider of rehabilitation services, may not serve as a member of the board or act as the general counsel to the board.

SECTION 9. Chapter 111, Human Resources Code, is amended by adding Section 111.026 to read as follows:

Sec. 111.026. PUBLIC INTEREST INFORMATION; 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 commission shall adopt rules establishing methods by which consumers and service recipients can be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for the notification through inclusion of the information:

(1) on each registration form, application, or written contract relating to participation in a program that is funded in any part by money derived from or through the commission;

(2) on a sign that is prominently displayed in the place of business of each person or entity engaging in a program that is funded in any part by money derived from or through the commission; or

(3) in a bill for service provided by a person or entity engaging in a program that is funded in any part by money derived from or through the commission.

SECTION 10. Section 111.052, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) The commission shall appoint a director of licensure to administer all of the licensing programs subject to the jurisdiction of the commission. The director of licensure is entitled to an annual salary as determined by legislative appropriation.

SECTION 11. Section 111.055, Human Resources Code, is amended to read as follows:

Sec. 111.055. FINANCES. (a) All money paid to the commission under this chapter shall be deposited in the state treasury and may be used only for the administration of this chapter.

(b) The state auditor shall audit the financial transactions of the commission at least once each biennium [~~The state treasurer may receive money appropriated by congress and allotted to Texas for carrying out the purposes of this chapter or authorized agreements, arrangements, or plans, and may make disbursements on the certification of the commissioner. All public money available to the commission must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements required by law for other public funds in the state treasury. The state auditor shall regularly audit all accounts established by the commission in local depositories to assure that nonpublic funds made available to~~

~~the commission through gift or bequest, by local organizations desiring to participate in projects for the handicapped authorized in Article XVI, Section 6, Subsection (b), of the Texas Constitution, or by endowment or other means, are expended in a manner consistent with the purposes of this chapter. The commission shall comply with the reporting procedures prescribed by the state auditor for the commission's acceptance, holding, investment, and use of nonpublic funds~~].

SECTION 12. Chapter 111, Human Resources Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. COMMISSION SERVICES FOR THE DEAF

Sec. 111.081. GENERAL POWERS AND DUTIES. The commission shall:

(1) develop and implement a statewide program of advocacy and education to ensure continuity of services to the deaf;

(2) provide direct services to the deaf, including interpreter services, information and referral services, message relay services, advocacy services, services to elderly deaf and hearing impaired, training in basic life skills and job-seeking skills, and individual and family counseling;

(3) work to ensure more effective coordination and cooperation among public and nonprofit organizations providing social and educational services to deaf individuals;

(4) establish a registry of available interpreters for the deaf and a catalogue of resources available for the needs of the deaf, both of which it shall disseminate to interested people and update annually;

(5) conduct, in consultation with institutions of higher education, interpreter training workshops and institutes designed to qualify interpreters for state certification, develop guidelines for instruction of interpreters for the deaf in institutions of higher education, and with the assistance of the Central Education Agency develop and implement standards for training interpreters for the deaf in institutions of higher education; and

(6) annually review the schedule of fees recommended by the commission for the payment of interpreters and, as a result of the findings of the review and other relevant information, adopt by rule a schedule of reasonable fees to be paid to interpreters with varied levels of skill. The schedule of fees must be made available and recommended for adoption by other state agencies.

Sec. 111.082. TRAINING FEES. The commission may charge and collect fees for training interpreters under Section 111.081(5) of this code. The commission shall set the fees in an amount reasonable to defray the costs of conducting the training sessions.

Sec. 111.083. INTERPRETERS IN AGENCY OR COURT PROCEEDINGS. (a) The commission shall compile a list of qualified interpreters who are available for assignment by a state agency, a court, or a political subdivision to interpret proceedings for deaf persons. The commission shall disseminate this list to the agencies, courts, political subdivisions, and the general public. The commission shall prescribe the qualifications for interpreters who are to appear on the list and in prescribing those qualifications shall consider interpreters who are certified by the Texas Society of Interpreters for the Deaf or the National Registry of Interpreters for the Deaf, or both.

(b) The commission by rule shall adopt a schedule of reasonable fees recommended for the payment of interpreters required by law to be provided in proceedings of state agencies, courts, and political subdivisions. In adopting the schedule, the commission shall consider the recommendations of the Texas Society of Interpreters for the Deaf and the National Registry of Interpreters for the Deaf.

Sec. 111.084. BOARD FOR EVALUATION OF INTERPRETERS. (a) The commission may establish a program in accordance with this section for the certification of interpreters who have reached varying levels of proficiency in the

manual communication skills necessary to communicate with deaf and hearing-impaired individuals.

(b) The commission shall appoint a board of five persons to administer the certification program.

(c) Subject to approval of the commission, the board shall prescribe qualifications for each of several levels of certification based on proficiency and shall evaluate and certify interpreters using these qualifications.

(d) The commission shall use the recommendations of the board in compiling a statewide registry of interpreters by skill level. The registry must, in addition to other pertinent information, include recommendations relating to the appropriate selection and utilization of sign language interpreters for the deaf. The registry must be made available to and recommended for adoption by state commissions, departments, and agencies.

(e) The commission may charge a reasonable fee for the administration of an examination or other requirements for certification of an applicant.

(f) Based on the board's recommendations, the commission may waive any certification requirement for an applicant with a valid certificate from another state having certification requirements substantially equivalent to those of this state.

(g) The commission may recognize, prepare, or administer continuing education programs for interpreters. Participation in the programs is voluntary.

(h) The commission by rule may adopt a system under which certificates expire on various dates during the year.

(i) The commission shall adopt rules specifying the grounds for denying, suspending, or revoking an interpreter's certificate.

Sec. 111.085. EXAMINATION RESULTS. (a) Not later than the 60th day after the day on which a certification examination is administered under this subchapter, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the day on which the commission receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify each examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails the certification examination administered under this subchapter, the board shall furnish the person with an analysis of the person's performance on the examination.

Sec. 111.086. REVOCATION OR SUSPENSION OF CERTIFICATE. (a) The commission shall revoke or suspend a certificate, place on probation a person whose certificate has been suspended, or reprimand an interpreter certified by the commission for a violation of a rule of the commission. If a certificate suspension is probated, the commission may require the practitioner:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to those areas prescribed by the commission; or

(3) to continue or renew professional education until a satisfactory degree of skill has been attained in those areas that are the basis of the probation.

(b) If the commission proposes to suspend or revoke a person's certificate, the person is entitled to a hearing before the commission or a hearings officer appointed by the commission. All final decisions to suspend or revoke shall be made by the commission.

Sec. 111.087. TELECOMMUNICATION DEVICES FOR THE DEAF IN STATE AGENCIES AND UNITS OF LOCAL GOVERNMENT. (a) The commission shall administer a program for the use of telecommunication devices for the deaf in selected state agencies and in emergency dispatch communication

centers in selected units of local government, including counties, municipalities, and other political subdivisions that administer emergency response systems. The program shall cover the use of telecommunication devices for the deaf placed in selected state agencies and units of local government under prior law, but may not authorize additional placements.

(b) The commission shall establish rules for the program, including rules requiring reports by state agencies and units of local government where a device has been placed.

(c) After placement, a purchased device remains the property of the commission. The commission is responsible for the repair, upkeep, and proper functioning of all devices included in the commission's property inventory lists.

(d) The commission shall administer training programs for personnel of state agencies and units of local government where a device has been placed to teach the use and general maintenance of the device.

(e) Each state agency or unit of local government in which a device is placed shall:

(1) take all necessary actions to help ensure continued use of a device; and

(2) file reports as required by the commission.

(f) The rehabilitation commission shall remove all telecommunication devices installed by the Texas Commission for the Deaf under this section, as originally enacted, that have not been used to communicate with a deaf or hearing-impaired person in any one-year period beginning on or after September 1, 1983. The commission may reassign such a device if it determines that the reassignment is necessary to maximize the use of the device.

Sec. 111.088. PROGRAMS FOR DEAF-BLIND MULTIHANDICAPPED INDIVIDUALS AND THEIR PARENTS. (a) The commission shall establish programs to serve deaf-blind multihandicapped individuals by helping them attain self-sufficiency and independent living.

(b) The commission shall establish a program of parental counseling for the parents of deaf-blind multihandicapped individuals. The counseling program may be provided on an individual or group basis and must include programs, activities, and services necessary to foster greater understanding and to improve relationships among professionals, parents, and deaf-blind multihandicapped individuals.

(c) The commission shall establish a summer outdoor training program for deaf-blind multihandicapped individuals. The outdoor training program must be designed to help meet the unique needs of deaf-blind multihandicapped individuals for the purpose of broadening their educational experiences and improving their ability to function more independently.

(d) The commission shall establish regulations for implementing and administering the programs.

(e) The commission may contract for services or goods with private or public entities for purposes of this section.

(f) From information collected from the programs, the commission shall determine the need for related future services and the most efficient and effective method of delivering the future services.

Sec. 111.089. PRIVATE OUTDOOR TRAINING PROGRAMS FOR DEAF STUDENTS. (a) The commission may contract with private entities to provide for the attendance of deaf students at outdoor recreational programs operated for the purpose of providing skill training and recreational experiences for deaf children or for deaf children and their parents.

(b) In selecting students to attend programs under this section, the commission shall select students from each regional day school program for the deaf, students from the Texas School for the Deaf, and other deaf children that the commission thinks will benefit from the program.

Sec. 111.090. CONTRACTS FOR SERVICES. (a) Before the commission contracts with or provides a grant to an agency, organization, or individual to provide direct services to the deaf, the commission shall make reasonable efforts to notify all potential service providers of the availability and purpose of the contract or grant.

(b) The notice shall include a request that all interested service providers submit within a specified period a contract or grant proposal for the commission's consideration. The notice must also clearly state the criteria that the commission will consider in determining which applicant will be awarded the contract or grant.

(c) The commission shall review all proposals submitted under this section and shall award the contract or grant to the applicant that the commission determines is best able to provide the needed services.

(d) To ensure an equitable distribution of contract or grant funds, the commission shall develop a formula to allocate those funds among the agencies, organizations, or individuals that are awarded the contracts or grants.

(e) The commission shall adopt rules to implement this section.

SECTION 13. Section 112.001(3), Human Resources Code, is amended to read as follows:

(3) "Developmental disability" means a severe, chronic disability as defined by applicable federal developmental disability laws [~~that:~~

[~~(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;~~

[~~(B) is manifested before the person attains age 22;~~

[~~(C) is likely to continue indefinitely;~~

[~~(D) results in substantial functional limitations in three or more of the following areas of major life activity:~~

[~~(i) self-care;~~

[~~(ii) receptive and expressive language;~~

[~~(iii) learning;~~

[~~(iv) mobility;~~

[~~(v) self-direction;~~

[~~(vi) capacity for independent living; or~~

[~~(vii) economic sufficiency; and~~

[~~(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration, and are individually planned and coordinated~~].

SECTION 14. Section 112.001, Human Resources Code, is amended by adding Subdivisions (4), (5), and (6) to read as follows:

(4) "Applicable federal developmental disability laws" refers to the various Acts of congress providing for assistance and services to the developmentally disabled and codified as 42 USCA, Chapter 75, Section 6000 et seq.

(5) "Facility for persons with developmental disabilities" means a facility, or a specified portion of a facility, that is designed primarily for the delivery of one or more services to persons with one or more developmental disabilities, as those terms are defined in the applicable federal developmental disabilities laws.

(6) "Protection and advocacy system" means the system established in this state under the applicable federal developmental disabilities laws for the purpose of advocating for and protecting the rights of persons with developmental disabilities.

SECTION 15. Section 112.002, Human Resources Code, is amended to read as follows:

Sec. 112.002. PURPOSE AND LEGISLATIVE FINDINGS. (a) The purpose of this chapter is to establish a developmental disabilities program that[:

[~~(1) promotes a system of effective and efficient services for persons with developmental disabilities that plans, coordinates, monitors, tests, and evaluates those services;~~

[~~(2) assists the state in assuring that persons with developmental disabilities receive the care, treatment, and services necessary to enable them to achieve their maximum potential; and~~

[~~(3)~~] assures compliance with applicable federal developmental disability laws [~~the Developmental Disabilities Services and Facilities Construction Act (Pub.L. No. 91-517), the Developmentally Disabled Assistance and Bill of Rights Act (Pub.L. No. 94-103), and the Developmental Disabilities Assistance and Bill of Rights Act (Pub.L. No. 97-35), and all amendments to those Acts, as long as those Acts are effective~~].

(b) The legislature finds that persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for their disabilities within the funds available for those purposes and that the treatment, services, and habilitation for a person with developmental disabilities must be designed to maximize the developmental potential of the person and must be provided in the setting that is least restrictive of the person's personal liberty.

SECTION 16. Section 112.012, Human Resources Code, is amended to read as follows:

Sec. 112.012. MEMBERS. The members of the council shall be appointed by the governor in accordance with applicable federal developmental disability laws.

[~~(a) The council is composed of 25 members, each of whom must be a Texas resident.~~

[~~(b) The commissioner or executive director of each of the following agencies serves as a voting ex officio member of the council, and from time to time may designate an employee from the commissioner's or executive director's agency to represent him on the council:~~

[~~(1) the Texas Department of Mental Health and Mental Retardation;~~

[~~(2) the Texas Department of Human Resources;~~

[~~(3) the Texas Department of Health;~~

[~~(4) the Central Education Agency;~~

[~~(5) the Texas Rehabilitation Commission;~~

[~~(6) the State Commission for the Blind; and~~

[~~(7) the Texas Commission for the Deaf.~~

[~~(c) The governor shall appoint the following members to serve on the council:~~

[~~(1) a representative from a higher education training facility;~~

[~~(2) a representative from an agency of local government;~~

[~~(3) a representative from a nongovernmental agency concerned with services to the handicapped; and~~

[~~(4) a representative from a citizen group concerned with services to the handicapped.~~

[~~(d) The governor shall appoint 14 consumer members to serve on the council. At least five of the consumer members must be persons with developmental disabilities, five must be parents or guardians of a person with a mentally impairing developmental disability, and one must be the parent or guardian of a person with developmental disabilities who is living in an institution. The remaining consumer members may be parents or guardians of persons with developmental disabilities, may be appointed from one of the above categories, or may be other interested persons.~~

[~~(e) A consumer member may not be:~~

[~~(1) an employee of a state agency that receives funds under the developmental disabilities program established by this chapter and federal law;~~

[~~(2) a managing employee of any other entity that receives funds under the developmental disabilities program; or~~

[~~(3) a person with an ownership or control interest in an entity that receives funds under the developmental disabilities program.~~]

SECTION 17. Section 112.016, Human Resources Code, is amended to read as follows:

Sec. 112.016. OFFICERS. (a) The governor shall designate a member of the council to be the presiding officer [~~At the regular meeting in March, members of the council shall elect a chair and a vice-chair to serve terms of one year beginning immediately on election~~].

(b) The presiding officer serves in that capacity at the will of the governor [~~A council member may not serve in any one office more than two consecutive terms~~].

(c) [~~A representative of a state agency may not serve as chair or vice-chair.~~

[~~(d)~~] The council shall meet quarterly in regular session and on call by the chair when necessary for the transaction of council business.

SECTION 18. Section 112.017, Human Resources Code, is amended to read as follows:

Sec. 112.017. BYLAWS. The council may adopt bylaws and [~~or~~] policies consistent with this chapter and applicable state or federal law. [~~The bylaws or policies may include duties of officers, process for nominations or vacancies for officers, duties of committees, quorum requirements for committees, provisions for special or ad hoc committees, and policies for council staff.~~]

SECTION 19. Section 112.018, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The administering agency may adopt rules necessary for the operation of this chapter and for compliance and implementation of applicable federal developmental disability laws.

SECTION 20. Section 112.019, Human Resources Code, is amended to read as follows:

Sec. 112.019. STATE PLAN FOR DEVELOPMENTAL DISABILITIES. [~~(a)~~] The council shall develop jointly with the administering agency the state plan for persons with developmental disabilities. The plan must conform to applicable federal developmental disability laws[~~:~~

[~~(1) specify programs, services, and resources available to assist developmentally disabled persons;~~

[~~(2) describe the allocation of funds available to assist developmentally disabled persons;~~

[~~(3) specify objectives relating to developmentally disabled persons to be attained under the state plan; and~~

[~~(4) include any other provision required by the council and applicable state or federal law.~~

[~~(b) At least annually, the council shall review and evaluate the implementation of the state plan and submit modifications to the state plan as necessary.~~

[~~(c) In reviewing and evaluating implementation of the state plan, the council shall:~~

[~~(1) analyze state services systems with respect to services for developmentally disabled persons and analyze public and private programs that are currently or potentially capable of providing services to developmentally disabled persons;~~

[~~(2) assess the needs and problems of developmentally disabled persons;~~

[~~(3) identify gaps and barriers within the service delivery system;~~

[~~(4) establish priorities, goals, and measurable objectives for formulating the state plan, for allocating developmental disabilities funds, and for operating the developmental disabilities program;~~

[~~(5) review and comment on all state plans in Texas that relate to programs affecting developmentally disabled persons; and~~

[~~(6) review and comment on laws, policies, procedures, and practices relating to the rights of and services to developmentally disabled persons~~].

SECTION 21. Section 112.020, Human Resources Code, is amended to read as follows:

Sec. 112.020. ADDITIONAL COUNCIL POWERS AND DUTIES. In addition to powers and duties derived by the council from applicable federal developmental disability laws, the council shall:

(1) [~~The council shall establish a developmental disabilities program. In administering that program, the council shall:~~

[~~(1) engage in and support activities that coordinate and strengthen services for developmentally disabled persons, and that safeguard the rights of persons who are faced with developmental disabilities;~~

[~~(2) foster cooperation and communication among state, county, municipal, voluntary, and private agencies providing services to developmentally disabled persons to assure that the services are delivered effectively, economically, and without duplication;~~

[~~(3) promote public awareness of the needs and problems of developmentally disabled persons;~~

[~~(4) cooperate with and support consumers and consumer organizations that advocate the rights of developmentally disabled persons and the delivery of effective services to developmentally disabled persons;~~

[~~(5) promote the establishment of community-based programs, especially model service delivery and service coordination programs, that hold promise of expanding or otherwise improving services to developmentally disabled persons;~~

[~~(6) encourage and support training programs to prepare professionals and paraprofessionals to work effectively with developmentally disabled persons;~~

[~~(7) encourage and support pertinent research efforts and preventive measures relating to developmentally disabled persons;~~

[~~(8) provide technical assistance where appropriate to achieve effective implementation of the state plan;~~

[~~(9) develop, with the administering agency, applications for special project grants and submit comments on the applications to the governor, the United States Secretary of Health and Human Services, and appropriate state agencies;~~

[~~(10) negotiate a management agreement with the administering agency to assure that the council is adequately staffed to perform its duties;~~

[~~(11)~~] undertake at the request of the governor and the legislature activities appropriate to the achievement of legislative and executive functions relating to persons with developmental disabilities or other handicapping conditions; and

(2) [~~(12)~~] submit to the governor, legislature, and other appropriate state and federal authorities periodic reports on the council's responsibilities and performance[~~; and~~

[~~(13) assure that the State of Texas is in compliance with the Developmental Disabilities Services and Facilities Construction Act (Pub.L. No. 91-517), the Developmentally Disabled Assistance and Bill of Rights Act (Pub.L. No. 94-103), and the Developmental Disabilities Assistance and Bill of Rights Act (Pub.L. No. 97-35), and all amendments to those Acts, as long as those Acts are effective~~].

SECTION 22. Chapter 112, Human Resources Code, is amended by adding Section 112.021 to read as follows:

Sec. 112.021. PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS. The protection and advocacy system shall have access to records as required by the provisions of the applicable federal disability laws.

SECTION 23. Subchapter C, Chapter 112, Human Resources Code, is repealed.

SECTION 24. Section 111.012, Human Resources Code, is amended to read as follows:

Sec. 111.012. APPLICATION OF SUNSET ACT. The Texas Rehabilitation Commission is subject to the Texas Sunset Act (Art. 5429k, Vernon's Texas Civil Statutes). Unless[~~, and unless~~] continued in existence as provided by that Act, the commission is abolished and this chapter expires [~~effective~~] September 1, 1997 [~~1985~~].

SECTION 25. Section 111.002(5), Human Resources Code, is amended to read as follows:

(5) "Rehabilitation services" means any equipment, supplies, goods, or services necessary to enable a handicapped individual to engage in a gainful occupation or to achieve maximum personal independence. To enable a handicapped individual to engage in a gainful occupation or achieve maximum personal independence the commission may engage in or contract for [~~the following~~] activities including, but not limited to:

(A) evaluation of rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for services and the nature and scope of services to be provided;

(B) counseling and guidance;

(C) physical and mental restoration services necessary to correct or substantially modify a physical or mental condition that is stable or slowly progressive;

(D) training;

(E) maintenance covering a handicapped individual's basic living expenses, including food, shelter, clothing, and other subsistence expenses necessary to support and derive the full benefit of the other rehabilitation services being provided;

(F) transportation;

(G) placement in a suitable employment;

(H) postemployment services necessary to maintain suitable employment;

(I) obtaining occupational licenses, including any license, permit, or other written authority required by a state, city, or other governmental unit to be obtained in order to enter an occupation or small business, and providing tools, equipment, initial stocks, goods, and supplies; and

(J) providing other equipment, supplies, services, or goods that can reasonably be expected to benefit a handicapped individual in terms of employment in a gainful occupation or achievement of maximum personal independence.

SECTION 26. Subsections (a) and (e), Section 132.002, Human Resources Code, are amended to read as follows:

(a) The council on disabilities is established and is composed of 22 [~~21~~] members.

(e) The governing board of each of the following agencies shall appoint one person to represent that agency on the council:

(1) the Texas Department of Human Resources;

(2) the Texas Department of Mental Health and Mental Retardation;

(3) the Texas Department of Health;
(4) the Central Education Agency;
(5) the Texas Rehabilitation Commission;
(6) the Texas Employment Commission [~~for the Deaf~~];
(7) the State Commission for the Blind;
(8) the Texas Department on Aging; [~~and~~]
(9) the Texas Commission on Alcoholism; and
(10) the Texas School for the Deaf.

SECTION 27. Sections 1, 2, 12, 17, and 21, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Physical therapy" means the examination, treatment, or instruction of human beings to detect, assess, prevent, correct, and alleviate physical disability and pain from injury, disease, disorders, or physical deformities and includes the administration and evaluation of tests and measurements of bodily functions and structures in aid of diagnosis or treatment; the planning, administration, evaluation, and modification of treatment and instruction, including the use of physical measures, activities, and devices for preventive and therapeutic purposes on the basis of approved test findings and the provision of consultative, educational, and advisory services for the purpose of reducing the incidence and severity of physical disability and pain. The term includes [~~Physical therapy shall also include~~] the delegation of selective forms of treatment to supportive personnel with assumption of the responsibilities for the care of the patient and continuing direction and supervision of the supportive personnel. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used herein, and a license issued hereunder shall not authorize the diagnosis of diseases or the practice of medicine as defined by law.

(2) "Physical therapist" or "physiotherapist" means a person who practices physical therapy. "Hydrotherapist," "massage therapist," "mechano-therapist," "functional therapist," "physical therapy practitioner," "physical therapy, specialist," "physiotherapy practitioner," "physical therapy technician," and "myofunctional therapist" are equivalent terms; any derivation of the above terms or any reference to any one of them in this Act includes the others.

(3) "Physical therapist assistant" means a person who works under the supervision of a licensed physical therapist and assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy but do not require a professional education equivalent for licensing as a physical therapist.

(4) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and on-site supervision by the physical therapist or a physical therapist assistant.

(5) "Board" means the Texas Advisory Board of Physical Therapy Examiners.

(6) "Discipline" means the revocation or suspension of a license, the placing on probation of a licensee whose license has been suspended, or the reprimand of a licensee in accordance with this Act and rules adopted by the board.

(7) "Commission" means the Texas Rehabilitation Commission.

(8) "Commissioner" means the commissioner of the Texas Rehabilitation Commission.

Sec. 2. CREATION OF ADVISORY BOARD. (a) There is created a Texas Advisory Board of Physical Therapy Examiners. The board shall consist of nine members appointed by the governor with the advice and consent of the senate for

staggered terms of six years, with three members' terms expiring on January 31 of each odd-numbered year. Six members must be licensed physical therapists and three members must be members of the general public. The board is an advisory board to the Texas Rehabilitation Commission and shall perform its duties as a part of the commission.

(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, any interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(c) [~~(b)~~] A vacancy on the board shall be filled by appointment by the governor with the advice and consent of the senate for the remainder of the term.

(d) [~~(c)~~] Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(e) [~~(d)~~] The director of licensure appointed by the commission shall administer the licensing programs created under this Act [~~board may appoint an executive director at an annual salary as determined by legislative appropriation~~].

(f) [~~(e)~~] The [~~executive~~] director of licensure shall hire [~~administer this Act and carry out the instructions of the board, including the employment of investigators and other~~] staff as required to implement the purpose of this Act. The [~~executive~~] director of licensure or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions concurrently with [~~for at least 10 days before~~] any public posting. The [~~executive~~] director of licensure or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the [~~executive~~] director of licensure must be based on the system established under this subsection.

(g) [~~(f)~~] A member of the board is not liable to civil action for any act performed in good faith in the execution of his duties in this capacity.

(h) [~~(g)~~] The board is subject to the Texas Sunset Act[~~, as amended~~] (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished [~~effective~~] September 1, 1997 [~~1993~~].

(i) [~~(h)~~] A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the health-care industry. A member or employee of the board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973[~~; as amended~~] (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

(j) [~~(i)~~] It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by this section for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by this section for appointment to the board;

(3) violates a prohibition prescribed by Subsection (i) [~~(h)~~] of this section; or

(4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.

(k) [~~(j)~~] The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

Sec. 12. TITLE. (a) A licensed physical therapist may use the title "Physical Therapist." No other person may be so designated or permitted to use the term "Physical Therapist." [~~The license as a physical therapist does not authorize the use of the prefix "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the licensed person is a physician.~~]

(b) A licensed physical therapist assistant may use the title "Physical Therapist Assistant." No other person may be so designated or permitted to use the term "Physical Therapist Assistant." [~~The license as physical therapist assistant does not authorize the use of the prefix "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the licensed person is a physician.~~]

Sec. 17. FEES. [~~(a)~~] With the approval of the commission, the [~~The~~] board shall establish [~~reasonable the necessary~~] fees for licenses, license renewals, examinations, and other administrative expenses. The board shall set the fees in amounts that are reasonable and necessary to cover all the costs of administering [~~the administration of~~] this Act. [~~in amounts not to exceed:~~

[~~Examination~~
[~~1. Physical Therapist~~ ~~$75~~
[~~2. Physical Therapist Assistant~~ ~~70~~
[~~Application~~
[~~1. Physical Therapist~~ ~~40~~
[~~2. Physical Therapist Assistant~~ ~~40~~
[~~License Fee~~
[~~Endorsement~~
[~~1. Physical Therapist~~ ~~75~~
[~~2. Physical Therapist Assistant~~ ~~70~~
[~~Temporary License~~
[~~1. Physical Therapist~~ ~~30~~
[~~2. Physical Therapist Assistant~~ ~~20~~
[~~Renewal~~
[~~1. Physical Therapist~~ ~~55~~
[~~2. Physical Therapist Assistant~~ ~~45~~
[~~Issuance Fee~~
[~~1. Physical Therapist~~ ~~45~~
[~~2. Physical Therapist Assistant~~ ~~45~~
[~~Duplicate License~~
[~~1. Physical Therapist~~ ~~25~~
[~~2. Physical Therapist Assistant~~ ~~25~~
[~~Transfer Fee~~
[~~1. Physical Therapist~~ ~~25~~
[~~2. Physical Therapist Assistant~~ ~~25~~

[~~(b) The board may not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.~~]

Sec. 21. DISPOSITION OF FUNDS. (a) Fees received [~~by the board~~] under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(b) The state auditor shall audit the financial transactions of the board as part of its audit of the commission during each fiscal biennium.

(c) On or before January 1 of each year, the commission [~~board~~] shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the commission under this Act [~~board~~] during the preceding year.

SECTION 28. Section 3(e), Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The board may adopt rules consistent with this Act to carry out its duties in administering this Act. In adopting rules under this section, the board shall consider any applicable commission policies or procedures.

SECTION 29. Section 4(b), Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The director of licensure or the secretary shall keep a record of each meeting of the board and maintain a register containing the names of all physical therapists licensed under this Act, which shall be at all times open to public inspection. On March 1 of each year, the [~~executive~~] director of licensure shall transmit an official copy of the list of the licensees to the secretary of state for permanent record, a certified copy of which shall be admissible as evidence in any court of this state.

SECTION 30. Section 5(b), Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The [~~executive~~] director of licensure [~~the board~~] shall execute a bond in the amount of $10,000 for board and staff members payable to the board, conditioned on the faithful performance of the duties of the board members and office staff and an accounting of funds received in the board office. The bond shall be signed by two or more good and sufficient sureties or by a surety company authorized to do business in this state and shall be approved by the chairman of the board.

SECTION 31. Section 8(a), Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An applicant for a license as a physical therapist must file a written application, on a form provided by the board, accompanied by an examination fee prescribed by the board, which is refundable if the applicant does not take the examination, and an application fee prescribed by the board, which is not refundable. The applicant must present evidence satisfactory to the board that he has completed an accredited curriculum in physical therapy, medicine, osteopathy, or chiropractic [~~education~~] that has provided adequate instruction in the basic sciences, clinical sciences, and physical therapy theory and procedures as determined by the board and has completed a minimum of 60 academic semester credits or the equivalent from a recognized college in which semester hour credits are acceptable for transfer to The University of Texas, including courses in biological, social, and physical science.

SECTION 32. Section 9(a), Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An applicant for a physical therapist assistant license must file a written application with the board, on a form provided by the board, accompanied by an examination fee prescribed by the board, which is refundable if the applicant does not take the examination, and an application fee prescribed by the board, which is not refundable. The applicant must present evidence satisfactory to the board that he has completed an accredited program of the type required for licensure as a physical therapist, or a physical therapist assistant program including courses in the anatomical, biological, and physical sciences, and clinical procedures as prescribed and approved by the board.

SECTION 33. Subsections (a) and (b), Section 13, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) An applicant who fails to pass a one-part examination or any part or parts of a divided examination given by the board may take another one-part

examination or the part or parts of the divided examination that he failed on payment of an additional examination fee. The applicant must be reexamined not [~~less than six months nor~~] more than 12 months after the unsuccessful examination.

(b) On the failure of an applicant to pass a second or subsequent examination, the board may [~~shall~~] require him to complete additional courses of study designated by the board, in which case the applicant shall be required to present to the board satisfactory evidence of having completed the required additional courses before taking subsequent examinations and shall pay additional fees equal to the fee required for filing the original application.

SECTION 34. Section 3(g), Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) The board is subject to the Texas Sunset Act[~~, as amended~~] (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished, and this Act expires [~~effective~~] September 1, 1997 [~~1985~~].

SECTION 35. Section 5, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (d), (e), (f), (g), (h), and (l) and adding Subsection (m) to read as follows:

(b) The board shall collect fees for licenses, license renewals, examinations, and all other administrative expenses. The board, with the approval of the commission, shall set the fees in amounts that are reasonable and necessary to cover all the costs of administering this Act [~~shall prescribe and publish fees for the following:~~

[~~(1) application for licensure fee (nonrefundable);~~

[~~(2) initial license fee;~~

[~~(3) renewal of license fee;~~

[~~(4) late renewal fee;~~

[~~(5) endorsement license fee; and~~

[~~(6) temporary license fee.~~

[~~These fees shall be determined by and limited to the board's operational costs in implementing the provisions of this Act~~].

(d) The board may investigate complaints; issue, suspend, deny, and revoke licenses; reprimand licensees and place them on probation; issue subpoenas; and hold hearings. The board shall keep an information file about each complaint that is filed with the board relating to a licensee or an entity regulated by the board. If a written complaint is filed with the board relating to a licensee or entity regulated by the board, the board shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. The board shall notify the parties to the complaint at least as frequently as quarterly until the final disposition of the complaint.

(e) The board shall propose rules consistent with this Act to carry out its duties in administering this Act, shall submit said rules to the office of the Attorney General of Texas for review, and shall then adopt rules consistent with the advice of the attorney general. In adopting its rules, the board shall consider any applicable policies and procedures of the commission.

(f) The [~~commissioner with the advice of the board shall appoint an executive~~] director of licensure appointed by the commission shall administer the licensing programs under [~~to implement the purposes of~~] this Act [~~at a salary as determined by legislative appropriation~~]. The director of licensure may hire staff as necessary.

(g) The [~~executive~~] director of licensure [~~the board~~] or her/his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions concurrently with [~~for at least 10 days before~~] any public posting.

(h) The [~~executive~~] director of licensure [~~the board~~] or her/his designee shall develop a system of annual performance evaluation based on measurable job tasks. All merit pay for board employees must be based on the system established under this section.

(l) The board shall prepare or approve continuing education programs for licensees and shall require each licensee to participate in an approved continuing education program in order to renew a license issued under this Act [~~may recognize, prepare, implement, and require continuing education programs for persons it licenses~~].

(m) The board shall develop and implement policies that clearly define the respective responsibilities of the governing body of the board and the staff of the board.

SECTION 36. Section 7(b), Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The secretary or the [~~executive~~] director of licensure shall keep a record of each meeting of the board and maintain a register containing the names of all occupational therapists licensed under this Act, which shall be at all times open to public inspection. On March 1 of each year, the [~~executive~~] director of licensure shall transmit an official copy of the list of the licensees to the secretary of state for permanent record, a certified copy of which shall be admissible as evidence in any court of this state.

SECTION 37. Section 11, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. OPEN MEETINGS. (a) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967[~~, as amended~~] (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act[~~, as amended~~] (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on issues that are under the jurisdiction of the board.

SECTION 38. Section 14, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. APPROPRIATIONS TO TEXAS REHABILITATION COMMISSION. The commission shall deposit all [~~receive an account for~~] funds collected [~~derived~~] under this Act[~~. The funds shall be deposited~~] in the State Treasury to the credit of the General Revenue Fund [~~a special fund known as the Occupational Therapy Licensing Fund and may be used only for the administration of this Act and are hereby appropriated for this purpose~~].

SECTION 39. Section 16, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. REQUIREMENTS FOR LICENSURE. An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application on a form provided by the board, showing to the satisfaction of the board that the applicant [~~he or she~~] meets the following requirements:

[~~(a) Residence: Applicant need not be a resident of this state.~~

[~~(b) Character: Applicant shall be of good moral character.~~]

(1) [~~(c)~~] Education: Applicant shall present evidence satisfactory to the board of having successfully completed the academic requirements of an educational program in occupational therapy recognized by the board. The

[~~(1) Such~~] evidence for a license as an occupational therapist shall be [~~one of the following:~~

[~~(A)~~] a baccalaureate degree in occupational therapy,[;

[~~(B)~~] a certificate evidencing successful completion of required undergraduate occupational therapy course work awarded to persons with a baccalaureate degree which is not in occupational therapy,[;] or

[~~(C)~~] a postgraduate degree in occupational therapy. The

[~~(2) Such~~] evidence for a license as an occupational therapy assistant shall be either [~~one of the following:~~

[~~(A)~~] an associate degree in occupational therapy, or[;

[~~(B)~~] an occupational therapy assistant certificate.

(2) [~~(d)~~] Experience: Applicant shall submit to the board evidence of having successfully completed a period of supervised field work experience arranged by the recognized educational institution where the applicant [~~he or she~~] met the academic requirements.

[~~(1)~~] For an occupational therapist, a minimum of six months of supervised field work experience is required.

[~~(2)~~] For an occupational therapy assistant, a minimum of two months of supervised field work experience is required.

(3) [~~(e)~~] Examination: An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination as provided for in Section 17 of this Act.

SECTION 40. Section 18, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. LICENSE BY ENDORSEMENT. (a) A person who is licensed or otherwise registered as an occupational therapist or as an occupational therapy assistant by another state, the District of Columbia, or a commonwealth or territory of the United States whose requirements for licensing or registration were at the date of licensing or registration substantially equal to the requirements prescribed by this Act may receive an occupational therapist license without examination, on submission of an application on a form prescribed by the board and payment of an endorsement license fee prescribed by the board.

(b) The board may also waive examination requirements for a person who is certified by a national association approved by the board and who is currently practicing in a state that does not require a license or other form of registration.

SECTION 41. Section 22(a), Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The board may [~~shall~~] issue a temporary license without examination to a person who is a recent graduate of an institution of higher education in the United States if the person has applied for a license, has applied to take the licensing examination, and meets the requirements for license under Section 16 of this Act. A person who holds a temporary license may practice only under the supervision of a person who holds a regular license. A temporary license expires on notification of the results of the licensing examination. [~~has applied for a license and meets the qualifications prescribed by Section 16, except Subsection (e) of Section 16, of this Act. This license expires on completion of scoring of the next administered examination whether the applicant passes the examination or not.~~] Issuance of a temporary license following failure of part or all the examination shall be according to rules adopted by the board.

SECTION 42. Section 25, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. RENEWAL OF EXPIRED LICENSE. (a) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee plus a late fee in an amount that is one-half of the license fee.

(b) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a late fee that is equal to the license fee.

(c) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by applying for a license, submitting to reexamination, and complying with the requirements and procedures for obtaining an original license. However, the board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and has been legally practicing in the other state for the two years preceding the application for renewal. The person shall pay to the board a renewal fee that is equal to the license fee.

(d) Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address. [~~A license that has expired for less than three years from the date of the application for renewal may be renewed by submission of an application on a form prescribed by the board and payment of a renewal fee established by the board.~~

[~~(b) A license that has expired for more than three consecutive years may be reinstated only by complying with the requirements for issuing an original license.~~]

SECTION 43. The Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes) is amended by adding Section 25A to read as follows:

Sec. 25A. INACTIVE STATUS LIST. (a) A person who holds a license under this Act and who is not actively engaged in the practice of occupational therapy may apply to the board in writing to be placed on an inactive status list maintained by the board. The person must apply for inactive status before the expiration of the person's license. A person on inactive status is not required to pay the annual renewal fee.

(b) A person on inactive status may not perform any activities regulated under this Act.

(c) If a person on inactive status desires to reenter active practice, the person shall notify the board in writing. The board shall remove the person from the inactive status list on payment of an administrative fee and on compliance with educational or other requirements set by the board by rule.

SECTION 44. Section 30, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 30. [~~GROUNDS FOR~~] DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE; [~~OR~~] DISCIPLINE OF A LICENSEE. (a) If the board proposes to deny a license, or to suspend or revoke a license, the applicant or licensee is entitled to a hearing before the board or before a hearing officer appointed by the board. All final decisions shall be made by the board.

(b) After hearing, a license may be denied, suspended, or revoked or a licensee otherwise disciplined if the applicant or licensee has:

(1) used drugs or intoxicating liquors to an extent that affects his or her professional competence;

(2) been convicted of a crime, other than minor offenses defined as "minor misdemeanors," "violations," or "offenses," in any court if the acts for which he or she was convicted are found by the board to have a direct bearing on whether he or she should be entrusted to service the public in the capacity of an occupational therapist or occupational therapy assistant;

(3) obtained or attempted to obtain a license by fraud or deception;

(4) been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant;

(5) been adjudicated mentally incompetent by a court of competent jurisdiction;

(6) practiced occupational therapy in a manner detrimental to the public health and welfare;

(7) advertised in a manner that in any way tends to deceive or defraud the public; or

(8) had his or her license to practice occupational therapy revoked or suspended or had other disciplinary action taken against him or her or had his or her application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation.

SECTION 45. (a) All fund balances accrued to the credit of the Occupational Therapy Licensing Fund on the effective date of this Act are transferred to the general revenue fund on the effective date of this Act.

(b) Each member of the Texas Board of Physical Therapy Examiners who is serving on the effective date of this Act shall continue to serve for the remainder of that member's term of office unless the member is otherwise removed.

(c) A person who holds a temporary license on the effective date of this Act as a physical therapist or as an occupational therapist may practice under the terms of that license until the expiration date of the license.

(d) Promptly after this Act takes effect, the governor shall appoint three additional members, who meet the qualifications of Section 111.013, Human Resources Code, to the Texas Rehabilitation Commission. In appointing those members, the governor shall appoint one person to a term expiring February 1, 1987; one to a term expiring February 1, 1989; and one to a term expiring February 1, 1991.

SECTION 46. (a) Section 11, Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), is repealed.

(b) Chapter 81, Human Resources Code, is repealed.

(c) The Texas Commission for the Deaf is abolished. The powers and duties of that commission are transferred to the Texas Rehabilitation Commission. A reference in the laws of this state to the Texas Commission for the Deaf shall be interpreted as a reference to the Texas Rehabilitation Commission.

(d) The abolition of the Texas Commission for the Deaf and the repeal of Chapter 81, Human Resources Code, occur as if that commission was abolished and that law had expired under the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes) on September 1, 1985.

SECTION 47. This Act takes effect September 1, 1985.

SECTION 48. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - C. Harris

Amend **C.S.S.B. 118** as follows:

(1) On page 1 at line 12 through page 2 at line 15, by modifying bill Section 111.013(a) and (b) to read as follows:

"Sec. 111.013. COMPOSITION OF BOARD; APPOINTMENT; QUALIFICATIONS; TERMS. (a) The board of the Texas Rehabilitation Commission is composed of six members appointed by the governor with the advice and consent of the senate. Members serve for staggered terms of six years with the terms of two members expiring every two years.

(b) Appointees must be outstanding citizens of the state who are members of the general public and have demonstrated a constructive interest in rehabilitation services. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees. A person is not eligible for appointment as a board member if the person or the person's spouse: [~~No paid employee of an agency carrying on work for the commission is eligible for appointment, nor is a person who owns or is employed by an organization providing rehabilitation services or related services through the commission~~]

(1) is employed by or participates in the management of a business entity or other organization regulated by the agency or receiving funds from the commission;

(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the agency or receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission."

(2) On page 9 at line 24 through page 10 at line 3, by striking bill SECTION 10 in its entirety, renumbering the remaining bill SECTIONS as necessary.

(3) Beginning on page 11 at line 2 through page 18 at line 26, strike bill SECTION 12 in its entirety, renumbering the remaining bill SECTIONS as necessary.

(4) On page 23 at line 16 through line 20, by modifying Section 112.016 to read as follows:

"(c) A representative of a state agency may not serve as chair or vice chair.

(d) The council shall meet quarterly in regular session and on call by the chair when necessary for the transaction of council business."

(5) Beginning on page 29 at line 22 through page 30 at line 11, by modifying bill SECTION 26, Subsections (a) and (e) to read as follows:

"(a) The council on disabilities is established and is composed of 23 [~~21~~] members.

(e) The governing board of each of the following agencies shall appoint one person to represent that agency on the council:

(1) the Texas Department of Human Resources;

(2) the Texas Department of Mental Health and Mental Retardation;

(3) the Texas Department of Health;

(4) the Central Education Agency;

(5) the Texas Rehabilitation Commission;

(6) the Texas Commission for the Deaf;

(7) the State Commission for the Blind;

(8) the Texas Department on Aging; ~~and~~

(9) the Texas Commission on Alcoholism;~~and~~

(10) the Texas School for the Deaf; and

(11) the Texas Employment Commission."

(6) Beginning on page 30 at line 12 through page 40 at line 7, strike bill SECTIONS 27 through 33 in their entirety, renumbering the remaining bill SECTIONS as necessary;

(7) Beginning on page 40 at line 8 through page 51 at line 5, strike bill SECTIONS 34 through 46 in their entirety, renumbering the remaining SECTIONS as necessary.

The amendments were read.

Senator Edwards moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 601 WITH HOUSE AMENDMENTS

Senator Sarpalius called **S.B. 601** 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 - Gibson

Substitute the following for **S.B. 601**:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation, operations, powers, duties, name, and composition of the Texas Commission on Alcoholism and the transferal to the commission of the drug abuse programs of the Texas Department of Community Affairs; providing penalties.

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

SECTION 1. The Texas Alcohol and Drug Abuse Services Act is enacted to read as follows:

TITLE 1. GENERAL PROVISIONS

Sec. 1.01. PURPOSE. The purpose of this Act is to prevent broken homes and the loss of lives by creating the Texas Commission on Alcohol and Drug Abuse. The commission shall cooperate with all interested and affected federal, state, and local agencies and develop and coordinate prevention, intervention, treatment, and rehabilitation programs. Alcohol and drug abuse are recognized as preventable and treatable illnesses and public health problems affecting the general welfare and the economy of the state. The need for proper and sufficient facilities, programs, and procedures for prevention, intervention, treatment, and rehabilitation is recognized. It is the policy of this state that an alcohol or drug abuser shall be offered a continuum of services that will enable the person to lead a normal life as a productive member of society.

Sec. 1.02. SHORT TITLE. This Act may be cited as the Texas Alcohol and Drug Abuse Services Act.

Sec. 1.03. DEFINITIONS. In this Act:

(1) "Alcohol abuse" means the excessive use of alcohol in a manner that interferes with one or more of the following to a less than chronic extent: physical or psychological functioning, social adaptation, educational performance, or occupational functioning.

(2) "Alcoholism" means the loss of self control with respect to the use of alcohol, or the pathological use of alcohol that chronically impairs social or occupational functioning, or physiological dependence on alcohol as evidenced by tolerance or withdrawal symptoms.

(3) "Alcoholic" means the individual suffering from alcoholism.

(4) "Approved treatment program" means a substance abuse treatment facility approved by the commission to carry out a specific provision of this Act.

(5) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(6) "Drug abuse" means misuse or abuse of any controlled substance for other than appropriate and duly prescribed medicinal purposes.

(7) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence or both arising from administration of a controlled substance. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychic effects or to avoid the discomfort of its absence.

(8) "Prevention" means constructive methods or programs designed to reduce an individual's risk of abusing or becoming addicted to alcohol or drugs.

(9) "Intervention" means constructive methods or programs designed to interrupt the onset or progression of substance abuse or dependence in the early stages.

(10) "Rehabilitation" means a planned and organized program designed to reestablish the social and vocational life of a substance-free person.

(11) "Treatment" means a planned and organized program designed to initiate and maintain a person's substance-free status.

Sec. 1.04. COMPOSITION OF COMMISSION. (a) The Texas Commission on Alcohol and Drug Abuse is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) A person is not eligible for appointment as a member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of alcoholism or drug abuse;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

(c) Appointments to the commission shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointees.

(d) Members serve for staggered terms of six years, with the terms of three members expiring every other year.

(e) 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.

Sec. 1.05. APPLICATION OF SUNSET ACT. The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the commission is abolished and this Act expires effective September 1, 1997.

Sec. 1.06. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Section 1.04 of this Act for appointment to the commission;

(2) does not maintain during the service on the commission the qualifications required by Section 1.04 of this Act for appointment to the commission;

(3) violates a prohibition established by Section 1.08 of this Act;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled commission meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a member of the commission existed.

(c) If the executive director has knowledge that a potential ground for removal exists, he shall notify the chair of the commission of the ground. The chair of the commission shall then notify the governor that a potential ground for removal exists.

Sec. 1.07. OFFICERS. (a) The governor will annually appoint one commission member as chair.

(b) The members of the commission shall annually elect one member as vice-chair. The members may either elect one member as secretary or designate as secretary the executive director employed under Section 1.10 of this Act.

Sec. 1.08. RESTRICTIONS ON COMMISSION MEMBERSHIP AND EMPLOYMENT. (a) An officer, employee, or paid consultant of an association that

has as its primary interest the provision of services or other matters relating to alcohol or drug abuse may not be a member or employee of the commission, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of such an association be a member of the commission or an employee of the commission grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(b) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a provider of alcohol or drug abuse services, may not serve as a member of the commission or act as the general counsel to the commission.

Sec. 1.09. MEETINGS, TRAVEL, AND COMPENSATION. (a) The commission shall meet at least quarterly at the call of the chairperson or at the request of five members. The commission may not meet for more than 24 days in a fiscal year.

(b) The commission may authorize its members to travel within this state and in other states to perform its duties under this Act.

(c) Commission members are entitled to receive the compensatory per diem authorized by the General Appropriations Act for each day spent engaged in the performance of their official duties. Commission members are also entitled to reimbursement for travel expenses and other necessary expenses incurred in performing official duties.

Sec. 1.10. EXECUTIVE DIRECTOR AND PERSONNEL MATTERS. (a) The commission shall employ an executive director who shall hire other necessary employees.

(b) The executive director or the executive director's designee shall develop an intra-agency career ladder program, one part of which shall require the intra-agency posting of all nonentry level positions concurrently with any public posting.

(c) The executive director or the executive director's 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.

(d) The commission shall provide to its members and employees as often as is necessary information regarding their qualifications under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement shall include:

(1) personnel policies including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address areas of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance.

(f) The policy statements shall be filed with the governor's office, 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.

(g) The commission shall develop and implement policies that clearly separate the respective responsibilities of the governing body of the commission and the staff of the commission.

Sec. 1.11. FINANCES. (a) The commission may accept gifts and grants.

(b) All sums of money paid to the commission under this Act shall be deposited in the state treasury and may be used only for the administration of this Act.

(c) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

(d) The state auditor shall audit the financial transactions of the commission at least once during each biennium.

(e) The commission is designated as the state agency to receive and administer federal funds for alcohol and drug abuse and to promulgate all necessary policies relating to alcohol and drug abuse.

(f) An organization or other entity is not eligible for a grant of state funds from the commission unless the organization or other entity provides a minimum match that is equal to at least five percent of the total grant of state funds from the commission. If the commission determines that this requirement may jeopardize the provision of needed services, the commission may waive the requirement.

Sec. 1.12. RULES. The commission shall adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in the administration of any commission programs.

Sec. 1.13. PUBLIC INTEREST INFORMATION: 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 commission shall adopt rules establishing methods by which consumers and service recipients can be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for such notification through inclusion of the information:

(1) on each registration form, application, or written contract for services of a person or entity regulated or authorized by this Act;

(2) on a sign that is prominently displayed in the place of business of each person or entity regulated or authorized by this Act; or

(3) in a bill for service provided by a person or entity regulated or authorized by this Act.

(c) If a written complaint is filed with the commission relating to a licensee or entity regulated by the commission, the commission, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(d) The commission shall keep an information file about each complaint filed with the commission relating to a licensee or entity funded by or regulated by the commission.

Sec. 1.14. POWERS AND DUTIES. (a) The commission shall:

(1) provide for research and study of the problems of substance abuse in this state and seek to focus public attention on these problems through public information and education programs;

(2) plan, develop, coordinate, evaluate, and implement programs for the prevention, intervention, treatment, and rehabilitation of substance abuse and alcoholism and drug dependence in cooperation with federal and state agencies, local governments, organizations, and individuals and provide technical assistance, funds, and consultation services for statewide and community-based services;

(3) establish cooperative relationships with and enlist the assistance of other state, federal, and local agencies, hospitals, clinics, public health, welfare, and criminal justice system authorities, and educational and medical agencies and organizations, and other related public and private groups and individuals;

(4) sponsor, promote, and conduct educational programs on the prevention and treatment of substance abuse, alcoholism, and drug dependence and maintain a public information clearinghouse to purchase and provide books, literature, audiovisual, and other educational material for the programs;

(5) sponsor, promote, and conduct training programs for persons delivering prevention, intervention, treatment, and rehabilitation services and for persons in the criminal justice system or otherwise in a position to identify substance abusers, alcoholics, drug dependent persons, and their families in need of services;

(6) require programs rendering services to substance abusers and alcoholics and drug dependent persons to safeguard their legal rights of citizenship and maintain the confidentiality of client records as required by state and federal law;

(7) maximize the use of available funds for direct services rather than administrative services;

(8) consistently monitor the expenditure of funds and the provision of services of all grant and contract recipients to assure that the services are effective and properly staffed and meet the standards adopted under this Act, and shall make the monitoring reports a matter of public record;

(9) license facilities that treat alcohol or alcohol and drug dependent persons;

(10) use funds appropriated to the commission to carry out the mandate of this Act, and maximize the overall state allotment of federal funds; and

(11) establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals.

(b) The commission may appoint regional alcohol advisory committees consistent with the 24 state planning regions.

(c) The commission may appoint advisory committees to assist the commission in performing its duties. State advisory committee members are entitled to receive the per diem and travel expense allowance authorized by the General Appropriations Act for state employees.

Sec. 1.15. COOPERATION BY OTHER DEPARTMENTS. (a) Each department, agency, officer, and employee of the state, when requested by the commission, shall cooperate with the commission in appropriate activities to implement this Act.

(b) This section does not give the commission control over existing facilities, institutions, or agencies or require the facilities, institutions, or agencies to serve the commission inconsistently with their functions, the authority of their offices, or the laws and rules governing their activities.

(c) This section does not give the commission power to make use of a private institution or agency without its consent or to pay a private institution or agency for services that a public institution or agency is willing and able to perform.

TITLE 2. INVOLUNTARY TREATMENT OF ALCOHOLICS

SUBTITLE A. EMERGENCY DETENTION

Sec. 2.01. MAGISTRATE ORDER FOR EMERGENCY APPREHENSION AND DETENTION. (a) Any adult person may execute an

application for emergency detention for another. The application shall be in writing and shall state:

(1) that the applicant has reason to believe and does believe that the person suffers from alcoholism;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

(3) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(4) that the applicant's beliefs are based on specific recent behavior, overt acts, attempts, or threats, which shall be described in specific detail; and

(5) the relationship, if any, of the applicant to the person sought to be detained.

(b) The application may be accompanied by any relevant information.

(c) The application shall be presented personally to any magistrate who shall examine it and may interview the applicant.

(d) The magistrate shall deny the application unless he or she finds there is reasonable cause to believe that:

(1) the person suffers from alcoholism;

(2) the person evidences a substantial risk of serious harm to himself or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) necessary restraint cannot be accomplished without emergency detention.

(e) If the magistrate finds that the person meets all four criteria for emergency detention specified in Subsection (d) of this section, he shall issue a warrant for the immediate apprehension and transportation of the person to an approved treatment program, if one is readily available, or to another appropriate facility for a preliminary examination by a physician. The preliminary examination shall be conducted as soon as possible within 24 hours of the time of apprehension. Copies of the application for warrant and the warrant itself shall be immediately transmitted to the program.

(f) On completion of the preliminary examination, the person shall be released unless the examining physician or the physician's designee provides a written opinion that the person meets the criteria stated in Subsection (d) of this section. A person not admitted following the preliminary examination shall be entitled to reasonably prompt return to the location of his apprehension or other suitable place, unless the person is arrested or objects to the return.

(g) The person so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention is obtained. However, if the 24-hour period ends on a Saturday or Sunday, or a legal holiday, the period of detention shall end at 12 noon on the first succeeding business day.

Sec. 2.02. RELEASE FROM EMERGENCY DETENTION. If during the emergency detention period, it is determined by the administrator of the program or the administrator's designee that the criteria set out in Section 2.01(d) of this Act no longer apply, the person shall be released. Arrangements shall be made for the person's return to the location of apprehension or other suitable place, unless the person is arrested or objects to the return.

Sec. 2.03. RIGHTS OF PERSONS APPREHENDED FOR EMERGENCY DETENTION. (a) Each person apprehended or detained under this subtitle has the following rights:

(1) the right to be advised of the location of detention, the reasons for detention, and the fact that detention could result in a longer period of involuntary commitment;

(2) the right to contact an attorney of his or her own choosing with a reasonable opportunity to contact that attorney;

(3) the right to be transported back to the location of apprehension, or other suitable place, if not admitted for emergency detention, unless he is arrested or objects to the return;

(4) the right to be released if the administrator of the program determines that any of the four criteria for emergency detention set out in Section 2.01(d) of this Act no longer apply; and

(5) the right to be advised that communications to an alcoholism treatment professional may be used in proceedings for further detention.

(b) Each person apprehended or detained under this title shall be advised within 24 hours of admission, orally and in writing, in simple, nontechnical terms, of the rights of patients provided by this section.

SUBTITLE B. COURT-ORDERED TREATMENT

Sec. 3.01. COURT IN WHICH PROCEEDINGS TO BE HELD. A proceeding pursuant to this title shall be held in the statutory or constitutional court of the county exercising the jurisdiction of a probate court in alcoholism matters.

Sec. 3.02. APPLICATION FOR COURT-ORDERED TREATMENT. (a) A sworn application for court-ordered treatment may be filed by any adult person, or by the county or district attorney, with the county clerk in the county in which the proposed patient resides or in which the proposed patient is found or in which the patient is receiving treatment services by court order. However, on request of the proposed patient or his attorney, the court may in its discretion for good cause shown transfer the application to the county of the proposed patient's residence, if not initially filed there.

(b) The application must be in writing and must state the following based on the information and belief of the applicant:

(1) the name and address of the proposed patient, including county of residence in this state;

(2) that the proposed patient suffers from alcoholism and as a result, the person:

(A) is likely to cause serious harm to himself or others; or

(B) will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether or not to submit to treatment; and

(3) that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person (not including a juvenile alleged to be a child engaged in delinquent conduct or conduct indicating a need for supervision as defined in Section 51.03, Family Code).

(c) The application shall be styled using the proposed patient's initials and not the full name.

(d) On the filing of an application, the court shall set a date for the hearing on the merits, which hearing must be held not less than five days and no more than 14 days from the filing of the application. Immediately after the judge sets the date for the hearing, the expert shall give written notice of the hearing and a copy of the application to the proposed patient and his or her attorney in such manner as the court shall direct. The court may proceed to hear the cause at the stated time, with or without the presence of the proposed patient and with or without an answer by the proposed patient, provided the notice is received at least three days prior to the hearing and provided the proposed patient is represented by an attorney if the right of legal counsel is not waived. If the proposed patient is not represented by an attorney of his own choosing, the court shall appoint an attorney. The court shall inform relatives of the proposed patient and other persons to appear at the hearing

to give evidence in the cause. The judge may, in his discretion or on request, require the proposed patient to be examined by a physician and the results of the examination shall be considered by the court at the hearing on the application for commitment.

(e) The judge may order any peace officer or other designated person to take the proposed patient to an approved facility or other suitable place for detention pending the order of the court if:

(1) a certificate of medical examination for alcoholism is filed showing that the proposed patient has been examined within five days of the filing of the certificate; and

(2) the certificate states the opinion of the examining physician that the proposed patient is an alcoholic and:

(A) is likely to cause serious harm to himself or others if not immediately restrained; or

(B) will continue to suffer abnormal mental, emotional, or physical distress and will continue to deteriorate in ability to function independently if not treated, and that the proposed patient is unable to make a rational and informed choice as to whether or not to submit to treatment.

(f) If the proposed patient is detained under Section 3.02(e) of this Act, the court shall set a probable cause hearing to be held within 72 hours of the time detention begins, unless the right to hearing is waived by the proposed patient. However, if that 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hearing shall be held on the first succeeding business day.

(g) If the proposed patient admits the allegations of the application or if, at the hearing on the merits, the court finds that the material allegations of the application have been proven by clear and convincing evidence, it shall commit the patient to an approved treatment program for a period not to exceed 90 days.

Sec. 3.03. APPEAL. (a) All appeals from orders requiring court-ordered treatment shall be filed in the court of appeals for the county in which the order was entered.

(b) Notice of appeal shall be filed within 10 days from the date any such order is signed.

(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may stay the order and release the person from custody if the judge is satisfied that the person does not meet the criteria for protective custody pursuant to this Act. The judge may require an appearance bond in an amount to be determined by the court.

(e) These cases shall be advanced on the docket and given a preference setting over all other cases in the court of appeals and the supreme court. The courts may suspend all rules concerning the time for filing briefs and the docketing of cases.

Sec. 3.04. HABEAS CORPUS. This Act does not abridge the right of any person to a writ of habeas corpus.

Sec. 3.05. DISCHARGE FROM COURT-ORDERED TREATMENT. (a) The administrator of a facility to which a person has been committed for treatment shall discharge the patient on expiration of the court order.

(b) The administrator of a facility may, at any time prior to the expiration of an order for treatment, discharge the patient upon his or her determination that the patient no longer meets the criteria for court-ordered treatment. A discharge under this subsection terminates the court order. Any person discharged under this subsection may not again be compelled to submit to involuntary treatment except pursuant to a new order entered in accordance with the provisions of this Act.

(c) On discharging a person under this section, the administrator of the facility shall prepare a certificate of discharge and file it with the court that entered the order.

Sec. 3.06. COSTS OF COMMITMENT AND SUPPORT. (a) The laws relating to payment of costs of commitment and support and to securing reimbursement of actual costs that are applicable for court-ordered mental health services apply to each item of expense incurred by the state in connection with the commitment, care, custody, treatment, and rehabilitation of a person receiving care and treatment under this Act.

(b) Any person admitted to an approved treatment program who has sufficient funds shall be required to pay for his or her maintenance at the same rate charged other patients for maintenance at such facility. All of the provisions of Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), are applicable to any person admitted to a state hospital under the provisions of this Act.

Sec. 3.07. COMMITMENT BY COURTS IN CRIMINAL PROCEEDINGS; ALTERNATIVE SENTENCING. (a) The judge of any court having jurisdiction of misdemeanor cases may remand the defendant to an approved treatment program for care and treatment not to exceed 90 days, in lieu of incarceration or fine, if:

(1) the court or a jury has found the defendant guilty of an offense;

(2) the court finds that such violation resulted from or was related to the defendant's abuse of alcohol; and

(3) an approved treatment program, as defined in this Act, is available to treat the person, and the facility agrees in writing to admit the defendant under this section.

(b) A defendant who, in the opinion of the court, is mentally ill is not eligible for sentencing under this section. An order of sentencing by the court is treated as a final conviction and an appeal from the order may be taken in the same manner as provided for appeals from any other judgment of that court.

(c) If a juvenile court finds that a child has engaged in delinquent conduct or conduct indicating a need for supervision resulting from or related to the child's abuse of alcohol or drugs, the court may remand the child to an approved treatment program for care and treatment for not more than 90 days after the date on which the child is remanded if:

(1) an approved treatment program is available to treat the child; and

(2) the program agrees in writing to receive the child under this section.

SECTION 2. Section 1, Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Commission" means the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~].

(2) "Alcoholic" means an individual who suffers from alcoholism [~~any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of the beverage or while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety, or welfare~~].

(3) "Alcoholism" means the loss of self-control with respect to the use of alcohol, the pathological use of alcohol that chronically impairs social or occupational functioning, or physiological dependence on alcohol as evidenced by tolerance or withdrawal symptoms [~~a condition of abnormal behavior or illness leading directly or indirectly to the chronic and habitual use of alcoholic beverages~~].

(4) "Person" includes any individual, partnership, corporation, association, or other public or private legal entity.

(5) "Health care facility" has the meaning prescribed by the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes) [~~includes, regardless of ownership, a public or private hospital, institution, extended care facility, skilled nursing facility, intermediate care facility, home health agency, outpatient care facility, ambulatory health care facility, health center, alcoholism and drug treatment facility, health maintenance organization, and other specialized facilities where inpatient or outpatient health care services for observation, diagnosis, active treatment, or overnight care for patients with medical, mental or psychiatric, alcoholic, chronic, or rehabilitative conditions are provided requiring daily direct supervision by a physician or a practitioner of the healing arts, but does not include the office of those physicians or practitioners singly or in groups in the conduct of their profession~~].

(6) "Applicant" means a person who applies to the commission for a license under this Act.

(7) "Application" means a written request for consideration for licensure that meets the commission's requirements for form and content.

(8) "License" means a license issued by the commission to operate an alcohol or combined alcohol and drug treatment facility in this state.

(9) "Licensee" means the person named in the license. The term does not include the legal successors of that person.

(10) "Alcohol treatment facility" means a public or private hospital, clinic, detoxification facility, primary care facility, intermediate care facility, long-term care or outpatient care facility, community mental health center, recovery center, halfway house, ambulatory care facility, or any other facility that purports to provide alcohol or combined alcohol and drug treatment services and rehabilitation services as one of its programs. The term does not include an educational program for intoxicated drivers or the office of a private licensed health care practitioner.

(11) "Governmental unit" means the state, any political subdivision of the state, or any department, division, board, or other agency of the state or a political subdivision of the state. The term does not include any entity of the federal government.

SECTION 3. Section 2, Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. LICENSE REQUIREMENT; EXCEPTIONS [~~LICENSING A FACILITY~~]. (a) A person who operates an alcohol treatment [~~a health care~~] facility that treats alcoholics or alcohol and drug dependent persons must [~~may~~] obtain a license issued under this Act.

(b) This Act does not apply to facilities maintained or operated by the federal government or its agencies or to hospitals operated by the state.

SECTION 4. Section 3, Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. LICENSE APPLICATION. An applicant for a license to operate an alcohol treatment [~~a health care~~] facility to treat alcoholics or alcohol and drug dependent persons must:

(1) file a written application on a form prescribed by the commission; and

(2) cooperate with the inspection of the [~~health care~~] facility.

SECTION 5. Section 6, Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. INSPECTIONS. (a) The commission or its authorized representative may enter upon the premises of a facility at reasonable times to make an inspection the commission considers necessary [~~to license or renew a license for~~

~~a facility~~]. The inspection is subject to the limitations imposed under Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes).

(b) If the applicant or licensee is a health care facility as defined by Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), on-site inspections by the commission must comply with the provisions of that Act. In cases in which an applicant or licensee is not covered by that Act, the commission may enter into interagency agreements to avoid duplication of efforts and to conserve state resources in relation to its on-site inspections under this Act.

SECTION 6. Section 7, Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. RULES[; ~~REGULATIONS,~~] AND STANDARDS. [~~(a)~~] The commission shall [~~prescribe forms necessary to perform its duties and~~] adopt rules[; ~~regulations,~~] and standards for the following:

(1) the organizational structure of an alcohol treatment facility, including the governing authority of the facility, board authority, organization, fiscal and policy responsibilities, supervisory lines of authority, and staffing;

(2) the program conducted by a facility, including services to be provided, admission criteria, client rights, and standards for medication, nutrition, and emergency situations;

(3) the clinical and fiscal records kept by a facility;

(4) the general physical plant requirements for a facility, including environmental considerations, fire protection, safety, and other conditions to ensure the health and comfort of the clients; and

(5) standards relating to other aspects of alcohol or alcohol and drug abuse treatment as necessary to protect the alcoholic or alcohol and drug dependent person

[~~(1) the construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions which insure the health, safety, and comfort of residents;~~

[~~(2) the sanitary conditions of the facility and the surrounding area, including water supply, sewage disposal, food handling, and general hygiene;~~

[~~(3) the equipment needed for adequate care and treatment;~~

[~~(4) the diet required by the needs of residents, based on good nutritional practice and on recommendations made by physicians attending the residents; and~~

[~~(5) the qualifications of all staff and personnel, including management and nursing personnel, having responsibility for any part of the care given to residents~~].

(b) The commission may not adopt rules restricting competitive bidding or advertising by a facility regulated by the commission except to prohibit false, misleading, or deceptive practices by the facility. The commission may not include in its rules to prohibit false, misleading, or deceptive practices by a facility regulated by the commission a rule that:

(1) restricts the facility's use of any medium for advertising;

(2) restricts in an advertisement the personal appearance of a person representing the facility or the use of that person's voice;

(3) relates to the size or duration of an advertisement by the facility; or

(4) restricts the facility's advertisement under a trade name [~~The commission may adopt additional regulations for facilities concerning the treatment and care of alcoholics.~~

[~~(c) The rules, regulations, and standards authorized by this Act apply to licensed facilities and to facilities for which a licensed application has been made~~].

SECTION 7. Section 8, Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. DENIAL OR REVOCATION OF LICENSE. (a) The executive director of the commission may deny, revoke, or refuse to renew a license if the applicant or holder of the license fails to comply with the provisions of this Act or with the rules, regulations, and standards of the commission adopted under this Act.

(b) A person who is denied a license or whose license is revoked or not renewed is entitled to request reconsideration by the executive director of the commission on the question of the denial, revocation, or nonrenewal of the license. A request for reconsideration must be made during the 14-day period following the date on which notice of the action taken was mailed to the applicant or the holder of a license.

(c) If reconsideration is not requested, the denial, revocation, or nonrenewal takes effect on the 30th day after the date on which the notice was mailed. If reconsideration is requested, the effective date of the commission's original decision must be postponed to allow the person to participate in the reconsideration.

(d) The commission shall establish rules and procedures for reconsideration of denial, nonrenewal, or revocation decisions, and shall provide the opportunity for the affected person to present additional evidence or testimony to the commission. The rules must provide for at least 21 days' notice of a reconsideration hearing.

(e) The executive director of the commission shall conduct each reconsideration hearing held under this section. The executive director shall make the final decision in connection with the reconsideration hearing.

(f) The executive director of the commission shall send the person a copy of the decision made after reconsideration and a copy of the grounds for affirming or reversing the original decision. The executive director shall give written notice of the effective date of the decision as provided by commission rules.

(g) In addition to the request for reconsideration, a [~~(b) A~~] person who is denied a license or whose license is revoked or not renewed is entitled to a hearing before the commission or a hearings officer appointed by the commission on the question of the issuance of the license and is entitled to notice of the date, time, and place of the hearing not later than 21 days before the date of the hearing. A request for a hearing must be made during the 30-day period following the date on which the applicant or the holder of a license received notice that the license was denied or that it was to be revoked or refused renewal. This period must be extended if the person requests reconsideration under this section.

(h) [~~(c)~~] Except as provided in Subsection (j) [~~(e)~~] of this section, revocation of a license or an order refusing to renew a license does not take effect until the expiration of 30 days following the date on which the holder of the license received final notice of the revocation or order of refusal to renew the license.

(i) [~~(d)~~] If after a hearing the license is denied, revoked, or not renewed, the commission shall send to the applicant or holder of the license a copy of their findings and grounds for decision.

(j) [~~(e)~~] The commission may revoke a license to be immediately effective in a situation where health or safety requires action. The commission must immediately notify the holder and provide an opportunity for a hearing within 14 days after the action takes effect.

(k) [~~(f)~~] The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to judicial review of all hearings conducted under [~~authorized by~~] this Act.

SECTION 8. Sections 9(a) and (b), Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The commission may petition a district court to restrain a person who violates the licensing requirements of this Act or who violates the standards of this Act in a manner that causes immediate threat to the health and safety of individuals treated by the person [~~falsely represents a health care facility as licensed under this Act~~]. A suit for injunctive relief must be brought in Travis County.

(b) On application for injunctive relief and a finding that a person is violating [~~falsely representing a health care facility as licensed under~~] this Act, the district court shall grant the injunctive relief the facts may warrant.

SECTION 9. Section 10, Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. CHARGING OF FEES AND DISPOSITION OF FUNDS. The commission may charge nonrefundable application and inspection fees for an initial license or a renewal license. If the General Appropriations Act does not specify the amount of the fee, the commission shall establish reasonable and necessary fees for the administration of this Act. The commission shall set the fees in the amounts necessary for the fees to cover at least 50 percent of the costs of the licensing program by the 1987 fiscal year. The commission may not maintain unnecessary fund balances. Fee amounts shall be set in accordance with this prohibition [~~in such amounts as are necessary to cover the cost of the licensure program~~]. All application and inspection fees collected by the commission under the provisions of this Act shall be placed in a special fund in the State Treasury to be known as the Alcohol and Drug Abuse [~~Alcoholism~~] Treatment Licensure Fund, and the amounts in such fund may be appropriated only to the commission for the purpose of administering and enforcing this Act.

SECTION 10. Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), is amended by adding Sections 12-14 to read as follows:

Sec. 12. RIGHTS OF INDIVIDUALS RECEIVING TREATMENT. The commission shall adopt rules to protect the rights of individuals receiving services from an alcohol treatment facility and to maintain the confidentiality of client records as required by state and federal law.

Sec. 13. REPORTS OF ABUSE OR NEGLECT. (a) Any person, owner, or employee of an alcohol treatment facility who believes that a resident's, patient's, or client's physical or mental health or welfare has been, is, or will be adversely affected by abuse or neglect caused by any person shall report the facts underlying that belief to the commission.

(b) The commission shall adopt rules prescribing procedures for the investigation of those reports and for coordination with law enforcement agencies or other agencies.

(c) The commission shall contact the alcohol treatment facility by telephone immediately on learning of the alleged abuse or neglect and shall contact the facility in writing not later than the fifth day after the date on which information relating to the alleged abuse or neglect is received.

(d) Any individual who in good faith reports to the commission under this section is immune from civil or criminal liability based on the report. The immunity extends to participation in any judicial proceeding resulting from the report, but does not extend to an individual who caused the abuse or neglect.

(e) The commission may request the attorney general's office to file a petition for temporary care and protection of a patient, client, or resident of an alcohol treatment facility if it appears that immediate removal is necessary to prevent further abuse.

(f) All records made by the commission during its investigation are confidential and may not be disclosed except on court order, or on written consent and request by the person under investigation or that person's authorized attorney.

Sec. 14. PENALTIES. (a) A person who establishes, conducts, manages, or operates an alcohol treatment facility without a license commits an offense. An offense under this subsection is a Class C misdemeanor. Each day of violation constitutes a separate offense.

(b) A person who wilfully, maliciously, or recklessly makes a false report under Section 13 of this Act commits an offense. An offense under this subsection is a Class A misdemeanor.

(c) A person who fails to report a case of abuse or neglect commits an offense if the person has reasonable grounds to believe that abuse or neglect is occurring and the person is under a legal duty to report. An offense under this subsection is a Class A misdemeanor.

SECTION 11. Section 132.002(e), Human Resources Code, is amended to read as follows:

(e) The governing board of each of the following agencies shall appoint one person to represent that agency on the council:

(1) the Texas Department of Human Resources;

(2) the Texas Department of Mental Health and Mental Retardation;

(3) the Texas Department of Health;

(4) the Central Education Agency;

(5) the Texas Rehabilitation Commission;

(6) the Texas Commission for the Deaf;

(7) the State Commission for the Blind;

(8) the Texas Department on Aging; and

(9) the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~].

SECTION 12. Sections 1 and 2, Article 3.51-9, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE. The purpose of this article [~~Act~~] is to provide [~~encourage~~] consumers with benefits for the care and treatment of alcohol dependency in [~~to avail themselves of basic levels of benefits provided by~~] group health insurance policies or[~~;~~] contracts, and coverage provided by health maintenance organizations, and all self-funded or self-insured plans (but excluding those self-funded or self-insured plans with 250 or less employees or members), that provide basic hospital, surgical, or major medical expense benefits or coverages or any combination of these coverages, but excluding all individual insurance policies, regardless of the method of solicitation or sale, and excluding all health insurance policies that only provide cash indemnity for hospital or other confinement benefits, or supplemental or limited benefit coverage, or coverage for specified diseases or accidents, or disability income coverage, or any combination thereof [~~for the care and treatment of alcohol and other drug dependency and to preserve the right of the consumer to select such coverage according to his medical-economic needs~~].

Sec. 2. AVAILABILITY OF COVERAGE FOR ALCOHOL [~~AND OTHER DRUG~~]DEPENDENCY. Insurers, nonprofit hospital and medical service plan corporations subject to Chapter 20 of this code, [~~and~~] health maintenance organizations, and all employer, trustee, or other self-funded or self-insured plans or arrangements transacting health insurance or providing other health coverage or services in this state shall provide [~~offer and make available~~], under such group insurance policies or[~~;~~] contracts[~~;~~] and such plans or arrangements [~~plans~~] providing hospital and medical coverage or services on an expense incurred, service, or prepaid basis, benefits for the necessary care and treatment of alcohol [~~and other drug~~] dependency that are not less favorable than for physical illness generally, subject to the same durational limits, dollar limits, deductibles, and coinsurance factors. [~~Such offer of benefits shall be subject to the right of the group policy or~~

~~contract holder to reject the coverage or to select any alternative level of benefits if such right is offered by or negotiated with such insurer, service plan corporation, or health maintenance organization.]~~

This section does not apply to any employer, trustee, or any other self-funded or self-insured plans or arrangements with 250 or less employees or members, or any individual insurance policies regardless of the method of solicitation or sale, or to any health insurance policies that only provide cash indemnity for hospital or other confinement benefits, or supplemental or limited benefit coverage, or coverage for specified diseases or accidents, or disability income coverage, or any combination thereof.

Any benefits so provided shall be determined as if necessary care and treatment in an alcohol [~~or other drug~~] dependency treatment center were care and treatment in a hospital. For purposes of this article [~~Act~~], the term "alcohol [~~or other drug~~] dependency treatment center" means a facility which provides a program for the treatment of alcohol [~~or other drug~~] dependency pursuant to a written treatment plan approved and monitored by a physician and which facility is also:

(1) affiliated with a hospital under a contractual agreement with an established system for patient referral;[;] or

(2) accredited as such a facility by the Joint Commission on Accreditation of Hospitals;[;] or

(3) licensed as an alcohol treatment program by the Texas Commission on Alcohol and Drug Abuse; [~~Alcoholism;~~] or

(4) [~~certified as a drug dependency treatment program by the Texas Department of Community Affairs in accordance with such standards, if any, as may be adopted pursuant to Subsection (c) of Section 5.12 of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), by the Executive Director of the Texas Department of Community Affairs, or (5)~~] licensed, certified, or approved as an alcohol [~~or other drug~~] dependency treatment program or center by any other state agency having legal authority to so license, certify, or approve.

SECTION 13. Section 6b(b), Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

(b) A court granting probation to a defendant convicted of an offense under Article 6701l-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article shall require as a condition of probation that the defendant submit to:

(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 6701l-1, Revised Statutes, as amended; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 6701l-1, Revised Statutes, as amended; or 30 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 6701l-1, Revised Statutes, as amended; and

(2) an evaluation by a probation officer, by a person approved by the probation department, or by a program or facility approved by the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~] for the purpose of having the facility prescribe a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

SECTION 14. Section 6b(b), Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

(b) A court granting probation to a defendant convicted of an offense under Article 6701l-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article shall require as a condition of probation that the defendant submit to:

(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 6701l-1, Revised Statutes, as amended; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 6701l-1, Revised Statutes, as amended; or 30 days of detention in a jail if the

defendant was convicted under Subsection (f) of Article 6701l-1, Revised Statutes, as amended; and

(2) an evaluation by a probation officer, by a person approved by the probation department, or by a program or facility approved by the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~] for the purpose of having the facility prescribe a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

SECTION 15. Section 6c, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

Sec. 6c. If a person convicted of an offense under Article 6701l-1, Revised Civil Statutes of Texas, 1925, as amended, is punished under Subsection (c) of that article, and is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~], the Texas Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~] shall publish the jointly approved rules and regulations and shall monitor and coordinate the educational programs. Persons who have successfully completed an approved educational program or who are currently under an order to attend an educational program shall not be eligible for attendance upon a subsequent offense. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider, but is not limited to: the offender's school and work schedule, the offender's health, the distance which the offender must travel to attend an educational program, and the fact that the offender resides out-of-state, has no valid driver's license or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is required, as a condition of probation, to attend an educational program, the court clerk shall immediately report such fact to the Texas Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Texas Department of Public Safety for inclusion in the person's driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person's driver's license, permit, or privilege, or prohibit the person from obtaining a license or permit, as provided by Subdivision (2), Subsection (g), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

SECTION 16. Section 3(6), Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), is amended to read as follows:

(6) "Health facility" means and includes any health-care facility which is utilized in providing medical care, medical research, or the training or teaching of health-care personnel, any one or all, within this state and, without limiting the generality of the foregoing, shall include a public or private hospital, kidney disease treatment facility, radiation therapy facility, and alcoholism and drug treatment facility, so long as such health-care facility shall be licensed by the Texas Department of Health, the Texas Department of Mental Health and Mental

Retardation, or the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~] or any successor or successors to such entities, and health facility shall also include any facility or building related to any health-care facility such as a pharmacy, laboratory, laundry facility, and food service and preparation facility.

SECTION 17. Section 1, Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The purpose of this Act is to require that state agencies, including the Texas Department of Health, the Texas Department of Human Resources, the Texas Department of Mental Health and Mental Retardation, the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~], and those agencies with which each contracts, who perform surveys, inspections, and investigations of health care facilities, do not duplicate their procedures or subject such health care facilities to duplicitous rules and regulations.

SECTION 18. Sections 4(a) and (b), Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) All hospitals licensed by the Texas Department of Health which have been certified under Title XVIII of the Social Security Act, as added July 30, 1965 (Public Law 89-97), by the Texas Department of Mental Health and Mental Retardation, or by the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~], which have obtained accreditation from the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or another national accreditation body for the offered services, shall not be subject to additional licensing inspections under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or by the licensing agency so long as such certification or accreditation is maintained. Such hospitals shall only be required to annually remit any applicable fees and submit a copy of the most recent survey results or inspection results report from the accreditation body in order to be issued a license by the appropriate licensing agency.

(b) The Texas Department of Human Resources, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~] shall establish procedures to eliminate or reduce duplication of functions in certifying or licensing hospitals, nursing homes, or other facilities under their jurisdiction for payments under the requirements of the Medical Assistance Program (Chapter 32, Human Resources Code) and federal laws and regulations relating to Titles XVIII and XIX of the Social Security Act. The procedures established under this section shall provide for use by the affected agencies of information collected by those agencies in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home or other facilities under their jurisdiction.

SECTION 19. Section 2(a), Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and, in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or services which meet some need beyond the basic provision of food, shelter, and laundry. Nothing in this Act shall apply to:

(1) a hotel or other similar place that furnishes only food and lodging, or either, to its guests;

(2) a hospital;

(3) an establishment conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively upon prayer or spiritual means for healing, without the use of any drug or material remedy, provided safety, sanitary, and quarantine laws and regulations are complied with;

(4) an establishment that furnishes only baths and massages in addition to food, shelter and laundry;

(5) an institution operated by persons licensed by the Texas State Board of Chiropractic Examiners; or

(6) a facility operated within the jurisdiction of a state or federal governmental agency, including but not limited to the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, the State Commission for the Blind, the Texas Commission on Alcohol and Drug Abuse [~~Alcoholism~~], the Texas Department of Corrections, and the Veterans' Administration, where the facility is primarily engaged in training, habilitation, rehabilitation, or education of clients or residents, and such facility has been certified through inspection or evaluation as having met standards established by the state or a federal governmental agency.

"Institution" also means any place or establishment in or at which any person receives, treats or cares for, overnight or longer, within a period of twelve months, four or more pregnant women or women who have within two weeks prior to such treatment or care had a child born to them; provided, however, that this definition shall not include women who receive maternity care in the home of a relative within the third degree of consanguinity or affinity, nor shall it include general or special hospitals licensed in pursuance of or as those terms are defined in the Texas Hospital Licensing Law. Nothing in this Act shall be construed to prohibit an institution, as defined in this subdivision, from simultaneously caring for pregnant women and other women under 50 years of age.

"Institution" also means a foster care type residential facility providing room and board to fewer than four persons unrelated within the second degree of consanguinity or affinity to the proprietor and who, in addition to room and board, because of his physical or mental limitation or both, requires a level of care and services suitable to the needs of the individual which contribute to his health, comfort, and welfare; provided, however, that such institution shall be subject to licensure only upon written application for participation in the intermediate care program provided by Federal law as it now reads or may hereafter be amended.

SECTION 20. Sections 5.11 and 5.12, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 5.11. DESIGNATION FOR FEDERAL FUNDS. The Texas Commission on Alcohol and Drug Abuse [~~Department of Community Affairs or its designee as provided in this Act~~] is hereby designated as the single state agency to administer, apply for, and disperse funds under Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972 and is given all powers necessary to receive these funds.

Sec. 5.12. EDUCATION AND RESEARCH. (a) The Texas Commission on Alcohol and Drug Abuse [~~Department of Community Affairs~~], in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The Texas Commission on Alcohol and Drug Abuse [~~executive director of the Texas Department of Community Affairs~~] shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of this Act, the executive director of the commission [~~he~~] may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this Act;

(B) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(C) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The Texas Commission on Alcohol and Drug Abuse [~~executive director of the Texas Department of Community Affairs~~] may establish accreditation standards for drug abuse treatment programs and treatment personnel consistent with those required by federal law and regulation and certify those drug abuse treatment programs and treatment personnel meeting accreditation standards. The commission [~~Department of Community Affairs~~] may charge reasonable fees for initial certifications and renewal certifications in such amounts as are necessary to cover the costs of the accreditation program. All certification fees collected by the commission [~~Texas Department of Community Affairs~~] under the provisions of this Act shall be placed in a special fund in the State Treasury to be known as the Drug Dependency Treatment Program Certification Fund. The fund may be appropriated only to the commission [~~Texas Department of Community Affairs~~] for the purpose of administering and enforcing this Act [~~the drug dependency treatment certification program~~].

SECTION 21. Section 101(1), R. B. McAllister Drug Treatment Program Act (Article 4476-15a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Executive director" means the executive director or his designee of the Texas Commission on Alcohol and Drug Abuse [~~Department of Community Affairs~~].

SECTION 22. Sections 201(a) and (d), R. B. McAllister Drug Treatment Program Act (Article 4476-15a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The executive director shall establish and supervise a drug dependence treatment program. Within funds appropriated to the Texas Commission on Alcohol and Drug Abuse [~~Department of Community Affairs~~], the executive director shall provide integrated health, education, information, and welfare services through appropriate public and private facilities to persons who seek the services voluntarily or who are referred from public or private agencies.

(d) The executive director shall utilize and coordinate public and private treatment facilities and resources, wherever practicable, utilizing community mental health centers and nonprofit organizations [~~general hospitals~~].

SECTION 23. Section 202, R. B. McAllister Drug Treatment Program Act (Article 4476-15a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 202. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. The director shall:

(1) prescribe by rule those controlled substances that pose a substantial risk of severe psychic or physical dependence and the types of drug dependence for which treatment is feasible and available under this Act;

(2) require programs receiving funds under this Act to meet [~~established~~] standards established by the commission;

(3) prepare, publish, and distribute throughout the state as often as necessary a list of all public and private treatment facilities the director finds to conform to the established standards and periodically notify the courts of the treatment facilities within their respective jurisdictions and of the types of services offered at each facility;

(4) evaluate, on a continuing basis, the services provided by treatment facilities funded through this Act to assure that the services are effective, humanely operated, and properly staffed and meet the standards established under this Act, and make the evaluations a matter of public record;

(5) use funds appropriated through this Act to carry out the mandate of this Act, the Texas Controlled Substances Act, and Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972; and

(6) use funds to provide matching funds for local programs and to increase the overall state allotment of federal funds.

SECTION 24. Section 203, R. B. McAllister Drug Treatment Program Act (Article 4476-15a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 203. INFORMATION AND PREVENTION SERVICES. The executive director shall develop prevention services that include:

(1) information to promote awareness within the general public about controlled substances and inhalants and treatment services for drug dependence;

(2) education designed to promote a deeper understanding of drug use and abuse and its concomitant problems and to promote the support, participation, and cooperation of selected groups in drug abuse prevention education;

(3) intervention services to persons who do not require drug dependence treatment but who are risking drug dependence and are not being adequately served by the standard social service institutions; and

(4) alternatives to drug abuse through the development of public activities that promote positive growth and fulfillment.

SECTION 25. Section 402, R. B. McAllister Drug Treatment Program Act (Article 4476-15a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 402. STATE INTERAGENCY COOPERATION. The executive director is authorized, within funds appropriated to the Texas Commission on Alcohol and Drug Abuse [~~Department of Community Affairs~~], to facilitate referral of [~~accept~~] persons [~~referred~~] from the criminal justice system under the terms of bail, probation, conditional discharge, parole, or other conditional release which is not inconsistent with medical or clinical judgment or in conflict with this Act or applicable federal rules, regulations, or standards.

SECTION 26. (a) A task force to study necessary changes in certification, licensure, and commitment procedures for substance abusers, including alcoholics, drug dependent persons, and polydrug abusers, is established. The task force is composed of 18 persons. The chair shall be elected by the membership and shall be a public member. The task force consists of:

(1) three members appointed by the speaker of the house, including two members of the house of representatives and one citizen member;

(2) three members appointed by the lieutenant governor, including two members of the senate and one citizen member;

(3) the commissioner of the Texas Department of Mental Health and Mental Retardation or the commissioner's designee;

(4) three judges with the authority to commit alcoholics and drug dependent persons and who represent both rural and metropolitan areas, appointed by the governor;

(5) three providers of alcoholism services nominated by the Texas Commission on Alcohol and Drug Abuse, appointed by the governor;

(6) three providers of drug dependence services, nominated by the Texas Commission on Alcohol and Drug Abuse, appointed by the governor;

(7) one representative of law enforcement agencies, appointed by the governor; and

(8) one licensed physician who is knowledgeable about the treatment of alcoholism and drug dependence, appointed by the governor.

(b) The Texas Commission on Alcohol and Drug Abuse shall supply the necessary staff for the task force.

(c) The task force shall report to the 70th Legislature and recommend changes in certification, licensure, and commitment procedures for all substance abusers.

(d) This section expires August 31, 1987.

SECTION 27. (a) A member of the Texas Commission on Alcoholism who is serving a term as member on August 31, 1985, is entitled to continue to hold the office for the term for which the member was appointed unless removed under other law.

(b) A member of the commission who is serving a term as a member on August 31, 1985, is not required to have the public membership qualifications required by Section 1.04 of this Act. The member is not subject to removal for the failure to have the qualifications.

(c) On the effective date of this Act, the governor shall appoint one commissioner for a term expiring August 1, 1987, one commissioner for a term expiring August 1, 1989, and one commissioner for a term expiring August 1, 1991.

(d) All equipment, property, files, records, and funds of the Drug Abuse Prevention Division, Texas Department of Community Affairs, shall be transferred to the Texas Commission on Alcohol and Drug Abuse.

SECTION 28. Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953 (Article 5561c, Vernon's Texas Civil Statutes), is repealed.

SECTION 29. Section 6(c), Chapter 823, Acts of the 66th Legislature, Regular Session, 1979 (Article 12691-6, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The governor shall designate a chairman of the board from among the directors. A director holds the position of chairman at the pleasure of the governor. [~~The executive director of the Texas Department of Community Affairs, shall, as part of his or her regular duties of office, serve, ex officio, as the chairman of the board, who~~] The chairman shall preside at meetings of the board and perform such other duties as are prescribed by the board and this Act[~~, except that he or she shall not have a vote~~].

SECTION 30. (a) Except as prescribed by Subsections (b) and (c) of this section, this Act takes effect September 1, 1985.

(b) Sections 2-10 of this Act take effect January 1, 1986.

(c) Section 12 of this Act takes effect January 1, 1986, and applies only to group insurance policies, contracts, and plans and to coverage provided by health maintenance organizations sold or delivered or issued for delivery or renewed,

extended, or amended in this state on or after January 1, 1986, or subject to collective bargaining agreements applicable to particular policyholders, whichever is later in time. Group insurance policies, contracts, and plans and coverage provided by health maintenance organizations sold or delivered or issued for delivery or renewed, extended, or amended in this state before January 1, 1986, or subject to collective bargaining agreements applicable to particular policyholders entered into before January 1, 1986, are subject to the law as it existed before the effective date of this Act until such time as those policies, contracts, coverages, and agreements are renewed, extended, amended, canceled, expired, or renegotiated, and that law is continued in effect for that purpose. A suit filed under Article 3.51-9, Insurance Code, before the effective date of this Act is governed by the law in effect at the time the suit was filed.

SECTION 31. The Texas Commission on Alcohol and Drug Abuse shall adopt the policy statements required by Section 1.10, Texas Alcohol and Drug Abuse Services Act not later than November 1, 1985.

SECTION 32. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - C. Evans

Amend **C.S.S.B. 601** as follows:

By adding SECTION 30 and substituting the following:

SECTION 30. It is the intent of the Legislature that the Texas Commission on Alcoholism and the Texas Department of Community Affairs drug abuse prevention division ensure and provide for an orderly and smooth transition to the Texas Commission on Alcohol and Drug Abuse in a manner which is least disruptive to the equitable administration and funding of alcohol and drug abuse programs and contracts and that, to the extent possible, the Texas Commission on Alcohol and Drug Abuse be staffed by the personnel of the Texas Commission on Alcoholism and the Texas Department of Community Affairs drug abuse prevention division.

Floor Amendment No. 2 - Berlanga

Amend **C.S.S.B. 601** as follows:

By substituting the following subsection (a) to SECTION 30:

(a) Except as prescribed by Subsections (b), (c), and (d) of this section, this Act takes effect September 1, 1985.

By inserting a new subsection (d) to SECTION 30. The new subsection (d) reads as follows:

(d) Notwithstanding any other provision of this Act, the transferral to the commission of the powers, duties, funds, and drug abuse programs from the Texas Department of Community Affairs shall take effect January 1, 1986.

Floor Amendment No. 3 - Gavin

1. Page 34, line 4, add the words "group health before the word "coverage".

2. Page 34, line 9, add "any individual H.M.O. policies," after the word "policies".

3. Page 34, line 21, add "providing group health coverage" after the word "organizations".

4. Page 35, line 13, add "or any individual H.M.O. policies" after the word "sale".

The amendments were read.

Senator Sarpalius moved to concur in the House amendments.

Senator Traeger made the substitute motion not to concur in the House amendments.

The substitute motion failed by the following vote: Yeas 14, Nays 15.

Yeas: Barrientos, Blake, Brooks, Farabee, Glasgow, Howard, Kothmann, Mauzy, Sharp, Traeger, Truan, Uribe, Washington, Whitmire.

Nays: Brown, Caperton, Edwards, Henderson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Sarpalius, Sims, Williams.

Absent: Harris, Santiesteban.

The motion to concur in the House amendments prevailed by the following vote: Yeas 15, Nays 13.

Yeas: Brown, Edwards, Glasgow, Henderson, Howard, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Sarpalius, Sims, Williams.

Nays: Barrientos, Blake, Brooks, Farabee, Jones, Kothmann, Mauzy, Sharp, Traeger, Truan, Uribe, Washington, Whitmire.

Absent: Caperton, Harris, Santiesteban.

SENATE CONCURRENT RESOLUTION 186

Senator Sharp offered the following resolution:

BE IT RESOLVED by the Legislature of the State of Texas, That Rule 14, Section 9(a), of the Rules of the House of Representatives, 69th Legislature, and Rule 96(a) of the Rules of the Senate, 69th Legislature, are suspended, as provided by House Rule 14, Section 9(f), and Senate Rule 96(f), to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the House and Senate versions of **S.B. 192**, relating to the conveyance of certain state-owned real property by the Texas Board of Corrections, by authorizing the conferees to set a limit on proceeds set aside for the Texas Department of Corrections for acquiring other land or for the construction or improvement of facilities of the department.

The resolution was read.

On motion of Senator Sharp and by unanimous consent, the resolution was considered immediately and was adopted.

SENATE BILL 725 WITH HOUSE AMENDMENTS

Senator Caperton called **S.B. 725** 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 - P. Hill

Substitute the following for **S.B. 725**:

A BILL TO BE ENTITLED
AN ACT

relating to the administration, powers and duties, and continuation of the Texas Air Control Board, to the authority of the board to set fees and impose administrative penalties, to the creation of the Texas Clean Air Study Committee, and to the

authorization for additional motor vehicle emissions inspections, fees, and maintenance programs; providing enforcement procedures and penalties; amending the Texas Clean Air Act, as amended (Article 4477-5, Vernon's Texas Civil Statutes), by amending Sections 1.02, 2.01a, 2.02, 2.06, 2.15, 2.16, and 3.07, Subsection (c) of Section 3.09, Subsection (e) of Section 3.10, Subsections (a) and (b) of Section 3.14, Subsections (a) and (b) of Section 3.16, Sections 3.20, 3.27, 3.29, 4.01, and 4.02; by adding Sections 2.021, 2.022, 2.023, 2.03, 2.041, 2.091-2.094, 2.18-2.22, 3.101, and 3.271, Subsections (g) and (h) to Section 3.28, Sections 3.31, 4.041, and 4.042, and Subchapter G; and by repealing Sections 2.10 and 3.21-3.26 and Subsections (a), (b), (c), and (f) of Section 3.30; amending Subsections (d) and (g) of Section 142, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

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

SECTION 1. Sections 1.02 and 2.01a, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.02. POLICY AND PURPOSE. It the policy of this state and the purpose of this Act to safeguard the air resources of the state from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of health, general welfare, and physical property of the people, including the esthetic enjoyment of the air resources by the people and the maintenance of adequate visibility. It is intended the provisions of the Act should be vigorously enforced and that violations of the Act, or any rule or order of the Texas Air Control Board, should result in expeditious initiation of civil actions in the district courts of this state.

"Section 2.01a. APPLICATION OF SUNSET ACT. The Texas Air Control Board is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991 [~~1985~~]."

The policy structure and enforcement activities of the board shall be reviewed under the provisions of the Texas Sunset Act prior to January 1, 1987. The terms of all board members shall expire September 1, 1987, unless continued by the legislature.

SECTION 2. Section 2.02, Texas Clean Air Act, as amended (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2.02. MEMBERS OF THE BOARD. (a) The board is composed of nine members appointed by the governor with the advice and consent of the Senate. Of the nine members appointed by the governor, one shall be a professional engineer with at least ten years experience in the actual practice of his profession which experience shall include work in air control; one shall be a physician licensed to practice in this state, currently engaged in general practice in this state, with experience in the field of industrial medicine; one shall be a person who has been actively engaged in the management of a private manufacturing or industrial concern for at least ten years immediately prior to his appointment; one shall be a member of the general public with a demonstrated involvement in efforts to safeguard the environment [~~one shall be an agricultural engineer with at least ten years experience in his profession~~]; and five members must be members of the general public [~~shall be chosen to represent the public interest~~].

"(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

"(1) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

"(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

"(3) uses or receives a substantial amount of tangible goods, services, or funds from the board [~~shall be chosen to represent the public interest~~]."

SECTION 3. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.021 to read as follows:

"Section 2.021. APPOINTMENTS WITHOUT DISCRIMINATION. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees."

SECTION 4. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.022 to read as follows:

"Section 2.022. DISQUALIFICATION OF LOBBYISTS. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), 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. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.023 to read as follows:

"Section 2.023. CONFLICTS OF INTEREST. An officer, employee, or paid consultant of a trade association for 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 for 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."

SECTION 6. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Sections 2.03 and 2.041 to read as follows:

SECTION 2.03. TERMS OF BOARD MEMBERS. The members of the board hold office for staggered terms of six years, with the term of three members expiring on the 1st day of September in each odd-numbered year. Each member holds office until his successor is appointed and has qualified. Board members may not serve more than two full or partial terms.

"Section 2.041. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

"(1) does not have at the time of appointment the qualifications required by Section 2.02 of this Act for appointment to the board;

"(2) does not maintain during the service on the board the qualifications required by Section 2.02 of this Act for appointment to the board;

"(3) violates a prohibition established by Section 2.022 or 2.023 of this Act;

"(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

"(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

"(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

"(c) If the executive director has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of such ground. The chairman of the board shall then notify the governor that a potential ground for removal exists."

(d) The board shall maintain public records sufficient to show continuing eligibility under provisions of this Act.

SECTION 7. Section 2.06, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2.06. BOARD OFFICERS. (a) The governor shall designate a chairman of the board from among the members of the board. A member holds the position of chairman at the pleasure of the governor.

"(b) The board shall elect a [~~chairman and a~~] vice-chairman to serve a two-year term [~~terms~~] beginning on February 1 of each odd-numbered year."

SECTION 8. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.091 to read as follows:

"Section 2.091. CAREER LADDER PROGRAM. The executive director or his designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting."

SECTION 9. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.092 to read as follows:

"Section 2.092. PERFORMANCE EVALUATION SYSTEM. The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this section."

SECTION 10. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.093 to read as follows:

Sec. 2.093. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement shall include:

(1) personnel policies including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the agency's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address areas of significant underutilization in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance.

(b) The policy statements shall be filed with the governor's office within 60 days of the effective date of this Act, 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. Such report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 11. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.094 to read as follows:

"Section 2.094. EMPLOYEE QUALIFICATIONS; STANDARDS OF CONDUCT. The board shall provide to its members and employees as often as is necessary information regarding their qualifications under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees."

SECTION 12. Section 2.15, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2.15. [~~BIENNIAL~~] REPORTS. (a) The board shall make biennial written reports to the governor and to the Legislature and shall include in each report a statement of its activities.

"(b) The board shall file annually with the governor and the presiding officer of each house of the Legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The

form of the annual report and the reporting time shall be that provided in the General Appropriations Act."

SECTION 13. Section 2.16, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2.16. FEES. Except as specifically authorized in this Act, no fees may be charged by the executive director [secretary] or the board for the performance of any of their duties and functions under this Act."

SECTION 14. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.18 to read as follows:

"Section 2.18. AUDIT. The State Auditor shall audit the financial transactions of the board at least once during each biennium."

SECTION 15. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.19 to read as follows:

"Section 2.19. PUBLIC INFORMATION. The board shall prepare information of public interest describing the functions of the board and describing the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies."

SECTION 16. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.20 to read as follows:

"Section 2.20. COMPLAINT FILE. The board shall keep an information file about each complaint filed with the board relating to a licensee or entity regulated by the board."

SECTION 17. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.21 to read as follows:

"Section 2.21. NOTIFICATION CONCERNING COMPLAINT. If a written complaint is filed with the board relating to a licensee or entity regulated by the board, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation."

SECTION 18. Subchapter B, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 2.22 to read as follows:

"Section 2.22. PUBLIC TESTIMONY. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board."

SECTION 19. Section 3.07, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3.07. ENFORCEMENT PROCEEDINGS. The board[,] or the executive director, after notification to [~~secretary when authorized by~~] the board, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, [~~regulations,~~] orders, [~~variances~~] or other decisions of the board."

SECTION 20. Subsection (c), Section 3.09, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"(c) Any person may appear and be heard at the hearing on any rules [~~or regulations~~]. A record of the names and addresses of the persons appearing shall be made by the executive director [~~secretary~~]. Any person heard or represented at the hearing, or requesting notice of the action taken by the board, shall be sent written notice by mail of the action taken by the board."

SECTION 21. Subsection (e), Section 3.10, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"(e) The board, when it deems control of air pollution is necessary, shall establish rules [~~and regulations~~] concerning the control of emissions of particulate

matter from plants handling, loading and unloading, drying, manufacturing, and processing the following agricultural products: grain, seed, legumes and vegetable fibers, according to a formula derived from the process weight of the materials entering the process. Any person affected by a rule [~~or regulation~~] issued under the authority of this subsection may use the process weight method for controlling and measuring the emissions from the plant, or any other method selected by that person which the board or the executive director [~~secretary~~], when so authorized by the board, finds will provide adequate emission control efficiency and measurement."

SECTION 22. Subchapter C, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 3.101 to read as follows:

"Section 3.101. MEMORANDUM OF UNDERSTANDING. The board shall adopt as a rule any memorandum of understanding between the board and any other state agency."

SECTION 23. Subsections (a) and (b), Section 3.14, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) Whenever it appears to the board or the executive director [~~secretary~~] that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the board or the executive director [~~secretary~~] shall, with the concurrence of the governor, order any persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. The order shall fix a time and place for a hearing to be held before the board, which shall be held as soon after the order is issued as is practicable. The requirements of Section 3.17 as to the time for notice, newspaper notice, and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as in the judgment of the board or the executive director [~~secretary~~] is practicable under the circumstances. Not more than twenty-four hours after the commencement of the hearing, and without adjournment of the hearing, the board shall affirm, modify or set aside the order.

"(b) Whenever the board or the executive director [~~secretary~~] finds that emissions from one or more air contaminant sources are [~~is~~] causing imminent danger to human health or safety, but that there is not a generalized condition of air pollution of the type referred to in Subsection (a) of this section, the board or the executive director [~~secretary~~] may order the person or persons responsible for the emissions to reduce or discontinue the emissions immediately. In such event, the provisions in Subsection (a) of this section pertaining to a hearing before the board, notice, and affirmance, modification or setting aside of orders shall apply."

SECTION 24. Subsections (a) and (b), Section 3.16, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) The board may delegate the authority to hold hearings called by the board to:

"(1) one or more members;

"(2) the executive director [~~secretary~~]; or

"(3) one or more employees of the board[~~; or~~

"[~~(4) with the concurrence of the state commissioner of health, one or more employees of the State Department of Health~~].

"(b) Except for those hearings required to be held before the board under Section 3.14 of this Act, the board may authorize the executive director [~~secretary~~] to call and hold hearings on any subject on which the board may hold a hearing. The board also may authorize the executive director [~~secretary~~] to delegate the authority to hold any hearing called by the executive director [~~secretary~~] to one or more employees of the board [~~or, with the concurrence of the state commissioner of health, to one or more employees of the State Department of Health~~]."

SECTION 25. Section 3.20, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3.20. INVESTIGATIONS; ACTION ON VIOLATIONS. (a) The executive director [~~secretary~~] is authorized to make or cause to have made investigations as he may deem advisable in administering the provisions of this Act and the rules, [~~regulations,~~] orders and determinations of the board, including without limitation investigations of violations and general air pollution problems or conditions. The executive director [~~secretary~~] shall make or cause to have made such investigations as may be requested or directed by the board.

"(b) Whenever it appears that any provision of this Act or any rule, [~~regulation,~~] determination or order of the board is being violated, the board, or the executive director [~~secretary~~] when authorized by the board or this Act, may proceed under Section 4.02 of this Act, or hold a public hearing and enter orders on the alleged violation, or take any other action authorized in this Act as the facts may warrant.

"(c) If a public hearing is held on an alleged violation, the board or the executive director [~~secretary~~] shall give notice of the hearing to the person complained against and to such other interested persons as the board or executive director [~~secretary~~] may designate. The executive director [~~secretary~~], on behalf of the board, at the request of the person complained against, shall subpoena and compel the attendance of those witnesses, and shall require the production for examination of any book or paper relating to the matter under investigation at the hearing, as that person may reasonably designate."

SECTION 26. Section 3.27, Texas Clean Air Act, as amended (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3.27. CONSTRUCTION PERMIT. (a) Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this State shall apply for and obtain a construction permit from the board before any actual work is begun on the facility. The board may issue special permits to certain [~~exempt certain~~] facilities or by rule may exempt certain types of facilities from the requirements of Section 3.27 and Section 3.28 if it is found upon investigation that such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere. No facility may be exempt if the facility is located within one-half of a mile of a residence at the time of construction of the facility unless the facility is used for construction or repair of residences, the facility is used in connection with a residence, or the owners of all residences within one-half of a mile have signed a waiver of objection to the facility being exempt."

(b) In considering the issuance of a permit for construction or modification of any facility 3,000 feet or less of a school premises, the board shall consider any possible adverse short-term or long-term side effects that an air contaminant, including odor, that is emitted from the facility may have on individuals at the school, or on the recreational value of the school premises.

"(c) Along with the application for the permit or the special permit, the person shall submit copies of all plans and specifications necessary for determining whether the proposed construction will comply with applicable air control standards and the intent of the Texas Clean Air Act, together with any other information which the board considers necessary.

"(d) [~~(c)~~] If, from the information available to the board or, if a hearing is held under Subsection (c) of Section 3.271 of this Act, from any information presented at that hearing [~~submitted under subsection (b) of this section~~], the board finds the proposed facility for which a permit or a special permit is sought will utilize at least the best available control technology, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the

emissions resulting from the facility and no indication that the emissions from the proposed facility will contravene the intent of the Texas Clean Air Act, including protection of the health and physical property of the people, the board shall grant within a reasonable time a permit to construct or modify the facility. If the board finds that the emissions from the proposed facility will contravene these standards or will contravene the intent of the Texas Clean Air Act, it shall not grant the permit or special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

"(e) [~~(d)~~] If the person applying for a permit or special permit makes the alterations in his plans and specifications to meet the specific objections of the board, the board shall grant the permit or special permit, but the board may refuse to accept new applications by a person until all previous objections of the board to the previously submitted plans of that person are rectified. If the person fails or refuses to alter the plans and specifications, the board shall refuse to grant the permit or special permit.

"(f) [~~(e)~~] A permit, special permit, or exemption granted under this section may be revoked by the board if the board later determines that any of the terms of the permit, special permit, or exemption are being violated or that emissions from the proposed facility will contravene air pollution control standards set by the board or will contravene the intent of the Texas Clean Air Act.

Proceedings to revoke the permit shall be commenced by the board if any violation at the proposed facility is repeated or continued after 180 days following notice provided pursuant to section 4.02(a) of this Act.

"(g) [~~(f)~~] The board or the executive director may seek an injunction in a court of competent jurisdiction to halt work on a facility which is being done without a permit, special permit, or exemption issued under this section or is in violation of the terms of a permit, special permit, or exemption issued under this section.

"(h) [~~(g)~~] The powers and duties set out in Section 3.27 and Section 3.28 may be delegated by the board to the executive director. The applicant or any person affected by the decision of the executive director may appeal to the board any decision made by the executive director under these sections.

"(i) [~~(h)~~] Provided, however, that at the time this Act becomes effective no provision of this Act shall apply where any person, firm, partnership or corporation has let any contract, or begun any construction for any addition, alteration or modification to any new or existing facility. Any contracts under this subsection shall have a beginning construction date no later than six months after the effective date of this Act to qualify for this exemption."

SECTION 27. Subchapter C, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 3.271 to read as follows:

"Section 3.271. NOTICE AND OPPORTUNITY FOR HEARING. (a) Within the period required by board rule, a person applying for a permit or special permit under Section 3.27 or review of a permit under Subsection (g) of Section 3.28 of this Act shall publish notice of intent to obtain a permit or special permit or permit review at least one time in a newspaper with general circulation in the county in which the facility is located or to be located. Publication of additional notice may be required by board rule. Notice must include:

"(1) a description of the location or proposed location of the facility;

"(2) the fact that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a hearing from the board;

"(3) the manner in which the board may be contacted for further information; and

"(4) any other information the board by rule requires.

"(b) At the site of any facility or proposed facility for which a permit application is submitted under Section 3.27 or a review application is submitted under Subsection (g) of Section 3.28 of this Act, the applicant shall place a sign declaring the filing of an application for a permit or review of a permit for a facility at the site and stating the manner in which the board may be contacted for further information. The board shall adopt any rules necessary to carry out this subsection.

"(c) If a person who may be affected by the emissions makes a request for a hearing within the period set for hearing requests by board rules, the board or its delegate must hold a public hearing on the permit, review, or special permit application before granting the permit, continuance, or special permit. The board is not required to hold a hearing if the basis of a request is determined to be unreasonable. In addition, if an elected official from the general area in which the facility or proposed facility is located makes a request for a hearing within the period set for hearing requests by board rules, the board or its delegate must hold a hearing on the permit, review, or special permit application before granting the permit, continuance, or special permit. The board shall give notice of a hearing under this subsection as provided by Section 3.17 of this Act. For purposes of this subsection, elected official means a member of the Texas Legislature.

SECTION 28. Section 3.28(e), Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended and subsections (g) and (h) are added to read as follows:

(e) A permit issued under this section may be revoked by the board if the board later determines that any of the terms of the permit are being violated or that emissions from the facility contravene air pollution control standards set by the board or contravene the intent of the Texas Clean Air Act. Proceedings to revoke the permit shall be commenced by the board if any violation at the facility is repeated or continues after 180 days following notice provided pursuant to Section 4.02(a) of this Act.

"(g) A permit issued pursuant to this section is subject to review every 15 years. The board by rule shall establish a deadline by which the holder of a permit issued under this section shall submit an application for review of the permit, the general requirements which must be met by such applicant, and the procedures for reviewing and acting on applications for review. No less than 180 days prior to the expiration of the 15th year following the issuance or continuation of a permit under this section, the board shall provide by United States Mail, registered or certified, written notice to the holder of the permit that such permit is scheduled for review in accordance with the requirements of this subsection. Such notice shall include a description of the procedure for filing an application for review and the information to be included in the application. In determining whether and under which conditions operating permits should be continued, the board shall consider, at a minimum, whether the facility is or has been in substantial compliance with the provisions of this Act and the terms of the existing permit and the condition and effectiveness of existing emission control equipment and practices. The board shall impose as a condition for continuance of an operating permit those requirements determined to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area. In no event shall the board impose requirements less stringent than those of the existing permit, during this review, unless the board determines that any proposed change will meet the requirements of Section 3.27 of this Act. The board shall either continue a permit or submit to the applicant the report hereinafter required no later than 180 days after the application for review is filed. If the board determines that the facility will not meet the requirements for continuance of the operating permit, it shall set out in a report to the applicant the basis for its determination and establish a schedule to which the applicant must adhere in meeting the board's

requirements. The schedule set forth in the report shall include a final date for meeting the board's requirements and shall require completion of such action as expeditiously as possible. If the applicant meets the board's requirements in accordance with the schedule set forth in the report, the board shall continue the permit. If the applicant does not meet the board's requirements corrective action by the final date specified in the board's report, the applicant shall be required to show cause in a contested case proceeding conducted pursuant to the requirements of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) why the permit should not expire immediately. The applicant's permit shall remain effective until the final date specified in the board's report to the applicant or until the existing permit is continued or until the date specified in any order of the board entered following a contested case proceeding held pursuant to this subsection. If the holder of an operating permit to which the board has mailed notice of the requirements of this subsection does not apply for review of that permit by the date specified by the board pursuant to this subsection, the permit shall expire 15 years following the date it was issued or last continued. Nothing in this section shall affect the board's authority to commence enforcement action pursuant to Section 4.02 of this Act.

"(h) Each facility operating without a permit because it was constructed or construction on it had begun before the board's permitting program was implemented shall be registered with the board not later than the 180th day after the effective date of this subsection. The board shall exempt certain facilities or types of facilities from the requirements of this subsection if it is determined that such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere. The person in charge of the facility shall pay any fees in connection with registration established by the board under Section 3.29 of this Act. Not later than the 30th day after the effective date of this Act, the board shall publish notice sufficient to inform operators of those facilities of the registration requirement. This notice shall include at a minimum a description of the types and sizes of facilities required to register, the information to be submitted at registration, and the manner in which the board may be contacted for additional information concerning the applicability of this requirement. The board may require any information it determines is necessary in conjunction with the registration of the facilities. This subsection shall not apply to facilities affected by Subsection (e) of Section 3.10 of this Act.

SECTION 29. Section 3.29, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3.29. [~~PERMIT AND VARIANCE~~] FEES. (a) The board shall adopt, charge, and collect a fee for each application for a permit, permit amendment or revision, or special permit submitted under Section 3.27 or a registration submitted under Subsection (h) of Section 3.28 of this Act, for each application for review of a permit under Subsection (g) of Section 3.28 of this Act, and for inspections performed in enforcement of this Act or rules adopted by the board under this Act. Fees assessed under this section shall not be less than $50 nor more than $50,000.

"(b) The amount of the fees shall be established by board rule and must be set so that the board can recover not less than 50 percent of the actual annual expenditures by the board in:

"(1) reviewing and acting on permits or special permits;

"(2) amending and reviewing permits;

"(3) inspecting permitted, exempted, specially permitted, and registered facilities; and

"(4) enforcing the rules and orders adopted and permits, special permits, and exemptions issued under this Act [~~may adopt rules relating to charging and~~

~~collecting fees for permits and variances, including schedules of fees to be charged. The fees shall be sufficient to cover the reasonable costs of review and action by the board on a permit or variance application and of implementing and enforcing the terms and conditions of the permit or variance. Fees adopted under this section shall be not less than $50 nor more than $7,500~~].

SECTION 30. Subchapter C, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Section 3.31 to read as follows:

"Section 3.31. FACILITY. The term 'facility' as used in this Act means any discrete or identifiable structure, device, item of equipment, or enclosure which constitutes or contains a given stationary source, as defined in Subdivision (2) of Section 1.03 of this Act, together with any appurtenances. Emission control equipment shall not be considered appurtenances."

SECTION 31. Section 4.01, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 4.01. UNAUTHORIZED EMISSIONS PROHIBITED. (a) Except as authorized by a rule[~~, regulation, variance~~] or [~~other~~] order of the board, no person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity which causes or contributes to, or which will cause or contribute to, a condition of air pollution.

"(b) No person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity in violation of this Act or of any rule[~~, regulation, variance,~~] or [~~other~~] order of the board.

"(c) Any person who violates any provision of this Act or of any rule[~~, regulation, variance,~~] or [~~other~~] order of the board is subject to a civil penalty of not less than $50 nor more than $25,000 [~~$1,000~~] for each day of violation and for each act of violation, as the court or jury may deem proper, to be recovered in the manner provided in this Subchapter."

SECTION 32. Section 4.02, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.02. ENFORCEMENT BY SUIT [~~BOARD~~]. (a). Whenever the executive director finds that a person has violated, or is violating or threatening to violate, any provision of this Act or of any rule or order of the Board, he shall within five days notify that person of the apparent violation and:

(1) the board or the executive director may cause a suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than $50 nor more than $25,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty; and

(2) notwithstanding the authority conferred in Subsection (a)(1), the board or the executive director shall cause to be instituted a suit, as described in Subsection (a)(1) of this section, for civil penalties and appropriate injunctive relief if the apparent violation or threat of violation is repeated or continues after 120 days following the notice provided pursuant to paragraph (a) of this subsection unless the board in an open meeting prior to 120 days following such notice determines to defer the initiation of a suit. In no event shall the initiation of a suit be so deferred by the board for more than 60 days. If the apparent violation or threat of violation would materially affect human health and safety, the suit shall be instituted immediately.

(b). At the request of the board[~~,~~] or the executive director [~~secretary when authorized by the board~~], the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

(c). Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule or order of the board, the district court shall grant the injunctive relief the facts may warrant.

(d). The agency shall prepare a monthly report on enforcement actions taken and the resolution of such actions. The report shall be an agenda item for discussion by the board at each regularly scheduled meeting. When an enforcement action involves a suit filed for injunctive action or civil penalties or both, the report shall indicate the actual or projected time for resolution of the suit. Copies of the report and minutes of the meeting reflecting any action taken by the board in regards to the report shall be filed with the governor and the attorney general.

~~[(a). Whenever it appears that a person has violated or is violating, or is threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, then the board, or the executive secretary when authorized by the board, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, the district court shall grant the injunctive relief the facts may warrant.]~~

SECTION 33. Subchapter D, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Sections 4.041 and 4.042 to read as follows:

"Section 4.041. ADMINISTRATIVE PENALTY. (a) If a person violates this Act or a rule or order adopted or permit issued under this Act, the person may be assessed a civil penalty as provided by this section.

"(b) The penalty may be in an amount not to exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

"(c) In determining the amount of the penalty, the board shall consider:

"(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts; and the hazard or potential hazard created to the health or safety of the public;

"(2) the history of previous violations;

"(3) the amount necessary to deter future violations;

"(4) efforts to correct the violation; and

"(5) any other matters that justice may require.

"(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based the conclusion that a violation occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set forth in Subsection (c) of this section.

"(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged. The report shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

"(f) Not later than the 20th day after the date on which notice is received, the person charged either may give to the board written consent to the executive

director's report, including the recommended penalty, or may make a written request for a hearing.

"(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the board by order shall either assess that penalty or order a hearing to be held on the recommendations in the executive director's report. If the board assesses the penalty recommended by the report, the board shall give written notice to the person charged of its decision and the person charged shall pay the penalty.

"(h) If the person charged requests or the board orders a hearing, the executive director shall call a hearing and give notice of the hearing as provided by Section 3.17 of this Act. The hearing shall be held by a hearing examiner designated by the board. The hearing examiner shall make findings of fact and promptly issue to the board a written decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the board by order may find a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

"(i) The board shall give notice of its decision to the person charged, and if the board finds that a violation occurred and a civil penalty has been assessed, the board shall give to the person charged written notice of its findings, of the amount of the penalty, and of his right to judicial review of the board's order. If the board finds that a violation occurred and a civil penalty has been assessed, the board shall also publish notice of these decisions in the Texas Register within 10 days.

"(j) Within the 30-day period immediately following the day on which the order is final as provided by Subsection (c), Section 16, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

"(1) pay the penalty in full; or

"(2) if the person files a petition for judicial review of either the amount of the penalty or the fact of the violation or of both the fact of the violation and the amount of the penalty:

"(A) forward the amount to the board for placement in an escrow account; or

"(B) in lieu of payment into escrow, post with the board a supersedeas bond in a form approved by the board for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

"(k) Failure to forward the money to or to post the bond with the board within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (g) or (j) of this section, the board or the executive director may forward the matter to the attorney general for enforcement.

"(l) Judicial review of the order or decision of the board assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

"(m) If the penalty is reduced or not assessed, the board shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the board under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the

date the penalty is paid to the board under Subsection (j) of this section and ending on the date the penalty is remitted.

"(n) A penalty collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

"Section 4.042. REMEDIES SUPPLEMENTAL. The remedies provided in this Act to prevent, abate, or penalize violations of the board's rules, orders, or permits or the causing of or contributing to a condition of air pollution are supplemental of all other causes of actions and remedies available to the state at common law or by other statutes."

SECTION 34. The Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), is amended by adding Subchapter G to read as follows:

"SUBCHAPTER G. CLEAN AIR STUDY COMMITTEE

"Section 7.01. CLEAN AIR STUDY COMMITTEE. The Clean Air Study Committee is created.

"Section 7.02. COMPOSITION. The committee is composed of:

"(1) four members appointed by the governor, three of whom are representatives of business or industry and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment;

"(2) three members appointed by the lieutenant governor, two of whom are state senators and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment; and

"(3) three members appointed by the speaker of the house of representatives, two of whom are state representatives and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment.

"Section 7.03. CHAIRMAN. The governor shall appoint the chairman of the committee.

"Section 7.04. MEETINGS. The committee shall meet at least quarterly and at other times at the call of the chair.

"Section 7.05. POWERS AND DUTIES. (a) The committee shall study:

"(1) facilities that emit contaminants into the air and that have been allowed to operate without permits from the board because they were constructed or construction on them had begun before the board's permitting program was implemented;

"(2) the issuance of renewable permits; and

"(3) regulation of emissions into the air from ships.

"(b) Not later than December 1, 1986, the committee shall complete and have ready to submit a report to the 70th Legislature. The report shall include the committee's recommendation on whether or not to require operating permits for continued operation of facilities that have been operating without permits because they were constructed or construction on them had begun before the board's permitting program was implemented. If the committee recommends that operating permits be required, the committee also shall discuss procedures under which those facilities may be issued a permit. In addition, the committee shall review and make recommendations concerning the issuance of renewable permits, the length of each renewal period, and the procedure for renewal of a permit. The committee also shall include a recommendation on whether or not to regulate emissions into the air from ships under this Act. Finally, the committee shall include a discussion of the options it considered in making its recommendations. The committee shall accompany each of its recommendations with a discussion of the effect of that recommendation on:

"(1) air quality;

"(2) the regulated industry; and

"(3) the board's regulatory authority, including any additional resources the board would require to implement and carry out the recommendation.

"(c) The board shall develop and implement a continuing data collection system for identifying each facility operating without an operating permit because it was constructed or construction on it had begun before the board's permitting program was implemented and for collecting data on emissions from those facilities. Owners and operators of the facilities shall cooperate with and assist the board in obtaining data. The board shall provide to the committee and shall submit to the 70th Legislature a report on information collected through the data collection system, including a listing by legislative district of facilities operating without an operating permit.

"(d) The board shall provide staff for the committee as necessary to assist the committee in the performance of its duties.

"Section 7.06. EXPIRATION. This subchapter expires January 1, 1987."

SECTION 35. Subsections (d) and (g), Section 142, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), are amended to read as follows:

"(d) The Public Safety Commission shall establish a parameter motor vehicle emissions inspection and maintenance program for vehicles registered in any county in this state which does not meet National Ambient Air Quality Standards and for which the Texas Air Control Board has adopted a resolution requesting the department to institute such a program. The commission may establish any other motor vehicle emissions inspection and maintenance program required by federal law or by a rule or order adopted under federal law."

"(g) The Public Safety Commission may establish by rule an inspection fee in addition to the fee for compulsory inspection as provided by Subsection (c) of Section 141 of this Act for those vehicles inspected pursuant to Subsection (d) of this section. The[~~, and such~~] additional fee shall not exceed $5 if only a parameter program is established and may not exceed $10 if a program other than the parameter program is established under federal requirements."

SECTION 36. Section 2.10, Sections 3.21 through 3.26, and Subsections (a), (b), (c), and (f) of Section 3.30, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), are repealed.

SECTION 37. This Act takes effect September 1, 1985, except Subsection (b) of Section 3.27, as added by Section 26 of this Act, takes effect immediately.

SECTION 38. The chairman of the Texas Air Control Board shall be designated as provided by Section 2.06, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes), as amended by this Act, beginning either with the expiration of the term of the chairman serving on the effective date of this Act or with the occurrence on or after the effective date of this Act of a vacancy in the office of chairman, whichever occurs first. Until that time, the chairman serves as provided by Section 2.06 as it existed before amendment by this Act and that law is continued in effect for that purpose.

SECTION 39. Except for the provisions in Subsection (b) of Section 3.27, as added by Section 26 of this Act, the changes in law made by this Act by amending Section 3.27 and adding Section 3.271 of this Act apply only to an application for a permit for operation, construction, or modifications of a facility that may emit contaminants into the air if the application is filed on or after the effective date of this Act. An application for a permit filed before the effective date of this Act is governed by the Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes) as it existed before amendment by this Act and that law is continued in effect for that purpose.

SECTION 40. The changes in law made by this Act by amending Sections 4.01 and 4.02, Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes),

and by adding Section 4.041, Texas Clean Air Act (Article 4477-5, Vernon Texas Civil Statutes), apply only to the penalty for a violation occurring on or after the effective date of this Act. A violation occurring before the effective date of this Act is governed by the law that was in effect when the violation occurred.

SECTION 41. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1 - P. Hill

Amend **C.S.S.B. 725** in the following respects:

1. Amend SECTION 1, page 2 lines 10 and 11 by deleting "civil actions in the district courts of the state" and replacing with "enforcement actions as provided in this Act."

2. Amend SECTION 2, Sec. 2.02(a), on page 3 at line 8 to delete the language after the word "appointment;" and insert the following:

one shall be an agricultural engineer with at least ten years experience in his profession; and five members must be members of the general public of whom at least one must be a member with a demonstrated involvement in efforts to safeguard the environment.

3. Amend SECTION 6, Sec. 2.03, on page 5 at lines 8 and 9 to delete the following sentence:

"Board members may not serve more than two full or partial terms."

4. Amend SECTION 26 on page 15 to delete subsections (a) and (b) of Section 3.27 and substitute in lieu thereof the following:

(a) Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this State shall apply for and obtain a construction permit from the board before any actual work is begun on the facility. The board may issue special permits to certain [~~exempt certain~~] facilities [~~or~~]. The board by rule may exempt certain types of facilities from the requirements of Section 3.27 and Section 3.28 if it is found upon investigation that such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere.

(b) In considering the issuance of a permit for construction or modification of any facility 3,000 feet or less of an elementary, junior high, or senior high school, the board shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending these school facilities.

5. Amend SECTION 26 on page 16 to add a new Subsection (c) between line 1 and line 2 to read as follows and reletter subsequent subsections accordingly:

"(c) No person may commence construction on a permanently or temporarily located concrete plant that accomplishes wet batching, dry batching or central mixing under an exemption adopted by the board pursuant to Subsection (a) of this section, without first complying with the notice and opportunity for hearing provisions of Subsections (a) and (c) of Section 3.271 of this Act. For purposes of this subsection, only those persons actually residing in a permanent residence within one-quarter mile of the proposed plant may be a "person who may be affected" as that term is used in Section 3.271(c) of this Act."

6. Amend SECTION 26, Sec. 3.27(f), starting on page 17 at line 14, to delete the current language on lines 14 through 17 and replace with the following:

"Proceedings to revoke the permit may be commenced by the board if any violation at the proposed facility is continued after 180 days following the notice of violation provided pursuant to section 4.02(a) of this Act. The board may consider good faith efforts to correct the violation in deciding whether to revoke a permit, special permit, or exemption."

7. Amend SECTION 28, Sec. 3.28(e), starting on page 20 at line 7, to delete the current language after the word "Act." and replace with the following:

"Proceedings to revoke the permit may be commenced by the board if any violation at the proposed facility is continued after 180 days following the notice of violation provided pursuant to section 4.02(a) of this Act. The board may consider good faith efforts to correct the violation in deciding whether to revoke a permit, special permit, or exemption."

8. Amend SECTION 28, Sec. 3.28(h) as follows: On page 22, at line 17, delete the language following the word "subsection.", and before the word "facilities", and insert the following language: The requirements of this subsection shall not apply to oil and gas production and distribution facilities which do not constitute major facilities/stationary sources as defined in the rules of the board, and the board, pursuant to Section 3.27(a) of this Act shall exempt other; on page 22 at line 23 to insert the following language after the word "Act.": For purposes of this subsection, and the registration fee required by Section 3.29 of this Act, a registrant may treat two or more facilities which compose an integrated system or process as a single facility where a structure, device, item of equipment or enclosure which constitutes or contains a given source operates in conjunction with and is functionally integrated with one or more other such structures, devices, items of equipment or enclosures, provided that in any case sufficient information must be submitted to enable the board to develop an accurate inventory of emissions of air contaminants in the state and to discharge its other duties under this Act; and on page 23, at line 7, after the word "Act" delete the period and add the following language: , livestock confinement facilities, facilities used solely in conjunction with the operation of a farm or ranch, or facilities of the size and type which would meet the requirements for special permits under Section 3.27 of this Act.

9. Amend SECTION 29, Sec. 3.29(a) on page 23 at line 18 to insert the following language after the word "Act.":

For purposes of such fees, the board shall treat two or more facilities which compose an integrated system or process as a single facility where a structure device item of equipment or enclosure which constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other such structures, devices, items of equipment or enclosures.

10. Amend Section 29, page 24, by inserting a subsection (c) between line 8 and 9 to read as follows:

"(c) Nothing in this Act shall be construed as prohibiting the use of variances. Variances are to be considered an exceptional form of relief to be granted only upon the demonstration that compliance with any provision of this Act or rule or order of the board will result in an arbitrary and unreasonable taking of property."

11. Amend SECTION 30, Section 3.31 on page 24, line 17 by adding the following sentence after the word "appurtenances."

"Mines, quarries, and roads shall not be considered facilities."

12. Amend by revising Section 32 on page 25, line 25, Section 4.02(a)(2) of the Act, to read as follows and by adding a new subsection (3) to 4.02(a):

"(2) notwithstanding the authority conferred in subsection (a)(1), if the apparent violation or threat of violation of a non-clerical requirement continues more than 30 days after receipt of the notice provided pursuant to this section, the executive director shall institute proceedings pursuant to Section 3.20(b) of this Act to enter an appropriate order providing for compliance within 180 days of the notice of violation. However, if the board determines that good faith efforts to correct the violation have been made, the board may adopt an order pursuant to Section 3.20(b) of this Act providing for compliance beyond 180 days after issuance of the notice of violation. It is intended that good faith effort be strictly interpreted by the board while giving due consideration to economic reasonableness and technical practicability.

(3) nothwithstanding the authority conferred in subsection (a)(1), if a violation of an order entered pursuant to Subsection (a)(2) continues for more than 180 days following the receipt of the original notice of violation the board or executive director shall (i) institute a suit, as described in subsection (a)(1) of this section, for civil penalties and appropriate injunctive relief and/or commence an action under either Section 3.27(f) or Section 3.28(e) of this Act to revoke a permit, special permit or exemption, and/or (ii) commence an action for administrative penalties pursuant to Section 4.041 of this Act. If the apparent violation or threat of violation would materially affect human health and safety, the suit shall be instituted immediately."

13. Amend SECTION 33, Sec. 4.041, on page 31 between line 22 and line 23, by inserting the following language after subsection (n):

(o) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

The amendments were read.

Senator Caperton moved to concur in the House amendments.

Senator Parker made the substitute motion not to concur in the House amendments.

The substitute motion prevailed by the following vote: Yeas 16, Nays 13.

Yeas: Blake, Brooks, Brown, Farabee, Glasgow, Harris, Howard, Krier, Leedom, Lyon, Mauzy, Parker, Traeger, Washington, Whitmire, Williams.

Nays: Barrientos, Caperton, Edwards, Henderson, Jones, Kothmann, McFarland, Montford, Parmer, Sarpalius, Sharp, Sims, Truan.

Absent: Santiesteban, Uribe.

SENATE RULE 74a SUSPENDED

On motion of Senator Sarpalius and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendment to **S.B. 399**.

SENATE BILL 399 WITH HOUSE AMENDMENT

Senator Sarpalius called **S.B. 399** 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 - Roberts

Amend **S.B. 399** as follows:

On page 1, line 14, after "occurs" insert:

"to a person who has previously been diagnosed as terminally ill,"

The amendment was read.

Senator Sarpalius 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 **S.B. 399** 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 Sarpalius, Chairman; Truan, Edwards, Sims, Sharp.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 402 ADOPTED

Senator Truan called from the President's table the Conference Committee Report on **H.B. 402**. (The Conference Committee Report having been filed with the Senate and read on May 25, 1985.)

On motion of Senator Truan, the Conference Committee Report was adopted.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

H.C.R. 188
H.C.R. 200
H.B. 149
H.B. 373
H.B. 377
H.B. 711
H.B. 832
H.B. 895
H.B. 994
H.B. 1041
H.B. 1243
H.B. 1248
H.B. 1280
H.B. 1281
H.B. 1426
H.B. 1528
H.B. 1532
H.B. 1561
H.B. 1572
H.B. 1584
H.B. 1694
H.B. 1706
H.B. 1741
H.B. 1870
H.B. 1952
H.B. 2004
H.B. 2177
H.B. 2245
H.B. 2325
H.B. 2421
H.B. 2439

COMMITTEE SUBSTITUTE HOUSE BILL 2091 ON SECOND READING

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

C.S.H.B. 2091, Relating to the continuation, composition, powers, and duties of the Texas Department of Health and the Texas Board of Health; to the

continuation of the Occupational Safety Board; to contracts with nursing homes entered into by the Texas Department of Human Resources; to the requirement that certain state agencies execute memoranda of understanding with the Texas Department of Health; and providing penalties.

The bill was read second time.

FLOOR PRIVILEGES GRANTED

On motion of Senator Edwards and by unanimous consent, privileges of the floor were granted to Tim Graves, staff member of the Sunset Commission.

Senator Washington offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2091** by striking all below the enacting clause and substituting the following:

ARTICLE 1

SECTION 1. Section 1.02, Article 4414b, Revised Statutes, is amended to read as follows:

Sec. 1.02. CREATION. (a) To better protect and promote the health of the people of Texas, the Texas Board of Health and the Texas Department of Health are created. The Texas Department of Health consists of the commissioner of health, an administrative staff, and the hospitals known as the San Antonio State Chest Hospital and the South Texas [~~Harlingen State Chest~~] Hospital.

(b) The department shall develop and implement policies which clearly separate the respective responsibilities of the governing body of the department and the staff of the department.

SECTION 2. Section 1.03, Article 4414b, Revised Statutes, is amended to read as follows:

Sec. 1.03. APPLICATION OF SUNSET ACT. The Texas Board of Health and the Texas Department of Health are subject to the Texas Sunset Act[~~, as amended~~] (Article 5429k, Vernon's Texas Civil Statutes), and unless continued in existence as provided by that Act the board and the department are abolished effective September 1, 1997 [~~1985~~].

SECTION 3. Section 1.04, Article 4414b, Revised Statutes, is amended to read as follows:

Sec. 1.04. TEXAS BOARD OF HEALTH. (a) The board consists of 18 members appointed by the governor with the advice and consent of the senate. The governor shall make appointments so that the board is composed of:

(1) six members who are physicians currently licensed under the laws of this state, each of whom has been engaged in the practice of medicine in this state for at least five years prior to appointment;

(2) two members who are hospital administrators with at least five years' experience in hospital administration in this state prior to appointment;

(3) one member who is a dentist licensed under the laws of this state and who has been engaged in the practice of dentistry in this state for at least five years prior to appointment;

(4) one member who is a registered nurse licensed to practice professional nursing under the laws of this state and who has been engaged in the practice of nursing in this state for at least five years prior to appointment;

(5) one member who is a veterinarian licensed under the laws of this state and who has been engaged in the practice of veterinary medicine in this state for at least five years prior to appointment;

(6) one member who is a pharmacist licensed under the laws of this state and who has been engaged in the practice of pharmacy in this state for at least five years prior to appointment;

(7) one member who is a nursing home administrator licensed under the laws of this state and who has been engaged as a nursing home administrator in this state for at least five years prior to appointment;

(8) one member who is an optometrist licensed under the laws of this state and who has been engaged in the practice of optometry in this state for at least five years prior to appointment;

(9) one member who holds a civil engineering degree from an accredited university or college, is licensed by this state as a professional engineer, and has specialized in the practice of sanitary engineering in this state for at least five years prior to appointment;

(10) one member who is a doctor of chiropractic licensed under the laws of this state and who has been engaged in the practice of chiropractic in this state for at least five years prior to appointment; and

(11) two members who are citizens who have none of the qualifications required of the other 16 members.

(b) A person is not eligible for appointment as a public member under Subsection (a)(11) of this section if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(3) owns, 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 funds from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the department.

(c) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the board, nor may a person who is the spouse of an officer, managerial employee, or paid consultant of a trade association in the field of health care be a member or employee of the board grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), 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.

(e) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

(f) [~~(b)~~] Members of the board serve for staggered terms of six years, with the terms of six members expiring on February 1 of each odd-numbered year.

(g) Not later than September 1 of each odd-numbered year [~~(c) Biennially~~], the governor shall designate one member as chairman and one member as vice-chairman.

(h) [~~(d)~~] A majority of the members of the board constitute a quorum for the transaction of business.

(i) [~~(e)~~] The board shall meet in Austin or in other places fixed by the board.

(j) [~~(f)~~] The board shall meet at least once each month on dates determined by the board and shall hold special meetings when called by the chairman. The chairman shall give timely notice of any special meeting to each member.

(k) Meetings of board committees shall be held in compliance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(l) [~~(g)~~] Members of the board receive no fixed salary. A board member is entitled to $50 per day for each day spent in attending board meetings. A board member is also entitled to reimbursement for travel expenses and other necessary expenses incurred while performing an official duty.

(m) [~~(h)~~] Members of the board qualify by taking the constitutional oath of office. On presentation of the oath of office and the certificate of appointment, the secretary of state shall issue commissions to them, which are evidence of their authority to act.

(n) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) of this section for appointment to the board;

(3) violates a prohibition established by Subsection (c) or (d) of this section;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

(o) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(p) If the commissioner has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of that ground. The chairman of the board shall then notify the governor that a potential ground for removal exists.

(q) The state auditor shall audit the financial transactions of the board at least once during each biennium.

SECTION 4. Section 1.05, Article 4414b, Revised Statutes, is amended to read as follows:

Sec. 1.05. DUTIES OF BOARD. (a) The board shall:

(1) have general supervision and control of all matters pertaining to the health of citizens of this state;

(2) employ the commissioner of health;

(3) investigate the conduct of the work of the department and for this purpose shall have access at any time to all departmental books and records and may require written or oral information from a departmental officer or employee;

(4) adopt rules, not inconsistent with law, for its own procedure and for the conduct and performance of every duty imposed on the board, the department, or the commissioner by law and shall file a copy of the rules with the department; and

(5) examine, investigate, enter, and inspect as the board determines necessary any public place or public building for the discovery and suppression of disease and for the enforcement of any health or sanitation law of this state.

(b) The board is responsible for the adoption of policies and rules and for the government of the department. The board shall supervise the commissioner's administration and enforcement of the health laws of the state. The board may delegate in writing any power or duty imposed on it by law, except the power or duty to adopt rules, to the commissioner of health or, in his absence, to the person acting as commissioner of health, including the authority to make final orders or decisions.

(c) The board has all the powers, duties, and functions granted by law to the State Board of Health, the State Commissioner of Health, the State Department of Health, the Texas Department of Health, the Texas Board of Health Resources, and the Texas Department of Health Resources.

(d) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The

form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

(e) The board shall have information of public interest prepared describing the functions of the board and the department and describing the board's and the department's procedures by which complaints are filed with and resolved by the board and the department. The department shall make the information available to the general public and appropriate state agencies.

(f) The board shall adopt rules establishing methods by which consumers or service recipients can be notified of the names, mailing addresses, and telephone numbers of the board and the department for the purpose of directing complaints to the board and the department. The board may provide for that notification through inclusion of the information:

(1) on each registration form, application, or written contract for services of a person or entity regulated by the board or department;

(2) on a sign which is prominently displayed in the place of business of each person or entity regulated by the board or department; or

(3) in a bill for service provided by a person or entity regulated by the board or department.

(g) The board shall provide to its members and employees as often as is necessary information regarding their qualifications under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(h) The board shall develop and implement policies which will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board [~~The board may appoint advisory committees to assist the board in performing its duties. If not otherwise specified by law, a member of an advisory committee appointed by the board is entitled to receive $50 for each advisory committee meeting the member attends and the per diem and travel allowance authorized by the General Appropriations Act for state employees. Two members of each advisory committee must be representatives of the general public. A person is eligible to be appointed and to serve as a public member of an advisory committee if the person and the person's spouse are not licensed by an occupational regulatory agency in the health care field, are not employed by any health care facility, agency, or corporation or by a corporation authorized to underwrite health care insurance, do not govern or administer a health care facility, agency, or corporation, and do not have, other than as consumers, a financial interest in a health care facility, agency, or corporation~~].

SECTION 5. Section 1.06, Article 4414b, Revised Statutes, is amended by adding Subsections (f), (g), (h), and (i) to read as follows:

(f) The commissioner or his designee shall develop an intra-agency career ladder program, one part of which shall require the intra-agency posting of all nonentry level positions concurrently with any public posting. The commissioner may waive the posting requirements under circumstances outlined in departmental policies.

(g) The commissioner or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this section.

(h) The commissioner or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement shall include:

(1) personnel policies including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the department 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 for whom 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 for whom federal or state guidelines encourage a more equitable balance.

(i) The policy statements shall be filed with the governor's office not later than 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. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 6. Article 4414b, Revised Statutes, is amended by adding Sections 1.08, 1.09, and 1.10 to read as follows:

Sec. 1.08. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to assist the board in performing its duties.

(b) The board shall appoint each advisory committee to provide for:

(1) a balanced representation of persons or groups with knowledge and interest in the committee's field of work;

(2) the inclusion on the committee of at least two members who represent the interests of the general public; and

(3) a balanced representation of the geographical regions of the state.

(c) A person is eligible to be appointed and to serve as a public member of an advisory committee if the person and the person's spouse are not licensed by an occupational regulatory agency in the health care field, are not employed by any health care facility, agency, or corporation or by a corporation authorized to underwrite health care insurance, do not govern or administer a health care facility, agency, or corporation, and do not have, other than as consumers, a financial interest in a health care facility, agency, or corporation.

(d) If not otherwise specified by law and contingent on the availability of department funds for this purpose, a member of an advisory committee appointed by the board is entitled to receive $50 for each advisory committee meeting the member attends and the per diem and travel allowance authorized by the General Appropriations Act for state employees.

(e) The board shall specify each committee's purpose, powers, and duties and shall require each committee to report to the board in a manner specified by the board concerning the committee's activities and the results of its work.

(f) The board shall establish procedures for receiving reports concerning activities and accomplishments of advisory committees established by statute to advise the board or department. The board may appoint additional members to those advisory committees and establish additional duties of those committees as the board determines to be necessary.

(g) The board shall adopt rules to implement this section.

Sec. 1.09. COMPLAINTS. (a) The department shall keep an information file about each complaint filed with the department relating to a licensee or entity regulated by the department or a service delivered by the department.

(b) If a written complaint is filed with the department relating to a licensee or entity regulated by the department or a service delivered by the department, the department at least as frequently as quarterly and until final disposition of the complaint shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Sec. 1.10. COST CONTAINMENT. In awarding contracts or grants for services, or in selecting providers of services under any program administered by

the department, the department shall give preference to those providers who can provide the services in the most cost-effective manner and shall not discriminate among licensed health care providers who can provide the services under the authority of their license.

SECTION 7. Section 1, Chapter 641, Acts of the 68th Legislature, Regular Session, 1983 (Article 4414c, Vernon's Texas Civil Statutes), is amended by adding Subdivision (3) to read as follows:

(3) "Public health services" means personal health promotion, maintenance, and treatment services; infectious disease control and prevention services; environmental and consumer health protection services; laboratory services; health facility architectural plan review; public health planning, data, and statistical services; public health education and information services; and administration services.

SECTION 8. Sections 4 and 7, Texas Hospital Survey and Construction Act (Article 4437d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4. GENERAL POWERS AND DUTIES. In carrying out the purposes of the Act, the Commissioner of [~~State~~] Health [~~Officer, with the advice of the Advisory Hospital Council,~~] is authorized and directed:

(a) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(b) To provide such methods of administration, appoint a director and other personnel of the Division and take such other action as may be necessary to comply with the requirements of the Federal Act and the regulations thereunder;

(c) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(d) To the extent that he considers desirable to effectuate the purposes of this Act, to enter into agreements for the utilization of the facilities and services of other departments, agencies and institutions, public or private;

(e) To accept on behalf of the State and to deposit with the State Treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this Act, and to expend the same for such purpose;

(f) To make an annual report to the Board on activities and expenditures pursuant to this Act, including recommendations for such additional legislation as the Commissioner of [~~State~~] Health [~~Officer~~] considers appropriate to furnish adequate hospital, clinic and similar facilities to the people of this State.

Sec. 7. COORDINATION OF FEDERAL ACT. The Board is authorized to establish methods of administration and [~~with the approval of the Hospital Advisory Council~~] promulgate regulations for the purpose of meeting the requirements prescribed by the Federal Act relative to survey, planning and construction of hospitals and public health centers.

SECTION 9. The following are repealed:

(1) Sections 10 and 11, Special Senses and Communication Disorders Act (Article 4419g, Vernon's Texas Civil Statutes);

(2) Section 5, Texas Hospital Survey and Construction Act (Article 4437d, Vernon's Texas Civil Statutes);

(3) Section 10, Chapter 874, Acts of the 67th Legislature, Regular Session, 1981 (Article 4447w, Vernon's Texas Civil Statutes);

(4) Section 2.02(c), Texas Youth Camp Safety and Health Act (Article 4447l, Vernon's Texas Civil Statutes); and

(5) Section 18, Chapter 467, Acts of the 68th Legislature, Regular Session, 1983 (Article 6252-13e, Vernon's Texas Civil Statutes).

ARTICLE 2

SECTION 1. Section 1.03(16), Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is amended to read as follows:

(16) "Statewide Health Coordinating Council" means a twenty-seven person council, in accordance with federal law, appointed by the governor, to provide rules and regulations governing the development and implementation of the state health plan as required by the National Health Planning and Resources Development Act of 1974 (P.L. 93-641) as amended, the federal rules and regulations promulgated under that Act, and other pertinent federal authority. [~~the council appointed by the governor in accordance with federal law to advise the department generally on the performance of its functions.~~

SECTION 2. Section 1.05, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is amended to read as follows:

Section 1.05. AUTHORITY OF THE GOVERNOR. (a) As the chief executive and planning officer of this state, the governor is authorized to perform those duties and functions assigned to him by federal law. The governor is authorized to transfer personnel, equipment, records, obligations, appropriations, functions and duties of his office to another agency [~~the commission or the department~~].

(b) The governor by executive order may establish a capital expenditure review program in compliance with federal law if the governor finds that such a review program is necessary to prevent the loss of federal funds. The governor's findings, including a brief description of the reason for the findings, must be included in the text of an order issued under this subsection. If necessary, the governor may use any available funds to implement this subsection.

(c) An executive order issued under Subsection (b) of this section expires on the September 1 that follows the next regular session of the legislature that begins after the date the order is issued, unless an earlier date is specified in the order, or unless the governor rescinds the order before that time.

(d) The program established by an executive order issued under Subsection (b) of this section, when authorized by the governor, may negotiate an agreement with the Secretary of Health and Human Services on behalf of the State of Texas to administer a state capital expenditure review program pursuant to Section 1122 of the Social Security Act, the federal rules and regulations promulgated under that Act, and other pertinent federal authority, if after thorough review and study, the governor determines that such a review program would be necessary to prevent the loss of federal funds.

SECTION 3. Subchapter D, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is revised to read as follows:

SUBCHAPTER D. FUNCTIONS OF DEPARTMENT

Sec. 4.01. HEALTH PLANNING AND DEVELOPMENT AGENCY. The department is designated as the state health planning and development agency for the State of Texas.

Sec. 4.02 GENERAL POWERS AND DUTIES. (a) The department shall, in accordance with rules and regulations promulgated by the statewide health coordinating council, conduct the following duties:

(1) preparing, reviewing, and revising the preliminary state health plan for submission to the statewide health coordinating council;

(2) collecting and disseminating data necessary to support specific state health plan goals and;

(3) assisting the statewide health coordinating council in the performance of its functions and duties.

(b) The department shall perform the duties and functions prescribed by state and federal law regarding the development of the state health plan after consultation

with the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and other appropriate health-related state agencies as designated by the governor.

Sec. 4.03. COLLECTION OF DATA. (a) The department, shall adopt rules establishing reasonable procedures for the collection and dissemination of data determined to be necessary to facilitate and expedite proper and effective health planning and resource development.

(b) The rules must specify what type of data are required, the entities that are required to submit the data, and the period during which the data must be submitted.

(c) The department shall file, index, and periodically publish in a coherent manner summaries or analyses of the data collected.

(d) If the department does not receive the data as required by the rules, the department shall notify the entity of the problem and shall require the entity to submit the data not later than 30 days after the entity receives the notification.

(e) An entity that does not timely submit the data after notification under Subsection (d) of this section is subject to a civil penalty of not more than $100 for each day the entity fails to submit the data. At the request of the commissioner of health, the attorney general shall institute and conduct a suit in the name of the state to recover the civil penalty.

(f) All data received by the department under this section that contain information identifying specific patients are confidential and may not be released unless the information identifying the patient is removed from the data.

Sec. 4.04. STATEWIDE HEALTH COORDINATING COUNCIL. (a) The statewide health coordinating council is appointed by the governor in accordance with the requirements of applicable federal law.

(b) The statewide health coordinating council shall:

(1) provide guidance to the department in developing the state health plan;

(2) approve the state health plan for submission to the governor in accordance with applicable federal law and;

(3) promote the implementation of the state health plan's recommendations.

(c) The statewide health coordinating council shall adopt rules in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) detailing the processes used to accomplish its functions.

Sec. 4.05. STATE HEALTH PLAN. (a) The state health plan must be developed and used in accordance with applicable state and federal law and shall identify:

(1) major statewide health concerns;

(2) the availability and use of current health resources of the state; and

(3) the future health service and facility needs of the state.

(b) The state health plan must:

(1) propose strategies for the correction of major deficiencies in the service delivery system; and

(2) provide direction for the state's legislative and executive decision-making processes to implement the strategies proposed by the plan.

(c) Information needed for the development of the state health plan shall be gathered through systematic methods designed to include local, regional, and statewide perspectives.

(d) The statewide health coordinating council, through consultation with the health and human services coordinating council, shall generate overall directives for the development of the state health plan.

(e) The department shall submit the preliminary state health plan to the statewide health coordinating council for approval.

(f) Before submitting the state health plan to the governor for adoption, the statewide health coordinating council shall submit the state health plan to the health and human services coordinating council for review and comment.

(g) The statewide health coordinating council shall submit the state health plan to the governor for adoption not later than November 1 of each even-numbered year.

Sec. 4.06. COST DATA. (a) Any state agency directly affected by a recommendation in the state health plan shall submit cost data concerning implementation of the recommendation to the department and the statewide health coordinating council and shall indicate whether the agency is requesting funds in a manner consistent with the state health plan's recommendations. If the agency is not requesting funds consistent with the state health plan's recommendations, the agency shall submit an explanation and justification of any deviations.

(b) The department shall submit information received under this section to the Legislative Budget Board and the governor's budget office not later than November 1 of each even-numbered year. The submission is in addition to any other fiscal reporting requirements imposed on the department.

Sec. 4.07. ASSISTANCE UNDER TITLE XVI. No application for assistance under Title XVI of the Public Health Service Act may be considered by the department until the requirements of Subchapters B and C of this Act have been complied with.

Sec. 4.08. CONTRACTS. With the approval of the governor and after a public hearing, the department may contract with an appropriate state agency to perform specific state health planning and development agency functions of the department.

ARTICLE 3

SECTION 1. The Crippled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes) is amended to read as follows:

Sec. 1. SHORT TITLE. This Act may be cited as the Disabled [~~Crippled~~] Children's Services Act.

Sec. 2. DEFINITIONS. In this Act:

(1) "Disabled [~~Crippled~~] child" means a person whose physical function, condition, movement, or sense of hearing is impaired to the extent that the person is or may be expected to be partially or totally incapacitated for educational purposes or for acquiring remunerative occupation and who:

(A) is under 21 years of age and has:

(i) a joint, bone, ossicular chain, muscle, or neurological defect or deformity, including neurofibromatosis and spina bifida; [~~or~~]

(ii) cancer; or

(iii) a disease or condition specified by a rule adopted by the board under Section 8(b) of this Act; or

(B) has cystic fibrosis, regardless of the person's age.

(2) "Board" means the Texas Board of Health.

(3) "Cancer" means a malignant disease, including leukemia, lymphoma, and histiocytosis, characterized by unrestricted growth of abnormal cells, the natural course of which is fatal.

(4) "Department" means the Texas Department of Health.

(5) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(6) "Dentist" means a person licensed by the Texas State Board of Dental Examiners to practice dentistry in this state.

(7) "Program" means the disabled [~~crippled~~] children's services program.

(8) "Rehabilitation services" means a process of physical restoration of body function destroyed or impaired by congenital defect, disease, or injury, and may

include hospitalization, medical and dental care, optometric care, braces, artificial appliances, durable medical equipment, medical supplies, and occupational and physical therapy.

Sec. 3. PROGRAM. (a) A program is created in the department to provide rehabilitation services to disabled [~~crippled~~] children who are eligible for the services. The program shall provide:

(1) early identification of disabled [~~crippled~~] children;

(2) diagnosis and evaluation of disabled [~~crippled~~] children;

(3) rehabilitation services to disabled [~~crippled~~] children; and

(4) development and improvement of standards and services for disabled [~~crippled~~] children.

(b) The program prescribed by Subsection (a) of this section may provide transportation and subsistence for eligible disabled [~~crippled~~] children. The program may also provide the following services for eligible disabled [~~crippled~~] children who die while hospitalized for a condition covered by the program, including:

(1) transportation of the deceased's remains, and a parent or other person accompanying the remains, from the hospital to the place of burial within the state designated by the parent or other person legally responsible for interment;

(2) expense of embalming if embalming is required for transportation;

(3) cost of a casket purchased at a minimum price, if a casket is required for transportation; and

(4) other necessary expenses directly related to the care of the deceased's remains and the return of the remains to the place of burial within the state.

(c) The State Commission for the Blind is responsible for providing services to disabled [~~crippled~~] children whose sole or primary handicap is blindness or some other substantial visual handicap.

(d) The program established by this Act is separate and distinct from a financial or medical assistance program established by Chapters 31 and 32, Human Resources Code.

Sec. 4. ELIGIBILITY REQUIREMENTS. (a) A child is not eligible to receive services provided under this Act, unless:

(1) the child is a resident of the state;

(2) at least one licensed physician or dentist has certified to the department that he examined the child and found the child to be a disabled [~~crippled~~] child whose disability meets the medical criteria established by the board;

(3) the physician or dentist has reason to expect that the services provided will improve the child's condition or will extend the child's ability to function independently; and

(4) the department has determined that every person who has a legal obligation to provide services for the child is unable to pay for the entire cost of the services.

(b) A child is not eligible to receive services provided by this Act to the extent that a person who has a legal obligation to provide for the child's care and treatment is financially able to pay for all or part of the services provided by this Act. The department shall require the child or a person who has a legal obligation to provide for the child's care and treatment and who is financially able to bear a portion of the expense to pay for or reimburse the department for the portion of the cost of the services provided by the department to the child for whom application is made or by whom the services are received.

Sec. 5. OTHER BENEFITS. (a) In this section, "other benefit" means a benefit, other than a benefit under this Act, to which a person is entitled for payment of the costs of medical or dental care and treatment or burial, including:

(1) benefits available from:

(A) an insurance policy, group health plan, or prepaid medical dental care plan;

(B) Title XVIII or Title XIX of the Social Security Act;

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services; or

(E) workers' compensation or any compulsory employers' insurance program;

(2) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(3) benefits available from a cause of action for medical or dental expenses to a child applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for services provided under this Act.

(b) A child is not eligible to receive services provided by this Act to the extent that the child or a person who has a legal obligation to support the child is eligible for some other benefit that would pay for all or part of the services provided by this Act.

(c) An applicant for or a recipient of services provided under this Act shall inform the department at the time of application or at the time the applicant receives services, of any other benefit to which the child, the child's parent, the child's managing conservator, or other person who has a legal obligation to support the child, may be entitled.

(d) The child's parent, the child's managing conservator, or other person who has a legal obligation to support a child who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

Sec. 6. RECOVERY OF COSTS. The department may recover the cost of services provided under this Act from a person who does not reimburse the department as required by Sections 4(b) and 5(d) of this Act or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given. At the request of the commissioner of health, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.

Sec. 7. MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may modify, suspend, or terminate services to a disabled [~~crippled~~] child who is eligible for or is receiving services from the department after notice to the persons affected and an opportunity for a fair hearing.

(b) The rules adopted by the board shall contain criteria for the department's action.

(c) The board shall conduct fair hearings under the board's informal hearing rules.

Sec. 8. GENERAL PROVISIONS. (a) The board shall:

(1) adopt rules prescribing the type, amount, and duration of rehabilitation and support services to be provided and the medical, financial, and other criteria for eligibility to receive services;

(2) adopt substantive and procedural rules for the selection of physicians, dentists, and hospitals for participation in the program;

(3) adopt substantive and procedural rules for the modification, suspension, or termination of services to a disabled [~~crippled~~] child who is eligible for or receiving services provided under this Act; and

(4) select physicians, dentists, ambulatory surgical centers, and hospitals to provide rehabilitation services.

(b) The board may adopt rules to authorize the program to provide rehabilitation services to disabled children with a disease or condition specified by the rule. The board may adopt rules under this subsection covering disabled children with a specific disease or condition only if the General Appropriations Act in effect at that time provides a specific appropriation for services to disabled children with that disease or condition. If the subsequent General Appropriations Act does not specifically appropriate funds for services to disabled children with a disease or condition specified by rules adopted under this subsection, those rules expire and the program must stop providing services to those disabled children pending future specific appropriations.

(c) [~~(b)~~] The department may:

(1) provide services only for conditions specified by the board;

(2) pay only for rehabilitation services provided by a physician, dentist, ambulatory surgical center, or hospital approved by the board, except in an emergency situation;

(3) adopt reasonable procedures and standards to govern the determination of fees and charges for program payment;

(4) take census, make surveys, and establish permanent records of disabled [~~crippled~~] children;

(5) receive and expend gifts and donations for the purposes of this Act;

(6) receive funds appropriated or granted by the state or federal government to provide rehabilitation services for disabled [~~crippled~~] children; and

(7) enter into contracts and agreements necessary to carry out this Act.

(d) [~~(c)~~] Except as prescribed by Subsection (e) [~~(d)~~] of this section, a recipient of services may select any physician, dentist, ambulatory surgical center, or hospital approved by the board to provide treatment. If the recipient is a minor, the person legally authorized to consent to the treatment may select the physician, dentist, or hospital.

(e) [~~(d)~~] The board shall require a person selecting a physician, dentist, or hospital as prescribed by Subsection (d) [~~(c)~~] of this section to use existing rehabilitation services in a location as close to the recipient's home as possible.

Sec. 9. DEVICES AND SUPPLIES. The department shall maintain a record of orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for disabled [~~crippled~~] children. Orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for disabled [~~crippled~~] children may not be considered state owned personal property and are exempt from the personal property inventory requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). The state auditor shall verify the purchase of the items in the records of the department.

Sec. 10. ENTERING HOMES. This Act does not entitle an employee, agent, or representative of the department, or other official agent to enter a home over the objection of a disabled [~~crippled~~] child or, if the disabled [~~crippled~~] child is a minor, over the objection of the child's parent, managing conservator, or guardian. This Act does not limit the authority of a parent, managing conservator, or guardian over the minor.

Sec. 11. INTERAGENCY COOPERATION ACT. The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes) does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible disabled [~~crippled~~] child. A facility receiving payment under this Act shall deposit the payment in local funds.

ARTICLE 4

SECTION 1. Section 4, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. APPLICATION FOR LICENSE; FEES. (a) An application for a license shall be made to the Licensing Agency upon forms provided by it and contain such information as the Licensing Agency requires which may include affirmative evidence of ability to comply with reasonable standards, rules and regulations as are lawfully prescribed hereunder.

(b) The application shall be accompanied by a license fee which shall be in the sum of Fifty Dollars ($50) plus Two Dollars ($2) for each unit of capacity or bed space for which a license is sought. Such license fee shall be paid annually in said amount with each application for renewal of the institution's license. All license fees provided for herein shall be waived for the State of Texas and its departments, divisions, boards and agencies. Except as provided by Section 6C of this Act, all [~~All~~] license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees may be [~~are hereby~~] appropriated to said Agency for its use in the administration and enforcement of this Act.

(c) Upon receipt of an application for a license the Licensing Agency shall issue a license if upon inspection and investigation it finds that the applicant and facilities meet the requirements established under this law. A license, unless suspended or revoked, shall be renewed annually after an inspection and upon tender of the annual license fee together with the filing by the licensee and approval by the Licensing Agency of an annual report upon such date and containing such information in such form as the Licensing Agency prescribes by regulation. Such license shall be issued only for the premises and persons or governmental units and for the maximum number of beds named in the application and shall not be transferable or assignable. Any approved increase in the bed space shall be subject to an additional fee. Any violator of these provisions shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided for in Section 12 of this Act.

SECTION 2. Section 5, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. INSPECTION. (a) The Licensing Agency or its duly authorized representative shall have the right to enter upon the premises at all reasonable times in order to make whatever inspection, survey, or investigation it deems necessary in accordance with the rules and regulations prescribed by the Licensing Agency. Licenses shall be posted in a conspicuous place on the licensed premises.

(b) The Licensing Agency is entitled to access to books, records, and other documents maintained by or on behalf of an institution to the extent necessary to enforce this Act and the rules adopted under this Act. Any holder of a license or applicant for a license is deemed to have given consent to any authorized representative of the Licensing Agency to enter and inspect the institution in accordance with this Act. Refusal to permit the entry or inspection constitutes grounds for denial, nonrenewal, or revocation of a license as provided by this Act.

(c) The Licensing Agency shall establish procedures to preserve, during the course of any inspection, survey, or investigation, all relevant evidence of conditions that the Licensing Agency has reason to believe threaten the health and safety of a patient or resident, including taking photographs and photocopying relevant documents such as a licensee's notes, a physician's orders, and pharmacy records for use in any legal proceeding. When photographing individuals, the Licensing Agency shall respect the privacy of a patient or resident to the greatest extent possible and may not make public the identity of that patient or resident.

"(d) An institution or a physician who reveals information about a patient or a resident to the Licensing Agency during the course of an inspection, a survey, or an investigation is not liable for damages in a civil action brought by or on behalf of the patient or resident on a theory of civil recovery based on a contention that consent of the plaintiff was required prior to revealing the information to the Licensing Agency."

(e) The Licensing Agency shall develop a form written in clear and concise language to summarize each inspection report and complaint investigation report.

SECTION 3. Section 6, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. DENIAL OR REVOCATION OF LICENSE; HEARINGS AND REVIEW. The Licensing Agency, after providing notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke the license in a [~~any~~] case in which it finds that there has been a substantial failure to comply with the requirements established under this law. The case is subject to the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [~~notice to the licensee shall be effected by registered mail or by personal service, and it shall set forth the particular reasons for the proposed action and fix a date, not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing or upon default of the licensee, the Licensing Agency shall make a written determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served unless the applicant or licensee within such thirty (30) day period appeals the decision to the District Court pursuant to the provisions of this law.~~

[~~This procedure governing the hearing authorized by this Section shall be in accordance with rules promulgated by the Licensing Agency. A full and complete record shall be kept of all procedures in accordance with rules promulgated by the Licensing Agency. Witnesses may be subpoenaed by either party and their testimony taken in person, or by deposition under such regulations and for such purposes as the Licensing Agency may prescribe in its rules of procedure~~].

SECTION 4. Section 6C, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsections (f) through (j) to read as follows:

(a) The legislature finds that the closing of nursing and convalescent homes for violations of laws and regulations may, in certain circumstances, have an adverse effect on both the residents of the facilities and the families of the residents. The legislature further finds that in some cases there are not funds readily available to meet the basic needs of those residents for food, shelter, medication, and personal services. It is the purpose of this Act to provide for the appointment of a trustee to assume the operations of those [~~these~~] facilities in a manner calculated to emphasize resident care and reduce resident trauma. It is also the purpose of this Act to provide for a fund to assist a court-appointed trustee in meeting the basic needs of the residents of those facilities.

(f) The nursing and convalescent home trust fund is created with the state treasurer and shall be available to the licensing agency for expenditure without legislative appropriation to make emergency assistance funds available to a facility. The trustee of a facility may use the emergency assistance funds only to alleviate immediate threats to the health or safety of the residents of the facility, including payments for food, medication, sanitation services, minor repairs, supplies

necessary for personal hygiene, and services necessary for the personal care, health, and safety of the residents. In accordance with rules adopted by the Texas Board of Health, the licensing agency shall disburse money from the fund as ordered by the court. The court may order the licensing agency to disburse emergency assistance funds to a facility if the court finds that:

(1) the facility has inadequate funds accessible to the trustee for the operation of the facility;

(2) an emergency exists that presents an immediate threat to the health and safety of the residents of the facility; and

(3) it is in the best interests of the health and safety of the residents that funds be made available immediately.

(g) Any unencumbered balance in the nursing and convalescent home trust fund in excess of $100,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated to the licensing agency for its use in administering and enforcing this Act.

(h) In addition to the licensing fee required under Section 4 of this Act, the licensing agency shall adopt, charge, and collect an annual fee to be deposited to the credit of the nursing and convalescent home trust fund created by this section. The licensing agency shall set the fee for each nursing and convalescent home in the amount of one dollar for each licensed unit of capacity or bed space in that facility, or in an amount necessary to provide a fund balance of $100,000. The licensing agency shall attempt to set fees under this subsection in amounts that will cause the fund balance to equal $100,000 at the time the fee is adopted. Once the initial fee assessment is made, no additional annual fees may be assessed under this subsection unless the nursing home trust fund balance falls below $100,000.

(i) A facility that receives emergency assistance funds under this section shall reimburse the licensing agency for the amounts received not later than one year after the date on which the funds were received by the trustee. The person that owned the facility at the time that the trustee was appointed is responsible for the reimbursement and shall pay interest on the amount outstanding at a rate equal to the rate of interest determined under Section 2, Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes), to be applicable to judgments rendered during the month in which the money was disbursed to the facility. The interest begins to accrue on the date on which the funds were disbursed to the facility. Any amount that remains outstanding after the year has expired is delinquent and the facility that received the assistance funds may be determined by the Texas Department of Human Resources to be ineligible for a Medicaid provider contract. The licensing agency shall deposit the reimbursement and interest received under this subsection to the credit of the nursing and convalescent home trust fund. At the request of the licensing agency, the attorney general shall institute an action to collect the funds due under this subsection. Venue for an action brought under this subsection is in Travis County.

(j) The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) does not apply to any payments made by a trustee under this section.

SECTION 5. Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by adding Section 6D to read as follows:

Sec. 6D. NOTIFICATION OF CLOSURE. (a) A nursing or convalescent home that is closing, whether temporarily or permanently and whether voluntarily or involuntarily, shall notify the residents of the facility of the closing and shall make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the support of the resident within a reasonable time before the closing.

(b) If the Licensing Agency orders the closing or if the closing is in any other way involuntary, the nursing or convalescent home shall make the notification immediately on receiving notice of the closing, in which case the notification is not required to be written. If the decision to close is made voluntarily by the nursing or convalescent home, the home shall make the notification not later than one week after making the decision to close.

(c) A nursing or convalescent home that fails or refuses to comply with this section commits an offense. An offense under this section is a Class A misdemeanor.

SECTION 6. Section 7, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. RULES, REGULATIONS AND ENFORCEMENTS. The Licensing Agency is authorized to adopt, amend, promulgate, publish and enforce minimum standards in relation to:

(a) Construction of the home or institution, including plumbing, heating, lighting, ventilation and other housing conditions, which shall insure the health, safety and comfort of residents and protection from fire hazard;

(b) Regulate the number and qualification of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents, and establish requirements for in-service education of all employees who have any contact with residents;

(c) All sanitary and related conditions within the institution and its surroundings, including water supply, sewage disposal, food handling and general hygiene, which shall insure the health, safety and comfort of the residents;

(d) Diet related to the needs of each resident and based upon good nutritional practice or on recommendations which may be made by the physician attending the resident;

(e) Equipment essential to the health and welfare of the residents;

(f) At least two unannounced inspections per year shall be mandatory; in order to ensure continuous compliance, a sufficient percentage of institutions shall be selected at random by the Licensing Agency for unannounced inspections to be conducted between the hours of 5 p.m. and 8 a.m., with those inspections to be cursory in nature in order to avoid to the greatest extent feasible any disruption of the patients or residents in the institution; further inspections may be required by the Licensing Agency;

(g) For at least two unannounced inspections in each year as required by Subsection (f) of this section, the Licensing Agency shall arrange to invite in the inspections at least one person as a citizen advocate from one of the following groups: American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the Texas Department on Aging Certified Long Term Care Ombudsman, or any other statewide organization for the elderly, except that this subsection does not apply to an institution that provides maternity care;

(h) The use and administration of medications in conformity with applicable law and rules and regulations on the use and administration of medications; all personnel administering medications must have completed a state-approved training program in medication administration;

(i) Grading each home or institution so as to recognize those homes or institutions that go beyond the minimum level of services and personnel, as established by the agency and a superior grade shall be prominently displayed for public view and as incentive to attain the superior grade, allow each home or institution to advertise such grade. The agency shall not award a superior grade to an institution if the institution has violated state or federal laws or regulations during a period of 12 months prior to the grading inspection. The agency shall

cancel a superior grade granted to an institution if (1) the institution fails to meet the criteria established for a superior grade; or (2) the institution has violated state or federal laws or regulations. For the purposes of this subsection, a "violation of state or federal laws or regulations" means a violation of a law or regulation which affects the health, safety, or welfare of the residents of an institution; resident funds; the confidentality of records of a resident; the financial practices of an institution; and the control of medication within an institution. If a superior grade is cancelled, the institution is prohibited from advertising the superior grade. This subsection does not apply to an institution that provides maternity care.

(j) The Licensing Agency shall require one medical examination per resident per year. The details of this examination will be specified by the Licensing Agency.

(k) Unless another state or federal requirement prohibits, the Licensing Agency shall allow a licensed facility to operate a portion of the facility under the standards of a lesser licensing category. The Licensing Agency shall determine the rank of licensing categories and shall establish procedures and standards to accommodate a facility's operation under the lower category. Unless federal requirement prohibits, the operation of a portion of a facility under the standards of a lesser licensing category shall not constitute abandonment of the higher category of service under the certificate of need program, as provided in the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

The Licensing Agency is further authorized to provide for advice to and coordination of its personnel and facilities with any local agency of a city or county where such city or county shall see fit to supplement the state program with further regulations required to meet local conditions.

SECTION 7. Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by adding Section 9A to read as follows:

Sec. 9A. POSTING INFORMATION. Each facility shall prominently and conspicuously post the following for display in a public area of the facility that is readily accessible to residents, employees, and visitors:

(1) the license issued under this Act;

(2) a sign prescribed by the Licensing Agency that specifies complaint procedures established under this Act or under rules adopted under this Act and that specifies how complaints may be registered with the Licensing Agency; and

(3) a notice in a form prescribed by the Licensing Agency stating that inspection reports and related reports are available at the facility for public inspection and providing the department's toll-free telephone number to be used to obtain information concerning the facility.

SECTION 8. Section 10, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. JUDICIAL REVIEW. Any applicant or licensee aggrieved by the decision of the Licensing Agency is entitled to judicial review in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review under this section shall be under the substantial evidence rule[~~, after a hearing, may within thirty (30) days after the mailing or service of notice of the decision as provided in Section 6, file a notice of appeal in the District Court of the county in which the institution is located or to be located, and serve a copy of the notice of appeal upon the Licensing Agency. Thereupon the Licensing Agency shall promptly certify and file with the Court a copy of the record and decisions including the transcript of the hearings on which the decision is based. The court may affirm, modify, or reverse the decision of the Licensing Agency and either the applicant or~~

~~licensee or the Licensing Agency or State may apply for such further review as is provided by law. Such trial shall be de novo in the District Court~~]. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved except as the Court otherwise orders in the public interest for the welfare and safeguard of the persons in the institution.

SECTION 9. Section 12, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. PENALTIES. (a) Any person establishing, conducting, managing, or operating any institution without a license under this law shall be guilty of a misdemeanor and upon conviction shall be fined not more than $1,000 [~~Two Hundred Dollars ($200)~~] for the first offense and not more than $500 [~~One Hundred Dollars ($100)~~] for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

(b) A person who violates this Act or who fails to comply with a rule or regulation authorized by this Act determined by the Licensing Agency to threaten the health and safety of the patient is subject to a civil penalty of not less than $100 nor more than $25,000 [~~$500~~] for each act of violation, and each day of a continuing violation constitutes a separate ground of recovery.

(c) Except as expressly provided by this Act, any person commits an offense if he intentionally, knowingly, or recklessly discloses to any unauthorized person the date, time, or any other fact about an unannounced inspection of a facility before the inspection occurs. An offense under this subsection is a Class B misdemeanor.

(d) An "unauthorized person" as used in this section is defined as any person, organization, agency, or entity other than the Texas Department of Health, the Office of Attorney General, the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, any other statewide organization for the elderly, any ombudsman or representative of the Texas Department on Aging, any representative of other agencies or organizations when Medicare/Medicaid surveys are made concurrently with licensing inspections, or any other person, organization, agency, or entity authorized by law to make inspections or to accompany inspectors.

(e) Any person convicted of a violation of Subsection (c) of this section is ineligible for state employment.

SECTION 10. Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by adding Section 12A to read as follows:

Sec. 12A. ADMINISTRATIVE PENALTY. (a) If a person violates this Act or a rule or order adopted or license issued under this Act, the licensing agency may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed $10,000 a day for a person who violates this Act or a rule, order, or registration. Each day a violation continues may be considered a separate violation for purposes of penalty assessment. The commissioner, with the approval of the board, shall establish gradations of penalties imposed under this section in accordance with the relative seriousness of the violation.

(c) In determining the amount of the penalty, the commissioner shall consider:

(1) the gradations of penalties established under Subsection (b) of this section;

(2) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health or safety of the public;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the commissioner concludes that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which he based the conclusion that a violation has occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the commissioner shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may either give to the commissioner written consent to the commissioner's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the commissioner or fails to timely respond to the notice, the commissioner by order shall either assess that penalty or order that a hearing be held on the findings and recommendations in the commissioner's report. If the commissioner assesses the penalty recommended by the report, the commissioner shall give written notice to the person charged of his decision and the person charged shall pay the penalty.

(h) If the person charged requests or the commissioner orders a hearing, the commissioner shall call a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the commissioner. The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the commissioner by order either may find a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The commissioner shall give notice of his decision to the person charged, and if the commissioner finds that a violation has occurred and has assessed a civil penalty, the commissioner shall give written notice to the person charged of his findings, of the amount of the penalty, and of the person's right to judicial review of the commissioner's order.

(j) Within the 30-day period immediately following the day on which the commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commissioner for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the

penalty, the bond to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commissioner within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond within the time provided by Subsection (g) or (j) of this section, the commissioner may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commissioner assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) If the penalty is reduced or not assessed, the commissioner shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commissioner under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the commissioner under Subsection (j) of this section and ending on the date the penalty is remitted.

(n) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 11. Section 16, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by adding Subsection (i) to read as follows:

(i) Effect of Retaliation Because of Report. (1) A person has a cause of action against an institution, or the owner or employee of an institution, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a nursing home patient to the person's supervisors, to the Licensing Agency, or to a law enforcement agency. The person may recover:

(A) actual damages, including damages for mental anguish even though no other injury is shown, or $1,000, whichever amount is greater;

(B) exemplary damages;

(C) court costs; and

(D) reasonable attorney's fees.

(2) In addition to amounts recovered under Subdivision (1) of this subsection, a person whose employment is suspended or terminated in violation of this subsection is entitled to:

(A) reinstatement in his former position; and

(B) compensation for wages lost during the period of suspension or termination.

(3) A person who sues under this subsection has the burden of proof, but there is a rebuttable presumption that a person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person made a report in good faith. A person who sues under this subsection must file the complaint not later than the 90th day after the day on which the person's employment is terminated. The person must make the complaint in a signed writing.

(4) An action under this subsection may be brought in the district court of the county:

(A) in which the plaintiff resides;

(B) in which the plaintiff was employed by the defendant; or

(C) in which the defendant conducts business.

SECTION 12. Chapter 32, Human Resources Code, is amended by adding Section 32.038 to read as follows:

Sec. 32.038. LIQUIDATED DAMAGES. (a) The department's contracts with nursing homes for the provision of long-term care may require nursing homes to pay liquidated damages for breaching the terms of their contracts, provided that such liquidated damages shall not exceed 10% of any payments withheld by the department.

(b) Except as provided by Subsection (c) of this section, the department shall deposit damages received under this section to the credit of the general revenue fund.

(c) If the nursing and convalescent home trust fund established by Section 6C, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), has a balance of less than $100,000 on the date on which the department receives damages under this section, the department shall deposit to the credit of that fund the amount necessary to raise the fund balance to $100,000. The department shall deposit the remainder to the credit of the general revenue fund.

ARTICLE 5

SECTION 1. Section 4, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. In addition to the remedies hereinafter provided the Commissioner of Health, or alternatively, the attorney general, is hereby authorized to apply to any district court where the offense occurred for, and such court shall have jurisdiction after due notice and show cause hearing to grant, a temporary or permanent injunction restraining any person from violating any provision of Section 3; irrespective of whether or not there exists an adequate remedy at law.

SECTION 2. Section 5(a), Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any person who violates any of the provisions of Section 3 shall be guilty of a Class A misdemeanor [~~and shall on conviction thereof be subject to a fine of not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Dollars ($200.00), and for the second or subsequent offense shall be subject to a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or imprisonment in the county jail for a period of not more than one year, or both such fine and imprisonment~~].

SECTION 3. Section 13, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. (a) Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof, cannot be avoided by good manufacturing practice, or serves a useful purpose, shall be deemed to be unsafe for purposes of the application of clause (2) of Section 10(a); but when such substance is so required, cannot be so avoided, or serves a useful purpose, the Texas Board [~~Commissioner~~] of Health shall adopt rules [~~promulgate regulations~~] limiting the quantity therein or thereon to such extent as the board [~~Commissioner of Health~~] finds necessary for the protection of public health; and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of Section 10(a). Rules adopted under this section limiting the quantity of poisonous or deleterious substances in food must provide equal or stricter standards than those adopted by the federal Food and Drug Administration or its successor. While such a rule [~~regulation~~] is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1), Section 10(a). In determining the quantity of such

added substance to be tolerated in or on different articles of food, the board [~~Commissioner of Health~~] shall take into account the extent to which the use of such substance is required, cannot be avoided in the production of each such article, or serves a useful purpose, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

(b) Notwithstanding the provisions of Section 1.05, Article 4414b, Revised Statutes, the Commissioner of Health may adopt emergency rules under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) to establish tolerance levels of poisonous or deleterious substances in food.

SECTION 4. Section 20, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. (a) The Texas Board of Health may adopt rules [~~authority to promulgate reasonable and necessary regulations, not inconsistent with any provision of this Act;~~] for the efficient enforcement of this Act [~~is hereby vested in the Commissioner of Health~~]. The violation of a rule adopted [~~regulation promulgated~~] under this Act shall be deemed to be a violation of this Act.

(b) Hearings authorized or required by this Act shall be conducted by the Commissioner of Health or such officer, agent, or employee as the Commissioner of Health may designate for the purpose.

(c) Notwithstanding the provisions of Section 1.05, Article 4414b, Revised Statutes, the Commissioner of Health or his designee may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of food manufacturing within the jurisdiction of the Texas Department of Health if the Commissioner of Health or his designee determines that the activity is creating or posing an immediate and serious threat to human life or health and that other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay. The order may be issued without notice and hearing, or with such notice and hearing as the Commissioner of Health or his designee deems practicable under the circumstances. If an emergency order is issued under this authority without a hearing, the department shall fix a time and place for a hearing to be held in accordance with departmental rules so as to affirm, modify, or set aside the emergency order.

(d) The Texas Board of Health shall adopt rules that provide a system for removing adulterated items from grocery store shelves or the shelves of any other retail establishment selling those items.

(e) [~~Before promulgating any regulations, the Commissioner of Health shall give thirty (30) days notice of the proposal and of the time and place for a hearing thereon by publishing such notice in a newspaper of general circulation within the state and the Commissioner of Health shall place any person, firm or corporation so desiring said notices on a state mailing list which said list shall entitle said holder to a copy of any notice of any regulation to be promulgated. To be entitled to receive such notices, said holder shall first pay in advance, an annual service charge to be determined by the Commissioner of Health, which same shall not be more than Five Dollars ($5.00), except that the public hearing on regulations under Section 12 may be held at a time, to be fixed by the Commissioner of Health, after notice thereof. The regulation so promulgated shall become effective on a date fixed by the Commissioner of Health (which date shall not be prior to the ninetieth (90) day after its promulgation), except that if the Commissioner of Health finds that emergency conditions exist necessitating an earlier effective date, then the Commissioner of Health shall specify in the order his findings as to such conditions and the order shall take effect at such earlier date as the Commissioner of Health shall specify therein to meet the emergency. Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation~~

~~amending or repealing any such regulation the Commissioner of Health, to such an extent as he deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.~~

[~~(c-1)~~] In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, excluding judicial review under Section 23b of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstance shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. If this Section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, then in that event such appeals shall be as provided in Section 20(f) [~~Section 20(d)~~] of this Act. It is specifically provided hereby that Section 20(f) [~~Section 20(d)~~] of this Act shall not be operative unless and until the appeal as provided by this section [~~Section 20(c-1)~~] is held invalid, unconstitutional or inoperative.

(f) [~~(d)~~] If any party at interest be dissatisfied with any act, order, ruling or decision of the Commissioner of Health in connection with the administration of this Act, such party may file an action, naming the Commissioner of Health as defendant, in any of the district courts of Travis County to set aside the particular act, order, ruling or decision. The cause shall be tried by the court without a jury in the same manner as civil actions generally and all fact issues material to the validity of such act, order, ruling or decision shall be re-determined in such trial on the preponderance of the competent evidence but no evidence shall be admissible which was not either tendered to the Commissioner of Health or on file in his office while the matter was pending before him for decision. The burden of proof shall be on the plaintiff and judgment shall be entered by the court declaring the action, order, ruling or decision in question either valid or invalid. Appeals from any final judgment may be taken in the manner provided for in ordinary civil actions generally. No appeal bond shall be required by the Commissioner of Health. All acts, orders, rulings and decisions of the Commissioner of Health shall be final unless an action to set aside as herein authorized is filed within thirty (30) days after the action, order, ruling or decision is taken or made by the Commissioner of Health. This section does not apply to judicial review under Section 23b of this Act.

SECTION 5. The Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) is amended by adding Section 20A to read as follows:

Sec. 20A. (a) The Texas Department of Health and the Department of Agriculture shall execute a memorandum of understanding that:

(1) requires each agency to disclose to the other agency any positive results of testing conducted by the agency for pesticides in food; and

(2) specifies how each agency will assist the other in performing its duties regarding pesticides in food.

(b) The Texas Department of Health and the Department of Agriculture shall adopt the memorandum of understanding as a rule.

(c) The Texas Department of Health and the Department of Agriculture shall request the federal Food and Drug Administration to join in execution of the memorandum of understanding.

SECTION 6. Subsections 3, 4, and 5, Section 23, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), are amended to read as follows:

3. The registration statement shall be filed prior to commencing business as a wholesale drug distributor and annually thereafter. The Texas Board of Health by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the registration expiration date is changed, registration fees payable before or on September 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is payable [~~on or before the first day of September in each calendar year~~].

4. The Texas Board of Health shall adopt, charge, and collect fees for each registration filed, renewed, or amended under this section and for inspections performed in enforcing this section and rules adopted under this section. The fees may be charged on an annual basis. The amount of the fees shall be established by rule adopted by the board and must be set so that the Texas Department of Health can recover not less than 50 percent of the actual annual expenditures of state funds by the department in:

(a) reviewing and acting on registrations;

(b) amending and renewing registrations;

(c) inspecting registered facilities; and

(d) implementing and enforcing this section and rules and orders adopted and registrations issued under this section [~~initial and annual fee for registration which shall accompany the registration statement shall be Twenty-five Dollars ($25) for each place of business~~].

5. In the event the location of a registered place of business shall be changed, the registrant shall notify the Commissioner of Health, in writing, of the address of such new location and the name and resident address of the individual in charge thereof. The fee to accompany such notification shall be set by the Texas Board of Health under Subsection 4 of this section [~~Five Dollars ($5) unless it shall appear to the satisfaction of the Commissioner of Health that the change of location is of a temporary nature due to fire, flood, or other disaster~~].

SECTION 7. Section 23a, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23a. 1. All manufacturers of foods in the state shall annually register [~~on or before September 1~~] with the Texas Department of Health [~~and pay a fee set by the Texas Board of Health adequate to pay the cost of administering this program and not to exceed $25~~]. Where a manufacturer operates more than one establishment, then a separate registration and fee shall be required for each establishment operated.

2. The registration statement, which shall be signed and verified, shall be made on forms furnished by the Texas Department of Health and shall provide the following information:

(a) the name under which the business is conducted;

(b) the address of each place of business in the state being registered;

(c) if a sole proprietorship, the name of the proprietor; if a partnership, the names of all partners; if a corporation, the date and place of incorporation and name and address of its registered agent in the state; or if any other type of association, then the names of the principals of such association;

(d) the names of those individuals in an actual administrative capacity which, in the case of a sole proprietorship shall be the managing proprietor; in a partnership, the managing partner; in a corporation, the officers and directors; in any other association, those in a managerial capacity.

3. The Texas Board of Health shall adopt, charge, and collect fees for each registration filed or renewed under this section and for inspections performed in enforcing this section and rules adopted under this section. The fees may be charged on an annual basis. The amount of the fees shall be established by rule adopted by the board and must be set so that the Texas Department of Health can recover not less than 50 percent of the actual annual expenditures of state funds by the department in:

(a) reviewing and acting on registrations;

(b) amending and renewing registrations;

(c) inspecting registered facilities; and

(d) implementing and enforcing this section and rules and orders adopted and registrations issued under this section.

4. Not less than one-half of all registration fees collected shall be used for inspection and enforcement as provided by Subsections 3(c) and 3(d) of this section, and the remainder of those fees shall be used for the administration of this program.

5. The Texas Board of Health by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the registration expiration date is changed, registration fees payable before or on September 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is payable.

6. The term "manufacture" as used in this article shall mean the process of combining or purifying articles of food and packaging same for sale to the consumer, either by wholesale or retail. Any person, firm, or corporation who represents itself as responsible for the purity and the proper labeling of any article of food by placing or having placed its name and address upon the label of any food shall be deemed a manufacturer and shall be included within the meaning of this section.

7. [~~4.~~] All registration fees received by the Texas Department of Health shall be deposited in the State Treasury to the credit of the General Revenue Fund and are appropriated to the department for the administration of this Act.

8. [~~5.~~] The Commissioner of Health may, after notice and hearing, refuse to register or may cancel, revoke, or suspend the registration of any food manufacturer. The Texas Board of Health shall adopt rules establishing minimum standards for registering, cancelling, revoking, and suspending registrations under this section.

9. [~~6.~~] Procedures for notice and hearing shall be governed by Texas Department of Health rules for a contested case hearing and by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

10. [~~7.~~] (a) Any person who manufactures food in this state who does not comply with the registration requirements of this section commits an offense.

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

SECTION 8. The Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) is amended by adding Section 23b to read as follows:

Sec. 23b. (a) If a person violates this Act or a rule or order adopted or registration issued under this Act, the Commissioner of Health may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed $10,000 a day for a person who violates this Act or a rule, order, or registration. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commissioner shall consider:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health or safety of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the commissioner concludes that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which he based the conclusion that a violation has occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the commissioner shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may either give to the commissioner written consent to the commissioner's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the commissioner or fails to timely respond to the notice, the commissioner by order shall either assess that penalty or order that a hearing be held on the findings and recommendations in the commissioner's report. If the commissioner assesses the penalty recommended by the report, the commissioner shall give written notice to the person charged of his decision and the person charged shall pay the penalty.

(h) If the person charged requests or the commissioner orders a hearing, the commissioner shall call a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the commissioner. The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the commissioner by order either may find a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The commissioner shall give notice of his decision to the person charged, and if the commissioner finds that a violation has occurred and has assessed a civil penalty, the commissioner shall give written notice to the person charged of his findings, of the amount of the penalty, and of the person's right to judicial review of the commissioner's order.

(j) Within the 30-day period immediately following the day on which the commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commissioner for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commissioner within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond within the time provided by Subsection (g) or (j) of this section, the commissioner may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commissioner assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) If the penalty is reduced or not assessed, the commissioner shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commissioner under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the commissioner under Subsection (j) of this section and ending on the date the penalty is remitted.

(n) A penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

ARTICLE 6

SECTION 1. Section 8(a), Texas Food, Drug, Device, and Cosmetic Salvage Act (Article 4476-5e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An applicant for license as a salvage broker or salvage operator must:

(1) file an application on a form prescribed by the department;

(2) pay a nonrefundable license fee [~~of $100~~] to the department; and

(3) cooperate with the department in any required prelicensing inspections.

SECTION 2. Section 9, Texas Food, Drug, Device, and Cosmetic Salvage Act (Article 4476-5e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. RENEWAL OF LICENSE. (a) A person who holds a license issued under this Act may renew the license by filing an application for renewal on a form prescribed by the department accompanied by a nonrefundable renewal fee [~~of $100~~]. A licensee must file for renewal before the expiration date of the current license.

(b) [~~A person who files a renewal application after the expiration date must pay an additional $25 as a delinquency fee.~~

[~~(c)~~] The department shall renew the license of a licensee who submits a renewal application and pays the renewal fee after an inspection to determine the licensee's compliance with the rules adopted by the board.

SECTION 3. The Texas Food, Drug, Device, and Cosmetic Salvage Act (Article 4476-5e, Vernon's Texas Civil Statutes) is amended by adding Section 9A to read as follows:

Sec. 9A. FEES. The board shall adopt, charge, and collect fees for each application for a license or renewal license submitted under this Act and for

inspections performed in enforcing this Act and rules adopted under this Act. The fees may be charged on an annual basis. The amount of the fees shall be established by board rule and must be set so that the department can recover not less than 50 percent of the actual annual expenditures of state funds by the department in:

(1) reviewing and acting on licenses;

(2) amending and renewing licenses;

(3) inspecting establishments operated by licensees; and

(4) implementing and enforcing this Act and rules and orders adopted and licenses issued under this Act.

SECTION 4. The Texas Food, Drug, Device, and Cosmetic Salvage Act (Article 4476-5e, Vernon's Texas Civil Statutes) is amended by adding Section 18 to read as follows:

Sec. 18. ADMINISTRATIVE PENALTY. If a person violates this Act or a rule or order adopted or license issued under this Act, the Commissioner may assess a civil penalty against that person as provided by Section 23b, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes).

ARTICLE 7

SECTION 1. Section 2, Chapter 618, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4476-11, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) The Texas [State] Department of Health, hereinafter designated as "the department," shall establish, administer, and enforce such rules, regulations, and standards as it deems necessary to insure the proper use of synthetic narcotic drugs in the treatment of drug-dependent persons.

(b) [~~To advise the department in the establishment, administration, and enforcement of such rules, regulations, and standards, an advisory committee shall be appointed as follows:~~

[~~(1) One physician licensed to practice medicine in the State of Texas particularly informed about the problems arising from drug addiction shall be appointed by the Texas State Board of Medical Examiners.~~

[~~(2) One pharmacist licensed to practice pharmacy in the State of Texas shall be appointed by the Texas State Board of Pharmacy.~~

[~~(3) One attorney licensed to practice law in the State of Texas shall be appointed by the President of the State Bar of Texas.~~

[~~(4) One law-enforcement officer shall be appointed by the Director of the Department of Public Safety of the State of Texas.~~

[~~(5) One stabilized addict shall be appointed by the Commissioner of Mental Health and Mental Retardation.~~

[~~(6) One social worker with particular experience in the treatment of narcotics addiction shall be appointed by the Commissioner of Mental Health and Mental Retardation.~~

[~~(7) The Commissioner of Health shall appoint one officer or employee of his department.~~

[~~(8) The Director of the Texas Department of Corrections shall appoint one officer or employee of his department.~~

[~~(9) The Commissioner of the Texas Rehabilitation Commission shall appoint one officer or employee of the commission.~~

[~~(10) The Commissioner of Mental Health and Mental Retardation shall serve as a permanent member of this advisory committee in the capacity of chairman.~~

[~~(b) The initial appointments to this advisory committee pursuant to subparagraphs (1), (2), and (3) of Subsection (a) of this section shall serve for a period of two years and until their successors are appointed. The initial appointments to this advisory committee pursuant to subparagraphs (4), (5), and~~

~~(6) of Subsection (a) of this section shall serve for a period of four years and until their successors are appointed. The initial appointments to this advisory committee pursuant to subparagraphs (7), (8), and (9) of Subsection (a) of this section shall serve for a period of six years and until their successors are appointed. Each subsequent appointee to this advisory committee shall serve for a term of six years and until his successor is appointed.~~

~~[(c) This advisory committee shall meet at least twice a year or at the call of its chairman. The advisory committee shall give written notice of the date, place, and subject of each of its meetings to the secretary of state, who shall then post the notice on a bulletin board to be located at a place convenient to the public in the State Capitol. Persons interested in the establishment of rules, regulations, and standards pursuant to this Act shall be given an opportunity to be heard by this committee.~~

[~~(d)~~] The rules, regulations, and standards adopted by the department under this Act shall be filed with the secretary of state and shall be published and available on request from the secretary of state.

~~[(e) Members of the advisory committee who are not officers or employees of the State of Texas shall be entitled to $25 each day while engaged in authorized business of the committee and in addition thereto shall be entitled to travel and other necessary expenses incurred in performing their duties on the committee. Such compensation and reimbursement will be made from monies appropriated to the department. Other members of the committee shall have their expenses paid by their respective agencies to the same extent as authorized for travel performed for such agencies.~~]

SECTION 2. Section 4, Chapter 618, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4476-11, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. (a) Any physician licensed by the Texas State Board of Medical Examiners or any institution, public or private, organized and operated under the laws of this state for the purpose of providing health services may apply to the department on forms approved by the department for a permit to prescribe and administer synthetic narcotic drugs to drug-dependent persons. The department shall issue a permit to applicants qualified according to its rules, regulations, and standards. A permit issued pursuant to this Act shall remain in effect until suspended or revoked by the department or surrendered by the holder thereof.

(b) The Texas Board of Health shall adopt, charge, and collect fees for each application for a permit submitted under this section and for inspections performed in enforcing this Act and rules adopted under this Act. The fees may be charged on an annual basis. The amount of the fees shall be established by board rule and must be set so that the department can recover not less than 50 percent of the actual annual expenditures of state funds by the department in:

(1) reviewing and acting on permits;

(2) amending permits;

(3) inspecting facilities operated by permit holders; and

(4) implementing and enforcing this Act and rules, regulations, standards, and orders adopted and permits issued under this Act.

(c) Fees collected under this section shall be deposited to the credit of the general revenue fund and may be appropriated to the department for the administration of this Act.

SECTION 3. Chapter 618, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4476-11, Vernon's Texas Civil Statutes), is amended by adding Section 13 to read as follows:

Sec. 13. If a person violates this Act or a rule, regulation, standard, or order adopted or permit issued under this Act, the Commissioner may assess a civil

penalty against that person as provided by Section 23b, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes).

ARTICLE 8

SECTION 1. Section 3, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) The department shall adopt as a rule any memorandum of understanding between the department and any other state agency. A revision of any memorandum of understanding must be adopted as a rule.

SECTION 2. Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsections (k) and (l) to read as follows:

"Sec. 4. (k)(1) The department shall charge a nonrefundable fee for the filing and review of a permit application under this section. A fee schedule shall be adopted by rule which shall be reasonably related to the population served, the volume of waste to be handled, the type and size of the facility, and/or the cost of the review of the permit application, but in no event shall be less than $500 nor more than $10,000.

(2) The department shall charge an annual fee for each solid waste facility authorized to be operated or maintained under this Act. The department shall adopt a fee schedule for determining the amount of fee to be charged. The amount of the fee shall be reasonably related to the population served, the volume of waste handled, and/or type and size of the facility, but in no event shall be less than $100 not more than $2500.

(3) The department shall charge an annual fee to generators of hazardous waste and transporters of solid waste who are required to register with the department by rule adopted under this Act. Fee schedules shall be adopted by rule which shall be reasonably related to the volume and/or the type of waste generated or transported, but in no event shall be less than $25 nor more than $500.

(4) The fees collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

"(1) Beginning January 1, 1986, an operator of a municipal solid waste facility must maintain records and report to the department the amount of waste that the facility transfers, processes, stores, treats, and/or disposes. The amount of waste shall be recorded in tons or the volume equivalent of tons according to an equivalency formula that shall be adopted by rule of the department. The department shall adopt rules to establish requirements for record keeping and reporting under this subsection.

"(2) An operator of a municipal solid waste incineration or disposal facility shall remit to the department 25 cents ($0.25) for each ton of waste received for incineration or disposal at the facility. The department shall adopt rules to establish the method and schedule of payment. Seventy-five percent (75%) of the revenues collected under this subsection must be deposited in the state treasury to the credit of the Municipal Solid Waste Management Planning Fund and the remaining twenty-five percent (25%) must be deposited in the state treasury to the credit of the Municipal Solid Waste Resource Recovery Applied Research and Technical Assistance Fund."

SECTION 3. All revenue received by the Texas Department of Health that is deposited in the Municipal Solid Waste Management Planning Fund and the Municipal Solid Waste Resource Recovery Applied Research and Technical Assistance Fund under Section 4(1) of the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are appropriated to the department from the respective fund to be used only in accordance with the provisions of the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Article 4477-7c, Vernon's Texas Civil Statutes).

SECTION 4. Section 8(a)(2), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) Any person who violates any provision of this Act or of any rule, permit, license, or other order of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs[~~, which is not a requirement applicable to hazardous waste,~~] is subject to a civil penalty of not less than $100.00 nor more than $25,000.00 [~~$2,000.00~~] for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8. [~~Any person who violates any requirement applicable to hazardous waste shall be subject to a civil penalty of not less than $100.00 nor more than $25,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8(a).~~]

SECTION 5. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Section 8a to read as follows:

Sec. 8a. (a) If a person violates a provision of this Act within the department's jurisdiction or a rule or order adopted or license or permit issued by the department under this Act, the department may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed $10,000.00 a day for a person who violates this Act or a rule, order, license, or permit. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health or safety of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a preliminary report stating the facts on which it based the conclusion that a violation has occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The department shall base the recommended amount of the proposed penalty on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the department shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may either give to the department written consent to the department's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the commissioner or fails to timely respond to the notice, the commissioner by order shall either assess that penalty or order that a hearing be held on the findings and recommendations in the department's report. If the commissioner assesses the penalty recommended by the report, the department

shall give written notice to the person charged of his decision and the person charged shall pay the penalty.

(h) If the person charged requests or the commissioner orders a hearing, the commissioner shall call a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the commissioner. The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the commissioner by order either may find a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The commissioner shall give notice of his decision to the person charged, and if the commissioner finds that a violation has occurred and has assessed a civil penalty, the commissioner shall give written notice to the person charged of his findings, of the amount of the penalty, and of the person's right to judicial review of the commissioner's order.

(j) Within the 30-day period immediately following the day on which the commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commissioner for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commissioner within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond within the time provided by Subsection (g) or (j) of this section, the commissioner may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commissioner assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) If the penalty is reduced or not assessed, the commissioner shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commissioner under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the commissioner under Subsection (j) of this section and ending on the date the penalty is remitted.

(n) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

ARTICLE 9

SECTION 1. Section 1, Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically determined deficiency of a blood coagulation factor or hereditarily resulting in an abnormal or deficient plasma procoagulant.

(2) [~~"Committee" means the hemophilia advisory committee.~~

[~~(3)~~] "Department" means the Texas Department of Health [~~Resources~~].

[~~(4) "Program" means the hemophilia assistance program.~~]

(3) "Commissioner" [~~(5) "Director"~~] means the commissioner [~~director~~] of health [~~resources~~].

(4) [~~(6)~~] "Administrator" means a person employed or appointed by the commissioner [~~director~~] to administer the program.

SECTION 2. Section 2(b), Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department shall, in the order of priority listed:

(1) set standards of eligibility for assistance under this Act in conformance with Section 6 of this Act; and

(2) provide financial assistance for medically eligible persons, through approved providers, in obtaining blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home.

SECTION 3. Section 3(b), Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The administrator shall report to the commissioner [~~director~~].

SECTION 4. Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is amended by adding Section 6 to read as follows:

Sec. 6. ELIGIBILITY; RECOVERY OF COSTS. (a) A person is not eligible to receive services provided by this Act to the extent that a person who has a legal obligation to provide for the person's care and treatment is financially able to pay for all or part of the services provided by this Act. The department shall require the person or a person who has a legal obligation to provide for the person's care and treatment and who is financially able to bear a portion of the expense to pay for or reimburse the department for the portion of the cost of the services provided by the department to the person for whom application is made or by whom the services are received.

(b) In this section, "other benefit" means a benefit, other than a benefit under this Act, to which a person is entitled for payment of the costs of blood, blood derivatives and concentrates, and other substances provided under this Act, including:

(1) benefits available from:

(A) an insurance policy, group health plan, or prepaid medical dental care plan;

(B) Title XVIII or Title XIX of the Social Security Act;

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services; or

(E) workers' compensation or any compulsory employers' insurance program;

(2) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits

created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(3) benefits available from a cause of action for medical or dental expenses to a person applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for services provided under this Act.

(c) A person is not eligible to receive services provided by this Act to the extent that the person or a person who has a legal obligation to support the person is eligible for some other benefit that would pay for all or part of the services provided by this Act.

(d) An applicant for or a recipient of services provided under this Act shall inform the department at the time of application or at the time the applicant receives services, of any other benefit to which the person or any other person who has a legal obligation to support the person may be entitled.

(e) The person or any other person who has a legal obligation to support the person who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

(f) The department may recover the cost of services provided under this Act from a person who does not reimburse the department as required by Subsection (a) or (e) of this section or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given. At the request of the commissioner of health, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.

SECTION 5. Section 5, Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is repealed.

ARTICLE 10

SECTION 1. Section 3(g), Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) "Registration" means:

(1) the notification of the Agency of the service or use of a product or device that has an electronic circuit that can generate or emit a physical field of radiation during operation; or

(2) the satisfaction of registration requirements imposed by rule under Section 6(d) of this Act for entities possessing other state or federal licenses [~~an activity involving the operation of radiation producing equipment or the manufacture, use, handling, or storage of radioactive material. Said notice shall state the location, nature, and scope of such operation, manufacture, use, handling, or storage~~].

SECTION 2. Section 4(d), Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The Agency shall, for the protection of the occupational and public health and safety and the environment:

(1) Develop programs for evaluation of hazards associated with use of sources of radiation;

(2) Develop programs with due regard for compatibility with federal programs for regulation of sources of radiation;

(3) Formulate, adopt, promulgate and repeal rules and guidelines, which shall provide for licensing and registration, relating to control and transport of sources

of radiation with due regard for compatibility with the regulatory programs of the Federal Government;

(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this Act;

(5) Advise, consult, and cooperate with other agencies of the state, the Federal Government, other states and interstate agencies, local governments, and with groups concerned with control and transport of sources of radiation;

(6) Have the authority to accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the Federal Government and from other sources, public or private;

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation;

(8) Collect and disseminate information relating to control and transport of sources of radiation, including:

(A) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

(B) Maintenance of a file of registrants possessing sources of radiation requiring registration under the provisions of this Act and any administrative or judicial action pertaining thereto;

(C) Maintenance of a file of all rules and guidelines relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon; and

(D) Maintenance of a file of all known locations in Texas where radioactive material has been disposed of and where soils or facilities have been contaminated, together with any information on inspection reports concerning the material disposed of and on radiation levels at the locations;

(9) Have the authority to acquire by purchase, gift, or under any other authority of law any by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and fee simple title in any land, affected mineral rights, and in buildings at which by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act has been disposed of and abandoned, so that it can be managed in a manner consistent with public health, safety, and the environment;

(9A) Have the authority to acquire, by purchase or gift, fee simple title in any land, affected mineral rights, and in buildings at which radioactive waste is being or can be disposed of in a manner consistent with public health and safety and the environment. Property acquired under this subsection shall be dedicated to use only for disposing of radioactive waste until the Agency determines that another use would not endanger the health, safety, or general welfare of the public or the environment. All right, title, and interest in, of, and to radioactive waste accepted for disposal at these facilities shall become the property of the state and shall be administered and controlled in the name of the state;

(9B) Have the authority to lease property acquired under Subsection (9A) of this section to persons to operate sites for disposing of radioactive waste. A person's actions in disposing of radioactive waste shall be under the direct regulation of the Agency and shall be in accordance with rules adopted by the Agency;

(9C) Formulate, adopt, promulgate, and repeal rules and guidelines providing for the transport and routing of radioactive material within the State of Texas;

(9D) Conduct studies of the need for radioactive waste processing and disposal facilities and technologies as considered necessary by the Agency to minimize the risks to the public and the environment from the management of radioactive waste;

(9E) Establish, as considered necessary by the Agency, a classification system for radioactive waste based on radiological, chemical, and biological characteristics and on physical state so that radioactive wastes can be managed safely and compatibly; and

(9F) Cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, for the development of regional sites that divide the burden of disposal of radioactive waste generated in the region among the states;

(10) Administer the fund in accordance with Section 16 of this Act; [~~and~~]

(11) Prepare and update emergency and environmental surveillance plans for fixed nuclear facilities within the State of Texas; and

(12) Adopt as a rule any memorandum of understanding between the Agency and any other state agency.

SECTION 3. Section 5(a), Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) There is hereby established a Radiation Advisory Board consisting of eighteen (18) members. The Governor shall appoint to the Board individuals as follows: one (1) from industry, who shall be trained in the field of nuclear physics, science and/or nuclear engineering; one (1) from labor; one (1) from agriculture; one (1) from insurance; one (1) engaged in the use and application of nuclear physics in medicine; one (1) from public safety; one (1) hospital administrator; two (2) representatives of the general public; three (3) persons licensed by the Texas State Board of Medical Examiners specializing in: one (1) from nuclear medicine, one (1) from pathology, and one (1) from radiology; one (1) representative [~~two (2) representatives~~] from the nuclear utility industry; one (1) representative of the radioactive waste processing industry; one (1) representative of the petroleum well-servicing industry; one (1) health physicist; one (1) representative licensed by the State Board of Dental Examiners; and one (1) representative from the uranium mining industry. A person is not eligible for appointment as a representative of the general public if the person or the person's spouse is engaged in an occupation in the field of health care or is employed by, participates in the management of, or has, other than as a consumer, a financial interest in part of the nuclear utility industry or in a business entity or other organization that is licensed under Section 6A or 6B of this Act. Members of the Board hold office for staggered terms of six (6) years. Provided, members of the Board shall receive no salary for services but may be reimbursed for actual expenses incurred in connection with attendance at Board meetings or for authorized business of the Board.

SECTION 4. Section 7, Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended by adding Subsections (c) and (d) to read as follows:

(c) The Agency shall adopt rules regarding the frequency of inspection by the Agency of devices that have electronic circuits that can generate or emit physical fields of radiation during operation. In developing the rules required by this subsection, the Agency shall take into account the threat to human health and safety that the various devices may present. An inspection interval of five years for routine inspections shall be adopted for those devices that present a minimal threat to human health and safety.

SECTION 5. Section 11, Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. (a) The Agency may promulgate, amend, and revoke rules and guidelines relating to control of sources of radiation in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The Agency shall afford notice and an opportunity for a hearing in accordance with the Agency's formal hearing procedures and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas

Civil Statutes), on written request of any person affected by the following procedures:

(1) the [~~grant;~~] denial, suspension, or revocation[~~, or amendment~~] of any license or registration; [~~or~~]

(2) the determination of compliance with or the grant of exemptions from a rule or order of the Agency; or

(3) the grant or amendment of a specific license.

(c) This subsection does not apply to license or registration activities for which notice and hearing are required under other provisions of this Act.

(d) Whenever the Agency finds that an emergency exists requiring immediate action to protect the public health and safety and the environment, the Agency may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as it shall direct to meet the emergency. Notwithstanding any other provision of this Act, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately. On written application to the Agency within thirty (30) days of the date of the emergency order, the person to whom the order was directed shall be afforded an opportunity for a hearing. The hearing shall be held within not less than ten (10) days nor more than twenty (20) days after the Agency receives the written application. On the basis of such hearing, the emergency order shall be continued, modified, or revoked by the Agency.

(e) [~~(d)~~] Judicial review of Agency decisions, rules, guidelines, and orders made, promulgated, issued, amended, or revoked under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), shall be under the substantial evidence rule. A person who has exhausted all administrative remedies available within the Agency and who is affected by a final decision of the Agency is entitled to judicial review under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 6. Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended by adding Section 15C to read as follows:

Sec. 15C. ADMINISTRATIVE PENALTY. (a) If a person violates this Act or a rule or order adopted or license or registration issued under this Act, the Commissioner of Health may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed $10,000 a day for a person who violates this Act or a rule, order, license, or registration. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the Commissioner shall consider:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health or safety of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the Commissioner concludes that a violation has occurred, the Commissioner may issue a preliminary report stating the facts on which he based the conclusion that a violation has occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the

amount of that proposed penalty. The Commissioner shall base the recommended amount of the proposed penalty on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the Commissioner shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may either give to the Commissioner written consent to the Commissioner's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the Commissioner or fails to timely respond to the notice, the Commissioner by order shall either assess that penalty or order that a hearing be held on the findings and recommendations in the Commissioner's report. If the Commissioner assesses the penalty recommended by the report, the Commissioner shall give written notice to the person charged of his decision and the person charged shall pay the penalty.

(h) If the person charged requests or the Commissioner orders a hearing, the Commissioner shall call a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the Commissioner. The hearing examiner shall make findings of fact and promptly issue to the Commissioner a written decision as to the occurrence of the violation and recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the Commissioner by order either may find that a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The Commissioner shall give notice of his decision to the person charged, and if the Commissioner finds that a violation has occurred and has assessed a civil penalty, the Commissioner shall give written notice to the person charged of his findings, of the amount of the penalty, and of the person's right to judicial review of the Commissioner's order.

(j) Within the 30-day period immediately following the day on which the Commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the Commissioner for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the Commissioner a supersedeas bond in a form approved by the Commissioner for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the Commissioner within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond within the time provided by Subsection (g) or

(j) of this section, the Commissioner may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the Commissioner assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) If the penalty is reduced or not assessed, the Commissioner shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the Commissioner under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the Commissioner under Subsection (j) of this section and ending on the date that the penalty is remitted.

(n) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 7. Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended by adding Section 19 to read as follows:

Sec. 19. IMPORTATION OF LOW-LEVEL RADIOACTIVE WASTE FOR PROCESSING. (a) The Agency by rule may prohibit a person who is licensed as a processor of radioactive waste under this Act from accepting for processing low-level radioactive waste generated outside this state.

(b) A rule adopted under Subsection (a) of this section may not take effect sooner than 24 months before the opening date of a low-level radioactive waste disposal site authorized under the Texas Low-Level Radioactive Waste Disposal Authority Act (Article 4590f-1, Vernon's Texas Civil Statutes) and expires on the date that the disposal site opens.

ARTICLE 11

SECTION 1. Sections 2, 3, 4, 5, 6, and 7, Chapter 201, Acts of the 60th Legislature, Regular Session, 1967 (Article 5182a, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. In [~~When used in~~] this Act:[;]

(1) "Board" [~~"board"~~] means the Texas [~~Occupational Safety~~] Board of Health. [~~created herein;~~]

(2) "Engineer" [~~"engineer"~~] means the State Safety Engineer.[;]

(3) "Director" [~~"director"~~] means the director [~~Director~~] of the Division of Occupational Safety of the Texas [~~State~~] Department of Health.[;]

(4) "Division" [~~"division"~~] means the Division of Occupational Safety of the Texas [~~State~~] Department of Health.[;]

(5) "Employer" means an individual [~~"employer" includes every person~~], firm, corporation, partnership, stock association, agent, manager, representative, [~~or~~] foreman, or any other person who has [~~having~~] control or custody of any employment, place of employment, or [~~any~~] employee. The term does not include a carrier[~~; except carriers~~] regulated by the Interstate Commerce Commission, except that the term does include railroads.[;]

(6) "Employee" [~~"employee"~~] means an individual [~~a person~~] who works for an employer for wages, compensation, or other things of value. The term does[~~, but shall~~] not include an individual [~~any person~~] employed to perform [~~in the~~] domestic services [~~of another~~] in a private residence.[;]

(7) "Safe" [~~"safe" and "safety"~~] as applied to employment or places of employment, means [~~mean such~~] freedom to employees from occupational injury as the nature of the employment reasonably permits.[;]

(8) "Safeguard" means [~~"safety device" and "safeguard" shall be given a broad interpretation so as to include~~] any practicable method of mitigating or preventing occupational injury.[~~; and~~]

(9) "Place [~~"place~~] of employment" means every place where, either temporarily or permanently, any trade, industry, or business is carried on, or where any employee [~~person~~] is directly or indirectly employed by another for direct or indirect gain or profit[~~, but not including domestic service performed in a private residence~~]. The term does not include a private residence where domestic service is performed.

(10) "Department" means the Texas Department of Health.

(11) "Commissioner" means the Commissioner of Health.

Sec. 3. DUTIES OF EMPLOYERS. [~~(a)~~] Every employer shall furnish and maintain employment and a place of employment which shall be reasonably safe and healthful for employees. Every employer shall install, maintain, and use such methods, processes, devices, and safeguards, including methods of sanitation and hygiene, as are reasonably necessary to protect the life, health, and safety of such employees, and shall do every other thing reasonably necessary to render safe such employment and place of employment.

[~~(b) Every employer shall comply with every rule lawfully made by the board in accordance with the provisions of this Act; provided, however, any employer or group of employers in the same or similar industry, trade, or business may from time to time be exempt by the board from application of any rule or rules in accordance with his safety classification as determined by the board pursuant to Section 7(a) of this Act.~~

[~~(c) However, no rule or standard promulgated under this Act shall, or shall be deemed to, establish legal standards of conduct or legal duties, the violation of which standards or duties would constitute negligence or gross negligence in any civil proceeding.~~]

Sec. 4. OCCUPATIONAL SAFETY DIVISION [~~BOARD~~]. (a) For the purpose of administering the provisions of this Act there is [~~hereby~~] created within the department [~~State Department of Health~~] a Division of Occupational Safety to be administered by [~~an Occupational Safety Board consisting of three members, one to be the Commissioner of Labor Statistics, one to be the Commissioner of Health, and the third to be the public member who shall also serve as chairman of~~] the board.

(b) The Division of Occupational Safety shall:

(1) consult with employers regarding compliance with federal occupational safety laws and rules;

(2) collect information and data relating to occupational safety as required by federal laws, rules, or agreements; and

(3) perform other duties as required by the board.

(c) The board may enter into contracts with the federal government to perform occupational safety projects and may apply for funds from the federal government through any federal program relating to occupational safety. The board may adopt rules to implement this Act. [~~The public member shall be appointed by the governor to serve for a term of two years, or until his successor is appointed and qualified. Vacancies in the position of public member shall be filled for an unexpired term by appointment by the governor in the same manner as the original appointment. The terms on the board of the Commissioner of Labor Statistics and the Commissioner of Health shall be coextensive with their tenure as such Commissioners, respectively.~~

[~~(b) The members of the board created hereby shall receive no salary but the public member shall be allowed the sum of $25 for each day or part thereof actually spent in the discharge of his official duties, including time spent in traveling to and~~

~~from the place of meeting or other authorized business of the board, and all members of the board shall be reimbursed for their reasonable and necessary traveling and other expenses while in performance of official duty, to be evidenced by vouchers approved by the engineer. The engineer is hereby authorized and directed to provide such board with such technical, clerical, and other assistance as shall be necessary to permit said board to perform its duties as provided in this Act.~~

~~[(c) After due notice of meetings, a majority of the board shall constitute a quorum to transact business, and the act or decision of any two members thereof shall be held the act or decision of the board. No vacancy shall impair the right of the remaining member or members of the board to exercise all the powers of the board. The board shall provide itself with a seal on which shall be inscribed the words "Occupational Safety Board, Department of Health, State of Texas." Any order, rule or proceeding of said board when duly attested by any member of the board shall be admissible as evidence of the act of said board in any court of this state.~~

~~[(d) The Occupational Safety Board is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1985.]~~

Sec. 5. SAFETY ENGINEER. (a) The commissioner ~~[board]~~ shall employ a State Safety Engineer who shall be the director of the Division of Occupational Safety.

(b) The engineer shall hold an earned~~[; under the control of the board, and who shall have the following qualifications:~~

~~[(1) he shall have a~~] degree in engineering from an accredited college or university or ~~[shall]~~ be a registered professional engineer and~~[, in addition,]~~ shall have not less than three years' experience ~~[been engaged]~~ in safety engineering ~~[with at least three years' experience;]~~ or

~~[(2) he]~~ shall hold an earned ~~[have a college]~~ degree in another academic discipline ~~[other than that specified in (1) hereof]~~ and~~[, in addition, shall]~~ have been engaged in safety engineering for ~~[with]~~ at least five years. ~~[years' experience; or]~~ In ~~[(3) in]~~ lieu of a college degree as specified by this subsection, the engineer ~~[in (1) and (2) hereof, he]~~ shall have ~~[been engaged in safety engineering for a period of]~~ not less than 10 years' experience in safety engineering ~~[years]~~.

(c) ~~[(b)]~~ The engineer shall administer the operation of the division~~[, under control of the board]~~. The engineer ~~[He]~~ shall employ and supervise such personnel as may be necessary for the proper conduct of the operation of the division. The engineer ~~[He]~~ shall devote full time to the ~~[his]~~ duties as engineer and may not accept additional employment from any other source.

~~[(c) The engineer shall make annual reports to the board and to the Governor of the State of Texas at the close of each fiscal year. The reports shall contain the following information to be obtained from the records: (i) accident frequency rates, (ii) accident severity rates, (iii) time loss from industrial accidents, (iv) location and cause of industrial accidents, and (v) all of such information shall be reported by industrial and occupational classification.~~

~~[(d) The engineer shall cause to be inspected any plant or facility when he has reason to believe that the plant or facility has not complied with the rules, standards and regulations established by the board. No plant or facility shall be subject to this paragraph when it is entitled to credit on its workmen's compensation insurance rate.]~~

Sec. 6. CONFIDENTIAL INFORMATION. No information relating to secret processes or methods of manufacture or products shall be disclosed at any public hearing or otherwise, and all such information shall be kept strictly confidential by the engineer, the board, and all employees thereof. Wilful disclosure or conspiracy to disclose confidential information disclosed under this section

constitutes an offense against the state. The engineer, the board, or any employee thereof, who, having knowledge of confidential information, wilfully discloses or conspires to disclose such information is guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed $1,000 and forfeiture of that person's [his] appointment as engineer, member of the board, or employee of the board.

Sec. 7. CLASSIFICATION, CONSULTATIVE AND EDUCATIONAL POWERS. (a) For purposes of establishing a safety classification for employers, the board is authorized, empowered, and directed to secure medical and compensation costs data regularly compiled by the State Board of Insurance in carrying out its rate-making duties and functions with respect to the employers' liability and workers' [workmen's] compensation insurance law, to obtain from the commissioner of the Texas Department of Labor and Standards [Commissioner of Labor Statistics] such statistical details as are collected by that department [him] and to collect and compile information relating to employers' accident frequency rate, existence and implementation of private safety programs, man-hour losses due to injuries, and other facts reflecting accident experience and, based upon all such factors to separate employers into such classifications as the board deems appropriate in order to carry out the purposes of this Act.

(b) The board is authorized and empowered, through any member, the engineer or any agent or employee in the division authorized by it for such purpose to endeavor to eliminate any impediment to occupational or industrial safety called to its attention by an affected employer. In[, and to otherwise effectuate the purposes of this Act, by means of conference, conciliation, and persuasion, in] carrying out such endeavor it is authorized and empowered to advise and consult with any employer directly involved and with the representative of that employer, if any [representatives of employers and employees and public officials].

(c) The board may [is empowered to] issue [or cause to be issued such] publications and [such] reports of study and research as in its judgment [will] tend to promote occupational and industrial safety and minimize or eliminate any impediment to safety called to its attention, and to otherwise effectuate the purposes and policies of this Act.

SECTION 2. Sections 8, 9, 10, 11, 12, and 13, Chapter 201, Acts of the 60th Legislature, Regular Session, 1967 (Article 5182a, Vernon's Texas Civil Statutes), are repealed.

ARTICLE 12

SECTION 1. Chapter 73, Human Resources Code, is amended to read as follows:

CHAPTER 73. INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION SERVICES

Sec. 73.001. DEFINITIONS. In this chapter:

(1) "Council" means the Interagency Council on Early Childhood Intervention Services.

(2) "Developmentally delayed child" means a child who is determined by an interdisciplinary team to exhibit [exhibits]:

(A) a significant delay, beyond acceptable variations in normal development, in one or more of the following areas:

(i) cognitive;

(ii) gross or fine motor;

(iii) language or speech;

(iv) social or emotional;

(v) self-help skills; or

(B) an organic defect or a condition that is very likely to result in a delay in one or more of those capabilities or skills.

Sec. 73.002. INTERAGENCY COUNCIL. (a) The council is composed of one lay member who is the parent of a developmentally delayed child and one representative each from the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the Central Education Agency. The governor with the advice and consent of the senate shall appoint the lay member, and the commissioner of each agency shall appoint that agency's representative. The agency representative should be a person in the agency with administrative responsibility for the supervision of early childhood intervention support staff or related services.

(b) A member appointed by an agency serves for a term of two years or until the person terminates employment with the agency, whichever occurs first. The member appointed by the governor serves for a term of two years expiring February 1 of every odd-numbered year.

(c) The members of the council shall annually elect one member to serve as chairperson [~~chairman~~].

(d) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(e) Any action taken by the council must be approved by a majority vote of the members present.

(f) The council shall establish a policy for carrying out its duties under this chapter.

(g) The council shall direct the Texas Department of Health to allocate funds appropriated to the Texas Department of Health under this chapter to each agency that assumes implementation responsibilities.

(h) The council shall develop a method for programs funded under this chapter to respond to individual complaints regarding services provided by the program.

Sec. 73.003. STATE PLAN. (a) The council shall develop and implement a state plan for early childhood intervention services to ensure that:

(1) the provisions of this chapter are properly implemented by the agencies affected;

(2) child and family needs are assessed statewide and all available resources are coordinated to meet those needs;

(3) manpower needs are assessed statewide and strategies are developed to meet those needs;

(4) incentives are offered for private sources to maintain present commitments and to assist in developing new programs; and

(5) a procedure for review of individual complaints about services provided under this chapter is implemented.

(b) The council shall make written recommendations for the carrying out of its duties under this chapter. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.

Sec. 73.004. ADVISORY COMMITTEE. (a) The council shall establish an advisory committee composed of parents, professionals, and advocacy groups. The council shall appoint as many members as it considers necessary to assist the council in the performance of its duties.

(b) The committee shall meet and serve under the rules of the council, but the committee shall elect its own chairperson [~~chairman~~]. The committee may be divided into regional committees to assist the council in community-level program planning and implementation.

Sec. 73.005. DUTIES. (a) The council with the advice of the committee shall address contemporary issues affecting intervention services in the state including:

(1) successful intervention strategies;
(2) personnel preparation and continuing education;
(3) screening services;
(4) day or respite care services;
(5) public awareness; and
(6) contemporary research.

(b) The council with the advice of the committee shall advise the legislature on legislation that is needed to develop further and to maintain a statewide system of quality intervention services for all developmentally delayed children under three years of age. The council may develop and submit legislation to the legislature or comment on pending legislation that affects this population.

Sec. 73.006. REIMBURSEMENT AND STAFF SUPPORT. (a) Agency representatives on the council are entitled to reimbursement for expenses incurred in the performance of their council duties by the appointing agencies in accordance with the travel provisions for state employees in the General Appropriations Act. The lay member and advisory committee members are entitled to reimbursement from the council [~~Council and committee members are entitled to reimbursement~~] for actual and necessary expenses incurred in the performance of council [~~their~~] duties. [~~The agencies represented on the council shall equally bear the cost of reimbursement.~~]

(b) The agencies represented on the council shall provide staff support to the council. The agencies may provide staff support to the committee.

(c) The council shall select an early childhood intervention administrator and shall direct the Texas Department of Health to employ that person.

Sec. 73.007. PUBLIC AWARENESS AND TRAINING. [~~(a)~~] The council shall develop [~~Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the Central Education Agency shall jointly develop~~] and implement:

(1) a general public awareness strategy focusing on the importance of prenatal care and early detection of developmental delay and the availability of state resources to meet the needs of developmentally delayed children under six years of age; and

(2) a statewide plan for conducting regional training sessions for public and private service providers who have routine contact with children under six years of age that focuses on methods for early detection of developmental delay.

[~~(b) The Texas Department of Health shall allocate funds appropriated to it under this chapter to other agencies that assume implementation responsibilities.~~]

Sec. 73.008. EARLY IDENTIFICATION STRATEGY. (a) The council [~~Texas Department of Health~~] shall develop and implement a statewide strategy for the early identification of developmentally delayed children under six years of age, utilizing information from other agencies serving handicapped children.

(b) The strategy must include plans to:

(1) incorporate, strengthen, and expand similar existing local efforts;

(2) incorporate and coordinate screening services currently provided through a public agency; and

(3) establish a liaison with primary referral sources, including hospitals, physicians, public health facilities, and day-care facilities, to encourage referrals of developmentally delayed children.

Sec. 73.009. REFERRAL FOR SERVICES. (a) The council shall establish policies to provide direction to the Texas Department of Health in performing the services described by this section. A child under six years of age may be referred to the Texas Department of Health for services described by this section if the child is:

(1) identified as developmentally delayed;

(2) suspected of being developmentally delayed; or

(3) considered at risk of developmental delay because of certain biological or environmental factors.

(b) For each child referred, the Texas Department of Health [~~department~~] shall:

(1) seek appropriate medical or developmental screening or evaluation and if such screening services or evaluation services are not available, the Texas Department of Health [~~department~~] shall provide those services either directly or by contract; and

(2) refer the child to a public or private program that can meet the child's needs.

(c) Services under this section shall be provided in a manner that minimizes intrusion into family privacy.

Sec. 73.010. ELIGIBILITY FOR SERVICES. (a) A developmentally delayed child is eligible for services under this chapter [~~Sections 73.011, 73.012, 73.013, and 73.016 of this code~~] if the child:

(1) is under three years of age; [~~or~~]

(2) has not reached the age of eligibility for entry into the comprehensive special education program for handicapped children under Section 21.501, [~~16.104 of the Texas~~] Education Code; or

(3) is under three years of age and is an eligible child authorized under Section 11.052(a) and Section 11.10(o), Education Code[~~, as amended~~].

(b) The Texas Department of Health may charge fees for services provided under this chapter.

Sec. 73.011. PARENT COUNSELING AND CASE MANAGEMENT. (a) The council shall establish policies to provide direction to the Texas Department of Health concerning the services described by this section. For an eligible developmentally delayed child, the Texas Department of Health shall provide parent counseling and case management services designed to:

(1) assist in the development of positive attitudes and coping skills;

(2) provide objective information about alternatives for securing direct services for the child;

(3) actively involve the case manager in procuring needed services on the parent's behalf;

(4) actively involve the case manager in responding to complaints about services procured through this process; and

(5) facilitate communication among providers serving the child, including the primary physician.

(b) The services shall be provided before a child is placed in an appropriate program. If the child is placed in a program that meets the standards established by Section 73.019 of this code, that program shall assume responsibility for providing parent counseling and case management services following placement. If the child is not placed in such a program, the Texas Department of Health [~~department~~] shall continue to provide those services.

Sec. 73.012. MONITORING. (a) The council shall develop policies to provide direction to the Texas Department of Health in implementing a system to ensure that [~~Texas Department of Health shall monitor~~] the overall progress of an eligible developmentally delayed child who receives services under this chapter is monitored until the child enters the public school system, including the monitoring of the parental counseling and case management services.

(b) Periodic reevaluations shall be obtained as the Texas Department of Health [~~department~~] considers necessary. If an original placement no longer meets the child's needs, the Texas Department of Health [~~department~~] shall provide additional referrals.

Sec. 73.013. INTERVENTION SERVICES. (a) The council shall develop policies to provide direction to the Texas Department of Health in providing [~~shall provide~~] intervention services to an eligible developmentally delayed child if the Texas Department of Health [~~department~~] is not able to place the child in a program that meets the standards established by Section 73.019 of this code.

(b) Intervention services must include:

(1) training, counseling, and case management services for the child's parents;

(2) [~~individualized~~] instruction or treatment based on an individualized plan in the following areas of development: cognitive, gross or fine motor, language or speech, social or emotional, and self-help skills; and

(3) related services, including occupational therapy, physical therapy, speech and language therapy, adaptive equipment, and transportation.

(c) The Texas Department of Health may either directly provide the services needed to comply with the requirements of this section or contract for the provision of the services.

Sec. 73.014. REPORT. The agencies represented on the council and the lay member [~~Texas Department of Health~~] shall report to the council any needs that are identified for the provision of early childhood intervention services [~~identified in areas where a program that meets the standards established by Section 73.019 of this code is not available~~].

Sec. 73.015. NEW PROGRAM STRATEGY. The council shall develop a strategy for establishing new programs to meet needs identified by the agencies represented on the council and the lay member [~~Texas Department of Health~~] in accordance with Section 73.014 of this code.

Sec. 73.016. GRANT REQUEST FOR [~~NEW~~] PROGRAM. A public or private service provider may apply for funds to provide a program of intervention services for eligible developmentally delayed children in an area of identified need by submitting a grant request to the council [~~Central Education Agency or the Texas Department of Mental Health and Mental Retardation~~]. The council shall adopt guidelines for the submission and processing of grant requests [~~determining which agency shall receive a request, but each agency shall process any request received~~].

Sec. 73.017. APPROVAL CRITERIA. [~~(a) The agency receiving a request for funding for a new program shall transmit the request to the council for approval.~~

[~~(b)~~] The council shall review the requests for funding a program on a competitive basis giving consideration to the following:

(1) the extent to which the program would meet identified needs;

(2) the cost of initiating a program, if applicable;

(3) whether other funding sources are available;

(4) the proposed cost to the parents for the services; and

(5) the assurance of quality services.

Sec. 73.018. PROGRAM APPROVAL. (a) For each grant approved by the council, the council shall direct the Texas Department of Health to allocate appropriated funds for the program to the service provider in the amount specified by the council.

(b) The council [~~Texas Department of Health~~] shall require the service provider to execute a contract with the Texas Department of Health [~~department~~] specifying the program standards and council [~~agency~~] guidelines that the provider has agreed to meet.

(c) The contract must specify the [~~minimum and maximum~~] number of eligible developmentally delayed children to be served. [~~The program must serve at least the minimum number and may not be required to serve more than the maximum number specified.~~] If the number of eligible children applying for admission to an approved program exceeds the [~~maximum~~] number specified, the service provider may apply for supplemental funding if resources are available.

(d) The service provider may charge a fee for intervention services, based on the parent's ability to pay, to be used to offset the cost of providing or securing the services. If a fee is charged, a separate charge shall be made for each type of service. A determination of the parent's ability to pay for services must include a consideration of the availability of financial assistance or other benefits for which the child may be eligible.

Sec. 73.019. PROGRAM STANDARDS. Before a grant request for a new program may be approved, a service provider must agree to meet the following program standards:

(1) the program must be maintained within the guidelines established by the council [~~agency~~];

(2) the provider must ensure that for each child served an individualized developmental plan is developed and is based on a comprehensive developmental evaluation performed by an interdisciplinary team with parent participation and periodic review and reevaluation;

(3) the provider must provide services to meet the unique needs of each child as indicated by the child's individualized developmental plan;

(4) the provider must demonstrate a capability to obtain or provide an array of services that must include:

(A) training, counseling, case management services, and home visits for the parents of each child served;

(B) [~~individualized~~] instruction or treatment based on an individualized plan in the following areas of development: cognitive, gross or fine motor, language or speech, social or emotional, and self-help skills; and

(C) related services, including occupational therapy, physical therapy, speech and language therapy, adaptive equipment, transportation, and other therapies as needed or prescribed;

(5) the provider must maintain a plan for in-service personnel training;

(6) the provider must cooperate with the Texas Department of Health's monitoring and case management efforts; [~~and~~]

(7) the provider must cooperate with the periodic evaluation efforts of the council; and

(8) the provider must develop an approved method to respond to individual complaints regarding services provided by a program funded under this chapter in accordance with rules adopted by the council [~~agency~~].

Sec. 73.020. COUNCIL [~~AGENCY~~] GUIDELINES. (a) The council [~~agency that receives a grant request for a new program~~] shall develop specific program guidelines in the following areas:

(1) instructional or treatment options;

(2) frequency and duration of service;

(3) staff-child ratios;

(4) staff composition and qualifications; and

(5) other program aspects designed to ensure the provision of quality services.

(b) The provisions of this chapter do not affect the existing authority of a state agency to provide services to a child who meets the eligibility criteria provided by this chapter. The council [~~agency~~] may modify the standards established by Section 73.019 of this code if the council [~~agency~~] considers the modifications necessary for a particular program.

Sec. 73.021. PROGRAM MONITORING [~~EVALUATION~~]. (a) Under guidelines adopted by the council, the agency representatives or their designees [~~Each agency~~] shall periodically evaluate each program [~~operating under the agency's guidelines~~] to determine whether the provider is meeting the conditions of

the contract. The agency representatives shall notify the council of the results of the evaluations.

(b) If the council [~~an agency~~] determines that a program is not meeting a requirement that was agreed on as a condition for funding, the council [~~agency~~] shall notify the Texas Department of Health to withhold further funding for the program. If the Texas Department of Health discovers gross mismanagement of a program, the department may withhold further funding for the program without obtaining the council's prior approval.

SECTION 2. Section 11.092, Education Code, is repealed.

SECTION 3. Section 1, Article 5, Chapter 67, Acts of the 59th Legislature, Regular Session, 1965 (Article 5547-205, Vernon's Texas Civil Statutes), is repealed.

ARTICLE 13

SECTION 1. Section 5, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt, amend, promulgate, and enforce such rules, regulations, and minimum standards as may be designed to further the purposes of this Act. Provided, however, that the rules, regulations, or minimum standards so adopted, amended, promulgated, or enforced shall be limited to safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Provided, however, that any rules, regulations, or standards set shall first be adopted [~~approved~~] by the Texas [~~State~~] Board of Health in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)[~~, and after they have been so approved, shall be approved also by the Attorney General as to their legality, and then filed with the Secretary of State, and no such rule or regulation shall be effective until it has been filed with the Secretary of State~~].

The Commissioner of Health shall appoint, with the advice and consent of the Texas [~~State~~] Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of such Hospital Licensing Director shall be the administration of this Act and he shall be directly responsible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

SECTION 2. Section 15, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is repealed.

SECTION 3. Section 4(b), Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The Texas Department of Human Resources, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and the Texas Commission on Alcoholism shall execute a memorandum of understanding that establishes [~~establish~~] procedures to eliminate or reduce duplication of functions in certifying or licensing hospitals, nursing homes, or other facilities under their jurisdiction for payments under the requirements of the Medical Assistance Program (Chapter 32, Human Resources Code) and federal laws and regulations relating to Titles XVIII and XIX of the Social Security Act. Each agency by rule shall adopt the memorandum of understanding. The procedures established under this section shall provide for use by the affected agencies of information collected by those agencies in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home or other facilities under their jurisdiction.

SECTION 4. Section 3.04, Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.04. APPLICATION PROCEDURES; RULES; FEES. (a) Applications for examination for personnel certification must be made to the department on a form and under rules prescribed by the board. A nonrefundable fee determined by the board shall accompany the application as follows:

(1) for examination for certification or recertification of a paramedic emergency medical technician or specially skilled emergency medical technician, a fee not to exceed an accumulated amount of $7.50 a year; and

(2) for examination for certification or recertification of a basic emergency medical technician or emergency care attendant, a fee not to exceed an accumulated amount of $5 a year.

(b) Not later than the 30th day after the day on which an examination for certification or recertification is administered under this Act, the department shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the department shall notify examinees of the results of the examination not later than the 14th day after the day on which the department receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination for certification or recertification administered under this Act, the department shall furnish the person with an analysis of the person's performance on the examination.

(d) Emergency medical services personnel who meet the minimum standards for personnel certification adopted under Section 3.02 of this Act shall be issued a certificate by the department that is valid for a period of four years from the date of issuance.

(e) [~~(c)~~] Emergency medical services providers must submit an application for vehicle registration in accordance with procedures prescribed by the board. An emergency medical services volunteer provider must submit with the application a letter of sponsorship from a governmental entity. A nonrefundable fee determined by the board shall accompany the application and may not exceed $25 for each emergency medical services vehicle or a maximum of $500 for a fleet of emergency services vehicles. On inspection by the department, emergency medical services vehicles that meet the minimum standards adopted under Section 3.02 of this Act shall be issued a registration by the department that is valid for two years.

(f) [~~(d)~~] Inspections required under Subsection (e) [~~(c)~~] of this section may be delegated by the department to the commissioners court of a county or the governing body of a municipality at their request and in accordance with criteria and procedures adopted by the board. The commissioners court or governing body shall collect and retain the fee for vehicles it inspects.

(g) [~~(e)~~] Applications for approval of courses and of training programs must be made to the department on a form and under rules prescribed by the board. Training programs and courses that meet the minimum standards adopted under Section 3.02 of this Act must be approved by the department.

(h) [~~(f)~~] Application for certification of program instructors, examiners, and course coordinators must be made to the department on a form and under rules prescribed by the board. Program instructors, examiners, and course coordinators who meet the minimum standards adopted under Section 3.02 of this Act shall be issued a certificate that is valid for one year.

(i) [~~(g)~~] The board shall exempt from the payment of fees under this section all individuals who actively participate in the operations of an emergency medical services volunteer provider.

SECTION 5. Section 5, Chapter 300, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. CERTIFICATES OF REGISTRATION; ELIGIBILITY FOR REGISTRATION. (a) The Board, upon application on the form prescribed by it, and upon the payment of a fee of Ten Dollars ($10.00), shall issue a certificate of registration as a professional sanitarian to any person who has the qualifications stipulated under the provisions of this Act, and who submits evidence by passing a written examination prescribed by the Board satisfactory to the Board that the applicant is qualified under the provisions of this Act. In evaluating the evidence submitted to it, the Board shall carefully consider the applicant's knowledge and understanding of the principles of sanitation, the physical, biological, and social sciences[~~, provided that:~~

[~~(a) Any person, who, within six (6) months after the effective date of this Act, submits under oath evidence satisfactory to the Board that he has been a resident of the State of Texas for at least one (1) year immediately preceding the date of application, and that he was employed in the field of sanitation for a period of one (1) year prior to the effective date of this Act may be registered as a professional sanitarian~~].

(b) Any person[~~, other than those covered under paragraph (a),~~] who [~~after the effective date of this Act~~] applies for registration shall have had not less than one (1) year of full time experience in the field of sanitation and shall have completed training in the basic sciences and/or public health to the extent deemed necessary by the Board in order to effectively serve as a registered sanitarian. The educational requirements set forth by the Board shall not be at variance with the definition for Sanitarian set forth by the Position Classification Act of 1961. Other qualifications may be established by the Board in accordance with the rules and regulations adopted under this Act. Persons employed in the field of sanitation who meet all qualifications for registration as a professional sanitarian, except the qualifications of experience, shall, upon the approval by the Board and after payment of a fee of Five Dollars ($5.00) and by passing a written examination prescribed by the Board, be granted a certificate of Sanitarian in Training. This certificate shall remain in effect unless revoked by the Board for a period not to exceed one (1) year after date of issue.

(c) Not later than the 30th day after the day on which a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination not later than the 14th day after the day on which the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

SECTION 6. Section 9, Chapter 300, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-3, Vernon's Texas Civil Statutes), is repealed.

SECTION 7. Chapter 498, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512d, Vernon's Texas Civil Statutes), is amended by adding Section 10A to read as follows:

Sec. 10A. EXAMINATION RESULTS. (a) Not later than the 30th day after the day on which a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the day on which the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the

examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails the licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.

SECTION 8. Section 11, Chapter 498, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. LICENSE RENEWAL. (a) A license issued pursuant to this Act expires one year from the date of issuance.

(b) A person may renew an unexpired license by paying to the board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not longer than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for longer than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the board may renew without reexamination an expired license of a person who was licensed in Texas, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.

(f) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the licensee's last known address [~~Licenses shall be renewed according to procedures established by the board and payment of the renewal fee as set in Section 7 of this Act~~].

SECTION 9. Sections 2, 3, 4, 5, 7, 8, 11, and 26, Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. It is hereby found, determined, and declared that health-related equipment, as defined in this Act, in many portions of this state is presently obsolete, inadequate, or insufficient; that the cost of providing such health-related equipment within this state has in many cases become excessive; and that the present and prospective health, safety and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded methods of providing such health-related equipment. It is the purpose of this Act to establish the Texas Hospital Equipment Financing Council, the board of trustees of which shall be appointed by the governor of the state with the advice and consent of the senate [~~comprised of the members of the hospital advisory council, as created under the Texas Hospital Survey and Construction Act, as amended (Article 4437d, Vernon's Texas Civil Statutes), or shall be appointed by the hospital advisory council,~~] as hereinafter provided, and to enable the financing council and the participating health-care providers, as herein defined, to provide at a reasonable cost health-related equipment, as herein defined, which the financing council determines will improve the adequacy, cost, and accessibility of health care within this state. It is therefore determined and declared as a matter of public policy that the establishment of the financing council, as herein defined, the issuance of revenue bonds and notes by the financing council, and the exercise of the other powers of the financing council, all as herein provided, are in the public interest and in

furtherance of an important public purpose. The necessity in the public interest of the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

Sec. 3. When used in this Act, unless the context requires a different definition, the following terms shall mean as follows:

(1) "Act" means the Texas Hospital Equipment Financing Act.

(2) "Board" means the board of trustees of the financing council, as herein defined.

(3) "Bonds" means revenue bonds, notes, interim certificates, bond anticipation notes, or other evidences of indebtedness of the financing council, as herein defined, issued pursuant to this Act, including refunding bonds.

(4) "Cost" as applied to health-related equipment, as herein defined, means and includes any and all costs of or related or incidental to such equipment and, without limiting the generality of the foregoing, shall include the following:

(A) the cost of the acquisition, repair, reconditioning, restoration, modification, refinancing, or installation of any such health-related equipment;

(B) the cost of any property interest in such health-related equipment including an option to purchase or a leasehold interest;

(C) the cost of architectural, engineering, legal, and related services; the cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue; and all other expenses necessary or incident to planning providing, or determining the feasibility and practicability of such health-related equipment;

(D) the cost of financing charges and interest prior to acquisition and installation of such health-related equipment and for a maximum of two years after such acquisition and installation and start-up costs related to such health-related equipment and for a maximum of two years after such acquisition and installation;

(E) any and all costs paid or incurred in connection with the financing of such health-related equipment, including out-of-pocket expenses, the cost of financing, legal, accounting, financial advisory, and consulting fees, expenses, and disbursements; the cost of any policy of insurance; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(F) all direct or indirect costs of the financing council, as herein defined, and all direct or indirect costs, if any, of the hospital advisory council, as herein defined, incurred in connection with providing such health-related equipment, including without limitation reasonable sums to reimburse such financing council and, if necessary, the hospital advisory council for time spent by its agents or employees with respect to providing such health-related equipment and the financing and refinancing thereof; and

(G) any and all costs paid or incurred for the administration of any program for the purchase or lease of or the making of loans for health-related equipment, as herein defined, by the financing council; any program for the sale or lease of such health-related equipment to any participating health-care provider, as herein defined; and any program for loans to such participating health-care providers or to any entity which will provide loans to any participating health-care provider in either case to enable such providers to purchase such health-related equipment.

(5) "Financing council" means the Texas Hospital Equipment Financing Council created and existing under the provisions of this Act as a public agency, body politic, [~~benefit corporation~~] and constituted authority for the purposes set forth in this Act.

(6) "Health facility" means and includes any public or non-profit health-care facility which is utilized in providing medical care, medical research, or the training or teaching of health-care personnel, any one or all, within this state and, without limiting the generality of the foregoing, shall include a [~~public or private~~] hospital,

kidney disease treatment facility, radiation therapy facility, and alcoholism and drug treatment facility, so long as such health-care facility shall be licensed by the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, or the Texas Commission on Alcoholism or any successor or successors to such entities, and health facility shall also include any facility or building related to any health-care facility such as a pharmacy, laboratory, laundry facility, and food service and preparation facility.

(7) "Health-related equipment" means and includes any equipment which will improve medical care, research, training, or teaching, any one or all, in this state.

(8) [~~"Hospital advisory council" means the Texas Hospital Advisory Council, as established under the Texas Hospital Survey and Construction Act, as amended (Article 4437d, Vernon's Texas Civil Statutes).~~]

[~~(9)~~] "Participating health-care provider" means a public or private[~~, profit or~~] nonprofit corporation, association, foundation, trust, cooperative, agency, body politic, or similar person or organization authorized by the laws of this state to provide or operate a health facility, as herein defined, and which, pursuant to the provisions of this Act, contracts with or borrows from the financing council, as herein defined, or any entity which will provide loans for the financing or refinancing of the lease or other acquisition of health-related equipment, as herein defined, as provided in this Act.

(9) [~~(10)~~] "State" means the State of Texas.

(10) [~~(11)~~] "Trustee" means any member of the board, as herein defined. The use of a singular term herein shall also include the plural of such term, and the use of a plural term herein shall also include the singular of such term, and words of the masculine, feminine, or neuter gender shall include other genders unless the context clearly requires a different connotation.

Sec. 4. There is hereby created a [~~nonmember, nonstock~~] public agency [~~benefit corporation~~] to be known as the Texas Hospital Equipment Financing Council with the powers herein set forth for the purpose of providing at a reasonable cost health-related equipment which the financing council determines will improve the adequacy, cost, and accessibility of health care within this state, which purpose is hereby declared to be a public purpose of this state. The exercise by the financing council of all powers and duties conferred by this Act shall constitute and be deemed and held to be an essential public purpose of the state, acting by and through the financing council, in promoting the general health, welfare, and prosperity of the state and all of its citizens. The [~~Neither the~~] state [~~nor the hospital advisory council~~] shall not be authorized to lend its credit or grant or loan any public money or thing of value in aid of the financing council.

Sec. 5. (a) The board of the financing council shall consist of 12 members, entitled trustees.

(b) The members of the board of the financing council shall be appointed by the governor with the advice and consent of the senate; provided each of the members of the board of the financing council serving as such on the date of enactment of this provision shall continue his or her term until the earlier of his or her resignation or the termination of such term under the law in effect at the time of his or her appointment and thereafter until the governor of the state appoints a replacement trustee pursuant to the provisions hereof. [~~The members of the hospital advisory council shall serve, ex officio, as trustees. Each such member shall serve as a trustee during the entire time such person is a member unless such member shall decline to serve by so notifying the hospital advisory council in writing in which event the hospital advisory council by majority vote shall appoint a person to serve as a trustee in lieu of such member.~~]

(c) Each [~~If all or any of the trustees are appointed by the hospital advisory council, each~~] trustee so appointed shall hold office for a term expiring on

September 1 [~~July 17~~] of an [~~each~~] odd-numbered year, with the terms of four trustees expiring in each odd-numbered year. Each trustee so appointed shall hold office until a successor is appointed and has qualified by executing the surety bond required by this Act of each trustee. Appointments to the board of the financing council [~~hospital advisory council~~] shall be made with due regard for the race, creed, sex, religion, and national origin of the appointees and the geographical distribution of the members of the board of the financing council [~~hospital advisory council~~].

(d) Each trustee shall be eligible for reappointment.

(e) Any vacancy in the office of a trustee [~~appointed by the hospital advisory council~~] shall be filled by the governor with the advice and consent of the senate [~~majority vote by the hospital advisory council~~]. Any such vacancy, except for a vacancy resulting from the expiration of the term of such trustee, shall be filled for the unexpired term only.

(f) To be eligible to serve as a trustee [~~appointed by the hospital advisory council~~], a person shall be a qualified voter of the state. [~~Members and employees of the hospital advisory council are eligible to serve as trustees.~~] No officer, director, or employee of a participating health-care provider shall be eligible to serve as a trustee. Any trustee [~~appointed by the hospital advisory council~~] having any pecuniary interest in any participating health-care provider shall resign from the board prior to the authorization of any bonds for the benefit of such participating health-care provider, and such vacancy shall be filled as otherwise provided in this Act.

Sec. 7. The financing council shall have all the rights and powers necessary or convenient to accomplish the purposes of the financing council as set forth in this Act, including without limitation the powers:

(1) to provide or cause to be provided by a participating health-care provider by acquisition, lease, fabrication, repair, reconditioning, or installation one or more items of health-related equipment to be located within a health facility in this state;

(2) to lease as lessor any item of health-related equipment for such rentals and upon such terms and conditions as the financing council may deem advisable and as are not in conflict with the provisions of this Act;

(3) to sell for installment payments or otherwise, to option or contract for sale, and to convey all or any part of any item of health-related equipment for such price and upon such terms and conditions as the financing council may deem advisable and as are not in conflict with the provisions of this Act;

(4) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its bonds in accordance with the provisions of this Act, and secure any of its bonds or obligations by mortgage or pledge of all or any of its property and income;

(5) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or any part of the cost of any health-related equipment, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of an item of health-related equipment, and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as the board may deem advisable and as are not in conflict with provisions of this Act, and such loans may be made to a participating health-care provider or to any bank, savings and loan association, or other entity which will directly or indirectly provide such financing or refinancing;

(6) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold property as security for the payment of funds so loaned or invested;

(7) to purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with health-related equipment, or any interest therein, wherever situated, as the purposes of the financing council shall require;

(8) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(9) to sue and be sued and plead and be impleaded in its own name;

(10) to contract for services with engineers, attorneys, accountants, and health-care and financial experts and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation;

(11) to select its depository or depositories, subject only to the provisions of this Act and any convenants with respect to the bonds issued pursuant to this Act;

(12) to procure and pay premiums on insurance of any type whatsoever in amounts and from insurers as the financing council deems necessary or advisable;

(13) to appoint agents of the financing council for such period of time as the financing council may determine and define their duties;

(14) to have a [~~corporate~~] seal which may be altered at its pleasure and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced on instruments of any nature required or authorized to be executed by its proper officers;

(15) to make and alter bylaws, not inconsistent with the laws of this state, for the administration and regulation of the affairs of the financing council; and

(16) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the financing council is organized. Provided, however, that the financing council shall not be authorized to incur financial obligations under this Act unless payable solely from the proceeds of bonds, revenues derived from the lease or sale of health-related equipment or realized from a loan made by the financing council to finance or refinance in whole or in part directly or indirectly health-related equipment, revenues derived from the operation or ownership of health-related equipment, or any other revenues, including insurance proceeds, as may be provided by a participating health-care provider, any one or more; provided further, however, that nothing in this Act shall be interpreted to bestow upon the financing council the power of taxation, the power of eminent domain, the police power, or any equivalent sovereign power of this state or the hospital advisory council. Nothing in this section grants any authority to officers or trustees of the financing council for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the bylaws or in any other laws of this state. Authority of officers and trustees to act beyond the scope of the purpose or purposes of the financing council is not granted by any provision of this section.

Sec. 8. The financing council is [~~not~~] an "agency" as defined in the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), and is [~~not~~] subject to the provisions of such Act. The financing council is [~~not~~] a public agency and [~~political subdivision or~~] body politic of the state. The financing council is, however, prohibited from using any money of the state and, therefore, [~~is prohibited from using any money of the state or the hospital advisory council, and, therefore,~~] shall not be subject to public bidding requirements of the state.

Sec. 11. All expenses of the financing council incurred in carrying out the provisions of this Act shall be payable solely from funds provided under the authority of this Act, and no liability under this Act shall be incurred by the financing council beyond the extent to which money shall have been provided under this Act by the sale of bonds or by participating health-care providers; except that, for the purposes of meeting the necessary expenses of initial organization and operation of the financing council for the period commencing with the organization of the financing council and continuing until such a date as the financing council derives money from funds provided to it under the authority of this Act, the

financing council is empowered to borrow such money as the financing council may require. Such money borrowed by the financing council shall subsequently be charged to and apportioned among participating health-care providers. [~~No expenses of the financing council shall be paid by the hospital advisory council, and the hospital advisory council and each member shall incur no liability under this Act. The hospital advisory council shall not lend money to the financing council.~~]

Sec. 26. (a) No [~~The financing council shall be a nonprofit public benefit corporation, and no~~] part of the [its] net earnings of the financing council remaining after its bonds and its expenses have been paid shall inure to the benefit of any person other than the state.

(b) The legislature may in its sole discretion and at any time alter the structure, organization, programs, or activities of the financing council, subject only to any limitation provided by the constitution and the laws of the state and of the United States relating to the impairment of contracts entered into by the financing council. The books and records of the financing council are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). [~~Representatives of the hospital advisory council shall have access at any time to all books and records of the financing council.~~]

(c) Whenever all bonds and obligations of the financing council have been paid and discharged or adequate provision has been made therefor the legislature may dissolve the financing council.

(d) Whenever dissolution of the financing council occurs the title to all funds and properties then owned by the financing council shall automatically vest in the state without any further conveyance, transfer, or act of any kind whatsoever.

(e) The dissolution of the financing council shall not take away or impair any remedy available to or against the financing council or its trustees or officers for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three years after the date of such dissolution. Any such action or proceeding by or against the financing council may be prosecuted or defended by the financing council in its [~~corporate~~] name. The trustees and officers shall have the power to take such [~~corporate or other~~] action that shall be appropriate to protect such remedy, right, or claim.

SECTION 10. Section 6(c), Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The chairman, vice-chairman, secretary, and, if elected, the treasurer and any assistant secretaries of the board shall be elected at the first meeting of the board after all trustees have been appointed and qualified for office by executing the surety bond required by this Act of each trustee. Thereafter, officers of the board shall be elected at the first meeting of the board on or following September 1 [~~July 17~~] of each odd-numbered year, or at any time necessary to fill a vacancy.

SECTION 11. Section 15(a), Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The financing council's bonds issued under the provisions of this Act shall not constitute obligations of [~~the hospital advisory council,~~] the Texas Department of Health, the state, or any political subdivision or agency thereof (other than the financing council) or a pledge of the faith and credit of any of them. The issuance of bonds under the provisions of this Act shall not directly or indirectly or contingently obligate the state or any political subdivision or agency thereof to levy any form of taxation therefor or to make any appropriation for their payment. All bonds issued by the financing council pursuant to the provisions of this Act are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or of any trust indenture or mortgage or deed of trust executed as security therefor.

ARTICLE 14

SECTION 1. DEFINITIONS. In this article:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Resident" means a person who is physically present and living voluntarily in the state and whose stay is not temporary.

SECTION 2. DENTAL HEALTH PROGRAMS. (a) The department, with approval of the board, may establish dental health programs to provide:

(1) dental treatment services to indigent residents under 18 years of age;

(2) dental disease prevention services for residents, including the provision of grants to communities to purchase equipment and supplies and provide training for the fluoridation of the community's public water supply; and

(3) dental education services.

(b) The dental treatment program must use or improve existing dental treatment delivery systems before developing new systems and must use private sector dental treatment services to the maximum extent possible.

SECTION 3. IMPLEMENTATION. The board shall:

(1) adopt rules it considers necessary to define the dental and financial standards for eligibility and the scope of services available under the dental treatment program;

(2) adopt substantive and procedural rules for the selection of communities and other entities to participate in the dental disease prevention program; and

(3) adopt any other rules necessary to implement this article.

SECTION 4. CONTRACTS. The department may enter into contracts or agreements it considers necessary to implement this article. The contracts may provide for payment by the state, within the limits of funds available, for supplies, equipment, and services and may be negotiated with other departments, agencies, boards, educational institutions, individuals, and governmental entities.

SECTION 5. FUNDS. The department may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purposes of programs established under this article.

SECTION 6. COOPERATION WITH FEDERAL GOVERNMENT. The department may make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this article or any federal statute, rule, or regulation pertaining to dental health.

SECTION 7. FEES. Program participants may be charged a fee for the services of any of the programs of dental health according to the rules adopted by the board.

SECTION 8. MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department, after notice to the persons affected and an opportunity for a fair hearing, for good cause may modify, suspend, or terminate services to a person who is receiving services from the department.

(b) The criteria for departmental action authorized under this section shall be contained in rules adopted by the board.

ARTICLE 15

SECTION 1. DEFINITIONS. In this article:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Heart disease or defect" means an abnormality or disease of the heart or major blood vessel near the heart.

SECTION 2. CHILDREN'S OUTREACH HEART PROGRAM. The department, with approval of the board, may establish a children's outreach heart program to provide:

(1) prediagnostic cardiac screening and follow-up evaluation services to persons under 21 years of age who are from low-income families and who may have a heart disease or defect; and

(2) training to local physicians and public health nurses in heart disease or defect screening and diagnostic procedures.

SECTION 3. IMPLEMENTATION. The board shall adopt rules it considers necessary to define the medical and financial standards for eligibility and the scope of the program.

SECTION 4. CONTRACTS. The department may enter into contracts or agreements it considers necessary to facilitate the provision of services under this article, including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States.

SECTION 5. FUNDS. The department may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purposes of the program.

SECTION 6. FEES. Recipients of services or training provided by the program may be charged a fee for services or training according to rules adopted by the board.

ARTICLE 16

SECTION 1. SHORT TITLE. This article may be cited as the Texas Ambulatory Surgical Center Licensing Act.

SECTION 2. DEFINITIONS. In this article:

(1) "Ambulatory surgical center" means a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(2) "Board" means the Texas Board of Health.

(3) "Department" means the Texas Department of Health.

(4) "Person" means any individual, firm, partnership, corporation, or association.

SECTION 3. DUTIES OF THE BOARD. (a) The board shall adopt rules necessary to implement this article, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ambulatory surgical center.

(b) The board shall set minimum standards for:

(1) the construction and design of an ambulatory surgical center, including plumbing, heating, lighting, ventilation, and other design standards that are necessary to ensure the health and safety of patients;

(2) the qualifications of the professional staff and other personnel at an ambulatory surgical center;

(3) the equipment essential to the health and welfare of the patients;

(4) sanitary and hygienic conditions within the ambulatory surgical center and its surroundings; and

(5) a quality assurance program for patient care.

(c) Standards set under this section may not exceed the minimum standards for certification under Title XVIII of the Social Security Act, as added July 30, 1965 (Public Law 89-97).

(d) The board shall set all fees imposed by this article in amounts reasonable and necessary to defray the costs of administering this Article.

(e) Subsection (b) of this section does not authorize the board to establish the qualifications of licensed practitioners or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other state laws.

SECTION 4. LICENSE REQUIREMENT; EXEMPTIONS. (a) A person may not establish or operate an ambulatory surgical center in this state without a license issued under this Article.

(b) The following facilities are not required to be licensed under this article:
(1) an office or clinic of a licensed physician, dentist, or podiatrist;
(2) a licensed nursing home; or
(3) a licensed hospital.

SECTION 5. AMBULATORY SURGICAL CENTER LICENSE; FEES; INSPECTION. (a) An applicant for an ambulatory surgical center license must submit an application to the department on a form prescribed by the department. The application must contain evidence that there are one or more physicians, dentists, or podiatrists on the staff of the ambulatory surgical center who are currently licensed by the appropriate state licensing board.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board. The license fee shall be paid annually on renewal of the license.

(c) The department shall issue a license if on inspection and investigation it finds that the applicant and center meet the requirements of this article and the standards set under this Article.

(d) All ambulatory surgical centers licensed by the department that have been certified under Title XVIII of the Social Security Act may not be subject to additional licensing inspections under this article so long as the certification is maintained. Those facilities are only required to annually remit any license fees and submit the results or inspection results report from the certification body in order to be issued a license by the department.

(e) A license issued under this article is not transferable or assignable. A separate license is needed for each separate facility.

SECTION 6. DISPOSITION OF FUNDS. The ambulatory surgical center licensing fund is established as a special fund in the state treasury. All fees collected under this article shall be deposited to the credit of the ambulatory surgical center licensing fund and may be appropriated to the department only to administer and enforce this article.

SECTION 7. INSPECTIONS. The department may inspect an ambulatory surgical center at reasonable times as necessary to assure compliance with this article.

SECTION 8. DENIAL, REVOCATION, OR SUSPENSION OF LICENSE. (a) The department may deny, revoke, or suspend a license for a violation of this article or rule adopted under this article.

(b) The procedures by which the department denies, revokes, or suspends a license and the procedures by which the departmental action is appealed are governed by department rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 9. INJUNCTION. (a) If the department finds that a violation of the standards or licensing requirements prescribed by this article creates an immediate threat to the health and safety of the patients of an ambulatory surgical center, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(b) If a person violates the licensing requirements or the standards prescribed by this article, the department may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an institution without a license issued under this article.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this article, the district court shall grant any injunctive relief warranted by the facts.

(d) At the request of the department, the attorney general shall institute and conduct the suits authorized in this section.

(e) Venue for a suit brought under this section is in the county in which the ambulatory surgical center is located or in Travis County.

SECTION 10. PENALTIES. (a) A person who establishes or operates an ambulatory surgical center without a license issued under this article commits an offense. An offense under this article is a Class C misdemeanor. Each day of a continuing violation constitutes a separate offense.

(b) A person who violates this article or who fails to comply with a rule or regulation authorized by this article is subject to a civil penalty of not less than $100 nor more than $500 for each violation if the department determines the violation threatens the health and safety of a patient. Each day of a continuing violation constitutes a separate ground of recovery.

ARTICLE 17

SECTION 1. SHORT TITLE. This article may be cited as the Texas Birthing Center Licensing Act.

SECTION 2. DEFINITIONS. In this article:

(1) "Birthing center" means a facility, place, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy. The term does not include a hospital or the residence of the woman giving birth.

(2) "Board" means the Texas Board of Health.

(3) "Department" means the Texas Department of Health.

(4) "Person" means any individual, firm, partnership, corporation, or association.

SECTION 3. DUTIES OF THE BOARD. (a) The board shall adopt rules necessary to implement this article. The rules shall establish different levels of licenses to operate a birthing center and shall include requirements for the issuance, renewal, denial, suspension, and revocation of each level of license.

(b) The board shall set minimum standards for each level of license that pertain to:

(1) qualifications for professional personnel;

(2) qualifications for nonprofessional personnel;

(3) treatment and services provided by a birthing center and the coordination of treatment and services;

(4) supervision of professional and nonprofessional personnel.

(5) organizational structure of the birthing center, lines of authority, and delegation of responsibility;

(6) clinical records kept by the birthing center; and

(7) other aspects of birthing centers necessary to protect the public.

(c) The board shall set all fees imposed by this article in amounts reasonable and necessary to defray the costs of administering this article.

(d) Subsection (b) of this section does not authorize the board to establish the qualifications of licensed practitioners or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other state laws.

SECTION 4. LICENSE REQUIREMENT; EXEMPTIONS. (a) A person may not establish or operate a birthing center in this state without the appropriate license issued under this article.

(b) The following facilities are not required to be licensed under this article:

(1) a licensed ambulatory surgical center;

(2) a licensed nursing home; or

(3) a licensed hospital.

SECTION 5. BIRTHING CENTER LICENSE; FEES; INSPECTION. (a) An applicant for a birthing center license must submit an application to the department on a form prescribed by the department. The application must contain evidence that the composition of the center's staff meets the guidelines adopted by

the board under this article for the level of license for which the applicant is applying.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board. The license fee shall be paid annually on renewal of the license.

(c) The department shall issue the appropriate license if on inspection and investigation it finds that the applicant and center meet the requirements of this article and the standards set under this article.

(d) A license issued under this article is not transferable or assignable. A separate license is needed for each separate facility.

SECTION 6. DISPOSITION OF FUNDS. The birthing center licensing fund is established as a special fund in the state treasury. All fees collected under this article shall be deposited to the credit of the birthing center licensing fund and may be appropriated to the department only to administer and enforce this article.

SECTION 7. INSPECTIONS. The department may inspect a birthing center at reasonable times as necessary to assure compliance with this article.

SECTION 8. DENIAL, REVOCATION, OR SUSPENSION OF LICENSE. (a) The department may deny, revoke, or suspend a license for a violation of this article or rule adopted under this article.

(b) The procedures by which the department denies, revokes, or suspends a license and the procedures by which the departmental action is appealed are governed by department rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 9. INJUNCTION. (a) If the department finds that a violation of the standards or licensing requirements prescribed by this article creates an immediate threat to the health and safety of the patients of a birthing center, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(b) If a person violates the licensing requirements or the standards prescribed by this article, the department may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an institution without a license issued under this article.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this article, the district court shall grant any injunctive relief warranted by the facts.

(d) At the request of the department, the attorney general shall institute and conduct the suits authorized in this section.

(e) Venue for a suit brought under this section is in the county in which the birthing center is located or in Travis County.

SECTION 10. PENALTIES. (a) A person who establishes or operates a birthing center without a license issued under this article commits an offense. An offense under this article is a Class C misdemeanor. Each day of a continuing violation constitutes a separate offense.

(b) A person who violates this article or who fails to comply with a rule or regulation authorized by this article is subject to a civil penalty of not less than $100 nor more than $500 for each violation if the department determines the violation threatens the health and safety of a patient. Each day of a continuing violation constitutes a separate ground of recovery.

ARTICLE 18

SECTION 1. DEFINITIONS. In this article:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Hospital" means a general or special hospital licensed under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes).

SECTION 2. DATA SYSTEM. (a) The department shall establish a uniform reporting and collection system for hospital financial, utilization, and patient discharge data.

(b) The board shall adopt necessary rules consistent with this article to govern the reporting and collection of data.

SECTION 3. AGGREGATE HOSPITAL FINANCIAL AND UTILIZATION DATA. (a) Each hospital shall submit to the department financial and utilization data for that hospital, including data relating to that hospital's:

(1) total gross revenue, including:
(A) Medicare gross revenue;
(B) Medicaid gross revenue;
(C) other revenue from state programs;
(D) revenue from local government programs;
(E) local tax support;
(F) charitable contributions;
(G) other third party payments;
(H) gross inpatient revenue; and
(I) gross outpatient revenue;
(2) total deductions from gross revenue, including:
(A) charity care;
(B) bad debt;
(C) contractual allowance; and
(D) any other deductions;
(3) total admissions, including:
(A) Medicare admissions;
(B) Medicaid admissions;
(C) admissions under a local government program;
(D) charity care admissions; and
(E) any other type of admission;
(4) total discharges;
(5) total patient days;
(6) average length of stay;
(7) total outpatient visits;
(8) total assets;
(9) total liabilities;
(10) total cost of reimbursed and unreimbursed care for indigent patients; and
(11) total cost of reimbursed and unreimbursed medical education.

(b) The data must be based on the hospital's latest audited financial records.

(c) The data must be submitted in the form and at the time established by the department.

SECTION 4. HOSPITAL DISCHARGE ABSTRACT RECORDS. (a) The department shall establish a sampling method to collect hospital discharge abstract records relating to specific inpatient discharges from hospitals. The hospital discharge abstract records requested by the department must contain the data required by the department, including:

(1) patient demographic data;
(2) admission data, including the source and type of the data;
(3) discharge data;
(4) diagnoses and procedures;
(5) total charges and the components of the charges; and
(6) payor sources.

(b) The data must be submitted in the form and at the time established by the department.

SECTION 5. USE OF DATA. (a) The department shall use the data collected under this article to publish an annual report regarding:

(1) the amount of charity care, bad debt, and other uncompensated care hospitals provide;

(2) the use of hospital services by indigent patients; and

(3) the impact of indigent care services on hospitals.

(b) The department shall also use the hospital discharge data collected under this article to publish periodic reports on the use of hospital services.

SECTION 6. VERIFICATION OF DATA. (a) Before the department may publish a report as prescribed by Section 5 of this article or otherwise make data available to the public, the department shall provide to each hospital a copy of the preliminary report or otherwise provide the hospital an opportunity to verify the data relating to that hospital.

(b) If a hospital does not submit corrected data before the 31st day after the day on which the hospital received the preliminary report or other data, the department shall presume that the data is correct.

SECTION 7. CONFIDENTIALITY. (a) Any data reported or submitted to the department under this article that relates to a specific patient or any financial data that relates to a provider or facility is confidential. Before the department may disclose such data under this article, the department must remove any information that would identify a specific patient, provider or facility.

(b) Disclosure, distribution, or sale of confidential information obtained under this article or other violation of this section is prohibited. Any person who violates this section shall be guilty of a Class B misdemeanor.

SECTION 8. ADVISORY COMMITTEE. (a) The board shall appoint a hospital data advisory committee to assist in the development of reporting requirements and in the interpretation and evaluation of the data received under this article.

(b) The advisory committee must include representatives from:

(1) the hospital industry;

(2) private business;

(3) the insurance industry;

(4) state agencies such as the Texas Health and Human Services Coordinating Council, the Texas Department of Human Resources, and the Employees Retirement System of Texas;

(5) consumer organizations; and

(6) the Statewide Health Coordinating Council.

ARTICLE 19

SECTION 1. Section 1.02, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1.02. POLICY, PURPOSE. The policy of this state and the purpose of this Act are to insure that health-care services and facilities are made available to all citizens in an orderly and economical manner [~~and to meet the requirements of, and to implement, the National Health Planning and Resources Development Act of 1974 (P.L. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (P.L. 96-79), the federal rules and regulations promulgated under that Act, and other pertinent federal authority~~]. To achieve this public policy and purpose, it is essential that appropriate health planning activities be undertaken and implemented and that health-care services and facilities be provided in a manner that is cost effective and that is compatible with the health-care needs of the various areas and populations of the state."

SECTION 2. Section 1.03, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (9), (13), (15), and (18) and by adding Subdivisions (19) and (20) as follows:

"(9) 'Health-care facility,' referred to as 'facility,' means, regardless of ownership, a [~~public or private~~] hospital, a long-term care nursing facility, including a skilled nursing or [~~facility;~~] intermediate care facility or skilled nursing or intermediate care institution for mental disease, ambulatory surgical facility, family planning clinic which performs ambulatory surgical procedures, rural health initiative clinic, urban health intiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, minor emergency center, inpatient hospice facility, diagnostic, imaging, or outpatient treatment facility, inpatient psychiatric facility, or inpatient substance abuse facility, and other facilities as defined by federal law, but does not include the office of physicians or practitioners of the healing arts singly or in groups in the conduct of their profession."

"(13) 'Party' means any person, excluding the commission, who by formal intervention or action as determined by rule of the commission participates in the consideration of a specific application by the commission."

"(15) 'Project' means an activity [~~services, facility, or HMO~~] requiring a certificate of need or other action under this Act."

"(18) 'Expenditure minimum' means:

"(A) a capital expenditure, not including the cost of equipment, that exceeds $2 million or the adjusted amount set under Section 2.06 of this Act, if the expenditure is by or on behalf of an existing hospital, inpatient rehabilitation facility, inpatient psychiatric facility, or inpatient substance abuse facility; or

"(B) a capital expenditure that exceeds $600,000 if the expenditure is by or on behalf of an existing health-care facility not listed in Paragraph (A) of this subdivision or any facility entering into long-term care skilled nursing and/or intermediate care services [~~$150,000 or any other unadjusted minimum as may be defined by federal law~~].

"(19) 'Hospital' means a general or special hospital licensed under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes).

"(20) 'Long-term care facility and/or service' means that facility or service requiring a license for intermediate care and/or skilled nursing services under the nursing home licensure act (Article 4442c, Vernon's Texas Civil Statutes)."

SECTION 3. Sections 2.01a, 2.02, 2.03, and 2.04, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 2.01a. APPLICATION OF SUNSET ACT. The Texas Health Facilities Commission is subject to the Texas Sunset Act. Unless[~~; and unless~~] continued in existence as provided by that Act the commission is abolished, and Subchapters B and C of this Act expire effective September 1, 1997 [~~1985~~].

"Section 2.02. COMPOSITION. (a) The commission is under the direction of three commissioners appointed by the governor with the advice and consent of the senate. At least one commissioner, at the time of appointment, must be a resident of a county having a population of less than 50,000, according to the last preceding federal decennial census. However, a commissioner by moving to another county does not vacate the office. [~~The governor shall not appoint to the commission any person who is actively engaged as a health care provider or who has any substantial pecuniary interest in a facility.~~]

"(b) The commissioners must be members of the general public. A person is not eligible for appointment as a commissioner if the person or the person's spouse:

"(1) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

"(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

"(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

"(c) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the commission, may not serve as a member of the commission or act as the general counsel to the commission.

"(d) An officer, employee, or paid consultant of a trade association in the health-care industry may not be a member or employee of the commission, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association in the health-care industry be a member of the commission or an employee of the commission grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

"(e) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

"Section 2.03. TERMS OF OFFICE; REMOVAL. (a) Commissioners hold office for staggered terms of six years, with the term of one commissioner expiring on February 1 of each odd-numbered year.

"(b) It is a ground for removal from the commission if a commissioner:

"(1) does not have at the time of appointment the qualifications required by Subsection (b) of Section 2.02 of this Act for appointment to the commission;

"(2) does not maintain during the service on the commission the qualifications required by Subsection (b) of Section 2.02 of this Act for appointment to the commission;

"(3) violates a prohibition established by Subsection (c) or (d) of Section 2.02 of this Act;

"(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

"(5) is absent from more than one-half of the regularly scheduled commission meetings which the commissioner is eligible to attend during each calendar year, except when the absence is excused by majority vote of the commission.

"(c) The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a commissioner existed.

"(d) If the general counsel has knowledge that a potential ground for removal exists, he shall notify the chairman of the commission of such ground. The chairman of the commission shall then notify the governor that a potential ground for removal exists.

"Section 2.04 CHAIRMAN, VICE-CHAIRMAN. The governor shall biennially designate one commissioner to serve as chairman and one commissioner to serve as vice-chairman. The terms of the chairman and vice-chairman begin on September 1 of each odd-numbered year."

SECTION 4. Sections 2.06, 2.07, and 2.09, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 2.06. GENERAL DUTIES OF COMMISSION. (a) In addition to the other powers and duties prescribed by this Act, the commission shall:

"(1) administer a state certificate of need program as prescribed by this Act [~~and to comply with federal law~~];

"(2) promulgate and adopt rules determined to be necessary for the administration and enforcement of Subchapters B and C of this Act;

"(3) issue written orders regarding certificates of need, declaratory rulings, and other matters which may properly come before it;

"(4) annually adjust the expenditure minimum provided by Subdivision (18) of Section 1.03 of this Act to reflect the change during the preceding 12-month

period in the Department of Commerce's composite construction cost index [~~make an annual report to the governor and the legislature of the commission's operations and provide other reports that the governor or the legislature may require~~]; and

"(5) [~~administer all funds entrusted to the commission; and~~

"[~~(6) prescribe the personnel policies for the commission and~~] perform other duties and functions that may be prescribed by law.

"(b) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

"(c) The commission shall develop and implement policies which 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.

"Section 2.07. EXECUTIVE OFFICER. (a) The chairman is the chief executive and administrative officer of the commission.

"(b) In addition to the other powers and duties prescribed by this Act, the chairman as chief executive officer of the commission shall:

"(1) administer the duties and functions of the commission;

"(2) employ and remove personnel and prescribe their duties, responsibilities, and compensation; [~~and~~]

"(3) submit through and with the approval of the commission requests for appropriations and other funds to operate the commission;

"(4) administer all funds entrusted to the commission; and

"(5) prescribe the personnel policies for the commission.

"(c) In the absence of the chairman for any cause, the vice-chairman has the powers and duties assigned to the chairman. If the chairman and vice-chairman are both absent, the remaining commissioner has the powers and duties assigned to the chairman."

"Section 2.09. FUNDS. (a) For the purpose of carrying out its duties an functions, the commission may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation.

"(b) The State Auditor shall audit the financial transactions of the commission at least once during each biennium."

SECTION 5. The Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes) is amended by adding Section 2.12 to read as follows:

"Section 2.12. PERSONNEL. (a) The chairman or the chairman's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement shall include:

"(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

"(2) a comprehensive analysis of the commission work force that meets federal or state guidelines;

"(3) procedures by which a determination can be made of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

"(4) reasonable methods to appropriately address areas of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance.

"(b) The policy statements shall be filed with the governor's office not later than 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. The report may be made separately or as a part of other biennial reports made to the legislature.

"(c) The commission shall develop and implement policies which clearly define the respective responsibilities of the governing body of the commission and the staff of the commission.

"(d) The commission shall provide to its members and employees as often as is necessary information regarding their qualifications under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

"(e) The chairman or the chairman's designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.

"(f) The chairman or the chairman's 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."

SECTION 6. The Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes) is amended by adding Section 2.13 to read as follows:

"Section 2.13. LIMITATIONS ON EMPLOYMENT AND REPRESENTATION. (a) No commissioner or commission employee shall, within one year after his service on or employment with the commission has ceased, appear in a hearing before the commission for any purpose.

"(b) While associated with the commission or at any time after, a commissioner or commission employee may not represent a person, corporation, or other business entity before the commission or a court in a matter in which the commissioner or employee was personally involved while with the commission or in a matter that was within the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission."

SECTION 7. The Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes) is amended by adding Section 2.14 to read as follows:

"Section 2.14. PUBLIC INFORMATION AND 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) If a written complaint is filed with the commission alleging a violation of Subchapter C of this Act by an entity regulated by the commission, the commission, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

"(c) The commission shall keep an information file about each complaint filed with the commission alleging a violation of Subchapter C of this Act by an entity regulated by the commission."

SECTION 8. Subsections (a), (c), and (d), Section 3.01, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) Each person must obtain from the commission a certificate of need in accordance with this Act for a proposed project to:

"(1) obligate a capital expenditure by or on behalf of a health-care facility that exceeds the expenditure minimum in this Act;

"(2) increase the bed capacity of a hospital, an inpatient rehabilitation facility, an inpatient psychiatric facility, or an inpatient substance abuse facility by more than 20 beds during any two-year period;

"(3) increase the bed capacity of a long-term nursing care facility, including a skilled nursing or intermediate care facility or a skilled nursing or intermediate care institution for mental disease, by more than 10 beds during any two-year period;

"(4) add beds for long-term nursing care to an existing hospital, except where the hospital provides long-term care services, it may qualify under Subdivision (3) above; or

"(5) establish a new health-care facility or offer a new long-term nursing care service;

"(6) make an expenditure of $500,000 or more for any single piece of medical equipment [~~offer a new institutional health care service;~~

"[~~(3) terminate an existing institutional health-care service where the termination is associated with the obligation of any capital expenditure;~~

"[~~(4) acquire major medical equipment costing more than the expenditure minimum in this Act, unless the acquisition is exempt by commission rule pursuant to federal law, the commission shall, by rule, exempt such acquisitions to the maximum extent premitted by federal law;~~

"[~~(5) substantially change the bed capacity of a health-care facility where the change is associated with the obligation of any capital expenditure; or~~

"[~~(6) acquire an existing health care facility where the acquisition is associated with the obligation of any capital expenditure, unless the acquisition is exempt by commission rule pursuant to federal law; the commission shall, by rule, exempt such acquisitions to the maximum extent permitted by federal law.~~]"

"[~~(c) This section applies to a proposed project by an HMO's ambulatory care facility or by or on behalf of an inpatient health care facility controlled directly or indirectly by an HMO or combination of HMOs only in those circumstances described in P.L. 96-79~~].

"(c) [~~(d)~~] The commission by rule shall define and determine the terms and conditions under which a project comes within the meaning of this section. In this regard, the commission by rule shall exempt:

"(1)[~~, to the extent permitted by federal law, the acquisition of major medical equipment to be used solely for research;~~] the offering of an institutional health service solely for research;

"(2)[~~; or~~] the obligation of capital expenditures solely for research;

"(3) the acquisition of equipment, costing less than $500,000, except when the equipment is acquired as part of a project that is otherwise subject to review under Subsection (a) of this section;

"(4) all nonmedical capital expenditures;

"(5) the acquisition of an existing health-care facility;

"(6) the establishment of a swing-bed service by a facility, but only if the service is established and maintained in accordance with federal statutes and regulations governing the rural swing-bed program and the swing-beds will be used exclusively by Medicare patients, although the commission by rule shall require the facility to notify the commission of the project;

"(7) all projects receiving legislative authorization and appropriations or authorized by general obligation bonds;

"(8) the construction by an existing hospital of a new health-care facility, excluding an inpatient facility, if:

"(A) the capital expenditure for the new facility does not exceed the expenditure minimum in this Act;

"(B) the new facility is located in the existing hospital's medical service area as determined by the commission; and

"(C) the new facility is limited to outpatient services only; and

"(9) the conversion by an existing hospital of existing licensed beds within an existing structure to skilled nursing care beds to be used exclusively for Medicare patients on the following basis:

"(A) for not more than 20 beds in a two-year period; and

"(B) according to abbreviated notice and hearing provisions adopted by the commission to expedite the decision. In establishing such rules, the commission shall restrict the criteria for its review to the following and no other:

"(i) acceptance of an application to so convert within five days of the filing of same;

"(ii) published notice in the county of the application within 15 days of the filing of such application;

"(iii) receipt of any contesting parties request to become a party within 10 days of publication of such notice;

"(iv) if contested by a properly admitted party, a hearing within 40 days of filing of the application;

"(v) a decision on the application within 45 days of filing of the application;

"(vi) a determination of only the following, whether in a contested hearing or waived hearing:

"(aa) there are insufficient skilled nursing beds within the county;

"(bb) the applicant hospital has unused existing bed capacity within its existing facility;

"(cc) the certification by the State Medicare Agency that there are no skilled nursing beds which are medicare certified in the applicant's county shall constitute a prima facie case;

"(C) if there are no admitted parties to such applications, the commission shall issue its order permitting such conversion immediately after the time within which to become a party has expired;

"(D) if a person contests an application for a certificate of need under this subsection, the commission shall charge the person the same fee as the applicant to participate in the hearing on the application.

"(d) Notwithstanding Subdivision (5) of Subsection c of this section, a transfer or conveyance of a 50 percent or more interest in a certificate of need to establish a new health-care facility on which construction has not begun may not be consummated without prior review and approval by the commission. The commission shall adopt rules prescribing the procedures and review criteria for proposed transfers or conveyances. If a transfer or conveyance is consummated without prior review and approval by the commission, the certificate of need is subject to forfeiture as prescribed by Section 3.13 of this Act. [~~In addition, the commission shall promulgate rules for determining the costs of acquiring facilities or equipment if facilities or equipment are leased or donated.~~]"

SECTION 9. Sections 3.04 and 3.05, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 3.04. APPLICATION FOR CERTIFICATE OF NEED. (a) A person may apply for a certificate of need by submitting a written application to the commission. The application must be prepared in the form and contain the information required in rules promulgated by the commission. The commission may not require the submission of preapplication reports or notices by potential applicants or require a person to submit an architectural drawing or floor plan of a proposed project.

"(b) Each application for certificate of need must be accompanied by the required application fee [~~except as prohibited by federal law~~]. All application fees shall be deposited in the state treasury and shall be expended by the commission for the administration and enforcement of this Act.

"(c) An application for a certificate of need may not be accepted and dated unless the applicant has provided the information required by the commission under Subsection (b) of Section 4.09 of this Act to the department and the department has notified the commission. A person who has not provided the information required by the commission under Subsection (b) of Section 4.09 of this Act to the department may not participate in a hearing on an application for a certificate of need.

"Section 3.05. FEES [~~APPLICATION FEE~~]. (a) The maximum application fee is $15,000 or one [~~$7,500 or 2~~] percent of the total cost of the proposed project, whichever is less, and the minimum application fee is $25, and within these limits the commission by rule shall establish a schedule of application fees for the various types and sizes of projects, with fees for the more substantial projects set at nearer the maximum and fees for the smaller projects set at nearer the minimum.

"(b) if a person contests an application for a certificate of need, the commission may charge the person a reasonable fee to participate in the hearing on the application. The fee is due at the time the person files a request to contest the application.

"(c) If the General Appropriations Act does not specify the amount of a fee, the commission shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed the amounts prescribed by this section.

"(d) The commission may not maintain unnecessary fund balances. Fee amounts shall be set in accordance with this prohibition."

SECTION 10. Subsections (a) and (b), Section 3.06, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) Each application for a certificate of need shall be reviewed and a determination made within seven [~~10~~] working days after the date of its receipt whether the application complies with the rules governing the preparation and submission of applications.

"(b) If the application complies with the rules governing the preparation and submission of applications, the chairman shall, pursuant to commission rules:

"(1) declare the application to be sufficient and shall accept and date the application;

"(2) prepare a notice of the application [~~schedule a hearing on the application which on a showing of good cause by the applicant or the parties, may be postponed for a reasonable period of time not to exceed 45 days~~]; and

"(3) provide written notification of the application to affected persons and to the health systems agency within whose boundary the project is located [~~of the time, place, and matter to be considered at the hearing~~]."

SECTION 11. Subsection (a), Section 3.07, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is amended to read as follows:

"(a) The applicant shall publish public notice of the [~~hearing to be held by the commission on an~~] application for a certificate of need in at least one newspaper of general circulation in the locality within which the proposed service or facility would be developed."

SECTION 12. Subsection (a), Section 3.08, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is amended to read as follows:

"(a) A health systems agency may review an application transmitted to it and may provide written comments to the commission and to the applicant under rules adopted by the commission [~~not later than the 60th day after the day the application is dated~~]."

SECTION 13. Subdivision (1), Subsection (b), Section 3.09, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is amended to read as follows:

"(b)(1) If a health systems agency has submitted written comments concerning an application to the commission and the applicant as provided in Section 3.08 of this Act, a representative or representatives of that agency may present testimony and evidence for or against that application at the hearing. Any other interested party may present evidence or testimony for or against an application pursuant to rules promulgated by the commission if the party has filed with the department the information required by the commission under Subsection (b) of Section 4.09 of this Act. The commission may not participate as a party in a hearing on an application. Testimony may be presented orally or in writing."

SECTION 14. Subsections (b) and (c), Section 3.10, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), are amended to read as follows:

"(b) Criteria established by the commission must include at least the following:

"(1) whether a proposed project is necessary to meet the health-care requirements [~~needs~~] of the community or population to be served;

"(2) whether a proposed project would adversely affect an existing health-care facility that serves or is approved to serve the community or population the proposed project would serve [~~can be adequately staffed and operated when completed~~];

"(3) whether the cost of a proposed project is economically feasible;

"(4) [~~if applicable, whether a proposed project meets the special needs and circumstances for rural or sparsely populated areas, and~~]

"(5) if applicable, whether a [~~the~~] proposed project meets the special needs of facilities that provide substantial services to indigent individuals; and

"(5) whether the proposed project, if the project is a long-term care nursing facility, including a skilled nursing or intermediate care facility or a skilled nursing or intermediate care institution for mental disease, can be adequately staffed and operated when completed [~~for special services or special facilities~~].

"(c) An applicant must prove a prima facie case that addresses each application criterion set by the commission. The commission shall adopt rules relating to the evidence necessary to prove a prima facie case. If an applicant proves a prima facie case, the commission shall issue the certificate of need unless a contesting party proves that an applicable criterion has not been met [~~In developing criteria the commission shall consider at least the following~~]:

"[~~(1) the recommendations, if any, of the Texas Department of Health, the Texas Board of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the governing boards of other state agencies;~~

"[~~(2) the relationship of a proposed project to the state health plan and the health systems plan and annual implementation plan of the appropriate health systems agency;~~

"[~~(3) the special needs and circumstances of facilities that provide substantial services to indigents;~~

"[~~(4) the special needs and circumstances of facilities that provide a substantial portion of their services to persons residing outside the areas in which the facilities are located;~~

"[~~(5) the possible effects of a project on existing facilities; and~~

"[~~(6) the special needs and circumstances of health maintenance organizations~~]."

SECTION 15. Subsections (a) and (d), Section 3.11, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) The commission shall either grant or deny a contested application for a certificate of need by written order not later than the 90th day following the date of publication of public notice[~~; unless the date of the hearing was delayed pursuant to Section 3.06(b)(2) of this Act, in which case the deadline for the order is extended accordingly, or~~] unless a later date is agreed on in writing by the applicant and the commission. The commission shall either grant or deny an uncontested application for a certificate of need by written order not later than the 45th day after the date of the publication of public notice. The commission by rule shall develop a system of expedited review for an uncontested application."

"(d) The commission may prescribe as conditions to a certificate of need limits on project cost, time periods for development and completion of a project, limits on the scope of the project, project status reports, and other conditions as may be placed in the order necessary for administering this Act. The commission may not require a certificate holder to amend a certificate of need order to address a cost overrun or gross square footage overrun which does not exceed by 10 percent the cost limitation or gross square footage limitation established as a condition in the certificate of need order."

SECTION 16 Subsections (b) through (f), Section 3.14, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), are amended to read as follows:

"(b) If requested by the commission, the attorney general may institute a legal action to enjoin an alleged violation of Subchapter C of this Act or to recover civil penalties as provided by this subchapter.

"(c) No agency of the state or any of its political subdivisions may appropriate or grant funds or assist in any way a person, applicant, facility, or certificate holder who is or whose project is in violation of Subchapter C of this Act.

"(d) No permit to build or license to operate a facility or license to provide a service may be issued for a project or to a person in violation of Subchapter C of this Act, by the state or a political subdivision or instrumentality of the state.

"(e) A person who violates Subchapter C of this Act is subject to a civil penalty of no greater than $100 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this subchapter. Such civil penalties assessed for violations of Subchapter C of this Act shall be deposited in the State Treasury and shall be expended by the commission for the administration and enforcement of Subchapter C of this Act.

"(f) A person who has been judicially determined to be in violation of Subchapter C of this Act, and who has paid all imposed civil penalties and has made a proper application to the commission, shall not be deemed to be in violation of Subchapter C of this Act."

SECTION 17. The Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes) is amended by adding Section 4.09 to read as follows:

"Section 4.09. MEMORANDUM OF UNDERSTANDING. (a) The department and the commission shall execute a memorandum of understanding clearly defines the duties of each agency and the procedures for collecting and disseminating information under Section 4.03 of this Act.

"(b) The memorandum must contain a provision specifying what information required by the department under Section 4.03 of this Act is required for the commission to receive to effectively make determinations about the need for proposed projects.

"(c) The memorandum must contain a provision requiring the department to timely notify the commission if an applicant or a party has not timely submitted information required by the commission under Subsection (b) of this section.

"(d) Not later than the last month of each fiscal year, the department and the commission shall review and update the memorandum.

"(e) Each agency shall adopt the memorandum of understanding as a rule. All revisions to the memorandum must be adopted as rules."

SECTION 18. There is hereby appropriated from the general revenue fund $1,150,652 for the year ending August 31, 1986 and $1,157,052 for the year ending August 31, 1987 to implement the provisions of ARTICLE 19 of this Act. For each year of the biennium $158,600 shall be used to pay the salaries of the commissioners, with one at $55,400 and two at $51,600. For the fiscal year ending August 31, 1986, $992,052 shall be designated for the certification program and for the fiscal year ending August 31, 1987, $998,452 shall be designated for the certification program.

SECTION 19. (a) For those applications pending on the effective date of this Act, the Texas Health Facilities Commission by rule shall establish procedures for determining whether any jurisdictional basis remains for ruling on the application. The procedures shall include provisions for the administrative withdrawal of those applications for which no jurisdictional basis remains and shall provide the opportunity for all parties to respond to the proposed administrative withdrawal of a contested application. If the proposed administrative withdrawal of a contested application is opposed by an applicant or party, the commission shall issue a declaratory ruling as to the continuing requirement for a certificate of need or other commission action. If the commission determines that jurisdiction remains over the application, the commission shall then proceed with the processing of the application.

(b) For those applications dated and accepted before the effective date of this Act for which a jurisdictional basis remains for commission ruling, the provisions of the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes) and commission rules in effect at the time of dating and acceptance of the applications apply.

SECTION 20. A person serving a term as a commissioner on August 31, 1985, is not required to have, during that term or during any subsequent and consecutive term, the public membership qualifications required by Subsection (b), Section 2.02, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), as added by this Act, and is not required to comply with Section 2.13, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), as added by this Act, after the person leaves the commission. A commissioner is not subject to removal for the failure to have the qualifications.

SECTION 21. Not later than January 1, 1986, the Texas Department of Health and the Texas Health Facilities Commission shall complete and adopt a memorandum of understanding as prescribed by Section 4.09, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), as added by this Act.

SECTION 22. This ARTICLE takes effect September 1, 1985 except that Section 7 of this ARTICLE takes effect September 1, 1986.

ARTICLE 20

SECTION 1. Section 1.04(c), Article 4414b, Revised Statutes, as amended by Section 3, Article 1, of this Act, applies only to appointments made on the expiration of the terms of those members serving on the Texas Board of Health on the effective date of this Act.

SECTION 2. The memorandum of understanding required by Section 4(b), Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), as amended by Section 3, Article 13, of this Act, must be executed and adopted not later than September 1, 1986.

SECTION 3. If any of the following bills is enacted by the 69th Legislatue at its regular session in 1985 and becomes law, the provisions of that Act prevail over the provisions of this Act to the extent of any conflict:

(1) **S.B. 894**,
(2) **S.B. 959**,
(3) **H.B. 1732**,
(4) **H.B. 2005**, and
(5) **S.B. 1052**

SECTION 4. The change in law made by this Act does not affect a person's liability for civil penalties if, before the effective date of this Act, the person commenced the development of a project in violation of the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes) as the Act existed at the time of development, and the former law is continued in effect for the purpose of recovering those penalties.

SECTION 5. This Act takes effect September 1, 1985, except that:

(1) Sections 4 and 10, Texas Ambulatory Surgical Center Licensing Act, as adopted by Article 16 of this Act, take effect January 1, 1986; and

(2) Sections 4 and 10, Texas Birthing Center Licensing Act, as adopted by Article 17 of this Act, take effect January 1, 1986.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Lyon offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 for **C.S.H.B. 2091** by adding a new Article 20 to read as follows and renumbering the existing Article 20 accordingly:

ARTICLE 20

SECTION 1. SHORT TITLE. This Article may be cited as the Texas Abortion Facility Reporting and Licensing Act.

SECTION 2. DEFINITIONS. For the purposes of this article:

(1) "Facility" means a place where abortions are performed.

(2) "Abortion" means any act or procedure performed after the pregnancy has been medically verified with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus, and shall not include birth control devices or oral contraceptives.

(3) "Board" means the Texas Board of Health.

(4) "Department" means the Texas Department of Health.

(5) "Person" means any individual, firm, partnership, corporation, or association.

(6) "Patient" means a female on whom an abortion is performed, but shall in no event be construed to include a fetus.

SECTION 3. DUTIES OF THE BOARD. (a) The board shall adopt rules necessary to implement this article, including requirements for the issuance, renewal, denial, suspension, and revocation of a license, to operate a facility based on the minimum standards set out below.

(b) The board shall set minimum standards to protect the health and safety of the patient. An abortion shall be performed only by a physician as defined by the provisions of Article 4495b, V.T.C.S. These standards shall be no more stringent than Medicare certification standards for:

(1) qualifications for professional personnel;

(2) qualifications for nonprofessional personnel;

(3) medical treatment and medical services provided by a facility and the coordination of treatment and services;

(4) supervision of professional and nonprofessional personnel;

(5) sanitary and hygenic conditions within the facility;

(6) the equipment essential to the health and welfare of the patients; and

(7) clinical records kept by the facility.

(c) The board shall set all fees imposed by this article in amounts reasonable and necessary to defray the costs of administering this article.

(d) Subsection (b) of this section does not authorize the board to establish the qualifications of licensed practitioners or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other laws of this state.

SECTION 4. REPORTING REQUIREMENTS. (a) Each facility must submit an annual report to the department on each abortion that is performed at the facility on a form provided by the department. The report shall not identify by any means the physician performing the abortion or the patient on whom the abortion was performed. The report shall include the following information:

(1) Whether or not the facility at which the abortion is performed is licensed under this Article;

(2) Patient's year of birth, race, marital status, and state and county of residence;

(3) Type of abortion procedure;

(4) The date the abortion was performed;

(5) Whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) The period of gestation based on the best medical judgment of the attending physician at the time of the procedure;

(7) The date, if known, of the patient's last menstrual cycle;

(8) The number of previous live births of the patient;

(9) The number of previous induced abortions of the patient;

(b) All information and records held by the department under the provisions of this Article shall be strictly confidential and not considered open records for the purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes). Such information shall not be released or made public upon subpoena or otherwise, except that release may be made under the following circumstances:

(1) release is made for statistical purposes only, so that no person, patient or facility may be identified; or

(2) release is made with the consent of each person, patient and facility identified in the information released; or

(3) release is made to medical personnel, appropriate state agencies, or county and district courts to enforce the provisions of this Article.

(c) A violation of this section is punishable as a Class A misdemeanor.

SECTION 5. LICENSE REQUIREMENT. A person may not establish or operate a facility in this state without the appropriate license issued under this article.

SECTION 6. FACILITY LICENSE: FEES; INSPECTION. (a) An applicant for a facility license must submit an application to the department on a form prescribed by the department. The application must contain evidence that there are one or more physicians on the staff of the facility who are currently licensed by the Texas State Board of Medical Examiners.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board. The license fee shall be paid annually on renewal of the license.

(c) The department shall issue the appropriate license if on inspection and investigation it finds that the applicant and facility meet the requirements of this article and the standards set under this article.

(d) As a condition for the renewal of the license, an annual report must be submitted to the department which includes the report called for in Section 4.

(e) A license issued under this article is not transferable or assignable. A separate license is needed for each separate facility.

(f) Nothing in this article shall be construed to require a facility licensed under Article 4437f, V.T.C.S. or the office of a physician licensed under Article 4495b, V.T.C.S. to obtain a license under this Article, unless such office is utilized primarily for the purpose of performing abortions.

SECTION 7. DISPOSITION OF FUNDS. The Facility Licensing Fund is established as a special fund in the state treasury. All fees collected under this article shall be deposited to the credit of the Facility Licensing Fund and shall be appropriated to the department only to administer and enforce this article.

SECTION 8. INSPECTIONS. The department may inspect a facility at reasonable times as necessary to assure compliance with this article.

SECTION 9. DENIAL, REVOCATION, OR SUSPENSION OF LICENSE. (a) The department may deny, revoke, or suspend a license for a violation of this article or rule adopted under this article.

(b) The procedures by which the department denies, revokes, or suspends a license and the procedures by which the departmental action is appealed are governed by department rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 10. INJUNCTION. (a) If the department finds that a violation of the standards or licensing requirements prescribed by this article creates an immediate threat to the health and safety of the patients of a facility, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(b) If a person violates the licensing requirements or the standards prescribed by this article, the department may petition the district court for an injunction to prohibit the person from continuing the violations or to restrain or prevent the establishment or operation of a facility without a license issued under this article.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this article, the district court may grant any injunctive relief warranted by the facts.

(d) At the request of the department, the attorney general may institute and conduct the suits authorized in this section.

(e) Venue for a suit brought under this section is in the county in which the facility is located or in Travis County.

SECTION 11. PENALTIES. (a) A person who establishes or operates a facility required to be licensed under this article and which is not licensed under this article commits an offense. An offense under this article is a Class C misdemeanor. Each day of a continuing violation constitutes a separate offense.

(b) A person who knowingly violates this article or who knowingly fails to comply with a rule or regulation authorized by this article is subject to a civil penalty of not less than $100 nor more than $500 for each violation if the department determines the violation threatens the health and safety of a patient. Each day of a continuing violation constitutes a separate ground of recovery.

SECTION 12. Nothing in this Article shall remove the responsibility or limit the ability of a physician to perform an abortion in an unlicensed facility if, at the commencement of the abortion, the physician reasonably believed that the abortion was necessary to prevent the death of the patient on whom the abortion was

performed or to prevent serious impairment of the patient's physical or mental condition.

The amendment was read.

(Senator Farabee in Chair)

The amendment was adopted by the following vote: Yeas 28, Nays 3.

Yeas: Barrientos, Blake, Brooks, Brown, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Caperton, Mauzy, Washington.

Senator Jones offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 3

Amend Floor Amendment No. 1 to **C.S.H.B. 2091** by inserting a new ARTICLE 19 of the bill to read as follows and renumbering the existing succeeding ARTICLE(S) in consecutive numerical order:

ARTICLE 19

SECTION 1. SHORT TITLE. This Act may be cited as the Opticians' Registry Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Dispensing Optician" or ophthalmic dispenser" means any person, except as permitted under Section 11 of this Act, who provides or offers to provide ophthalmic dispensing services or products to the public.

(2) "Ophthalmic dispensing" means the design, verification, fitting, adjustment, and delivery of ophthalmic lenses, frames, and other specially fabricated ophthalmic or optical devices prescribed by a licensed physician or optometrist. It includes:

(a) Prescription analysis and interpretation;

(b) The taking of measurements to determine the size, shape, and specifications of the ophthalmic lenses, frames, or lens forms best suited to the wearer's need;

(c) The preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating ophthalmic products;

(d) The verification of the quality of finished ophthalmic products;

(e) The adjustment of lenses or frames to the intended wearer's face or eyes; and

(f) The adjustment, repair, replacement, reproduction or duplication of previously prepared ophthalmic lenses, frames, or other specially fabricated ophthalmic or optical devices; the replacement, reproduction, duplication of previously dispensed contact lenses according to the original written prescription for contact lenses.

(3) "Prescription" means written or, in case of an emergency for replacement of lost or damaged lenses, verbal directions from a licensed physician or optometrist for therapeutic or corrective lenses. A prescription consists of a description of the refractive power of an ophthalmic product and if necessary, of the vertex distance, cylinder, axis, and prism. A prescription for contact lenses must specify that it is for contact lenses. A prescription for contact lenses written by a licensed optometrist must be fully written as required by the Texas Optometry Act, in which case a dispensing optician registered under this Act may fabricate or order the contact lenses and dispense them with appropriate instructions for the care and handling

of the lenses, but shall make no measurements of the eye or the cornea or evaluate the physical fit of the lenses, by any means whatsoever.

(4) "Board" means the Texas Board of Health.

(5) "Department" means the Texas Department of Health.

(6) "Advisory Council" means the Advisory Council of Opticians Registry.

SECTION 3. PROHIBITED ACTS. (a) A person may not, except as permitted under Section 11 of this Act, provide or offer to provide ophthalmic dispensing services to the public unless the person is registered with and complies with this Act.

(b) A person may not, unless registered under this Act, use any words, letters, abbreviations, or insignia that imply that the person may render ophthalmic dispensing services.

(c) A person may not engage in dispensing contact lenses from an Optometrist's fully written contact lens prescription in any manner that would adjust or alter the specific, written instructions of the Optometrist.

SECTION 4. DUTIES OF BOARDS: FEES: ADVISORY COUNCIL. (a) The board shall adopt rules to implement standards adopted under this Act. The board shall adopt rules relating to minimum requirements for the registration of dispensing opticians and the probation, suspension, denial, or revocation of registration.

(b) The board shall appoint a nine-member advisory council to be known as the Advisory Council of the Opticians' Registry. The members shall be appointed from different geographical areas to ensure representation of urban and rural interests.

(c) Each application must be accompanied by a nonrefundable license fee in an amount set by the board. The license fee shall be paid annually on renewal of the license.

(d) The optician registry fund is established as a special fund in the state treasury. All fees collected under this article shall be deposited to the credit of the optician registry fund and may be appropriated to the department only to administer and enforce this article.

(e) The board shall appoint members of the council as follows:

(1) Three must be consumers;

(2) One must be an optometrist licensed in this state;

(3) Five must be dispensing opticians of which at least two must be registered under this act as spectacle dispensers and at least two must be registered under this act as contact lens dispensers.

(f) The board shall adopt by rule the forms required by this Act.

SECTION 5. POWERS AND DUTIES OF THE DEPARTMENT. (a) The department shall administer this Act; evaluate the qualifications of applicants, and provide for the examination of applicants.

(b) The department shall investigate persons engaging in practices that violate this Act.

(c) The department shall employ administrative and clerical staff as necessary to carry out this Act.

SECTION 6. EXAMINATIONS. (a) The department shall administer a written qualifying spectacle-dispensing examination and a written qualifying contact lens examination at least once a year to applicants for registration. The qualifying examinations shall be professionally constructed and validated and objectively administered and scored.

(b) If a person fails to pass a qualifying examination, the person may reapply to take a subsequent examination. An applicant who fails two successive examinations may not reapply until the applicant completes any remedial work required by the department.

SECTION 7. CERTIFICATE OF REGISTRATION. (a) On application and payment of a registration fee, the department shall issue a certificate of registration to an applicant who passes the examination required under Section 6 of this Act.

(b) A person may qualify and be registered as a contact lens dispenser, as a spectacle dispenser, or as both a contact lens dispenser and a spectacle dispenser.

(c) A person issued a certificate by the department shall display the certificate in an appropriate public manner as specified by the board.

(d) A certificate of registration is the property of the department and must be surrendered on demand.

SECTION 8. RENEWAL OF REGISTRATION. (a) A certificate of registration issued under this Act is valid for one year from the date of issuance. To renew the registration, the registrant must submit an application for renewal in the manner prescribed by the board. The application must be accompanied by a renewal fee and evidence that the applicant has acceptably completed any continuing education courses required by the rule of the board.

(b) The department shall adopt a system under which registrations expire and are renewed on various dates of the year.

(c) A person registered under this Act who does not renew the registration by the expiration date may renew the registration not later than 90 days after the expiration date by meeting the requirements set forth in this section and by paying a late penalty fee as prescribed by the board.

(d) The registration of a person who fails to meet the renewal requirements is void, and such a person may practice as a dispensing optician as provided by this Act until the person submits a new application, pays the appropriate fees, and meets the current requirements for registration.

SECTION 9. ENFORCEMENT; PENALTY. (a) The attorney general, or the district or county attorney for the county in which an alleged violation of this Act occurs, on the verified complaint of any person, shall enforce this Act and rules adopted under this Act by appropriate judicial proceedings in a court of competent jurisdiction.

(b) A person commits an offense if the person violates this Act. An offense under this Act is a Class B misdemeanor.

(c) The attorney general or prosecutor may sue in a court of competent jurisdiction to enjoin or restrain a person from violating this Act or a rule adopted under this Act.

(d) In addition to granting injunctive relief or any other remedy provided by law, a court may impose a civil penalty for a violation of this Act or a rule adopted under this Act;

SECTION 10. DENIAL, SUSPENSION, REVOCATION, AND PROBATION. (a) The department may refuse to issue a certificate of registration to an applicant, or may suspend or revoke a certificate of registration, or place on probation an individual who is registered under this Act for:

(1) Obtaining a certificate by means of fraud, misrepresentation, or concealment of material facts;

(2) Selling, bartering, or offering to sell or barter a certificate of registration;

(3) Violating any lawful order or rule rendered or adopted by the board; or

(4) Violating Section 3 of this Act.

(b) A person whose application of registration is denied, suspended, or revoked is entitled to a hearing before the department if the person submits a written request for a hearing to the department. A hearing is governed by department rules for a contested hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13A, Vernon's Texas Civil Statutes).

SECTION 11. APPLICATION OF THIS ACT. This Act does not prevent, limit, or restrict;

(1) Any person licensed in this state under any other law from engaging in the profession or occupation for which the person is licensed; or

(2) An individual, firm, or corporation from employing a person registered under this Act.

(3) Any employee of an optometrist licensed in this state from performing the duties of employment required by said optometrist nor does it require such employee to be registered under this Act.

(4) A licensed physician from treating or prescribing for his patients or directing or instructing others under his control, supervision, or direction from aiding or ministering to the needs of his patients according to his directions, orders, instructions, or prescriptions. When the physician's directions, orders, instructions, or prescriptions are to be followed, performed, carried out, or filled by a registered dispensing optician separate from and independent of the physician's office, those directions, orders, instructions, or prescriptions shall be of a scope and content and communicated to the particular designated dispensing optician in a form and manner that, in the professional judgment of the physician, best serve the health, safety, and welfare of the physician's patient.

The amendment was read.

Senator Glasgow moved to table the amendment.

(President in Chair)

The amendment was tabled by the following vote: Yeas 16, Nays 15.

Yeas: Blake, Caperton, Glasgow, Howard, Kothmann, Krier, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Traeger, Truan, Williams.

Nays: Barrientos, Brooks, Brown, Edwards, Farabee, Harris, Henderson, Jones, Leedom, Lyon, McFarland, Sharp, Uribe, Washington, Whitmire.

Senator Brooks offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 4

Amend Floor Amendment No. 1 to **C.S.H.B. 2091**, Article 4, Section 10, Subsection 12(b) by striking "25,000" and substituting with "10,000".

The amendment was read and was adopted by the following vote: Yeas 23, Nays 8.

Yeas: Blake, Brooks, Brown, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Santiesteban, Sarpalius, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Barrientos, Caperton, Edwards, Farabee, Glasgow, Parmer, Sharp, Washington.

CONSIDERATION OF COMMITTEE SUBSTITUTE HOUSE BILL 2091 POSTPONED

On motion of Senator Edwards and by unanimous consent, further consideration of **C.S.H.B. 2091** was postponed until 2:15 o'clock p.m. today.

Question - Shall the bill as amended be passed to third reading?

HOUSE BILL 1985 ON SECOND READING

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

H.B. 1985, Relating to the preference given to cases and proceedings in the 289th District Court in Bexar County.

The bill was read second time.

Senator Krier offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1985** on page 1 by deleting lines 8-9 and substituting in its place the following:

"(b) The 289th District Court shall give primary preference to cases and proceedings under Titles 2 and 3, Family Code, and secondary preference to criminal cases. Chapter 240, Acts of the 64th Legislature, Regular Session, 1975, (Article 1918a, Vernon's Texas Civil Statutes), applies to the 289th District Court."

The amendment was read and was adopted.

Sentor Jones offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1985** by inserting two new sections, appropriately numbered, to read as follows:

SECTION _____. Subdivision 35, Article 199, Revised Statutes, is amended to read as follows:

35. MILLS AND[;] BROWN [~~AND COLEMAN~~]. The 35th Judicial District is composed of the Counties of Mills and[;] Brown [~~and Coleman~~]. The terms of said District Court shall be held in said counties each year as follows:

In the County of Mills on the first Mondays in January, May and October.

In the County of Brown on the first Mondays in February, June and November.

[~~In the County of Coleman on the first Mondays in April and September.~~]

Each term of court in each of such counties may continue in session until the date herein fixed for the beginning of the next succeeding term therein.

SECTION _____. All cases and proceedings pending on the effective date of this Act in Coleman County in the 35th District Court shall be transferred to the 42nd District Court. All process and writs issued from the 35th District Court in those cases are returnable to the 42nd District Court. The obligees in all bonds and recognizances taken in and for the 35th District Court and all witnesses summoned to appear before the 35th District Court in those cases are required to appear before the 42nd District Court but not at a time earlier than originally required. Each writ and process is as legal and valid as if it had been made returnable to the 42nd District Court.

The amendment was read and was adopted.

Senator Jones offered the following amendment to the bill:

Floor Amendment No. 2

Amend the caption to **H.B. 1985** by adding the following language:

; and fixing the jurisdiction of the 35th Judicial District Court.

The amendment was read and was adopted.

The bill as amended was passed to third reading.

HOUSE BILL 1985 ON THIRD READING

Senator Krier moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1985** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

CONFERENCE COMMITTEE APPOINTED ON SENATE BILL 725

The President asked if there were any motions to instruct the Conference Committee on **S.B. 725** 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 Caperton, Chairman; Sarpalius, Montford, Uribe, Blake.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 1545, To Committee on Intergovernmental Relations.
H.B. 244, To Committee on Natural Resources.
H.B. 1658, To Committee on State Affairs.
H.B. 1431, To Committee on Jurisprudence.

SENATE RULE 103 SUSPENDED

On motion of Senator Farabee and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider **H.B. 1658** today.

CONFERENCE COMMITTEE ON HOUSE BILL 1743

Senator Uribe 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 **H.B. 1743** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1743** 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 Uribe, Chairman; Santiesteban, Sims, Montford, Brown.

LOCAL AND UNCONTESTED BILLS CALENDAR

The President at 12:05 o'clock p.m. announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.

(Senator Blake in Chair)

The regular order of business having been suspended by provisions of **S.R. 8**, adopted by the 69th Legislature, the following bills/resolutions were laid before the Senate, read second time, passed to engrossment/third reading, read third time and passed: (Sponsor, vote on Constitutional Three-day Rule and final passage indicated after caption of each bill).

S.C.R. 176 (Caperton) Stating legislative intent of **S.B. 772**, 68th Legislature. (vv)

S.C.R. 179 (Caperton) Directing the State Preservation Board to erect a monument honoring Texans who participated in the defense of Pearl Harbor. (vv)

S.C.R. 183 (Parker) Directing that an interagency working committee be formed to promote protection of public health and the environment. (vv)

S.C.R. 185 (Brooks) Directing the Texas Board of Human Resources of the Texas Department of Human Resources to place a moratorium on implementing new minimum standards for child day-care centers until further legislative review. (vv)

C.S.S.R. 481 (Parker) Requesting the State Board of Education to conduct a comprehensive study of the numbers, kinds and conditions of existing school facilities in the State. (vv)

S.R. 518 (Barrientos) Encouraging all State agencies and departments to aid, assist and encourage the commercial development of space. (vv)

S.B. 1448 (Sarpalius) Relating to the election date for the Buffalo Lake Water District. (30-1) Washington "Nay" (31-0)

C.S.S.B. 1494 (Santiesteban) Creating the Lower Valley Water Authority. (30-1) Washington "Nay" (31-0)

H.B. 85 (Brown) Relating to the unlawful transfer of certain weapons to a person younger than 18 years old. (30-1) Washington "Nay" (31-0)

H.B. 157 (Lyon) Relating to the screening and treatment for dyslexia and related disorders of students enrolling in a public school in this State for the first time. (30-1) Washington "Nay" (31-0)

Senator Lyon offered the following committee amendment to the bill:

Amend **H.B. 157**, Section 1(b), by adding and deleting:

(b) The State Board of Education shall approve and from time to time review a program under which [a] students enrolling in [a] public schools in this state [~~for the first time is screened~~] are tested for dyslexia and related disorders at appropriate times.

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

H.B. 260 (Brown) Relating to the right of a property owner to reject a city contract for the relocation or replacement of sanitation sewer laterals on the owner's property. (30-1) Washington "Nay" (31-0)

H.B. 477 (Mauzy) Relating to supplemental compensation and expenses for the presiding judge of the statutory probate courts. (30-1) Washington "Nay" (31-0)

C.S.H.B. 498 (Montford) Relating to transferring certain duties relating to the administration of an appraisal district from the county clerk to the chief appraiser and revising certain procedures in the appointment of an appraisal district. (30-1) Washington "Nay" (31-0)

C.S.H.B. 501 (Krier) Relating to annexation of a county territory by, and to the election of trustees of, certain junior college districts. (30-1) Washington "Nay" (31-0)

H.B. 595 (Henderson) Relating to minimum qualifications for employment as a policeman in certain cities. (30-1) Washington "Nay" (31-0)

H.B. 655 (Farabee) Relating to certain contracts pertaining to the reenactment of a crime and the payments of proceeds from those contracts into an escrow account for crime victims' compensation. (30-1) Washington "Nay" (31-0)

H.B. 659 (Harris) Relating to the use of automatic dialing announcing devices. (30-1) Washington "Nay" (31-0)

H.B. 712 (Glasgow) Relating to the compensation of presiding judges of certain administrative judicial districts. (30-1) Washington "Nay" (31-0)

H.B. 744 (Brown) Relating to the jurisdiction of the statutory probate courts in Harris County and to special and substitute judges and certain staff for those courts. (30-1) Washington "Nay" (31-0)

H.B. 788 (Montford) Relating to the creation, enforcement, and prosecution of offenses involving the operation or navigation of aircraft. (30-1) Washington "Nay" (31-0)

Senator Montford offered the following committee amendment to the bill:

Amend **H.B. 788**, by deleting the periods at the end of Sec. 1 of Art. 46f-5 and Sec. 1 of Art. 46f-7 and adding the following at the end of both of those Sections:

, except that "federal aviation regulations" shall not include any regulations in existence on September 1, 1985 that are inconsistent with a regulation adopted after that date.

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

H.B. 870 (Edwards) Relating to the supplemental compensation of district judges in McLennan County. (30-1) Washington "Nay" (31-0)

H.B. 873 (Brown) Relating to issuance of permits for solid waste facilities in certain counties and to approval or rejection of local solid waste management plans by the Texas Department of Health. (30-1) Washington "Nay" (31-0)

H.B. 903 (Caperton) Relating to the creation of a voluntary program for the reduction of hours and wages of certain State employees. (30-1) Washington "Nay" (31-0)

C.S.H.B. 910 (Jones) Relating to issuance of tax receipts and removing from delinquent tax records certain property taxes that are presumed to have been paid. (30-1) Washington "Nay" (31-0)

C.S.H.B. 912 (McFarland) Relating to investments that a trustee is required or permitted to make in obligations of the United States. (30-1) Washington "Nay" (31-0)

H.B. 922 (Whitmire) Relating to the designation of school crossing zones and school crossing guards and the direction of traffic in school crossing zones by school crossing guards. (30-1) Washington "Nay" (31-0)

H.B. 952 (Farabee) Relating to a supplemental appropriation to the Office of the Attorney General for the purpose of paying State employees' workers' compensation claims. (30-1) Washington "Nay" (31-0)

H.B. 978 (Jones) Relating to the requirements for a public junior college to receive a portion of State appropriations for public junior colleges. (30-1) Washington "Nay" (31-0)

H.B. 986 (Krier) Relating to training educators to recognize and respond to signs of abuse or neglect in students. (30-1) Washington "Nay" (31-0)

H.B. 987 (Krier) Relating to the training of peace officers in the recognition, investigation and prosecution of certain cases involving children as victims. (30-1) Washington "Nay" (31-0)

H.B. 993 (Uribe) Relating to exclusion of certain urban property from defined water districts. (30-1) Washington "Nay" (31-0)

H.B. 1037 (Montford) Relating to subpoena procedures under the Administrative Procedure and Texas Register Act. (30-1) Washington "Nay" (31-0)

H.B. 1055 (Glasgow) Relating to creating an offense for escape from custody by a person detained under court order. (30-1) Washington "Nay" (31-0)

H.B. 1173 (Sharp) relating to the authority of certain cities to lease their oil, gas, and other mineral lands. (30-1) Washington "Nay" (31-0)

H.B. 1193 (Mauzy) Relating to the sale of estate property to the personal representative of the estate. (30-1) Washington "Nay" (31-0)

H.B. 1220 (Whitmire) relating to the creation of the County Criminal Courts at Law Nos. 13 and 14 of Harris County. (30-1) Washington "Nay" (31-0)

Senator Whitmire offered the following committee amendment to the bill:

Amend **H.B. 1220** by adding the following sentence at the end of Section 3(c): "The judges of the County Criminal Courts at Law of Harris County shall not engage in the private practice of law."

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

H.B. 1240 (Parmer) Relating to the civil service system in certain counties. (30-1) Washington "Nay" (31-0)

H.B. 1273 (Howard) Relating to the regulation of obstructions to air navigation. (30-1) Washington "Nay" (31-0) navigation. (30-1) Washington "Nay" (31-0)

H.B. 1304 (Edwards) Relating to computers and computer-related equipment for public schools. (30-1) Washington "Nay" (31-0)

Senator Edwards offered the following committee amendment to the bill:

Amend **H.B. 1304** as follows:

(1) On page 2, strike lines 2 through 5.

(2) On page 2, line 6, strike "14.005" and substitute "14.004".

(3) On page 2, line 16, strike "14.006" and substitute 14.005".

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

H.B. 1307 (Farabee) Relating to the manner in which a prisoner is required to appear at a hearing to revoke parole or mandatory supervision and to time limits

in which the hearing must be held and a disposition of the prisoner's case. (30-1) Washington "Nay" (31-0)

H.B. 1323 (Washington) Relating to action by the Texas Court of Criminal Appeals on a writ of habeas corpus based on newly discovered evidence. (30-1) Washington "Nay" (31-0)

Senator Washington offered the following committee amendment to the bill:

Amend **H.B. 1323** as follows:

(1) On page 1, line 23, between "unknown" and "to", insert "or unavailable".
(2) On page 2, line 1, between "discover" and "the", insert "or obtain".

Senator Washington offered the following committee amendment to the bill:

Amend **H.B. 1323** by renumbering Sections 2 and 3 accordingly and adding a new Section 2 to read as follows:

Section 2: Nothing in this Article shall be construed so as to limit the authority of the trial judge pursuant to Chapter 40 of this Code.

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

H.B. 1335 (Caperton) Relating to the creation of the County Court at Law No. 2 of Brazos County and to the County Court at Law of Brazos County. (30-1) Washington "Nay" (31-0)

Senator Caperton offered the following committee amendment to the bill:

Amend **H.B. 1335** in Section 1 of the bill, by adding subdivision (h) to Section 4 of Article 1970-359, VTCS, to read as follows:

"(h) The judges of the county courts at law of Brazos County shall not engage in the private practice of law while serving as a judge."

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

H.B. 1346 (Sarpalius) Relating to confiscation of certain oil and gas drilling equipment to cover costs of well plugging and replugging. (30-1) Washington "Nay" (31-0)

H.B. 1351 (Lyon) Relating to the arrest, search, and seizure powers of postal inspectors. (30-1) Washington "Nay" (31-0)

H.B. 1376 (Brown) Relating to taking water from the Gulf of Mexico without a water rights permit. (30-1) Washington "Nay" (31-0)

H.B. 1385 (Blake) Relating to the disposition of the unused portion of the funds in the unemployment compensation special administration fund. (30-1) Washington "Nay" (31-0)

H.B. 1391 (Brown) Relating to venue for trial of unauthorized use of vehicle offenses. (30-1) Washington "Nay" (31-0)

H.B. 1401 (Parker) Relating to the use of county funds for the maintenance of certain cemeteries. (30-1) Washington "Nay" (31-0)

H.B. 1425 (Brooks) Relating to the participation of the judges in County Courts at Law Nos. 1 and 2 in Galveston County in the management of that county's probation department. (30-1) Washington "Nay" (31-0)

H.B. 1481 (Lyon) Relating to the number of hours and days in the work week or work cycle of certain fire fighters. (30-1) Washington "Nay" (31-0)

H.B. 1525 (Sharp) Relating to the reports on student enrollment required to be made by the chief executive officer of each institution of higher education. (30-1) Washington "Nay" (31-0)

H.B. 1573 (Farabee) Relating to the expansion and development of certain prison industries. (30-1) Washington "Nay" (31-0)

Senator Farabee offered the following committee amendment to the bill:

Amend **H.B. 1573** on page 2, line 2 by striking "director of the department of corrections" and substituting therefor "Board of Corrections".

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

H.B. 1657 (Parmer) Relating to fire fighters' and police officers' civil services. (30-1) Washington "Nay" (31-0)

C.S.H.B. 1732 (Uribe) Relating to the regulation and manufacture of certain foods, drugs, devices, and cosmetics. (30-1) Washington "Nay" (31-0)

H.B. 1775 (Howard) Relating to the security for deposits of public funds. (30-1) Washington "Nay" (31-0)

H.B. 1802 (Uribe) Relating to the refusal to issue certain licenses by the Department of Agriculture. (30-1) Washington "Nay" (31-0)

H.B. 1803 (Uribe) Relating to handling and marketing of certain fruits and vegetables and the payment of claims against certain persons licensed to handle those fruits or vegetables. (30-1) Washington "Nay" (31-0)

H.B. 1874 (McFarland) Relating to the packaging of alcoholic beverages. (30-1) Washington "Nay" (31-0)

H.B. 1879 (Howard) Relating to the validation of certain municipal annexations and other related governmental acts and proceedings. (30-1) Washington "Nay" (31-0)

H.B. 1903 (Edwards) Relating to items exempt from the purchasing authority of the State Purchasing and General Services Commission. (30-1) Washington "Nay" (31-0)

H.B. 1908 (Henderson) Relating to the creation of a warehouseman's lien on property belonging to an evicted tenant. (30-1) Washington "Nay" (31-0)

H.B. 1921 (Uribe) Relating to the number and election of board members of a rehabilitation school district. (30-1) Washington "Nay" (31-0)

H.B. 1936 (Mauzy) Relating to the purposes for which revenues from leases for parking beneath freeways are used. (30-1) Washington "Nay" (31-0)

H.B. 1947 (Barrientos) Relating to the operation of a motor vehicle equipped with certain lights. (30-1) Washington "Nay" (31-0)

H.B. 1959 (Sims) Relating to requiring the Texas Department of Water Resources to make certain information available to the public. (30-1) Washington "Nay" (31-0)

H.B. 1992 (Caperton) Relating to prohibiting denial of certain salary bonuses or similar compensation or career ladder advancement because of a teacher's absence from school for observance of a religious holy day. (30-1) Washington "Nay" (31-0)

H.B. 2001 (Leedom) Relating to notice required for changes in the amount of interest paid on certain bank deposits and investment certificates. (30-1) Washington "Nay" (31-0)

H.B. 2005 (Brooks) Relating to eligibility to receive services, services provided, and providers of services under the Crippled Children's Services Act. (30-1) Washington "Nay" (31-0)

H.B. 2010 (Whitmire) Relating to requiring a public hearing on the budget of cities and towns. (30-1) Washington "Nay" (31-0)

H.B. 2034 (Mauzy) Relating to the appointment and duties of temporary guardianships under the Texas Probate Code. (30-1) Washington "Nay" (31-0)

Senator Mauzy offered the following committee amendment to the bill:

Amend **H.B. 2034** by deleting Section 2 and adding the following language:

"SECTION 2. Chapter 5, Texas Probate Code, is amended by adding Section 118A to read as follows:

Sec. 118A. DESIGNATION OF GUARDIAN BEFORE NEED ARISES. (a) A person, other than a minor or an incompetent, may designate by a written declaration persons to serve as guardian of the person of the declarant or the estate of the declarant in the event the declarant becomes incompetent. The declaration must be attested to by at least two credible witnesses 14 years of age or older who are not named as guardian or alternative guardian in the declaration.

(b) A declarant may, in the declaration, disqualify named persons from serving as guardian of the declarant's person or estate, and the persons named may not be appointed guardian under any circumstances.

(c) The declaration must have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration. A properly executed and witnessed declaration and affidavit are prima facie evidence that the declarant was competent at the time he executed the declaration and that the guardian named in the declaration would serve the best interest of the ward.

(d) The declaration and affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed. Unless the court finds that the person designated in the declaration to serve as guardian is disqualified or would not serve the best interests of the ward, the court shall appoint the person as guardian in preference to those otherwise entitled to serve as guardian under this code. If the designated guardian fails to qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next qualified designated alternate guardian named in the declaration. If the guardian and all alternate guardians fail to qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

(e) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including by the subsequent reexecution of the declaration i the manner required for the original declaration.

(f) If a declarant designates the declarant's spouse to serve as guardian under this section, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.

(g) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian. The following forms may, but need not, be used:

DECLARATION OF GUARDIAN IN THE EVENT OF LATER INCOMPETENCE OR NEED OF GUARDIAN

I, _____, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

1. I designate _____ to serve as guardian of my person, _____ as first alternate guardian of my person, _____ as second alternate guardian of my person, and _____ as third alternate guardian of my person.

2. I designate _____ to serve as guardian of my estate, _____ as first alternate guardian of my estate, _____ as second alternate guardian of my estate, and _____ as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, fails, or refuses to qualify, or resigns, the next named alternate guardian succeeds the prior named guardian and becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person: _____, _____, and _____.

5. I expressly disqualify the following persons from serving as guardian of my estate: _____, _____ and _____.

Signed this _____ day of _____, 19____.

_____

Declarant

_____ _____

Witness Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his Declaration of Guardian and that he had made and executed it for the purposes therein expressed. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

_____

Declarant

_____ _____

Affiant Affiant

Subscribed and sworn to before me by the above named declarant and affiants on this _____ day of _____, 19____.

_____

Notary Public in and for
the State of Texas
My Commission expires:

"SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

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

H.B. 2043 (Jones) Relating to the date on which unpaid property taxes become delinquent. (30-1) Washington "Nay" (31-0)

H.B. 2068 (Uribe) Relating to spills of hazardous substances into waters in the State. (30-1) Washington "Nay" (31-0)

Senator Uribe offered the following committee amendment to the bill:

Amend SECTION 4 of **H.B. 2068** by striking the last two sentences of Subsection (g) and by substituting the following:

"Any responsible person held liable under this subsection or Subsection (d) of this section has the right to recover indemnity or contribution from any third party who caused, suffered, allowed, or permitted the spill or discharge. Liability arising under this subsection or Subsection (d) of this section does not affect any rights the responsible person has against a third party whose acts caused or contributed to the spill or discharge."

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

H.B. 2084 (Traeger) Relating to the management and operation of the Texas Alcoholic Beverage Commission. (30-1) Washington "Nay" (31-0)

H.B. 2096 (Brooks) Relating to the authorization of the State Preservation Board to provide for the offering of Sesquicentennial Commemorative products in the Capitol. (30-1) Washington "Nay" (31-0)

H.B. 2162 (Washington) Relating to the number of signatures required on an application for a place on the ballot in a municipal election. (30-1) Washington "Nay" (31-0)

H.B. 2195 (Santiesteban) Relating to the authority and duties of a county historical commission and of a county commissioners court. (30-1) Washington "Nay" (31-0)

H.B. 2220 (Mauzy) Relating to subrogation recoveries by the director of the State Employees Division of the Attorney General's Office. (30-1) Washington "Nay" (31-0)

H.B. 2290 (Barrientos) Relating to creation, purposes, powers, duties and authority of regional plan implementation agencies. (30-1) Washington "Nay" (31-0)

Senator Barrientos offered the following committee amendment to the bill:

Amend **H.B. 2290** by adding subsection (g) to section 1 to read as follows:

(g) Nothing in this act waives the requirements of this chapter or other applicable laws relating to voter approval of bond issues.

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

H.B. 2299 (Leedom) Relating to the notice of delinquency given to persons whose names appear on the delinquent property tax roll of a taxing unit. (30-1) Washington "Nay" (31-0)

H.B. 2302 (Barrientos) Relating to the authority of the commissioners court of a county to exchange an interest in real estate for another interest in real estate. (30-1) Washington "Nay" (31-0)

Senator Barrientos offered the following committee amendment to the bill:

Amend **H.B. 2302** by adding Section 2(f) to amend article 1577, Revised Statutes as follows:

"(f) A county shall not exchange lands under this section unless the land to be acquired by the county pursuant to such exchange is to be used for one or more of those public purposes for which a county may otherwise acquire land."

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

H.B. 2316 (Caperton) Relating to the contents of a voter registration application form. (30-1) Washington "Nay" (31-0)

H.B. 2349 (Brooks) Relating to school crosswalks. (30-1) Washington "Nay" (31-0)

H.B. 2370 (Whitmire) Relating to the submission and approval of certain plats in cities of 1,500,000 residents or more. (30-1) Washington "Nay" (31-0)

H.B. 2371 (Barrientos) Relating to the creation and operation of municipal parking authorities. (30-1) Washington "Nay" (31-0)

Senator Barrientos offered the following committee amendment to the bill:

Amend **H.B. 2371** by striking Section 13 and substituting the following in lieu:

SECTION 13. ACTIONS AGAINST AUTHORITY. Except where there is actual notice on the part of the authority that death has occurred or that the claimant has received some injury or that property of the claimant has been damaged, in an action against the authority for damages, injuries to property, or personal injuries or death, any person making a claim shall give notice of the same to the authority against which such claim is made, reasonably describing the damage or injury claimed and the time, manner and place of the incident from which it arose, within six months from the date of the incident.

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

H.B. 2377 (Leedom) Relating to the creation of the Sunnyvale Municipal Utility District No. 1. (30-1) Washington "Nay" (31-0)

C.S.H.B. 2386 (Brooks) Relating to licensing and regulation of certain pilots, pilotage rates, and pilot service. (30-1) Washington "Nay" (31-0)

C.S.H.B. 2388 (Caperton) Relating to the adoption of rules by certain state agencies that affect law enforcement agencies of the State and political subdivisions of the State. (30-1) Washington "Nay" (31-0)

H.B. 2389 (Brooks) Relating to the Probate and County Court of Galveston County and to the docketing of certain cases in the statutory county courts of Galveston County. (30-1) Washington "Nay" (31-0)

H.B. 2404 (Brown) Relating to the jurisdiction, practice, procedure, and compensation of the judge of the County Court at Law No. 1 of Fort Bend County, and to the creation of the County Court at Law No. 2 of Fort Bend County. (30-1) Washington "Nay" (31-0)

H.B. 2412 (Brown) Relating to the authority of Harris County to erect markers designating the location of traffic accidents in which a fatality occurred. (30-1) Washington "Nay" (31-0)

H.B. 2414 (Edwards) Relating to the inclusion of Texas State Technical Institute among the institutions eligible to benefit from an existing appropriation for purchased utilities. (30-1) Washington "Nay" (31-0)

H.B. 2419 (Sharp) Relating to the jurisdiction of the County Court at Law of Williamson County. (30-1) Washington "Nay" (31-0)

H.B. 2420 (Brooks) Relating to special license plates for persons who are honorary consuls. (30-1) Washington "Nay" (31-0)

H.B. 2422 (Howard) Relating to the Cass County Juvenile Board. (30-1) Washington "Nay" (31-0)

C.S.H.B. 2423 (Parker) Relating to taking possession without a court order of a child suspected to be a child abuse victim. (30-1) Washington "Nay" (31-0)

H.B. 2434 (Farabee) Relating to the waiver of penalties and interest on a delinquent ad valorem tax in certain circumstances. (30-1) Washington "Nay" (31-0)

H.B. 2437 (Edwards) Relating to authorizing the board of trustees of a school district to invest certain gifts, devises, and bequests. (30-1) Washington "Nay" (31-0)

H.B. 2438 (Traeger) Relating to the conveyance of certain state-owned real property in Comal County by the General Land Office. (30-1) Washington "Nay" (31-0)

Senator Traeger offered the following committee amendment to the bill:

Amend **H.B. 2438** by revising SECTION 4 to read as follows:

"SECTION 4. DISPOSITION OF PROCEEDS. The commissioner may retain from the proceeds of the sale authorized by Section 1 of this Act an amount equal to the costs of conducting the sale, including advertising, appraisal, and administrative costs. The balance of the proceeds shall be deposited in the state treasury to the credit of the Texas capital trust fund."

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

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.B. 2408** by record vote of 143 ayes, 0 noes.

The House has concurred in Senate amendments to **H.B. 2214** by a record vote of 143 ayes, 0 noes.

The House has concurred in Senate amendments to **H.B. 2213** by a record vote of 138 ayes, 0 noes.

The House has concurred in Senate amendments to **H.B. 2212** by a record vote of 140 ayes, 0 noes.

The House has concurred in Senate amendments to **H.B. 2210** by a record vote of 139 ayes, 0 noes.

The House has concurred in Senate amendments to **H.B. 1247** by a record vote of 138 ayes, 0 noes.

The House has concurred in Senate amendments to **H.B. 356** by a record vote of 137 ayes, 1 noes.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

H.B. 2457 (Howard) Relating to the creation of the Little Cypress Utility District. (30-1) Washington "Nay" (31-0)

H.B. 2458 (Sharp) Relating to the duties of the county attorney of Fayette County and to the election and duties of the district attorney of the 155th Judicial District. (30-1) Washington "Nay" (31-0)

H.B. 2459 (Glasgow) Relating to the terms of office of the directors of the Wise County Water Control and Improvement District No. 1. (30-1) Washington "Nay" (31-0)

H.B. 2463 (Sims) Relating to the hunting and possession of certain exotic animals. (30-1) Washington "Nay" (31-0)

H.B. 2469 (Howard) Relating to the board of directors and contracts of the Franklin County Water District. (30-1) Washington "Nay" (31-0)

H.B. 2473 (Jones) Relating to the creation of the County Court at Law of Coryell County and to membership of the county court at law judge on the Coryell County Juvenile Board. (30-1) Washington "Nay" (31-0)

H.B. 2474 (Caperton) Relating to the creation of the County Court at Law of Austin County. (30-1) Washington "Nay" (31-0)

Senator Caperton offered the following committee amendment to the bill:

Amend **H.B. 2474** in Section 6 of the bill, by adding subdivision (h) to read as follows:

"(h) The judges of the county courts at law of Austin County shall not engage in the private practice of law while serving as a judge."

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

H.B. 2478 (Uribe) Relating to the validation of notes and deeds of trust issued to finance municipal airport improvements. (30-1) Washington "Nay" (31-0)

H.B. 2479 (Krier) Relating to dissolution of the Bexar County Water Control and Improvement District No. 17. (30-1) Washington "Nay" (31-0)

H.B. 2481 (Washington) Relating to notice of the possibility of suspension of a driver's license for a conviction for failure to maintain financial responsibility. (30-1) Washington "Nay" (31-0)

H.B. 2486 (Uribe) Relating to the authority of certain agricultural cooperative marketing associations to deal in the products of persons who are not members of the association. (30-1) Washington "Nay" (31-0)

H.B. 2487 (Jones) Relating to the creation of the Fox Crossing Water District and annexation of territory to that district. (30-1) Washington "Nay" (31-0)

H.B. 2488 (Santiesteban) Relating to the creation of the El Paso County Lower Valley Water District Authority. (30-1) Washington "Nay" (31-0)

Senator Santiesteban offered the following committee amendment to the bill:

Amend **H.B. 2488** by striking Section 2 and substituting the following:

Sec. 2: The Authority shall comprise all of the territory as follows:
Beginning at the most southerly point of the incorporated boundary of the City of El Paso, Texas, said point also being common to the United States Mexico boundary;
Thence, Northerly following along the existing city limits boundary a distance of 6.0 miles (approximately) to the North right-of-way line of U.S. Interstate 10;
Thence, Easterly following along the North right-of-way line of U.S. Interstate 10 a distance of .85 miles (approximately) to a point;
Thence, Northerly along the boundary of the Horizon Water District a distance of 1.2 miles (approximately) to a point on the common corner of W. J. Rand Survey 315 1/2 and C.D. Stewart Survey 317, 318 and 319;
Thence, West following along the boundary of the Horizon Water District along the common line of W.J. Rand Survey 315 1/2 and C.D. Stewart Survey 317 a distance of 1.0 mile to the common corner of O.A. Danielson Surveys 315 and 316, W.J. Rand Survey 315 1/2 and C.D. Stewart Survey 317;
Thence, North following along the boundary of the Horizon Water District along the common line of W.J. Rand Survey 315 1/2 and O.A. Danielson Survey 315 a distance of 1.0 mile to the common corner of O.A. Danielson Survey 312 and 315, W.J. Rand Survey 315 1/2 and Block 79, TSP 3, Section 17 of the T & P R.R. Surveys;
Thence, East following along the boundary of the Horizon Water District along the common line of W.J. Rand Survey 315 1/2 and Block 79, TSP 3, Section 17 of the T & P R.R. Surveys a distance of 1.0 mile to the common corner of Sections 17 and 18, Block 79, TSP 3 of the T & P R.R. Surveys, W.J. Rand Survey 315 1/2 and C.D. Stewart Survey 319;
Thence, North following along the boundary of the Horizon Water District along the common line of Sections 17 and 18, Block 79, TSP 3 of the T & P R.R. Surveys a distance of 1.0 miles to the common corner of Sections 15, 16, 17 and 18, Block 79, TSP 3 of the T & P R.R. Surveys;
Thence, East following along the boundary of the Horizon Water District along the common line of Sections 15 and 18, Block 79, TSP 3 of the T & P R.R. Surveys a distance of 1.0 mile to the common corner of Sections 14, 15, 18 and 19, Block 79, TSP 3 of the T & P R.R. Surveys;
Thence, South following along the boundary of the Horizon Water District along the common line of Sections 18 and 19, Block 79, TSP 3 of the T & P R.R. Surveys a distance of 1.0 mile to the common corner of Sections 18, 19 and 22 of the T & P R.R. Surveys and C.D. Stewart Survey 319;
Thence, East following along the boundary of the Horizon Water District along the common line of Sections 19 and 22, Block 79, TSP 3 of the T & P R.R. Surveys a distance of 1.0 mile to the common corner of Sections 19, 20, 21 and 22, Block 79, TSP 3 of the T & P R.R. Surveys;
Thence, South following along the boundary of the Horizon Water District along the common line of Sections of 21 and 22, Block 79, TSP 3 of the T & P R.R. Surveys a distance of .5 mile to a point;
Thence, West following along the boundary to the Horizon Water District a distance of .5 mile (approximately) to a point;
Thence, South following along the boundary of the Horizon Water District a distance of .5 mile (approximately) to the common line of Section 22, Block 79, TSP 3 of the T & P R.R. Surveys and C.D. Stewart Survey 320;
Thence, East following along the boundary of the Horizon Water District and the common line of Section 22, Block 79, TSP 3 of the T & P R.R. Surveys and C.D. Stewart Survey 320 a distance of .5 mile (approximately) to the common corner of

Sections 21 and 22, Block 79, TSP 3 of the T & P R.R. Surveys, C.D. Stewart 320 and W.J. Rand Survey 325;
Thence, South following along the boundary of the Horizon Water District and the common line of C.D. Stewart Survey 320 and W.J. Rand Survey 325 a distance of 1.0 mile to the common corner of C.D. Stewart Surveys 320, 321, 322 and W.J. Rand Survey 325;
Thence, West following along the boundary of the Horizon Water District and also being the common line of C.D. Stewart Surveys 320 and 322 a distance of 1.0 mile to the common corner of C.D. Stewart Surveys 318, 320, 322 and 323;
Thence, South following the boundary of the Horizon Water District and also being the common line of C.D. Stewart Surveys 322 and 323 a distance of 1.0 mile to the common corner of C.D. Stewart Surveys 322, 323 and Leigh Clark Surveys 292 and 293;
Thence, East following the boundary of the Horizon Water District and also being the common line of C.D. Stewart Survey 322 and Leigh Clark Survey 292 a distance of 1.0 mile to the common corner of C.D. Stewart Surveys 321, 322 and Leigh Clark Survey 291 and 292;
Thence, South following the boundary of the Horizon Water District and also being the common line of Leigh Clark Surveys 291 and 292 a distance of 1.0 mile to the common corner of Leigh Clark Surveys 291, 292, 295 and 296;
Thence, West following the boundary of the Horizon Water District and also being the common line of Leigh Clark Surveys 292 and 295 a distance of 1.0 mile to the common corner of Leigh Clark Surveys 292, 293, 294 and 295;
Thence, South following the boundary of the Horizon Water District and also being the common line of Leigh Clark Surveys 294 and 295 a distance of 1.0 mile to the common corner of Leigh Clark Surveys 294 and 295;
Thence, East following the boundary of the Horizon Water District and being the common section lines of several surveys a distance of 6.0 miles to the common corner of Sections 2, 3, 8 and 9, Block 78, TSP 4 of the T & P R.R. Surveys;
Thence, North following the boundary of the Horizon Water District and being the common line of Sections 2 and 3, Block 78, TSP 4 of the T & P R.R. Surveys a distance of 1.0 mile to the common corner of Sections 46 and 47, Block 78, TSP 3 and Sections 2 and 3, Block 78, TSP 4 of the T & P R.R. Surveys;
Thence, East following the boundary of the Horizon Water District and being the common section lines of several surveys a distance of 6.0 miles to the common corner of Sections 46 and 47, Block 77,TSP 3 and Sections 2 and 3, Block 77, TSP 4 of the T & P R.R. Surveys;
Thence, South following along the boundary of the Horizon Water District and being the common line of Sections 2 and 3, Block 77, TSP 4 of the T & P R.R. Surveys, a distance of one mile to the common corner of Sections 2, 3, 10 and 11, Block 77, TSP 4 of the T & P R.R. Surveys;
Thence, East flowing along the boundary of the Horizon Water District and being the common line of Sections 2 and 11, Block 77, TSP 4 of the T & P R.R. Surveys a distance of 1.0 mile to the common corners of Sections 1, 2, 11 and 12, Block 77, TSP 4 of the T & P R.R. Surveys;
Thence, South following along the boundary of the Horizon Water District and being the common line of Sections 11 and 12, Block 77, TSP 4 of the T & P R.R. Surveys a distance of 1.0 mile to the common corners of Sections 11, 12, 13 and 14, Block 77, TSP 4 of the T & P R.R. Surveys;
Thence, East following along the boundary of the Horizon Water District and being the common line of Sections 12 and 13, Block 77, TSP 4 of the T & P R.R. Surveys a distance of 1.0 mile to the common line of El Paso County and Hudspeth County;
Thence along said county line, South 11 miles to a point, said point being common to the NE corner of Survey No. 350 and the NW corner of Survey No. 349;

Thence continuing along the Hudspeth - El Paso County line, East 2.0 miles to a point, said point marking the NE corner of Survey No. 348;
Thence continuing along the Hudspeth - El Paso County line, South 4.0 miles to a point;
Thence continuing along the Hudspeth - El Paso County line, East 0.25 miles to the most easterly corner of Survey No. 362;
Thence continuing along the Hudspeth - El Paso County line, South 45°06' West, 3.2 miles to a point on the United States - Mexico international boundary and as defined by the rectified Rio Grande river channel;
Thence following along said international boundary line in a northwesterly direction, 28 miles (approximately) to the point of beginning of this description.
Save and except the existing areas encompassed by the following incorporated entities; 1) City of Clint, Texas, 2) El Paso County Water Authority (Horizon), 3) Fabens Water Control and Water Improvement District No. 4, 4), Tornillo Water Supply Corporation, 5) Haciendas Del Norte Improvement District, 6) San Elizario Municipal Utility District, and 7) Cuadrilla Water Improvement Corporation; and
A parcel of land continuing 5 square miles in the county of El Paso, Texas and being more particularly described as follows:
Sections 16 and 18 in Block 78, Township 2, T & P R.R. Survey, El Paso County, Texas
Section 48, Block 79, Township 2, T & P R.R. Survey, El Paso County, Texas
Sections 2 and 10, Block 79, Township 3, T & P R.R. Survey, El Paso County, Texas.
It is hereby found that all of the land thus included in said Authority will be benefited by the improvements to be acquired and constructed by the Authority.

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

H.B. 2490 (Parker) Relating to the creation of the Northwest Liberty County Drainage District. (30-1) Washington "Nay" (31-0)

H.B. 2496 (Lyon) Relating to the issuance of permits for certain lift equipment motor vehicles on public highways. (30-1) Washington "Nay" (31-0)

H.B. 2497 (Leedom) Relating to the organization, boundaries, purposes, powers, duties, functions, authority, and financing of the Colden Road Utility District. (30-1) Washington "Nay" (31-0)

H.B. 2499 (Krier) Relating to the dissolution of the Bexar County Water Control and Improvement District No. 18. (30-1) Washington "Nay" (31-0)

H.B. 2502 (Sarpalius) Relating to the election date for the Buffalo Lake Water District. (30-1) Washington "Nay" (31-0)

H.B. 2506 (Blake) Relating to the jurisdiction of the County Court at Law of Rusk County and to the salary of the judge of that court. (30-1) Washington "Nay" (31-0)

H.B. 2511 (Santiesteban) Relating to the creation of the Mowad Water District. (30-1) Washington "Nay" (31-0)

H.B. 2512 (Caperton) Relating to the creation of the Harris County Municipal Utility District No. 317. (30-1) Washington "Nay" (31-0)

H.B. 2513 (Caperton) Relating to the creation of the Harris County Municipal Utility District No. 318. (30-1) Washington "Nay" (31-0)

H.B. 2514 (Caperton) Relating to the creation of the Harris County Municipal Utility District No. 319. (30-1) Washington "Nay" (31-0)

H.B. 2516 (Brown) Relating to designating State Highway 288 as the Brazoria Parkway. (30-1) Washington "Nay" (31-0)

H.B. 2520 (Edwards) Relating to authority to establish a foreign trade zone at the location of the Saturn automobile production facility. (30-1) Washington "Nay" (31-0)

H.B. 2522 (Sims) Relating to the creation of the S. E. Thompson Municipal Utility District No. 1. (30-1) Washington "Nay" (31-0)

H.C.R. 99 (Barrientos) Directing the Central Education Agency to study educational needs of high-functioning students with autism. (vv)

H.C.R. 114 (Sims) Creating a special committee to select the Texas State Artist. (vv)

H.C.R. 131 (Parmer) Granting heirs, legal representatives and estates of Linda Jo Smith and Mary Lynn Shuler Hart and others permission to sue the State of Texas. (vv)

H.C.R. 137 (Harris) Granting permission to Jim Scoggins and Gerry Gammage to sue the State of Texas. (vv)

H.C.R. 141 (Washington) Denouncing persecution by Iranian government of members of Baha'i Faith. (vv)

H.C.R. 161 (Farabee) Authorizing the placement of a monument in the Capitol to commemorate the 40th anniversary of the Texas Public Employees Association and the Sesquicentennial of Texas Independence. (vv)

H.C.R. 181 (Brooks) Directing the Texas Health and Human Services Coordinating Council to conduct a study of school-age latch-key children in Texas. (vv)

H.C.R. 191 (Lyon) Granting Bob Bass permission to sue the Department of Highways and Public Transportation. (vv)

H.C.R. 192 (Lyon) Granting Bob Bass permission to sue the Department of Highways and Public Transportation. (vv)

H.C.R. 193 (Sarpalius) Relating to granting permission for an automatic teller machine to be located in the Capitol Complex. (vv)

H.C.R. 204 (Brown) Granting Robert John Bodisch permission to sue the State of Texas. (vv)

H.C.R. 205 (Barrientos) Granting Hartford Steam Boiler Inspection and Insurance Company permission to sue the State of Texas. (vv)

H.C.R. 206 (Brown) Granting Tom W. Bradfield and Donald H. Cummins permission to sue the State of Texas. (vv)

H.C.R. 207 (Brown) Granting Fred Shin and Austin Traffic Signal Construction Company permission to sue the State of Texas. (vv)

H.C.R. 211 (Jones) Granting Roy Klagmann permission to sue the State of Texas. (vv)

H.C.R. 213 (Barrientos) Granting George Feliz Ramirez permission to sue the State of Texas. (vv)

H.C.R. 219 (Barrientos) Granting Physicians Mutual Insurance Company permission to sue the State of Texas. (vv)

H.C.R. 226 (Barrientos) Granting Systems Marketing and Education, Inc., permission to sue the State of Texas. (vv)

H.C.R. 227 (Mauzy) Granting Eugene T. McLaughlin and Cara Houchins Hughes permission to sue the State and the General Land Office. (vv)

H.C.R. 228 (Barrientos) Granting Korba, Helfert, and Zabel, Inc., permission to sue the State of Texas. (vv)

H.C.R. 229 (Santiesteban) Granting J. D. Abrams, Inc., permission to sue the State of Texas. (vv)

H.C.R. 235 (Henderson) Granting Black Gold Express permission to sue the State of Texas. (vv)

H.C.R. 237 (Krier) Granting Vincent Paul Rydzak permission to sue the State of Texas. (vv)

H.C.R. 239 (Mauzy) Granting Samuel Hudson permission to sue the State of Texas. (vv)

H.C.R. 241 (Barrientos) Granting John Monahan and the University Employees Union permission to sue the State of Texas and The University of Texas System. (vv)

BILLS REMOVED FROM LOCAL AND UNCONTESTED BILLS CALENDAR

Number	Senators Objecting
H.B. 214	Brooks, Blake
H.B. 824	Washington, Blake
H.B. 1655	Traeger, Blake
H.B. 1703	Brooks, Blake
H.B. 2484	Farabee, Caperton
H.B. 2433	Blake, Traeger
H.B. 1172	Blake, Traeger
H.B. 2012	Mauzy, Blake
H.B. 1825	Mauzy, Blake
H.B. 245	Mauzy, Blake
H.B. 2260	Mauzy, Blake
H.B. 1555	Mauzy, Blake
H.B. 2218	Mauzy, Blake
H.B. 1206	Mauzy, Blake

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Farabee submitted the following report for the Committee on State Affairs:

C.S.H.B. 1658

CONCLUSION OF SESSION FOR LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Blake in Chair) announced that the session for the consideration of the Local and Uncontested Bills Calendar was concluded.

RECESS

On motion of Senator Mauzy, the Senate at 12:01 o'clock p.m. took recess until 2:15 o'clock p.m. today.

AFTER RECESS

The Senate met at 2:15 o'clock p.m. and was called to order by the President.

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Caperton submitted the following report for the Committee on Criminal Justice:

H.B. 1929

By unanimous consent, Senator Parker submitted the following report for the Committee on Education:

C.S.H.B. 682
C.S.H.B. 408
H.B. 2152
H.B. 1731
C.S.H.B. 2104

SENATE BILL 249 WITH HOUSE AMENDMENTS

Senator Sharp called **S.B. 249** 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 - C. Evans

Substitute the following for **S.B. 249**:

A BILL TO BE ENTITLED

AN ACT

relating to the administration, powers, duties, reorganization, and continuation of the Texas Water Commission and the Texas Water Development Board; the transfer of powers and duties over water and sewer utilities to the Texas Water Commission from the Public Utilities Commission of Texas; and coordination of certain duties between the Texas Water Commission and the Texas Department of Health; providing penalties.

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

PART 1. DEPARTMENT ORGANIZATION AND ADMINISTRATION

SECTION 1.001. Chapter 5, Water Code, is amended to read as follows:

CHAPTER 5. TEXAS WATER COMMISSION
[~~TEXAS DEPARTMENT OF WATER RESOURCES~~]

Sec. 5.001. DEFINITIONS. In this chapter:

(1) [~~"Department" means the Texas Department of Water Resources.~~

[~~(2)~~] "Board" means the Texas Water Development Board.

(2) [~~(3)~~] "Commission" means the Texas Water Commission.

(3) [~~(4)~~] "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

Sec. 5.002. SCOPE OF CHAPTER. The powers and duties enumerated in this chapter are the general powers and duties of the commission [~~department~~] and those incidental to the conduct of its business. The commission [~~department~~] has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

[Sections 5.003 to 5.010 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF THE TEXAS [~~DEPARTMENT OF~~] WATER COMMISSION [~~RESOURCES~~]

Sec. 5.011. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide an organizational structure for the commission that will provide more efficient and effective administration of water in this state and to define the duties, responsibilities, authority, and functions of the commission and the executive director.

Sec. 5.012. DECLARATION OF POLICY. The commission [~~Texas Department of Water Resources~~] is the agency of the state given primary responsibility for implementing the [~~provisions of the~~] constitution and laws of this state relating to water. [~~To assure that fundamental safeguards of the constitution are enjoyed by persons subject to the jurisdiction of the department, this title of the code provides for the formal separation of the legislative, executive, and judicial functions of the department and creates an office of public interest within the department.~~

[~~Sec. 5.012. DEPARTMENT AS AGENCY OF THE STATE; DIVISION OF DEPARTMENT BY FUNCTIONS. (a) The Texas Department of Water Resources is an administrative agency of the state and is responsible for carrying out the legislative, executive, and judicial functions provided in this title and delegated to it by the constitution and other laws of this state.~~

[~~(b) With respect to the department, the terms "legislative," "executive," and "judicial" mean those functions of the department that most closely resemble the same functions of the three branches of the state government.~~]

Sec. 5.013. GENERAL JURISDICTION OF COMMISSION. (a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification;

(5) the determination of the feasibility of certain federal projects;

(6) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;

(7) conduct of the state's coastal oil and hazardous spill prevention and control program;

(8) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;

(9) the administration of a portion of the state's injection well program;

(10) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;

(11) the state's responsibilities relating to regional waste disposal;

(12) the responsibilities assigned to the commission by the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes);

(13) the administration of the national flood insurance program;

(14) administer the state's water rate program under Chapter 13 of this code; and

(15) any other areas assigned to the commission by this code and other laws of this state.

(b) The rights, powers, duties, and functions delegated to the Texas Department of Water Resources by this code or by any other law of this state that are not expressly assigned to the board are vested in the commission.

Sec. 5.014. [~~Sec. 5.0121.~~] APPLICATION OF SUNSET ACT. The Texas [~~Department of~~] Water Commission [~~Resources~~] is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless[~~; and unless~~] continued in existence as provided by that Act the commission [~~board~~] is abolished and this chapter expires effective September 1, 1997 [~~1985~~].

[~~Sec. 5.013. LEGISLATIVE FUNCTIONS. The legislative functions of the department are vested in the Texas Water Development Board.~~

[~~Sec. 5.014. EXECUTIVE FUNCTIONS. (a) The executive functions of the department are vested in the executive director.~~

[~~(b) The executive director shall employ a deputy director, subject to the approval of the board. In the absence of the executive director, the deputy director shall assume the executive director's duties and functions.~~

[~~Sec. 5.015. JUDICIAL FUNCTIONS. The judicial functions of the department are vested in the Texas Water Commission.~~

[~~Sec. 5.016. GENERAL DUTIES AND RESPONSIBILITIES; INTERPRETATION. (a) The board, the executive director, and the commission shall carry out their respective powers and duties as provided by law and in a manner that respects the separation of governmental functions.~~

[~~(b) The board, commission, or executive director shall act in the name of and for the department, and duly authorized acts of the board, commission, or executive director are to be considered as acts of the department.~~]

Sec. 5.015. [~~Sec. 5.017.~~] CONSTRUCTION OF TITLE. This title shall be liberally construed to allow the commission and [~~board;~~] the executive director[~~; and the commission~~] to carry out their powers and duties in an efficient and effective [a] manner [~~that respects the separation of governmental functions~~].

[~~Sec. 5.018. PURPOSE OF ACT. Consistent with the objectives of the Joint Advisory Committee on Government Operations, the purpose of this Act is to assign the duties, responsibilities, and functions of the Texas Water Quality Board and Texas Water Rights Commission to a new department, and it is not the intention of this Act to make any substantive changes in the laws of the State of Texas.~~]

[**Sections 5.016 [~~5.019~~]** to 5.050 reserved for expansion]

[**~~SUBCHAPTER C. ADMINISTRATIVE PROVISIONS~~**

[~~Sec. 5.051. FUNDS FROM OTHER STATE AGENCIES. Any state agency that has statutory responsibilities for water pollution or water quality control and that receives a legislative appropriation for these purposes may transfer to the department any amount mutually agreed on by the department and the agency, subject to the approval of the governor.~~

[~~Sec. 5.052. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) Except as otherwise specifically provided in this code and subject to the specific limitations provided in this code, on application of any persons, the department shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the board or commission. A certified copy with the seal of the department or commission as appropriate and the signature of the chairman of the board or commission or the executive director or chief clerk of the commission is admissible as evidence in any court or administrative proceeding.~~

[~~(b) The board shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the department, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Civil Statutes of Texas, 1925, as amended.~~

~~[Sec. 5.053. DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR INSPECTION. All information, documents, and data collected by the department in the performance of its duties are the property of the state. Subject to the limitations in Section 26.134 of this code, all records are open to inspection by any person during regular office hours.~~

~~[Sec. 5.053. DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR INSPECTION. All information, documents, and data collected by the department in the performance of its duties are the property of the state. Records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours, except that, if a showing satisfactory to the executive director is made by any person that such records, reports, data, or other information (other than effluent data) would divulge methods or processes entitled to protection as trade secrets, then the department shall consider such records, reports, data, or other information as confidential. Nothing in this chapter shall be construed to make confidential any effluent data, including effluent data in records, reports, or other information, and including effluent data in permits, draft permits, and permit applications. Any records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the State of Texas or of the United States with responsibilities in water pollution control, provided such disclosure or transmittal is made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee, or authorized representative on behalf of, and under the authority of, the receiving agency or political entity. The executive director shall not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law.~~

~~[Sec. 5.054. SEAL. The department shall have a seal bearing the words "Texas Department of Water Resources" encircling the oak and olive branches common to other official seals.~~

~~[Sec. 5.055. REPORTS TO GOVERNOR. The department shall make biennial reports in writing to the governor and the members of the legislature. Each report shall include a statement of the activities of the board, commission, and executive director and their respective or joint recommendations for necessary and desirable legislation.~~

~~[[Sections 5.056 to 5.090 reserved for expansion]]~~

SUBCHAPTER C ~~[D]~~. TEXAS WATER COMMISSION ~~[TEXAS WATER DEVELOPMENT BOARD]~~

Sec. 5.051 ~~[5.091]~~. COMMISSION ~~[STATE AGENCY]~~. The Texas Water Commission ~~[Development Board]~~ is created as an agency of the state ~~[and shall exercise the legislative functions of the department as defined herein.~~

~~[Sec. 5.0911. The Texas Water Development Board is subject to the Texas Sunset Act, but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed.]~~

Sec. 5.052 ~~[5.092]~~. MEMBERS OF THE COMMISSION ~~[BOARD]~~; APPOINTMENT. (a) The commission ~~[board]~~ is composed of three ~~[six]~~ members who are appointed by the governor with the advice and consent of the senate.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state ~~[and has no conflict of interest prohibited by state or federal law]~~.

(c) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Sec. 5.053. ELIGIBILITY FOR MEMBERSHIP. A person is not eligible to serve on the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

Sec. 5.054. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not maintain during the service on the commission the qualifications required for appointment to the commission;

(2) violates a prohibition established by Sections 5.059 and 5.060 of this code;

(3) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(4) is absent from more than one-half of the regularly scheduled commission meetings that the member is eligible to attend during each calendar year, 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 was taken when a ground for removal of a member of the commission existed.

(c) If a member of the commission has knowledge that a potential ground for removal exists, he shall notify the chairman of the commission of that ground. The chairman of the commission shall then notify the governor that a potential ground for removal exists.

Sec. 5.055 [~~5.093~~]. OFFICERS OF STATE; OATH. Each member of the commission [~~board~~] is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

Sec. 5.056 [~~5.094~~]. TERMS OF OFFICE. (a) The members of the commission [~~board~~] hold office for staggered terms of six years, with the term [~~terms~~] of one member [~~two members~~] expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) A [~~No~~] person appointed to the commission [~~board~~] may not serve for more than two six-year terms.

Sec. 5.057. FULL-TIME SERVICE. Each member of the commission shall serve on a full-time basis.

Sec. 5.058. OFFICERS; MEETINGS. (a) The governor shall designate the chairman of the commission. He shall serve as chairman until the governor designates a different chairman.

(b) The chairman may designate another commissioner to act for him in his absence.

(c) The chairman shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The chairman or acting chairman shall give the other members reasonable notice before holding a special meeting.

(e) A majority of the commission is a quorum.

Sec. 5.059. CONFLICT OF INTEREST. An officer, employee, or paid consultant of a trade association in an industry regulated by the commission may

not be a member of the commission or employee of the commission, 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 commission be a member of the commission or an employee of the commission grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

Sec. 5.060. LOBBYIST PROHIBITION. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the commission may not serve as a member of the commission or act as the general counsel to the commission.

[~~Sec. 5.095. BOARD OFFICERS. (a) The governor shall designate one member as chairman of the board to serve at the will of the governor.~~

[~~(b) The members of the board shall elect a vice-chairman every two years. The board shall fill a vacancy in the office of vice-chairman for the remainder of the unexpired term.~~

[~~Sec. 5.096. BOARD MEETINGS. (a) The board shall meet at least once each month on a day and at a place within the state selected by it, subject to recesses at the discretion of the board. The chairman or two board members may call a special meeting at any time by giving notice to the other members.~~

[~~(b) The chairman or in his absence the vice-chairman shall preside at all meetings of the board.~~

[~~(c) A majority of the members constitute a quorum to transact business.~~

[~~Sec. 5.097. COMPENSATION; EXPENSES. A member is entitled to receive an amount as provided in the General Appropriations Act for each day he serves in the performance of his duties, together with travel and other necessary expenses.~~

[~~Sec. 5.098. SEAL. The board shall have a seal bearing the words "Texas Water Development Board" encircling the oak and olive branches common to other official seals.~~]

[**Sections 5.061** [~~5.099~~] to **5.100** [~~5.130~~] reserved for expansion]

SUBCHAPTER D [~~E~~]. GENERAL POWERS AND DUTIES OF THE **COMMISSION** [~~BOARD~~]

Sec. 5.101. SCOPE OF SUBCHAPTER. The powers and duties provided by this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of the code and other laws of this state.

Sec. 5.102. GENERAL POWERS. (a) The commission has the powers to perform any acts whether specifically authorized by this code or other law or implied by this code or other law, necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws.

(b) The commission may call and hold hearings, receive evidence at hearings, administer oaths, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to its jurisdiction under this code and other laws and rules, orders, permits, licenses, certificates, and other actions adopted, issued, or taken by the commission.

Sec. 5.103 [~~5.131~~]. RULES. (a) The commission [~~board~~] shall adopt [~~make~~] any rules necessary to carry out its [~~the~~] powers and duties under [~~the provisions of~~] this code and other laws of this state.

(b) The commission shall adopt reasonable procedural rules to be followed in a commission hearing. The executive director [~~and the commission~~] may recommend to the commission [~~board~~] for its consideration any rules that he considers [~~they consider~~] necessary.

(c) Rules shall be adopted in the manner provided by [~~in~~] the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 5.104. MEMORANDA OF UNDERSTANDING. (a) The commission and board by rule shall develop memoranda of understanding as necessary to clarify and provide for their respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission or board that is not expressly assigned to either the commission or board.

(b) The commission may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the commission and any other state agency.

Sec. 5.105 [~~5.132~~]. GENERAL POLICY. Except as otherwise specifically provided by this code, the [~~The~~] commission [~~board~~], by rule [~~in the rules~~], shall establish and approve all general policy of the commission [~~department~~].

Sec. 5.106 [~~5.133~~]. BUDGET APPROVAL. The commission [~~board~~] shall examine and approve all budget recommendations for the commission [~~department~~] that are to be transmitted to the legislature. [~~The commission may provide as a supplement to those recommendations statements of particular concern to the commission.~~]

Sec. 5.107 [~~5.134~~]. ADVISORY COUNCILS. The commission [~~board~~] may create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils that [~~which~~] the commission [~~board~~] may consider appropriate.

Sec. 5.108. EXECUTIVE DIRECTOR [~~5.135. APPOINTMENT~~]. (a) The commission [~~board~~] shall appoint an executive director [~~of the department~~] to serve at the will of the commission [~~board~~].

(b) The board shall exercise the powers of appointment which the Texas Water Rights Commission had the authority to exercise on August 30, 1977, except for those powers of appointment expressly provided to the Texas Water Rights Commission in Chapters 50 through 63 inclusive, of the Water Code, which are delegated to the commission.

Sec. 5.109. CHIEF CLERK. (a) The commission shall appoint a chief clerk who shall serve at the will of the commission.

(b) The chief clerk shall assist the commission in carrying out its duties under this code.

(c) The chief clerk shall issue notice of public hearings held under the authority of the commission.

Sec. 5.110. GENERAL COUNSEL. (a) The commission shall appoint a general counsel who shall serve at the will of the commission.

(b) The general counsel is the chief legal officer for the commission.

(c) The general counsel must be an attorney licensed to practice law in this state.

(d) The general counsel shall perform the duties and may exercise the powers specifically authorized by this code or delegated to the general counsel by the commission.

Sec. 5.111. STANDARDS OF CONDUCT. The commission shall provide to its members, appointees, and employees as often as is necessary information regarding their qualifications under this code and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 5.112. PUBLIC TESTIMONY POLICY. 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 department.

Sec. 5.113. COMMISSION AND STAFF RESPONSIBILITY POLICY. The commission shall develop and implement policies that clearly separate the respective responsibilities of the commission and the staff.

Sec. 5.114. APPLICATIONS AND OTHER DOCUMENTS. Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and handled in the manner provided by this code.

Sec. 5.115. NOTICE OF APPLICATION. (a) At the time an application for a permit or license is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license.

(b) The commission shall adopt rules for the notice required by this section.

(c) The notice must state:

(1) the identifying number given the application by the commission;

(2) the type of permit or license sought under the application;

(3) the name and address of the applicant;

(4) the date on which the application was submitted; and

(5) a brief summary of the information included in the permit application.

Sec. 5.116. HEARINGS; RECESS. The commission may recess any hearing or examination from time to time and from place to place.

Sec. 5.117. MANDATORY ENFORCEMENT HEARING. (a) The executive director shall monitor compliance with all permits and licenses issued by the commission, and if the evidence available to the executive director through this monitoring process indicates that a permittee or licensee is in substantial noncompliance with his permit or license for a period of four months, or for a shorter period of time if the executive director considers an emergency to exist, the executive director shall report this fact to the commission together with the information relating to the noncompliance.

(b) On receiving a report from the executive director under Subsection (a) of this section, the commission shall call and hold a hearing to determine whether the permittee or licensee who is the subject of the executive director's report has been in substantial noncompliance with his permit or license.

(c) At the conclusion of the hearing, the commission shall issue one of the following orders stating that:

(1) no violation of the permit or license has occurred;

(2) a violation of the permit or license has occurred but has been corrected and no further action is necessary to protect the public interest;

(3) the executive director is authorized to enter into a compliance agreement with the permittee or licensee;

(4) a violation of the permit or license has occurred and an administrative penalty is assessed as provided by this code; or

(5) a violation of the permit or license has occurred, and the executive director is directed to have enforcement proceedings instituted against the permittee or licensee.

(d) A compliance agreement under Subsection (c)(3) of this section is not effective unless it is approved by the commission. If the commission determines at a hearing that a permittee or licensee has not complied with the terms of the compliance agreement, the commission may direct the executive director to institute enforcement proceedings.

(e) The executive director, on receiving an order from the commission directing institution of enforcement proceedings, shall take all necessary steps to have enforcement proceedings instituted.

(f) The commission may compel the attendance of the governing body or any other officer of any permittee or licensee at any hearing held under this section.

Sec. 5.118. POWER TO ADMINISTER OATHS. Each member of the commission, the chief clerk, or a hearings examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.

Sec. 5.119. COMMISSION TO BE KNOWLEDGEABLE. The commission shall be knowledgeable of the watercourses of the state and of the needs of the state concerning the use, storage, and conservation of water and of the need to maintain the quality of water in the state.

Sec. 5.120. CONSERVATION AND QUALITY OF WATER. The commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of water.

[**Sections 5.121** [~~5.136~~] to 5.170 reserved for expansion]

SUBCHAPTER E. ADMINISTRATIVE PROVISIONS FOR COMMISSION

Sec. 5.171. AUDIT. The state auditor shall audit the financial transactions of the commission at least once during each biennium.

Sec. 5.172. FUNDS FROM OTHER STATE AGENCIES. Any state agency that has statutory responsibilities for water pollution or water quality control and that receives a legislative appropriation for these purposes may transfer to the commission any amount mutually agreed on by the commission and the agency, subject to the approval of the governor.

Sec. 5.173. PUBLIC INFORMATION RELATING TO COMMISSION. 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 the appropriate state agencies.

Sec. 5.174. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) Except as otherwise specifically provided by this code and subject to the specific limitations provided by this code, on application of any person the commission shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the commission. A certified copy with the seal of the commission and the signature of the chairman of the commission or the executive director or chief clerk is admissible as evidence in any court or administrative proceeding.

(b) The commission shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the commission, except that the fees set by the commission for copies prepared by the commission may not exceed those prescribed in Article 3913, Revised Statutes.

Sec. 5.175. DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR INSPECTION. All information, documents, and data collected by the commission in the performance of its duties are the property of the state. Subject to the limitations of this code, all records are open to inspection by any person during regular office hours.

Sec. 5.176. COMPLAINT FILE. The commission shall keep an information file about each complaint filed with the commission relating to an entity regulated by the commission.

Sec. 5.177. NOTICE OF COMPLAINT. If a written complaint is filed with the commission relating to an entity regulated by the commission, the commission at least as frequently as quarterly and until final disposition of the complaint shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Sec. 5.178. REPORTS TO GOVERNOR. (a) The commission shall make biennial reports in writing to the governor and the members of the legislature. Each

report shall include a statement of the activities of the commission and its recommendations for necessary and desirable legislation.

(b) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

Sec. 5.179. SEAL. The commission shall have a seal bearing the words "Texas Water Commission" encircling the oak and olive branches common to other official seals.

[Sections 5.180 to 5.220 reserved for expansion]

SUBCHAPTER F. EXECUTIVE DIRECTOR

Sec. 5.221 [~~5.171~~]. GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR. The executive director shall manage the administrative affairs of the commission subject to this code and other laws and under the general supervision and direction of the commission [~~department and shall exercise the executive functions of the department, including the execution of the rules, orders, and decisions of the department~~].

Sec. 5.222. DEPUTY DIRECTORS. (a) The executive director may employ any deputy directors that he determines appropriate.

(b) The deputy directors are under the direction and supervision of the executive director.

(c) The powers and duties of the deputy directors shall be those powers and duties required by the commission and the executive director.

Sec. 5.223 [~~5.172~~]. ADMINISTRATIVE ORGANIZATION OF COMMISSION [~~DEPARTMENT~~]. Subject to approval of the commission, the [~~The~~] executive director may organize and reorganize the administrative sections and divisions of the commission [~~department~~] in a manner and in a form that will achieve the greatest efficiency and effectiveness.

Sec. 5.224. INFORMATION REQUEST TO BOARD. (a) With regard to any matter pending before the commission, the executive director may obtain from the board information relating to that matter.

(b) On receiving a request from the executive director, the board should make the requested information available within 30 days after the information is requested and shall make the requested information available not later than 90 days after the information is requested.

Sec. 5.225. CAREER LADDER PROGRAM. The executive director or his designee shall develop an intra-agency career ladder program, one part of which shall require the intra-agency posting of all nonentry level positions concurrently with any public posting.

Sec. 5.226. MERIT PAY. The executive director or his 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 section.

Sec. 5.227. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the commission's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address areas of significant underutilization in the commission'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 indivdually or as a part of other biennial reports made to the legislature.

Sec. 5.228 [~~5.173~~]. APPEARANCES AT HEARINGS. The position of and information developed by the commission [~~department~~] shall be presented by the executive director or his designated representative at hearings of the [~~board and the~~] commission and the [~~at~~] hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's water resources, including matters that have been determined to be policies of the state. The executive director shall be named a party in hearings before the commission.

Sec. 5.229 [~~5.174~~]. CONTRACTS. (a) The executive director, on behalf of the commission [~~department~~], may negotiate with and with the consent of the commission [~~board~~] enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the commission [~~department~~].

(b) The executive director, on behalf of the commission [~~department~~], may negotiate with and with the consent of the commission [~~board~~] enter into contracts or other agreements with states and political subdivisions of this state or any other entity for the purpose of carrying out the powers, duties, and responsibilities of the commission [~~department~~].

[~~(c) The executive director, on behalf of the department, shall obtain the approval of the attorney general as to the legality of a resolution of the board authorizing state ownership in a project.~~]

Sec. 5.230 [~~5.175~~]. ENFORCEMENT. On approval of the commission, the [~~The~~] executive director may enforce the terms and conditions of any permit, certified filing, certificate of adjudication, order, standard, or rule by injunction or other appropriate remedy in a court of competent jurisdiction.

Sec. 5.231 [~~5.176~~]. TRAVEL EXPENSES. The executive director is [~~shall be~~] entitled to receive actual and necessary travel expenses. Other employees of the commission [~~department~~] are entitled to receive travel expenses as provided in the General Appropriations Act.

Sec. 5.232 [~~5.177~~]. EMPLOYEE MOVING EXPENSES. If provided by [~~the~~] legislative appropriation, the commission [~~department~~] may pay the costs of transporting and delivering the household goods and effects of employees transferred by the executive director from one permanent station to another when, in the judgment of the executive director, the transfer will serve [~~in~~] the best interest of the state.

Sec. 5.233 [~~5.178~~]. GIFTS AND GRANTS. The executive director may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties under this code.

Sec. 5.234 [~~5.179~~]. APPLICATIONS AND OTHER DOCUMENTS. (a) An application, petition, or other document requiring action of the commission [~~department~~] shall be presented to the executive director and handled as provided by [~~in~~] this code and in the rules adopted by [~~of~~] the commission [~~department~~].

(b) After an application, petition, or other document is processed [~~requiring action by the commission~~], it shall be presented to the commission for action as

[consideration of filing. If accepted for filing by the commission, if] required by law and rules of[;] the commission [shall set a hearing date and issue appropriate notice].

[(c) After an application is processed requiring action by the board, it shall be presented to the board for action as required by law and the rules.

[Sec. 5.180. DEVELOPMENT FUND MANAGER. The executive director, with the approval of the board, shall appoint the development fund manager who shall perform all duties required of that position by this code and the executive director.

[Sec. 5.181. PUBLIC INTEREST OFFICE. (a) There is created an office of public interest to insure that the department promotes the public's interest and is responsive to citizens. Public interest includes but is not limited to environmental quality and consumer protection.

[(b) The office shall be headed by a public interest advocate appointed by the commission and the board. The executive director may submit the names and qualifications of candidates for public interest advocate to the board and commission. The board and commission shall meet jointly for the purpose of appointing or dismissing the public interest advocate by a majority vote of each body.

[(c) The advocate shall represent the public interest and be a party to all proceedings before the department.

[(d) The office shall be adequately staffed to carry out its function under this code.

[(e) No ruling, decision, or other act of the board or the commission may be appealed by the advocate.]

Sec. 5.235 [5.182]. FEES. (a) The executive director shall charge and collect the fees prescribed by this section. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise.

(b) Except as specifically provided by this section, the fee for filing an application or petition is $25 plus the cost of any required notice.

(c) The fee for filing a water permit application is $75 plus the cost of required notice.

(d) The fee for filing an application for fixing or adjusting rates is $100 plus the cost of required notice.

(e) The fee for filing a water district creation petition or conversion resolution is $60 plus the cost of required notice.

(f) The fee for filing a bond issue application is $100 plus the cost of required notice.

(g) The fee for recording an instrument in the office of the commission is $1 per page.

(h) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(i) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level, provided that no additional fee shall be charged for recreational use for any impoundments of water now or hereafter permitted by the state or exempted from permit by statute.

(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.

(k) A fee charged under this section for one use of water under a permit from the commission may not exceed $5,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed $1,000.

(l) The fees prescribed by Subsections (h) through (j) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds $1,000, the applicant shall pay one-tenth of the fee when the application is filed, one-tenth within 30 days after notice is mailed to him that the permit is granted, and the balance before he begins to use water under the permit. If the applicant does not pay all of the amount owed before he begins to use water under the permit, his permit is annulled.

(m) When a permit is annulled, the matter reverts [~~shall revert~~] to the status of a pending, filed application and, on [~~upon~~] the payment of use fees as provided by this subsection together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

[Sections 5.236 to 5.270 reserved for expansion]

SUBCHAPTER G. PUBLIC INTEREST OFFICE

Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF PUBLIC INTEREST OFFICE. The office of public interest is created to ensure that the commission promotes the public's interest and is responsive to citizens. Public interest includes environmental quality and consumer protection.

Sec. 5.272. PUBLIC INTEREST ADVOCATE. The office shall be headed by a public interest advocate appointed by the commission. The executive director may submit the names and qualifications of candidates for public interest advocate to the commission.

Sec. 5.273. DUTIES OF ADVOCATE. The advocate shall represent the public interest and be a party to all proceedings before the commission.

Sec. 5.274. STAFF. The office shall be adequately staffed to carry out its functions under this code.

Sec. 5.275. APPEAL. A ruling, decision, or other act of the commission may not be appealed by the advocate.

[Sections 5.276 [~~5.183~~] to 5.310 [~~5.220~~] reserved for expansion]

[~~SUBCHAPTER G. TEXAS WATER COMMISSION~~

[~~Sec. 5.221. CREATION OF COMMISSION. The Texas Water Commission is created as an agency of the state and shall exercise the judicial functions of the department.~~

[~~Sec. 5.2211. The Texas Water Commission is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1985.~~

[~~Sec. 5.222. MEMBERS OF COMMISSION; APPOINTMENT. (a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate.~~

[~~(b) The governor shall make the appointments in such a manner that each member is from a different section of the state.~~

[~~Sec. 5.223. OFFICERS OF STATE; OATH. Each member of the commission is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.~~

[~~Sec. 5.224. TERMS OF OFFICE. (a) The members of the commission hold office for staggered terms of six years, with the terms of one member expiring every two years. Each member holds office until his successor is appointed and has qualified.~~

[~~(b) No person appointed to the commission may serve for more than two six-year terms.~~

[~~Sec. 5.225. FULL-TIME SERVICE. Each member of the commission shall serve on a full-time basis.~~

[~~Sec. 5.226. OFFICERS; MEETINGS. (a) The governor shall designate the chairman of the commission. He shall serve as chairman until the governor designates a different chairman.~~

[(b) The chairman may designate another commissioner to act for him in his absence.

[(c) The chairman shall preside at the meetings and hearings of the commission.

[(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The chairman or acting chairman shall give the other members reasonable notice before holding a special meeting.

[(e) A majority of the commission is a quorum.

[Sec. 5.227. CHIEF CLERK. (a) The commission shall employ a chief clerk who shall assist the commission in carrying out its duties under this code.

[(b) The chief clerk shall issue notice of public hearings held under the authority of the commission.

[[Sections 5.228 to 5.260 reserved for expansion]

[SUBCHAPTER H. GENERAL POWERS AND DUTIES OF THE COMMISSION

[Sec. 5.261. SCOPE OF SUBCHAPTER. The powers and duties enumerated in this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code.

[Sec. 5.262. RULES. (a) The commission shall adopt reasonable procedural rules to be followed in a commission hearing.

[(b) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

[Sec. 5.263. APPLICATIONS AND OTHER DOCUMENTS. Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and handled in the manner provided in this code.

[Sec. 5.264. HEARINGS; RECESS, ETC. The commission may recess any hearing or examination from time to time and from place to place.

[Sec. 5.265. POWER TO ADMINISTER OATHS. Each member of the commission, the chief clerk, or a hearing examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.

[Sec. 5.266. SEAL. The commission shall adopt an official seal.

[Sec. 5.267. COMMISSION TO BE KNOWLEDGEABLE. The commission shall be knowledgeable of the water courses of the state and of the needs of the state concerning the use, storage, and conservation of water and of the need to maintain the quality of water in the state.

[Sec. 5.268. CONSERVATION AND QUALITY OF WATER. The commission shall administer the law so as to promote the judicious use and the maximum conservation and protection of quality of water.

[[Sections 5.269 to 5.310 reserved for expansion]]

SUBCHAPTER H [I]. OFFICE OF HEARING EXAMINERS

Sec. 5.311. CREATION OF OFFICE. (a) The commission shall create [Within the commission there is created] an office of hearing examiners to assist the commission in carrying out its powers and duties under this code.

(b) The office of hearing examiners is independent of the [board, the] executive director[;] and the divisions of the commission [board] and is under the exclusive control of the commission.

Sec. 5.312. ORGANIZATION OF OFFICE OF HEARING EXAMINERS. (a) The office of hearing examiners shall be under the direction of the chief hearing examiner.

(b) The chief hearing examiner and all assistant hearing examiners employed in the office of hearing examiners shall be attorneys licensed to practice law in this state and shall be employed by the commission.

Sec. 5.313. DELEGATION OF RESPONSIBILITY. (a) The commission may delegate to a hearing examiner the responsibility to hear any matter before the commission.

(b) A hearing examiner shall prepare for and hold any hearing as directed by the commission and shall report to the commission on the hearing in the manner provided by law.

[Sections 5.314 to 5.350 reserved for expansion]

SUBCHAPTER I [~~J~~]. JUDICIAL REVIEW

Sec. 5.351. JUDICIAL REVIEW OF COMMISSION [~~DEPARTMENT~~] ACTS. (a) A person affected by a ruling, order, decision, or other act of the commission [~~department~~] may file a petition to review, set aside, modify, or suspend the act of the commission [~~department~~].

(b) A person affected by a ruling, order, or decision of the commission [~~department~~] must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the commission [~~department~~] performed the act.

[~~(c) Orders, decisions, or other actions of the board pursuant to Subchapters E and F of Chapter 16 and Chapter 17 of this code are not subject to appeal.~~]

Sec. 5.352. REMEDY FOR COMMISSION OR EXECUTIVE DIRECTOR[~~, COMMISSION, OR BOARD~~] INACTION. A person affected by the failure of the commission or the executive director[~~, commission, or board~~] to act in a reasonable time on an application to appropriate water or to perform any other duty with reasonable promptness may file a petition to compel the commission or the executive director[~~, commission, or board~~] to show cause why it should not be directed by the court to take immediate action.

Sec. 5.353. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 5.351 or 5.352 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff after receiving due notice can show good and sufficient cause for the delay.

Sec. 5.354. VENUE. A suit instituted under Section 5.351 or 5.352 of this code must be brought in a [~~the~~] district court in [~~of~~] Travis County.

Sec. 5.355. APPEAL OF DISTRICT COURT JUDGMENT. A judgment or order of a district court in a suit brought for or against the commission [~~department~~] is appealable as are other civil cases in which the district court has original jurisdiction.

Sec. 5.356. APPEAL BY EXECUTIVE DIRECTOR PRECLUDED. A [~~No~~] ruling, order, decision, or other act of the [~~board or the~~] commission may not be appealed by the executive director.

Sec. 5.357. LAW SUITS; CITATION. Law suits filed by and against the [~~board,~~] commission[,] or executive director shall be in the name of the commission [~~department~~]. In suits against the [~~department, board,~~] commission[,] or executive director, citation may be served on the executive director [~~or deputy director~~].

SECTION 1.002. Title 2, Water Code, is amended by adding Chapter 6 to read as follows:

CHAPTER 6. TEXAS WATER DEVELOPMENT BOARD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Executive administrator" means the executive administrator of the board.

(3) "Director of planning" means the director of planning of the board.

(4) "Development fund manager" means the development fund manager of the board.

(5) "Commission" means the Texas Water Commission.

Sec. 6.002. SCOPE OF CHAPTER. The powers and duties enumerated in this chapter are the general powers and duties of the board and those incidental to the conduct of its business. The board has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

[Sections 6.003-6.010 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF THE TEXAS WATER DEVELOPMENT BOARD

Sec. 6.011. BOARD AS AGENCY OF STATE. The board is the state agency primarily responsible for water planning and for administering water financing for the state.

Sec. 6.012. GENERAL DUTIES AND RESPONSIBILITIES. (a) The board has general jurisdiction over:

(1) the development of a statewide water plan;

(2) the administration of the state's various water assistance and financing programs including those created by the constitution; and

(3) other areas specifically assigned to the board by this code or other law.

(b) The board has only those powers and duties previously delegated by law to the Texas Department of Water Resources that are specifically delegated to the board under this code and other laws of this state.

Sec. 6.013. APPLICATION OF SUNSET ACT. The board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), but is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies that are subject to abolition September 1, 1997, under that Act are reviewed.

Sec. 6.014. CONSTRUCTION OF TITLE. This title shall be liberally construed to allow the board and the executive administrator to carry out their powers and duties in an efficient and effective manner.

[Sections 6.015-6.050 reserved for expansion]

SUBCHAPTER C. TEXAS WATER DEVELOPMENT BOARD

Sec. 6.051. STATE AGENCY. The Texas Water Development Board is an agency of the state.

Sec. 6.052. MEMBERS OF THE BOARD; APPOINTMENT. (a) The board is composed of six members who are appointed by the governor with the advice and consent of the senate.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state and has no conflict of interest prohibited by state or federal law.

(c) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Sec. 6.053. ELIGIBILITY FOR MEMBERSHIP. (a) Members of the board must be members of the general public.

(b) A person is not eligible for appointment to the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the board.

Sec. 6.054. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of 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) violates a prohibition established by Sections 6.057 and 6.058 of this code;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(c) If a board member has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of that ground. The chairman of the board shall then notify the governor that a potential ground for removal exists.

Sec. 6.055. OFFICERS OF STATE; OATH. Each member of the board is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

Sec. 6.056. TERMS OF OFFICE. (a) The members of the board hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) No person appointed to the board may serve for more than two six-year terms.

Sec. 6.057. CONFLICT OF INTEREST. 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 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

Sec. 6.058. LOBBYIST PROHIBITION. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), 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.

Sec. 6.059. BOARD OFFICERS. (a) The governor shall designate one member as chairman of the board to serve at the will of the governor.

(b) The members of the board shall elect a vice-chairman every two years. The board shall fill a vacancy in the office of vice-chairman for the remainder of the unexpired term.

Sec. 6.060. BOARD MEETINGS. (a) The board shall meet at least once every other month on a day and at a place within the state selected by it, subject to recesses at the discretion of the board. The chairman or two board members may call a special meeting at any time by giving notice to the other members.

(b) The chairman or in his absence the vice-chairman shall preside at all meetings of the board.

(c) A majority of the members constitute a quorum to transact business.

Sec. 6.061. COMPENSATION; EXPENSES. A member is entitled to receive an amount as provided by the General Appropriations Act for each day he serves in the performance of his duties, together with travel and other necessary expenses.

[Sections 6.062-6.100 reserved for expansion]

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF THE BOARD

Sec. 6.101. RULES. (a) The board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of this state.

(b) The executive administrator may recommend to the board for its consideration rules that he considers necessary to carry out the board's powers and duties.

(c) Rules shall be adopted in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 6.1011. BUDGET APPROVAL. The board shall examine and approve budget recommendations for the board that are to be transmitted to the legislature.

Sec. 6.102. ADVISORY COUNCILS. The board may create and consult with any advisory councils that the board considers appropriate to carry out its powers and duties.

Sec. 6.103. EXECUTIVE ADMINISTRATOR. The board shall appoint a person to be the executive administrator to serve at the will of the board.

Sec. 6.104. MEMORANDA OF UNDERSTANDING. (a) The board and the commission by rule shall develop memoranda of understanding as necessary to provide for their respective duties, responsibilities, or functions on any matter under the jurisdiction of the board or commission that is not expressly assigned to either the board or the commission.

(b) The board may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the board and any other state agency.

Sec. 6.105. PUBLIC TESTIMONY POLICY. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 6.106. STANDARDS OF CONDUCT. The board shall provide to its members, appointees, and employees as often as is necessary information regarding their qualifications under this code and their responsibilities under applicable laws relating to standards of conduct for state officers and employees.

[Sections 6.107-6.150 reserved for expansion]

SUBCHAPTER E. ADMINISTRATIVE PROVISIONS FOR THE BOARD

Sec. 6.151. AUDIT. The state auditor shall audit the financial transactions of the board at least once during each biennium.

Sec. 6.152. PUBLIC INFORMATION RELATING TO BOARD. The board shall prepare information of public interest describing the functions of the board and describing the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and the appropriate state agencies.

Sec. 6.153. DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR INSPECTION. All information, documents, and data collected by the board in the performance of its duties are the property of the state. Subject to the limitations in Section 26.134 of this code, all records are open to inspection by any person during regular office hours.

Sec. 6.154. COMPLAINT FILE. The board shall 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. 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 parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Sec. 6.156. REPORTS TO GOVERNOR. (a) The board shall make biennial reports in writing to the governor and the members of the legislature. Each report shall include a statement of the activities of the board and its recommendations for necessary and desirable legislation.

(b) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

Sec. 6.157. SEAL. The board shall have a seal bearing the words "Texas Water Development Board" encircling the oak and olive branches common to other official seals.

[Sections 6.158-6.180 reserved for expansion]

SUBCHAPTER F. EXECUTIVE ADMINISTRATOR

Sec. 6.181. GENERAL RESPONSIBILITIES. The executive administrator shall manage the administrative affairs of the board subject to this code and other laws and under the general supervision and direction of the board.

Sec. 6.182. APPOINTMENT OF CERTAIN PERSONS. The executive administrator, with the approval of the board, shall appoint a development fund manager, director of planning, and general counsel for the board.

(b) The development fund manager, director of planning, and general counsel shall perform the duties required for those positions by this code and may perform the powers and shall perform the duties required by the board or the executive administrator.

Sec. 6.183. EMPLOYMENT OF PERSONNEL. The executive administrator shall employ necessary personnel for the board.

Sec. 6.184. ADMINISTRATIVE ORGANIZATION. The executive administrator, with the approval of the board, may organize and reorganize the administrative sections and divisions of the board in a form and manner that will achieve the greatest efficiency and effectiveness.

Sec. 6.185. INFORMATION REQUEST TO COMMISSION. (a) With regard to any matter pending before the board, the executive administrator may obtain from the commission information relating to that matter.

(b) On receiving a request from the executive administrator, the commission should make the requested information available within 30 days after the information is requested and shall make the requested information available not later than 90 days after the information is requested.

Sec. 6.186. CAREER LADDER PROGRAM. The executive administrator or his designee shall develop an intra-agency career ladder program, one part of which shall require the intra-agency posting of all nonentry level positions concurrently with any public posting.

Sec. 6.187. MERIT PAY. The executive administrator or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this section.

Sec. 6.188. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive administrator or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the board's 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 appropriately address 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.

Sec. 6.189. APPEARANCES AT HEARINGS. The position of and information developed by the board shall be presented by the executive administrator or his designated representative at hearings of the board and commission and at hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's water resources, including matters that have been determined to be policies of the state.

Sec. 6.190. CONTRACTS. (a) The executive administrator, on behalf of the board, may negotiate with and, with the consent of the board, may enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the board.

(b) The executive administrator, on behalf of the board, may negotiate with and, with the consent of the board, may enter into contracts or other agreements with states and political subdivisions of this state or other entity for the purpose of carrying out the powers, duties, and responsibilities of the board.

(c) The executive administrator, on behalf of the board, shall obtain the approval of the attorney general as to the legality of a resolution of the board authorizing state ownership in a project.

Sec. 6.191. TRAVEL EXPENSES. The executive administrator is entitled to receive actual and necessary travel expenses. Other employees of the board are entitled to receive travel expenses as provided by the General Appropriations Act.

Sec. 6.192. GIFTS AND GRANTS. The executive administrator may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties provided by this code.

Sec. 6.193. EMPLOYEE MOVING EXPENSES. If provided by legislative appropriation, the board may pay the costs of transporting and delivering household goods and effects of employees transferred by the executive administrator from one permanent station to another when, in the judgment of the executive administrator, the transfer will serve the best interest of the state.

Sec. 6.194. APPLICATIONS AND OTHER DOCUMENTS. (a) An application, petition, or other document requiring action of the board shall be presented to the executive administrator and handled as provided by this code and in the rules of the board.

(b) After an application, petition, or other document requiring action of the board is processed, it shall be presented to the board for action as required by law and the rules of the board.

Sec. 6.195. NOTICE OF APPLICATION. (a) At the time an application requiring action of the board is filed and is administratively complete, the board shall give notice of the application to any person who may be affected by the granting of the application.

(b) The board shall adopt rules for the notice required by this section.

(c) The notice must state:

(1) the identifying number given the application by the board;

(2) the name and address of the applicant;

(3) the date on which the application was submitted; and

(4) a brief summary of the information included in the application.

[Sections 6.196-6.240 reserved for expansion]

SUBCHAPTER G. JUDICIAL REVIEW

Sec. 6.241. JUDICIAL REVIEW OF ACTS. (a) A person affected by a ruling, order, decision, or other act of the board may file a petition to review, set aside, modify, or suspend the act of the board.

(b) A person affected by a ruling, order, or decision of the board must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the board performed the act.

(c) Orders, decisions, or other actions of the board pursuant to Subchapters E and F of Chapter 16 and to Chapter 17 of this code are not subject to appeal.

Sec. 6.242. REMEDY FOR BOARD OR EXECUTIVE ADMINISTRATOR INACTION. A person affected by the failure of the board or the executive administrator to act in a reasonable time on an application or to perform any other duty with reasonable promptness may file a petition to compel the board or the executive administrator to show cause why it should not be directed by the court to take immediate action.

Sec. 6.243. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 6.241 or 6.242 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff after receiving due notice can show good and sufficient cause for the delay.

Sec. 6.244. VENUE. A suit instituted under Section 6.241 or 6.242 of this code must be brought in a district court in Travis County.

Sec. 6.245. APPEAL OF DISTRICT COURT JUDGMENT. A judgment or order of a district court in a suit brought for or against the board or the executive administrator is appealable as are other civil cases in which the district court has original jurisdiction.

Sec. 6.246. APPEAL BY EXECUTIVE ADMINISTRATOR PRECLUDED. A ruling, order, decision, or other act of the board may not be appealed by the executive administrator.

Sec. 6.247. LAW SUITS; CITATION. Law suits filed by and against the board or the executive administrator shall be in the name of the board. In suits against the board or the executive administrator, citation may be served on the executive administrator.

SECTION 1.003. Sections 11.002, 11.004, and 11.031, Water Code, are amended to read as follows:

Sec. 11.002. DEFINITIONS. In this chapter and in Chapter 12 of this code:

(1) "Commission" means the Texas Water Commission.

(2) "Board" means the Texas Water Development Board.

(3) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(4) [~~"Department" means the Texas Department of Water Resources.~~

[~~(5)~~] "Beneficial use" means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

(5) [~~(6)~~] "Water right" means a right acquired under the laws of this state to impound, divert, or use state water.

(6) [~~(7)~~] "Appropriator" means a person who has made beneficial use of any water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 Act, as amended; or a person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the commission or one of its predecessors.

Sec. 11.004. COMMISSION [~~DEPARTMENT~~] TO RECEIVE CERTIFIED COPIES OF JUDGMENTS, ETC. When any court of record renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or irrigation facility or affecting any matter over which the commission [~~department~~] is given supervision by law, the clerk of the court shall immediately transmit to the commission [~~department~~] a certified copy of the judgment, decree, or order.

Sec. 11.031. ANNUAL REPORT. (a) Not later than March 1 of every year, every person who takes water during the preceding calendar year from a stream or reservoir shall submit a written report to the commission [~~department~~] on a form prescribed by the commission [~~department~~]. The report shall contain all information required by the commission [~~department~~] to aid in administering the water law and in making inventory of the state's water resources. However, with the exception of public utilities and political subdivisions which furnish water for municipal uses, no report is required of persons who take water solely for domestic or livestock purposes.

(b) A person who fails to file an annual report with the commission [~~department~~] as required by this section is liable to a penalty of $25, plus $1 per day for each day he fails to file the statement after March 1. However, the maximum penalty under this section is $150. The state may sue to recover the penalty.

SECTION 1.004. Subsections (c) and (g), Section 11.035, Water Code, are amended to read as follows:

(c) If the party exercising the power granted by this section is not a corporation, district, city, or town, he shall apply to the commission [~~department~~] for the condemnation.

(g) If, after the costs of the condemnation proceedings have been paid, a party seeks to take the benefits of the condemnation proceedings, he shall apply to the commission [~~department~~] for the benefits. The commission may grant the application and fix the fees and charges to be paid by the applicant.

SECTION 1.005. Subsections (a) and (g), Section 11.041, Water Code, are amended to read as follows:

(a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the commission [~~department~~] a written petition showing:

(1) that he is entitled to receive or use the water;

(2) that he is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(g) If, after the preliminary investigation, the executive director determines that no probable grounds exist for the complaint, the executive director shall dismiss the complaint. The commission [~~department~~] may either return the deposit or pay it into the State Treasury.

SECTION 1.006. Section 11.042, Water Code, is amended to read as follows:

Sec. 11.042. DELIVERING WATER DOWN BANKS AND BEDS. Under rules prescribed by the commission [~~board~~], a person, association of persons, corporation, or water improvement or irrigation district supplying stored or conserved water under contract as provided in this chapter may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use or to the diversion plant of the appropriator. The commission [~~board~~] shall prescribe rules for this purpose.

SECTION 1.007. Subsections (b) and (c), Section 11.087, Water Code, are amended to read as follows:

(b) The commission [~~board~~] may make and enforce rules and orders to implement the provisions of this section, including rules and orders designed to:

(1) establish an orderly system for water releases and diversions in order to protect vested rights and to avoid the loss of released water;

(2) prescribe the time that releases of water may begin and end;

(3) determine the proportionate quantities of the released water in transit and the water that would have been flowing in the stream without the addition of the released water;

(4) require each owner or operator of a dam or reservoir on the stream between the point of release and the point of destination to allow free passage of the released water in transit; and

(5) establish other requirements the commission [~~board~~] considers necessary to effectuate the purposes of this section.

(c) Orders made by the commission to effectuate its rules [~~the board's regulations~~] under this section need not be published, but the commission shall transmit a copy of every such order by certified mail to each diverter of water and to each reservoir owner on the stream between the point of release and the point of destination of the released water as shown by the records of the commission [~~department~~].

SECTION 1.008. Subsection (b), Section 11.122, Water Code, is amended to read as follows:

(b) The commission [~~board~~] shall adopt rules to effectuate the provisions of this section.

SECTION 1.009. Sections 11.126 and 11.129, Water Code, are amended to read as follows:

Sec. 11.126. COMMISSION [~~DEPARTMENT~~] REQUIREMENTS. (a) If the proposed taking or diversion of water for irrigation exceeds nine cubic feet per second, the executive director may require additional information as prescribed by this section.

(b) The executive director may require a continuous longitudinal profile, cross sections of the proposed channel, and the detail plans of any proposed structure, on any scales and with any definition the executive director considers necessary or expedient.

(c) If the application proposes construction of a dam greater than six feet in height either for diversion or storage, the executive director may also require filing a copy of all plans and specifications and a copy of the engineer's field notes of any survey of the lake or reservoir. No work on the project shall proceed until approval of the plans is obtained from the executive director.

(d) If the applicant is a corporation, the commission may require filing a certified copy of its articles of incorporation, a statement of the names and addresses of its directors and officers, and a statement of the amount of its authorized capital stock and its paid-up capital stock.

(e) If the applicant is not a corporation, the commission may require filing a sworn statement showing the name and address of each person interested in the appropriation, the extent of his interest, and his financial condition.

Sec. 11.129. REVIEW OF APPLICATION; AMENDMENT. The commission shall determine whether the application, maps, and other materials comply with the requirements of this chapter and the rules of the commission [board]. The commission may require amendment of the application, maps, or other materials to achieve necessary compliance.

SECTION 1.010. Subsection (a), Section 11.130, Water Code, is amended to read as follows:

(a) The executive director shall have all applications for appropriations recorded in a well-bound book kept for that purpose in the commission [department's] office.

SECTION 1.011. Subsection (b), Section 11.135, Water Code, is amended to read as follows:

(b) The permit shall be in writing and attested by the seal of the commission, and it shall contain substantially the following information:

(1) the name of the person to whom the permit is issued;

(2) the date the permit is issued;

(3) the date the original application was filed;

(4) the use or purpose for which the appropriation is to be made;

(5) the amount or volume of water authorized to be appropriated for each purpose;

(6) a general description of the source of supply from which the appropriation is proposed to be made;

(7) the time within which construction or work must begin and the time within which it must be completed; and

(8) any other information the commission [board] prescribes.

SECTION 1.012. Subsection (g), Section 11.138, Water Code, is amended to read as follows:

(g) The commission [board] may prescribe by rule the fees to be paid for issuance of temporary permits, but no fee for issuance or extension of a temporary permit shall exceed $500.

SECTION 1.013. Subsection (d), Section 11.139, Water Code, is amended to read as follows:

(d) The commission [board] may prescribe rules and adopt fees which are necessary to carry out the provisions of this section.

SECTION 1.014. Subsections (b) and (f), Section 11.143, Water Code, are amended to read as follows:

(b) If the applicant elects to proceed under this section, he shall submit to the commission [department] a sworn application, on a form furnished by the commission [department], containing the following information:

(1) the name and post-office address of the applicant;

(2) the nature and purpose of the use and the amount of water to be used annually for each purpose;

(3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;

(4) the county in which the dam or reservoir is located;

(5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;

(6) the survey or the portion of the survey on which the dam or reservoir is located and, to the best of the applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey, which information the executive director may require to be marked on an aerial photograph or map furnished by the commission [department];

(7) the approximate surface area, to the nearest acre, of the reservoir when it is full and the average depth in feet when it is full; and

(8) the approximate number of square miles in the drainage area above the dam or reservoir.

(f) The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the commission [~~department~~] and whose diversion point is downstream from that described in the application.

SECTION 1.015. Sections 11.144 and 11.145, Water Code, are amended to read as follows:

Sec. 11.144. APPROVAL FOR ALTERATIONS. All holders of permits and certified filings shall obtain the approval of the commission before making any alterations, enlargements, extensions, or other changes to any reservoir, dam, main canal, or diversion work on which a permit has been granted or a certified filing recorded. A detailed statement and plans for alterations or changes shall be filed with the commission [~~department~~] and approved by the executive director before the alterations or changes are made. This section does not apply to the ordinary maintenance or emergency repair of the facility.

Sec. 11.145. WHEN CONSTRUCTION MUST BEGIN. (a) If a permit is for appropriation by direct diversion, construction of the proposed facilities shall begin within the time fixed by the commission, which shall not exceed two years after the date the permit is issued. The appropriator shall work diligently and continuously to the completion of the construction. The commission may, by entering an order of record, extend the time for beginning construction. The commission [~~board~~] may establish fees, not to exceed $1,000, for extending the time to begin construction of the proposed facilities.

(b) If the permit contemplates construction of a storage reservoir, construction shall begin within the time fixed by the commission, not to exceed two years after the date the permit is issued. The commission, by entering an order of record, may extend the time for beginning construction. The commission [~~board~~] may fix fees, not to exceed $1,000, for extending the time to begin construction of reservoirs.

SECTION 1.016. Sections 11.174 and 11.179, Water Code, are amended to read as follows:

Sec. 11.174. COMMISSION [~~DEPARTMENT~~] TO INITIATE PROCEEDINGS. When the commission [~~department~~] finds that its records do not show that any water has been beneficially used under a permit, certified filing, or certificate of adjudication during the past 10 years, the executive director shall initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication.

Sec. 11.179. COMMISSION [~~DEPARTMENT~~] MAY INITIATE PROCEEDINGS. When the commission [~~department~~] finds that its records do not show proof that some portion of the water has been used during the past 10 years, the executive director may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in part.

SECTION 1.017. Subsection (a), Section 11.203, Water Code, is amended to read as follows:

(a) A person who drills an artesian well or has one drilled shall keep a complete and accurate record of the depth, thickness, and character of the different strata penetrated and when the well is completed shall transmit a copy of the record to the commission [~~department~~] by registered mail.

SECTION 1.018. Section 11.204, Water Code, is amended to read as follows:

Sec. 11.204. REPORT OF NEW ARTESIAN WELL. Within one year after an artesian well is drilled, the owner or operator shall transmit to the commission

[~~department~~] a sworn report stating the result of the drilling operation, the use to which the water will be applied, and the contemplated extent of the use.

SECTION 1.019. Subsection (a), Section 11.207, Water Code, is amended to read as follows:

(a) Not later than March 1 of each year, a person who during any part of the preceding calendar year owned or operated an artesian well for any purpose other than domestic use shall file a report to the commission [~~department~~] on a form supplied by the commission [~~department~~].

SECTION 1.020. Section 11.302, Water Code, is amended to read as follows:

Sec. 11.302. DECLARATION OF POLICY. The conservation and best utilization of the water resources of this state are a public necessity, and it is in the interest of the people of the state to require recordation with the commission [~~department~~] of claims of water rights which are presently unrecorded, to limit the exercise of these claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface-water resources of the state may be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the public rights, duties, and functions mentioned in this section and in response to the mandate expressed in Article XVI, Section 59 of the Texas Constitution and is in the exercise of the police powers of the state in the interest of the public welfare.

SECTION 1.021. Subsections (c) and (f), Section 11.303, Water Code, are amended to read as follows:

(c) On or before September 1, 1969, every person claiming a water right to which this section applies shall file with the commission [~~department~~] a statement setting forth:

(1) the name and address of the claimant;

(2) the location and the nature of the right claimed;

(3) the stream or watercourse and the river basin in which the right is claimed;

(4) the date of commencement of works;

(5) the dates and volumes of use of water; and

(6) other information the commission [~~department~~] may require to show the nature and extent of the claim.

(f) The commission [~~department~~] shall prescribe forms for the sworn statements required by this section, but use of the commission [~~department~~] forms is not mandatory.

SECTION 1.022. Subsection (a), Section 11.305, Water Code, is amended to read as follows:

(a) Promptly after a petition is filed under Section 11.304 of this Code, the commission shall consider whether the adjudication would be in the public interest. If the commission finds that an adjudication would be in the public interest, it shall enter an order to that effect, designating the stream or segment to be adjudicated. The executive director shall have an investigation made of the area involved in order to gather relevant date and information essential to the proper understanding of the claims of water rights involved. The results of the investigation shall be reduced to writing and made a matter of record in the commission [~~department's~~] office.

SECTION 1.023. Subsections (a) and (c), Section 11.306, Water Code, are amended to read as follows:

(a) The commission shall prepare a notice of adjudication which describes the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment shall be filed with the commission [~~department~~]. The date shall not be less than 90 days after the date the notice is issued.

(c) The notice shall also be sent by first-class mail to each claimant of water rights whose diversion is within the stream or segment to be adjudicated, to the

extent that the claimants can reasonably be ascertained from the records of the commission [~~department~~].

SECTION 1.024. Section 11.307, Water Code, is amended to read as follows:

Sec. 11.307. FILING OF SWORN CLAIMS. (a) Every person claiming a water right of any nature, except for domestic or livestock purposes, from the stream or segment under adjudication shall file a sworn claim with the commission [~~department~~] within the time prescribed in the notice of adjudication, including any extensions of the prescribed time, setting forth:

(1) the name and post-office address of the claimant;

(2) the location and nature of the right claimed, including a description of any permit or certified filing under which the claim is made;

(3) the purpose of the use;

(4) a description of works and irrigated land; and

(5) all other information necessary to show the nature and extent of the claim.

(b) The commission [~~department~~] shall prescribe forms for claims, but use of the commission [~~department~~] forms is not mandatory.

SECTION 1.025. Subsection (b), Section 11.312, Water Code, is amended to read as follows:

(b) The commission shall also send notice by first-class mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission [~~department~~].

SECTION 1.026. Section 11.314, Water Code, is amended to read as follows:

Sec. 11.314. HEARING ON CONTEST; NOTICE. After the time for filing contests has expired, the commission shall prepare a notice setting forth the part of the preliminary determination to which each contest is directed and the time and place of a hearing on the contest. The notice shall be sent to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission [~~department~~]. The hearing shall be conducted as provided in Section 11.337 of this code.

SECTION 1.027. Section 11.325, Water Code, is amended to read as follows:

Sec. 11.325. WATER DIVISIONS. The commission [~~board~~] shall divide the state into water divisions for the purpose of administering adjudicated water rights. Water divisions may be created from time to time as the necessity arises. The divisions shall be constituted to secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

SECTION 1.028. Subsections (a) and (c), Section 11.329, Water Code, are amended to read as follows:

(a) The commission [~~department~~] shall pay the compensation and necessary expenses of a watermaster, assistant watermasters, and other necessary employees, but the holders of water rights that have been determined or adjudicated and are to be administered by the watermaster shall reimburse the commission [~~department~~] for the compensation and expenses.

(c) The commission shall hold a public hearing to determine the apportionment of the costs of administration of adjudicated water rights among the holders of the rights. After a public hearing, the commission shall issue an order assessing the annual cost against the holders of water rights to whom the water will be distributed under the final decree. The commission shall equitably apportion the costs. The executive director may provide for payments in installments and shall specify the dates by which payments shall be made to the commission [~~department~~].

SECTION 1.029. Sections 11.330-11.334, Water Code, are amended to read as follows:

Sec. 11.330. OUTLET FOR FREE PASSAGE OF WATER. The owner of any works for the diversion or storage of water shall maintain a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be locked at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound. The commission [~~board~~] shall adopt rules, and the executive director shall enforce the rules, governing the type and location of the headgates or gates and the outlets to allow the free passage of water.

Sec. 11.331. MEASURING DEVICES. The commission [~~board~~], by rule, may require the owner of any works for the diversion, taking, storage, or distribution of water to construct and maintain suitable measuring devices at points that will enable the watermaster to determine the quantities of water to be diverted, taken, stored, released, or distributed in order to satisfy the rights of the respective users.

Sec. 11.332. INSTALLATION OF FLUMES. The commission [~~board~~], by rule, may require flumes to be installed along the line of any ditch if necessary for the protection of water rights or other property.

Sec. 11.333. FAILURE TO COMPLY WITH COMMISSION [~~BOARD~~] RULES. If the owner of waterworks using state water refuses or neglects to comply with the rules adopted pursuant to Section 11.330, 11.331, or 11.332 of this code, the executive director, after 10 days notice or after a period of additional time that is reasonable under the circumstances, may direct the watermaster to make adjustments of the control works to prevent the owner of the works from diverting, taking, storing, or distributing any water until he has fully complied with the rules.

Sec. 11.334. SUIT AGAINST COMMISSION [~~DEPARTMENT~~] FOR INJURY. Any person who is injured by an act of the commission [~~department~~] under this subchapter may bring suit against the commission to review the action or to obtain an injunction. If the water right involved has been adjudicated as provided in this subchapter, the court shall issue an injunction only if it is shown that the commission [~~department~~] has failed to carry into effect the decree adjudicating the water right.

SECTION 1.030. Subsections (a) and (c), Section 11.335, Water Code, are amended to read as follows:

(a) If any area in which water rights of record in the office of the commission [~~department~~] have not been adjudicated, the claimants of the rights and the commission may enter into a written agreement for their administration.

(c) An agreement to administer unadjudicated water rights shall be recorded in the offices of the commission [~~department~~] and of the county clerk of each county in which any of the works or lands affected by the agreement are located.

SECTION 1.031. Sections 12.011, 12.012, 12.014, and 12.017, Water Code, are amended to read as follows:

Sec. 12.011. PERMIT APPLICATIONS. The commission [~~department~~] shall receive, administer, and act on all applications for permits and permit amendments:

(1) to appropriate public water for beneficial use or storage; or

(2) to construct works for the impoundment, storage, diversion, or transportation of public water.

Sec. 12.012. EVALUATION OF OUTSTANDING PERMITS. The commission [~~department~~] shall actively and continually evaluate outstanding permits and certified filings and shall carry out measures to cancel wholly or partially the certified filings and permits that are subject to cancellation.

Sec. 12.014. USE OF COMMISSION [~~DEPARTMENT~~] SURVEYS; POLICY. The commission shall make use of surveys, studies, and investigations conducted by the staff of the commission [~~department~~] in order to ascertain the character of the principal requirements of the district regional division of the

watershed areas of the state for beneficial uses of water, to the end that distribution of the right to take and use state water may be more equitably administered in the public interest, that privileges granted for recognized uses may be economically coordinated so as to achieve the maximum of public value from the state's water resources, and that the distinct regional necessities for water control and conservation and for control of harmful floods may be recognized.

Sec. 12.017. POWER TO ENTER LAND. Any member or employee of the commission [~~department~~] may enter any person's land, natural waterway, or artificial waterway for the purpose of making an investigation that would, in the judgment of the executive director, assist the commission [~~department~~] in the discharge of its duties.

SECTION 1.032. Subsections (b), (c), (d), (e), and (f), Section 12.051, Water Code, are amended to read as follows:

(b) When the governor receives an engineering report submitted by a federal agency seeking the governor's approval of a federal project, he shall immediately forward the report to the commission [~~department~~] for its study concerning the feasibility of the federal project.

(c) The commission [~~board~~] shall hold a public hearing to receive the views of persons and groups who might be affected by the proposed federal project. The commission [~~board~~] shall publish notice of the time, date, place, nature, and purpose of the public hearing once each week for two consecutive weeks before the date stated in the notice in a newspaper having general circulation in the section of the state where the federal project is to be located or the work done.

(d) After hearing all the evidence both for and against approval of the federal project, the commission [~~board~~] shall enter its order approving or disapproving the feasibility of the federal project, and the order shall include the commission's [~~board's~~] reasons for approval or disapproval.

(e) In determining feasibility, the commission [~~board~~] shall consider, among other relevant factors:

(1) the effect of the federal project on water users on the stream as certified by the commission;

(2) the public interest to be served;

(3) the development of damsites to the optimum potential for water conservation;

(4) the integration of the federal project with other water conservation activities;

(5) the protection of the state's interests in its water resources; and

(6) the engineering practicality of the federal project, including cost of construction, operation, and maintenance.

(f) The commission [~~board~~] shall forward to the governor a certified copy of its order. The commission's [~~board's~~] finding that the federal project is either feasible or not feasible is final, and the governor shall notify the federal agency that the federal project has been either approved or disapproved.

SECTION 1.033. Subsections (a), (b), (d), and (f), Section 12.052, Water Code, are amended to read as follows:

(a) The commission [~~department~~] shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.

(b) Rules and orders made by the commission [~~board~~] shall be made after proper notice and hearing as provided in the rules of the commission [~~board~~].

(d) If the commission determines that the existing condition of the dam is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the commission [~~department~~] to remedy or prevent the

occurrence of the situation will result in unreasonable delay, the commission may issue an emergency order, either mandatory or prohibitory in nature, directing the owner of a dam to repair, modify, maintain, dewater, or remove the dam which the commission determines is unsafe. The emergency order may be issued without notice to the dam owner or with notice the commission considers practicable under the circumstances. The notice does not have to comply with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(f) Nothing in this section or in rules or orders made by the commission [~~department~~] shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

SECTION 1.034. Subsection (a), Section 12.081, Water Code, is amended to read as follows:

(a) The powers and duties of all districts and authorities created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution are subject to the continuing right of supervision of the State of Texas by and through the commission [~~department~~] or its successor, and this supervision may include but is not limited to the authority to:

(1) inquire into the competence, fitness, and reputation of the officers and directors of any district;

(2) require, on its own motion or on complaint by any person, audits or other financial information, inspections, evaluations, and engineering reports;

(3) issue subpoenas for witnesses to carry out its authority under this subsection;

(4) institute investigations and hearings using examiners appointed by the commission; and

(5) issue rules necessary to supervise the districts.

SECTION 1.035. Subsections (b) and (c), Section 12.082, Water Code, are amended to read as follows:

(b) The commission [~~department~~] shall investigate and report on the organization and feasibility of all districts created under Chapter 53 of this code which issue bonds under the provisions of that chapter.

(c) A district that wants to issue bonds for any purpose shall submit to the commission [~~department~~] a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications made in connection with the engineer's report.

SECTION 1.036. Sections 12.112-12.114, Water Code, are amended to read as follows:

Sec. 12.112. FEES: EXEMPTIONS. The commission [~~board~~] and the Parks and Wildlife Commission are exempted from payment of any filing, recording, or use fees required by this code.

Sec. 12.113. DISPOSITION OF FEES, ETC. (a) The commission [~~department~~] shall immediately deposit in the State Treasury the fees and charges it collects.

(b) The commission [~~department~~] shall deposit all costs collected under Subchapter F, Chapter 11 of this code in the State Treasury to the credit of the water rights administration fund, from which the commission [~~department~~] shall pay all expenses necessary to efficiently administer and perform the duties described in Sections 11.325 through 11.335 of this code.

Sec. 12.114. DISPOSITION OF FEES PENDING DETERMINATION. The commission [~~department~~] shall hold all fees, except filing fees, which are paid with an application until the commission finally determines whether the application should be granted. If the application is not granted, the commission [~~department~~] shall return the fees to the applicant.

SECTION 1.037. Section 12.141, Water Code, is amended to read as follows:

Sec. 12.141. VIOLATIONS OF RULES, ORDERS, CERTIFIED FILINGS, PERMITS, CERTIFICATES OF ADJUDICATION. A person who wilfully violates any of the rules or orders adopted by the commission [~~board~~] or any of the terms and conditions contained in declarations of appropriations (certified filings), permits, certificates of adjudication, and orders of the commission is subject to a civil penalty of not more than $1,000 for each act of violation and for each day that the violation continues to take place. An action to collect the penalty provided in this section must be brought within two years from the date of the alleged violation.

SECTION 1.038. Section 15.001, Water Code, is amended to read as follows:

Sec. 15.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(4) [~~"Department" means the Texas Department of Water Resources.~~

[~~(5)~~] "Political subdivision" means a city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political subdivision of the state, or any interstate compact commission to which the state is a party.

(5) [~~(6)~~] "Project" means any undertaking or work to conserve, convey, and develop surface or subsurface water resources of the state, to provide for the maintenance and enhancement of the quality of the water of the state, to provide flood control and drainage, and to carry out other purposes defined by board rules.

(6) [~~(7)~~] "Fund" means the water assistance fund.

(7) [~~(8)~~] "Loan fund" means the water loan assistance fund.

(8) [~~(9)~~] "Conservation" as used herein shall include but not be limited to projects to develop water resources as well as projects to reduce consumption of water and projects to promote more efficient use of water.

SECTION 1.039. Subsections (a), (b), and (d), Section 15.005, Water Code, are amended to read as follows:

(a) On submission of a project application under this chapter, the development fund manager [~~executive director~~] shall determine if the application includes a project that will have flood control as one of its purposes and if the political subdivision submitting the application includes all of the watershed in which the project is to be located.

(b) If the development fund manager [~~executive director~~] finds that the application includes a project that has flood control as one of its purposes and that the watershed in which the project is located is partially located outside the political subdivision making the application, the development fund manager [~~executive director~~] shall require the applicant to submit a written memorandum of understanding relating to the management of the watershed in which the project is to be located.

(d) The board shall not consider any application for which a memorandum of understanding must be filed under this section until that memorandum of understanding is filed with the development fund manager [~~executive director~~].

SECTION 1.040. Sections 15.104, 15.110, 15.111, and 15.112, Water Code, are amended to read as follows:

Sec. 15.104. CERTIFICATE OF COMMISSION OR APPROVAL BY COMMISSION. (a) The [~~Except as provided by Subsection (b) of this section, the~~] board shall not deliver funds pursuant to an application for financial assistance from the loan fund until the political subdivision has furnished the board a resolution adopted by the commission certifying:

(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 underground water development has the right to use water that the project will provide.

(b) If an applicant includes a proposal for a waste water treatment plant, [~~the part of the application relating to the waste water treatment plant does not need to be certified by the commission, but~~] the board may not deliver funds for the waste water treatment plant until the applicant [~~political subdivision~~] has received a permit for construction and operation of the waste water treatment plant and [~~obtained written evidence of~~] approval of the plans and specifications [~~for the waste water treatment plant~~] from the commission [~~executive director~~].

Sec. 15.110. INSPECTION OF PROJECTS. (a) The board [~~department~~] may inspect the construction of a project any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board [~~department~~] does not subject the state to any civil liability.

Sec. 15.111. ALTERATION OF PLANS. After board approval of engineering plans, a political subdivision shall not make any substantial or material alteration in the plans unless the development fund manager [~~executive director~~] authorizes the alteration. For a waste water treatment plant or other facility required to have commission approval of plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

Sec. 15.112. CERTIFICATE OF APPROVAL. The board 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 [~~director's~~] plans as approved by the board or as altered with the development fund manager's [~~executive director's~~] approval;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any terms of the contract.

SECTION 1.041. Subsection (b), Section 15.325, Water Code, is amended to read as follows:

(b) The executive administrator [~~executive director~~] may authorize the release of water owned by the state from any facility in which the state has an interest under this subchapter for a period of not to exceed 72 hours from time of authorization to relieve an emergency condition that poses an imminent threat of flooding. The commission must approve any release of water that must be made beyond the 72-hour period provided by this subsection.

SECTION 1.042. Sections 15.329-15.331, Water Code, are amended to read as follows:

Sec. 15.329. INSPECTION OF PROJECTS. (a) The board [~~department~~] may inspect the construction of a project any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board [~~department~~] does not subject the state to any civil liability.

Sec. 15.330. ALTERATION OF PLANS. After board approval of engineering plans, a political subdivision shall not make any substantial or material alteration in the plans unless the development fund manager [~~executive director~~] authorizes the alteration. For a waste water treatment plant or other facility required to have commission approval of the plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

Sec. 15.331. CERTIFICATE OF APPROVAL. The board 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 plans approved by the board or as altered with the development fund manager's [~~executive director's~~] approval;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any terms of the contract.

SECTION 1.043. Subsection (g), Section 15.405, Water Code, is amended to read as follows:

(g) The board shall [~~may~~] require that flood control plans developed under contracts entered into under this section be made available to the commission [~~department as provided by board rules~~].

SECTION 1.044. Section 16.001, Water Code, is amended to read as follows:

Sec. 16.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Chairman" means the chairman of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(5) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(6) "Development fund manager" means the development fund manager of the Texas Water Development Board.

(7) [~~"Department" means the Texas Department of Water Resources.~~

[~~(6)~~] "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(8) [~~(7)~~] "Project" means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants including any system necessary to transport water from storage to points of distribution, or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers, by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

(9) [~~(8)~~] "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(10) [~~(9)~~] "Waste" has the same meaning as provided in Section 26.001 of this code.

(11) [~~(10)~~] "Water development bonds" means the Texas Water Development Bonds authorized by Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution.

SECTION 1.045. Sections 16.011-16.021, Water Code, are amended to read as follows:

Sec. 16.011. GENERAL RESPONSIBILITIES OF THE EXECUTIVE ADMINISTRATOR [~~DIRECTOR~~]. The executive administrator [~~director~~] shall determine the responsibilities of each administrative division of the board [~~department~~] and its staff in carrying out the authority, duties, and functions provided in this code.

Sec. 16.012. STUDIES, INVESTIGATIONS, SURVEYS. (a) The executive administrator [~~director~~] shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state. For these purposes the staff shall collect, receive, analyze, and process basic data concerning the water resources of the state.

(b) The executive administrator [~~director~~] shall:

(1) determine suitable locations for future water facilities, including reservoir sites;

(2) locate land best suited for irrigation;

(3) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;

(4) examine and survey reservoir sites; and

(5) investigate the effects of fresh water inflows upon the bays and estuaries of Texas.

(c) The executive administrator [~~director~~] shall keep full and proper records of his work, observations, data, and calculations, all of which are the property of the state.

(d) In performing his duties under this section, the executive administrator [~~director~~] shall assist the commission in carrying out the purposes and policies stated in Section 12.014 of this code.

Sec. 16.013. ENGINEERING, HYDROLOGIC, AND GEOLOGIC FUNCTIONS. The executive administrator [~~director~~] shall advise and assist the board and the commission with regard to engineering, hydrologic, and geologic matters concerning the water resources of the state. The executive administrator [~~director~~] shall evaluate, prepare, and publish engineering, hydrologic, and geologic data, information, and reports relating to the water resources of the state.

Sec. 16.014. SILT LOAD OF STREAMS, ETC. The executive administrator [~~director~~] shall determine the silt load of streams, make investigations and studies of the duty of water, and make surveys to determine the water needs of the distinct regional divisions of the watershed areas of the state.

Sec. 16.015. STUDIES OF UNDERGROUND WATER SUPPLY. The executive administrator [~~director~~] may make studies and investigations of the physical characteristics of water-bearing formations and of the sources, occurrence, quantity, and quality of the underground water supply of the state and may study and investigate feasible methods to conserve, preserve, improve, and supplement this supply. The work shall first be undertaken in areas where, in the judgment of the board, the greatest need exists, and in determining the need, the board shall consider all beneficial uses essential to the general welfare of the state. Water-bearing formations may be explored by coring or other mechanical or electrical means when the area to be investigated has more than a local influence on water resources.

Sec. 16.016. POLLUTION OF RED RIVER TRIBUTARIES. Within the limits of available money and facilities, the executive administrator [~~director~~] shall study salt springs, gypsum beds, and other sources of natural pollution of the tributaries of the Red River and shall study means of eliminating this natural pollution and preventing it from reaching the Red River.

Sec. 16.017. TOPOGRAPHIC AND GEOLOGIC MAPPING. The executive administrator [~~director~~] shall carry out the program for topographic and geologic mapping of the state.

Sec. 16.018. SOIL RESOURCE PLANNING. The executive administrator [~~director~~] may contract with the State Soil Conservation Board for joint investigation and research in the field of soil resource planning. The State Soil Conservation Board may appoint a representative to advise and work with the executive administrator [~~director~~].

Sec. 16.019. COOPERATIVE AGREEMENTS. With the approval of the board, the executive administrator [~~director~~] may negotiate and execute contracts with persons or with federal, state, or local agencies for joint or cooperative studies and investigations of the occurrence, quantity, and quality of the surface water and groundwater of the state; the topographical mapping of the state; and the collection, processing, and analysis of other basic data relating to the development of the water resources of the state and for the administration and performance of these contracts.

Sec. 16.020. MASTER PLANS OF DISTRICTS, ETC. The executive director shall review and analyze master plans and other reports of conservation districts, river authorities, and state agencies and shall make its recommendations to the [~~board or the~~] commission in all cases where approval of the [~~board or~~] commission is required by law or is requested by a district, authority, or agency.

Sec. 16.021. CENTRALIZED DATA BANK. The executive administrator [~~director~~] shall create a centralized data bank incorporating all hydrological data collected by state agencies.

SECTION 1.046. Subsections (a), (c), and (d), Section 16.051, Water Code, are amended to read as follows:

(a) The executive administrator [~~director~~] shall prepare, develop, and formulate a comprehensive state water plan.

(c) The executive administrator [~~director~~] shall be governed in his preparation of the plan by a regard for the public interest of the entire state. The executive administrator [~~director~~] shall direct his efforts toward the orderly development and management of water resources in order that sufficient water will be available at a reasonable cost to further the economic development of the entire state.

(d) The executive administrator [~~director~~] shall also give consideration in the plan to the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and to the effect of the plan on navigation.

SECTION 1.047. Sections 16.052-16.054, 16.057, 16.058, and 16.091, Water Code, are amended to read as follows:

Sec. 16.052. INTERBASIN WATER TRANSFER. The executive administrator [~~director~~] shall not prepare or formulate a plan which contemplates or results in the removal of surface water from the river basin of origin if the water supply involved will be required for reasonably foreseeable water supply requirements within the river basin of origin during the next ensuing 50-year period, except on a temporary, interim basis.

Sec. 16.053. HEARING ON PRELIMINARY PLAN. (a) After the executive administrator [~~director~~] completes his preliminary planning of the water resources development within a river basin, he shall hold a public hearing, after notice, at some central location within the river basin. If the proposed plan involves the transfer of water from one basin to another, the hearing shall be held at some location convenient to the areas affected.

(b) The executive administrator [~~director~~] shall present the proposed plan of development and hear evidence for and against the plan.

(c) After the hearing, the executive administrator [~~director~~] shall consider the effect the plan will have on the present and future development, economy, general welfare, and water requirements of the river basin or the areas affected.

Sec. 16.054. HEARING ON COMPLETED STATE WATER PLAN. When the executive administrator [director] has prepared and examined the completed preliminary plan, the board shall hold a public hearing on the plan to determine whether or not it gives adequate consideration to the protection of existing water rights in this state and whether or not it takes into account modes and procedures for the equitable adjustment of water rights affected by the plan. After the hearing, the board may formally adopt the state water plan. A majority vote is necessary for adoption.

Sec. 16.057. FEDERAL ASSISTANCE IN FINANCING PLAN. The executive administrator [director] may take all necessary action to qualify for federal assistance in financing the development and improvement of the plan.

Sec. 16.058. STUDIES OF BAYS AND ESTUARIES. The executive director shall carry out comprehensive studies of the effects of fresh water inflows upon the bays and estuaries of Texas. The studies shall include the development of methods of providing and maintaining the ecological environment thereof suitable to their living marine resources. The studies shall be completed and the results published by December 31, 1979. The General Land Office, the Parks and Wildlife Department, and the Texas Coastal and Marine Council are authorized and directed to assist and cooperate in all possible ways with the commission [department] in this undertaking.

Sec. 16.091. DESIGNATION OF BOARD [DEPARTMENT]. The board [department] is designated as the state agency to cooperate with the Corps of Engineers of the United States Army and the Bureau of Reclamation of the United States Department of the Interior in the planning of water resource development projects in this state.

SECTION 1.048. Subsections (a), (d), (e), and (g), Section 16.092, Water Code, are amended to read as follows:

(a) When a project is proposed for planning or development by the board [department], the Corps of Engineers of the United States Army, or the Bureau of Reclamation of the United States Department of the Interior, any political subdivision may apply to the executive administrator [director] for designation as the cooperating local sponsor of the project.

(d) The board [commission] shall prescribe the form to be used in applications for designation as cooperating local sponsor. Before accepting the application, the commission may require that the applicant complete the prescribed form.

(e) Before making any designation of local sponsorship, the board [commission] shall set the application for hearing and give public notice of the hearing. Any interested party may appear and be heard for or against the designation of the applicant as project sponsor.

(g) After a public hearing, the board [commission], by written order, shall grant or reject the application and shall state its reasons. The commission may set a reasonable time period for any sponsorship designation.

SECTION 1.049. Sections 16.232, 16.233, and 16.235, Water Code, are amended to read as follows:

Sec. 16.232. LOCATION OF PROJECTS; REPORTS. The executive administrator [director] shall maintain files reflecting engineering reports, studies, drawings, and staff findings and recommendations pertaining to the location and effect of reclamation projects.

Sec. 16.233. COOPERATION WITH OTHER AGENCIES. In performing [his] functions that are a part of duties assigned to the commission or board by this code or other law, the executive director, with the approval of the commission, or the executive administrator, with the approval of the board, may confer with federal and state agencies and with political subdivisions and[, with the approval of the

~~board;~~] may execute cooperative agreements with them. The executive director or executive administrator may cancel any such agreement on 10 days notice to the other party.

Sec. 16.235. DISTRICTS TO FILE INFORMATION WITH COMMISSION [~~DEPARTMENT~~]. Immediately before having its bonds approved by the attorney general, each drainage district and levee improvement district shall file with the commission [~~department~~], on forms furnished by the commission [~~department~~], a complete record showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, and profiles of improvements and the district engineer's estimates and reports on them.

SECTION 1.050. Subsections (d) and (e), Section 16.236, Water Code, are amended to read as follows:

(d) This section does not apply to:

(1) dams permitted by the commission or recognized as valid by final decree in any proceeding begun under Subchapter G, Chapter 11, of this code;

(2) dams authorized by Section 11.142 of this code;

(3) a levee or other improvement within the corporate limits of a city or town provided: (a) plans for the construction or maintenance or both must be approved by the city or town as a condition precedent to starting the project and (b) the city or town requires that such plans be in substantial compliance with rules and standards adopted by the commission [~~board~~]; or

(4) a levee or other improvement within the boundaries of any political subdivision which has qualified for the National Flood Insurance Program as authorized by the National Flood Insurance Act of 1968 (Title 42, U.S.C., Sections 4001-4127) provided: (a) plans for the construction or maintenance or both must be approved by the political subdivision which is participating in the national flood insurance program as a condition precedent to starting the project and (b) the political subdivision requires that such plans be in substantial compliance with rules and standards adopted by the commission [~~board~~];

(5) projects implementing soil and water conservation practices set forth in a conservation plan with a landowner or operator and approved by the governing board of a soil and water conservation district organized under the State Soil Conservation Law, as amended (Article 165a-4, Vernon's Texas Civil Statutes), provided that the governing board finds the practices do not significantly affect stream flooding conditions on, along, or near a state stream.

(e) On projects located within the corporate limits of a city or town or within the boundaries of any political subdivision which are exempt from the provisions of this section by Subdivision (3) or (4) of Subsection (d) above, any person whose property is located outside of the corporate limits of such city or town or of the boundaries of such a political subdivision and whose property is affected or potentially affected by the effect of the project on the floodwaters of the stream may appeal the decision of such political subdivision. The appeal shall be in writing and shall specify the grounds therefor and a copy shall be sent by certified mail to the project applicant and to the city or town or such political subdivision. The timely filing of such an appeal with the executive director suspends the decision of the city or town or political subdivision until a final decision is rendered by the commission [~~department~~]. The executive director shall review the complaint and investigate the facts surrounding the nature of the complaint. If the executive director finds that the complaint is frivolous or nonmeritorious or made solely for purposes of harassment or delay, then he shall dismiss the appeal. Otherwise, the executive director shall refer the appeal to the commission which shall after due notice hold a hearing to determine whether the project should be approved using the standards established by the commission [~~department~~] and shall hear such appeal de novo

under the procedural rules established by the commission for other reclamation projects.

SECTION 1.051. Sections 16.314-16.318, Water Code, are amended to read as follows:

Sec. 16.314. COOPERATION OF COMMISSION [~~TEXAS DEPARTMENT OF WATER RESOURCES~~]. In recognition of the necessity for a coordinated effort at all levels of government, the commission [~~department~~] shall cooperate with the Federal Insurance Administrator of the United States Department of Housing and Urban Development in the planning and carrying out of state participation in the National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS. All political subdivisions are hereby authorized to take all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program, including but not limited to:

(1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;

(2) guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;

(3) assisting in minimizing damage caused by floods;

(4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;

(5) engaging in floodplain management and adopting enforcing permanent land use and control measures consistent with the criteria established under the National Flood Insurance Act;

(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the secretary, or whomever he designates, of such property;

(7) consulting with, giving information to, and entering into agreements with the Department of Housing and Urban Development for the purpose of:

(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

(8) cooperating with the secretary's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(9) taking steps to improve the long-range management and use of flood-prone areas;

(10) purchasing, leasing, and receiving property from the secretary when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Department of Housing and Urban Development or other appropriate legal representative of the United States Government;

(11) requesting aid pursuant to the entire authorization from the commission [~~board~~];

(12) satisfying criteria adopted and promulgated by the commission [~~department~~] pursuant to the National Flood Insurance Program; and

(13) adopting permanent land use and control measures with enforcement provisions which are consistent with the criteria for land management and use adopted by the secretary.

Sec. 16.316. COORDINATION OF LOCAL, STATE, AND FEDERAL PROGRAMS BY COMMISSION [~~DEPARTMENT~~]. (a) The commission [~~department~~] shall aid, advise, and coordinate the efforts of present and future political subdivisions endeavoring to qualify for participation in the National Flood Insurance Program.

(b) Pursuant to the National Flood Insurance Program and state and local efforts complementing the program, the commission [~~department~~] shall aid, advise, and cooperate with political subdivisions, the State Board of Insurance, and the United States Department of Housing and Urban Development when aid, advice, and cooperation are requested or deemed advisable by the board.

(c) The aforementioned aid may include but is not necessarily limited to:

(1) coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;

(2) evaluating the present structure of all federal, state, and political subdivision flood control programs within or adjacent to the state, including an assessment of the extent to which public and private floodplain management activities have been instituted;

(3) carrying out studies with respect to the adequacy of present public and private measures, laws, regulations, and ordinances in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(4) evaluating all available engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas; and

(5) carrying out floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones.

(d) On the basis of such studies and evaluations, the commission [~~department~~], to the extent of its capabilities, shall periodically identify and publish information and maps with respect to all floodplain areas, including the state's coastal area, which have flood hazards, and where possible aid the federal government in identifying and establishing flood-risk zones in all such areas.

Sec. 16.317. COOPERATION OF STATE BOARD OF INSURANCE. Pursuant to the National Flood Insurance Program, the State Board of Insurance shall aid, advise, and cooperate with political subdivisions, the commission [~~department~~], and the United States Department of Housing and Urban Development when such aid, advice, and cooperation are requested or deemed advisable by the State Board of Insurance.

Sec. 16.318. RULES. Political subdivisions which qualify for the National Flood Insurance Program, the State Board of Insurance, and the commission [~~board~~] may adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations herein.

SECTION 1.052. Section 17.001, Water Code, is amended to read as follows:

Sec. 17.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(5) [~~(4)~~] "Development fund manager" means the development fund manager of the Texas Water Development Board.

(6) [~~(5) "Department" means Texas Department of Water Resources.~~] "Political subdivision" means a county, city, or other body politic

or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(7) [~~(6)~~] "Project" means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants, including any system necessary to transport water from storage to points of distribution or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

(8) [~~(7)~~] "Weighted average effective interest rate" means the rate of interest computed by dividing the total value of all coupons attached to the pertinent bonds issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond previously issued.

(9) [~~(8)~~] "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(10) [~~(9)~~] "Waste" has the same meaning as provided in Section 26.001 of this code.

(11) [~~(10)~~] "Water development bonds" means the Texas Water Development Bonds authorized by Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution.

(12) [~~(11)~~] "Water quality enhancement bonds" means the Texas Water Development Bonds authorized by Section 49-d-1, as amended, of Article III of the Texas Constitution.

(13) [~~(12)~~] "Lending rate" means an amount of interest calculated by adding one-half percent to the weighted average of the cost of uncommitted funds secured from the sale of Texas Water Development Bonds as of the date of the latest sale of Texas Water Development Bonds.

(14) [~~(13)~~] "Net effective interest rate" means the rate of interest computed by dividing the total value of all interest coupons attached to the bonds included in an issue issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond included in the issue.

SECTION 1.053. Section 17.123 and Sections 17.135-17.139, Water Code, are amended to read as follows:

Sec. 17.123. CERTIFICATE OF COMMISSION OR APPROVAL BY COMMISSION. (a) The [~~Except as provided in Subsection (b) of this section, the~~] board shall not deliver funds pursuant to an application for financial assistance until the political subdivision has furnished the board a resolution adopted by the commission certifying:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water which the project will provide; or

(2) that an applicant proposing underground water development has the right to use water that the project will provide.

(b) If an application includes a proposal for a waste water treatment plant, [~~the part of the application relating to the waste water treatment plant does not need to be certified by the commission, but~~] the board may not deliver funds for the waste

water treatment plant until the applicant [~~political subdivision~~] has obtained a permit for construction and operation of the waste water treatment plant and [~~written evidence of~~] approval of the plans and specifications for the [~~waste water treatment~~] plant from the commission [~~executive director~~].

Sec. 17.135. CONSTRUCTION CONTRACT REQUIREMENTS. The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

(1) that each bidder furnish a bid guarantee equivalent to five percent of the bid price;

(2) that each contractor awarded a construction contract furnish performance and payment bonds:

(A) the performance bond shall include without limitation 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 shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision; and

(3) that payment be made in partial payments as the work progresses;

(4) that each partial payment shall not exceed 90 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 10 percent retainage may be made by the political subdivision with approval of the development fund manager [~~executive director~~];

(5) that payment of the retainage remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings;

(B) approval by the governing body of the political subdivision by a resolution or other formal action; and

(C) certification by the development fund manager [~~executive director~~] 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; and

(6) that no valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

Sec. 17.136. FILING CONSTRUCTION CONTRACT. The political subdivision shall file with the board [~~department~~] a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

Sec. 17.137. INSPECTION OF PROJECTS. (a) The board [~~department~~] may inspect the construction of a project at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the board [~~department~~] does not subject the state to any civil liability.

Sec. 17.138. ALTERATION OF PLANS. After the development fund manager [~~executive director~~] approves of engineering plans, a political subdivision

may not make any substantial or material alteration in the plans unless the development fund manager [~~executive director~~] authorizes the alteration in accordance with rules of the board. For a waste water treatment plant or other facility required to have commission approval of the plans and specifications, the commission must give its approval before a substantial or material alteration is made in those plans.

Sec. 17.139. CERTIFICATE OF APPROVAL. The development fund manager [~~executive director~~] 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 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.

SECTION 1.054. Subsections (a), (c), (d), and (e), Section 17.277, Water Code, are amended to read as follows:

(a) After an application is received for financial assistance, the development fund manager [~~executive director~~] shall submit the application to the board together with comments and recommendations [~~of the development fund manager~~] concerning the best method of making financial assistance available.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided, the amount of any such assistance, and in consultation with and pursuant to agreement with the political subdivision, and except as provided by Subsection (d) of this section, the board shall determine the location, time, design, scope, and all other aspects of the construction of treatment works to be performed.

(d) The commission [~~executive director~~] shall review and approve plans and specifications for all treatment works for which financial assistance is provided in any amount from water quality enhancement funds or funds granted under the Federal Water Pollution Control Act, as amended. To avoid duplicate review and approval by two or more state agencies, review and approval of plans and specifications under this subsection by the Texas Department of Health is not required. [~~The Texas Department of Health shall review and approve plans in those cases where such assistance has not been requested except when notice of intention to apply for the financial assistance has been given to the executive director in which case the executive director shall perform review and approval functions. Duplicate review and approval will not be performed and actions on review and approval shall be fully interchangeable between the executive director and the Texas Department of Health~~].

(e) Except as provided by Subsection (d) of this section, the [~~The~~] deliberations, proposals, decisions, and other actions of the board under this subchapter do not require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision, or other governmental entity.

SECTION 1.055. Sections 17.279-17.281 and 17.283, Water Code, are amended to read as follows:

Sec. 17.279. CONSTRUCTION CONTRACT REQUIREMENTS. The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of treatment works:

(1) that each bidder furnish a bid guarantee equivalent to five percent of the bid price;

(2) that each contractor awarded either a design/construct contract or construction contract furnish performance and payment bonds each of which shall include without limitation 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 each of which shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision;

(3) that payment be made in partial payments as the work progresses;

(4) that each partial payment shall not exceed 90 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, the 10 percent retainage requirement may be reduced by the political subdivision with approval of the development fund manager [~~executive director~~];

(5) that payment of the retainage remaining due on completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings;

(B) approval by the governing body of the political subdivision by a resolution or other formal action; and

(C) certification by the development fund manager [~~executive director~~] 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; and

(6) that no valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

Sec. 17.280. FILING CONSTRUCTION CONTRACT. The political subdivision shall file with the board [~~department~~] a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

Sec. 17.281. BOARD [~~DEPARTMENT~~] INSPECTION. (a) The board [~~department~~] may inspect the construction of treatment works at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and

(2) the treatment works are being constructed in accordance with sound construction principles.

(b) Inspection of treatment works by the board [~~department~~] does not subject the state to any civil liability.

Sec. 17.283. CERTIFICATE OF APPROVAL. The development fund manager [~~executive director~~] may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the treatment works according to 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.

SECTION 1.056. Section 18.002, Water Code, is amended to read as follows:

Sec. 18.002. DEFINITIONS. As used in this chapter:

(1) "Commission" means the Texas Water Commission.

(2) [~~"Board" means the Texas Water Development Board.~~

[~~(3)~~] "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(3) [~~(4) "Department" means the Texas Department of Water Resources.~~

[~~(5)~~] "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

(4) [~~(6)~~] "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding four years.

(5) [~~(7)~~] "Research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

SECTION 1.057. Sections 18.011-18.015, 18.017, and 18.019-18.022, Water Code, are amended to read as follows:

Sec. 18.011. RULES[~~—IN GENERAL~~]. The commission [~~board~~] may adopt [~~make~~] rules necessary to:

(1) exercise the powers and to perform the [~~their~~] duties under this chapter;

(2) establish[~~:~~

[~~Sec. 18.012. RULES—LICENSES AND PERMITS. In order to effectuate the purposes of this chapter, the commission may make rules establishing~~] procedures and conditions for the issuance of licenses and permits; and

(3) establish[~~:~~

[~~Sec. 18.013. RULES—SAFETY. The board may make rules establishing~~] standards and instructions to govern the carrying out of research or projects in weather modification and control that the commission [~~board~~] considers necessary or desirable to minimize danger to health or property.

Sec. 18.014. STUDIES; INVESTIGATIONS; HEARINGS. The commission [~~department~~] may make any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this chapter.

Sec. 18.015. ADVISORY COMMITTEES. The commission [~~board~~] may establish advisory committees to advise the department and to make recommendations to the department concerning legislation, policies, administration, research, and other matters.

Sec. 18.017. MATERIALS AND EQUIPMENT. The commission [~~department~~] may acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this chapter.

Sec. 18.019. CONTRACTS, COOPERATIVE AGREEMENTS, ETC. (a) The commission [~~department~~] may cooperate with public or private agencies to promote the purposes of this chapter.

(b) The commission [~~department~~] may enter into cooperative agreements with the United States or any of its agencies, or with counties and cities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

(c) The commission [~~department~~] may represent the state, counties, cities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

Sec. 18.020. PROMOTION OF RESEARCH AND DEVELOPMENT. (a) In order to assist in expanding the theoretical and practical knowledge of weather modification and control, the commission [~~department~~] shall promote continuous research and development in:

(1) the theory and development of methods of weather modification and control, including processes, materials, and devices related to these methods;

(2) the utilization of weather modification and control for agricultural, industrial, commercial, and other purposes; and

(3) the protection of life and property during research and operational activities.

(b) The executive director with approval of the commission [board] may conduct and may contract for research and development activities relating to the purposes of this section.

Sec. 18.021. GRANTS, GIFTS, ETC. Subject to any limitations imposed by law, the commission [department] may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted or subject to any limitations provided by law, the commission [department] may spend it for the administration of this chapter or may by grant, contract, or cooperative arrangement use the money to encourage research and development by a public or private agency.

Sec. 18.022. DISPOSITION OF LICENSE AND PERMIT FEES. The commission [department] shall deposit all license and permit fees in the State Treasury.

SECTION 1.058. Sections 18.051 and 18.052, Water Code, are amended to read as follows:

Sec. 18.051. LICENSE AND PERMIT REQUIRED. Except as provided by rule of the commission [board] under Section 18.052 of this code, no person may engage in activities for weather modification and control:

(1) without a weather modification license and a weather modification permit issued by the commission; or

(2) in violation of any term or condition of the license or the permit.

Sec. 18.052. EXEMPTIONS. The commission [board], to the extent it considers exemptions practical, shall provide by rule for exempting the following activities from the license and permit requirements of this chapter:

(1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;

(2) laboratory research and experiments;

(3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and

(4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.

SECTION 1.059. Subsections (q) and (u), Section 18.0841, Water Code, are amended to read as follows:

(q) The commission [department] may monitor any program under such conditions as the commission [department] deems advisable.

(u) The commission [board] by rule shall define the term hail suppression as used in this section, using the most current scientifically accepted technological concepts.

SECTION 1.060. Section 18.091, Water Code, is amended to read as follows:

Sec. 18.091. RECORDS AND REPORTS. (a) A licensee shall keep a record of each operation conducted under permit, showing:

(1) the method employed;

(2) the type of equipment used;

(3) the kind and amount of each material used;

(4) the times and places the equipment is operated;

(5) the name and post-office address of each individual, other than the licensee, who participates or assists in the operation; and

(6) other information required by the commission [~~department~~].

(b) The commission [~~department~~] shall require written reports covering each operation, whether it is exempt or conducted under a permit.

(c) At the time and in the manner required by the commission [~~department~~], a licensee shall submit a written report containing the information described in Subsection (a) of this section.

(d) All information on an operation shall be submitted to the commission [~~department~~] before it is released to the public.

(e) The reports and records in the custody of the commission [~~department~~] shall be kept open for public inspection.

SECTION 1.061. Subsection (b), Section 18.1211, Water Code, is amended to read as follows:

(b) After notice and hearing, the commission may issue a warning or, if a warning has already been issued, may suspend a permit up to a period of two years if it [~~the board~~] finds that a permittee, through carelessness, performed all or any part of a weather modification and control operation outside the boundaries of the permit area. The commission may suspend the permit up to a period of two years without prior issuance of a warning if the permittee, through gross carelessness, performed all or any part of a weather modification and control operation outside the boundaries of a permit area.

SECTION 1.062. Subsections (a) and (b), Section 18.172, Water Code, are amended to read as follows:

(a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, license, permit, or order of the commission [~~or board~~], then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, license, permit, or order of the commission [~~or board~~], the district court shall grant the injunctive relief the facts may warrant.

SECTION 1.063. Section 26.001, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.001. DEFINITIONS. As used in this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

[~~(4) "Department" means the Texas Department of Water Resources.~~]

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term "agricultural waste" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, that may cause impairment of the quality of water in the state. "Other waste" also includes tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland that may cause impairment of the quality of the water in the state.

(13) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(14) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(15) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(16) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(17) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution.

(18) "Permit" means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(19) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

SECTION 1.064. Section 26.001, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.001. DEFINITIONS. As used in this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

[~~(4) "Department" means the Texas Department of Water Resources.~~]

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term "agricultural waste" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

(14) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(16) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(17) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(18) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(19) "Permit" means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(20) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(22) "Identified state supplement to an NPDES permit" means any part of a permit on which the board has entered a written designation to indicate that the board has adopted that part solely in order to carry out the board's duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.

(23) "NPDES" means the National Pollutant Discharge Elimination System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act.

(24) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including:

(A) intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances;

(B) extensions, improvements, remodeling, additions, and alterations of the items in Paragraph (A) of this subdivision;

(C) elements essential to provide a reliable recycled supply such as standby treatment units and clear-well facilities;

(D) any works, including sites and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment;

(E) any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; and

(F) facilities to provide for the collection, control, and disposal of waste heat.

SECTION 1.065. Sections 26.011 and 26.012, Water Code, are amended to read as follows:

Sec. 26.011. IN GENERAL. Except as otherwise specifically provided, the commission [~~department~~] shall administer the provisions of this chapter and shall

establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules or orders adopted or issued by the commission [~~department~~] in the public interest. The commission [~~department~~] has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

Sec. 26.012. STATE WATER QUALITY PLAN. The executive director shall prepare and develop a general, comprehensive plan for the control of water quality in the state which shall be used as a flexible guide by the commission [~~department~~] when approved by the commission [~~board~~].

SECTION 1.066. Section 26.014, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.014. POWER TO ENTER PROPERTY. The members of the commission and employees and agents of the commission [~~department~~] are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

SECTION 1.067. Section 26.014, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.014. POWER TO ENTER PROPERTY. The members of the commission and employees and agents of the commission [~~department~~] are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the commission [~~department~~]. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

SECTION 1.068. Section 26.015, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.015. POWER TO EXAMINE RECORDS. The members of the commission and employees and agents of the commission [~~department~~] may examine during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste.

SECTION 1.069. Section 26.015, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.015. POWER TO EXAMINE RECORDS. The members of the commission and employees and agents of the commission [~~department~~] may examine and copy during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste or pollutants into any water in the state, or any other records required to be maintained.

SECTION 1.070. Sections 26.016-26.018, Water Code, are amended to read as follows:

Sec. 26.016. ENFORCEMENT PROCEEDINGS. The executive director may institute court proceedings to compel compliance with the provisions of this chapter or the rules, orders, permits, or other decisions of the commission [~~department~~].

Sec. 26.017. COOPERATION. The commission [~~department~~] shall:

(1) encourage voluntary cooperation by the people, cities, industries, associations, agricultural interests, and representatives of other interests in preserving the greatest possible utility of water in the state;

(2) encourage the formation and organization of cooperative groups, associations, cities, industries, and other water users for the purpose of providing a medium to discuss and formulate plans for attainment of water quality control;

(3) establish policies and procedures for securing close cooperation among state agencies that have water quality control functions; and

(4) cooperate with the governments of the United States and other states and with official or unofficial agencies and organizations with respect to water quality control matters and with respect to formulation of interstate water quality control compacts or agreements, and when representation of state interests on a basin planning agency for water quality purposes is required under Section 3(c) of the Federal Water Pollution Control Act, as amended, or other federal legislation having a similar purpose, the representation shall include an officer or employee of the commission [~~board~~].

Sec. 26.018. CONTRACTS, INSTRUMENTS. With the approval of the commission [~~board~~], the executive director may make contracts and execute instruments that are necessary or convenient to the exercise of the commission's [~~department's~~] powers or the performance of its duties.

SECTION 1.071. Subsection (c), Section 26.0191, Water Code, is amended to read as follows:

(c) At the hearing, the commission shall affirm, modify, or set aside the temporary or emergency order. If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and the rules of the commission [~~department~~].

SECTION 1.072. Sections 26.023-26.026, Water Code, are amended to read as follows:

Sec. 26.023. WATER QUALITY STANDARDS. The commission [~~board~~] by rule shall set water quality standards for the water in the state and may amend the standards from time to time. The commission [~~board~~] has the sole and exclusive authority to set water quality standards for all water in the state.

Sec. 26.024. HEARINGS ON STANDARDS; CONSULTATION. Before setting or amending water quality standards, the commission [~~board~~] shall:

(1) hold public hearings at which any person may appear and present evidence under oath, pertinent for consideration by the commission [~~board~~]; and

(2) consult with the executive administrator [~~director~~] to insure that the proposed standards are not inconsistent with the objectives of the state water plan.

Sec. 26.025. HEARINGS ON STANDARDS: NOTICE TO WHOM. Notice of a hearing under Section 26.024 of this code shall be given to each of the following that the commission [~~board~~] believes may be affected:

(1) each local government whose boundary is contiguous to the water in question or whose boundaries contain all or part of the water, or through whose boundaries the water flows;

(2) the holders of rights to appropriate water from the water in question as shown by the records of the department; and

(3) the holders of permits from the commission to discharge waste into or adjacent to the water in question.

Sec. 26.026. STANDARDS TO BE PUBLISHED. The commission [~~department~~] shall publish its water quality standards and amendments and shall make copies available to the public on written request.

SECTION 1.073. Subsection (b), Section 26.027, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the commission [~~department~~] containing all information reasonably required by the commission [~~department~~].

SECTION 1.074. Subsection (b), Section 26.027, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the commission [~~department~~] containing all information reasonably required by the commission [~~department~~].

SECTION 1.075. Subsection (d), Section 26.029, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the commission [~~department~~].

SECTION 1.076. Subsection (d), Section 26.027, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the commission [~~department~~].

SECTION 1.077. Subsections (a)-(d), Section 26.0291, Water Code, are amended to read as follows:

(a) An annual waste treatment inspection fee is imposed on each permittee for each waste discharge permit held by the permittee. The fee is to supplement any other funds available to pay expenses of the commission [~~department~~] in inspecting waste treatment facilities and enforcing the laws of the state, and the rules of the commission [~~Texas Department of Water Resources~~], governing waste discharge and waste treatment facilities. The fee for each year is imposed on each permit in effect during any part of the year.

(b) The commission [~~board~~], by rule, shall adopt a fee schedule for determining the amount of the fee to be charged. The amounts of the fees in such schedule shall be proportional to the average volume of discharge specified in the permit, beginning at $100 for a zero discharge or small discharge, and a maximum of $2,000 for the largest average volume of discharge in the state. The annual fee to be charged each permittee shall be that set by the fee schedule adopted by the commission [~~board~~].

(c) The fees collected under this section shall be deposited in a special fund in the state treasury to be known as the waste treatment facility inspection fund. Money in the fund shall be used to supplement any other funds available for paying expenses of the commission [~~department~~] in inspecting waste treatment facilities.

(d) The commission [~~board~~] may adopt rules necessary to administer this section.

SECTION 1.078. Subsections (b), (c), (d), (f), (g), (h), and (i), Section 26.031, Water Code, are amended to read as follows:

(b) Whenever it appears that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the commission [~~board~~] may hold a public hearing in or near the area to determine

whether rules should be adopted controlling or prohibiting the installation or use of private sewage facilities in the area.

(c) Before the commission [~~board~~] adopts its rules, the executive director shall consult with the commissioner of the Texas Department of Health for recommendations concerning the impact of the use of private sewage facilities in the area on public health and present the recommendations at the hearing.

(d) If the commission [~~board~~] finds after the hearing that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the commission [~~board~~] may adopt rules as it may consider appropriate to abate or prevent pollution or injury to public health.

(f) The commission [~~board~~] may provide in the rules for a system of licensing of private sewage facilities in the area, including procedures for cancellation of a license for violation of this section, the license, or the rules of the commission [~~department~~]. The commission [~~board~~] may also provide in the system of licensing for periodic renewal of the licenses, but this may not be required more frequently than once a year.

(g) The commission [~~board~~] may delegate the licensing function and the administration of the licensing system to the executive director or to any local government whose boundaries include the area or which has been designated by the commission [~~board~~] under Sections 26.081 through 26.086 of this code as the agency to develop a regional waste disposal system which includes the area or to any district or authority created and existing under Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution, which owns or operates a dam or reservoir project within the area regulated.

(h) The commission [~~board~~] also may prescribe and require the payment of reasonable license fees by an applicant for a license, including fees for periodic renewal of a license. The commission [~~board~~] may change the amount of the license fees from time to time. The amount of the fees shall be based on the reasonable cost of performing the licensing function and administering the licensing system, including, where applicable, costs of soil percolation and other tests to determine the suitability of using a particular type or types of private sewage facilities in the area or at any location within the area, field inspections, travel, and other costs directly attributable to performing the licensing function and administering the licensing system.

(i) If the commission [~~board~~] or the executive director has the responsibility for performing the licensing function, the license fees shall be paid to the commission [~~department~~]. Those fees shall not be deposited in the General Revenue Fund of the state but shall be deposited in a special fund for use by the commission [~~department~~] in performing the licensing function and administering the licensing system, and the fees so deposited are hereby appropriated to the commission [~~department~~] to use for those purposes only.

SECTION 1.079. Section 26.032, Water Code, is amended to read as follows:

Sec. 26.032. CONTROL BY COUNTIES. (a) Whenever it appears to the commissioners court of any county that the use of private sewage facilities in an area within the county is causing or may cause pollution or is injuring or may injure the public health, the county may proceed in the same manner and in accordance with the same procedures as the commission [~~board~~] to hold a public hearing and enter an order, resolution, or other rule as it may consider appropriate to abate or prevent pollution or injury to public health.

(b) The order, resolution, or other rule may provide the same restrictions and requirements as are authorized for an order of the commission [~~board~~] entered under this section.

(c) Before the order, resolution, or other rule becomes effective, the county shall submit it to the commission [~~board~~] and obtain the commission's [~~board's~~] written approval.

(d) In the event of any conflict within an area between rules adopted by the commission [board] and an order, resolution, or other rule adopted by a county under this section, the rules of the commission [board] shall take precedence.

(e) Where a system of licensing has been adopted by the commission [board] or the commissioners court of a county, no person may install or use private sewage facilities required to be licensed without obtaining a license.

SECTION 1.080. Subsections (a), (b), and (c), Section 26.033, Water Code, are amended to read as follows:

(a) After consultation with the Texas Department of Health [Resources], the commission [board] shall provide by rule for a system of approved ratings for municipal waste disposal systems and other waste disposal systems which the commission [board] may designate.

(b) The owner or operator of a municipal waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the commission [board] on highways approaching or inside the boundaries of the municipality, subject to reasonable restrictions and requirements which may be established by the State Department of Highways and Public Transportation.

(c) In addition, the owner or operator of any waste disposal system, including a municipal system, which attains an approved rating has the privilege of erecting signs of a design approved by the commission [board] at locations which may be approved or established by the commission [board], subject to such reasonable restrictions and requirements which may be imposed by any governmental entity having jurisdiction.

SECTION 1.081. Sections 26.034 and 26.035, Water Code, are amended to read as follows:

Sec. 26.034. APPROVAL OF DISPOSAL SYSTEM PLANS. (a) The commission [executive director] shall review and approve plans and specifications for treatment works for which financial assistance is provided in any amount from water quality enhancement funds or funds granted under the Federal Water Pollution Control Act, as amended. To avoid duplicate review and approval by two or more state agencies, review and approval of plans and specifications under this subsection by the Texas Department of Health is not required. [The Texas Department of Health shall review and approve plans in those cases where such financial assistance or federal grant has not been requested except when notice of intention to apply for the financial assistance or federal grant has been given to the executive director in which case the executive director shall perform review and approval functions. Duplicate review and approval will not be performed and actions on review and approval shall be fully interchangeable between the executive director and the Texas Department of Health].

(b) Before beginning construction, every person who proposes to construct or materially alter the efficiency of any treatment works to which this section applies shall submit completed plans and specifications to the commission [executive director] for review and approval.

(c) The commission [executive director] shall approve the plans and specifications if they conform to the waste discharge requirements and water quality standards established by the commission [and the board respectively].

Sec. 26.035. FEDERAL GRANTS. The executive director with the approval of the commission or the executive administrator with the approval of the board, as applicable under this code or other laws, [board] may execute agreements with the United States Environmental Protection Agency or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures, and facilities for the collection, treatment, and disposal of waste or other water quality control activities. The

commission or board [~~department~~] may accept federal funds for these purposes and for other purposes consistent with the objectives of this chapter and may use the funds as prescribed by law or as provided by agreement.

SECTION 1.082. Section 26.036, Water Code, is amended to read as follows:

Sec. 26.036. WATER QUALITY MANAGEMENT PLANS. (a) The executive director shall develop and prepare, and from time to time revise, comprehensive water quality management plans for the different areas of the state, as designated by the commission [~~board~~].

(b) The executive director may contract with local governments, regional planning commissions, planning agencies, other state agencies, colleges and universities in the state, and any other qualified and competent person to assist the commission [~~department~~] in developing and preparing, and from time to time revising, water quality management plans for areas designated by the commission [~~board~~].

(c) With funds provided for the purpose by legislative appropriation, the commission [~~board~~] may make grants or interest-free loans to, or contract with, local governments, regional planning commissions, and planning agencies to pay administrative and other expenses of such entities for developing and preparing, and from time to time revising, water quality management plans for areas designated by the commission [~~board~~]. The period of time for which funding under this provision may be provided for developing and preparing or for revising a plan may not exceed three consecutive years in each instance. Any loan made pursuant to this subsection shall be repaid when the construction of any project included in the plan is begun.

(d) Any person developing or revising a plan shall, during the course of the work, consult with the commission [~~department~~] and with local governments and other federal, state, and local governmental agencies which in the judgment of the commission [~~executive director~~] may be affected by or have a legitimate interest in the plan.

(e) Insofar as may be practical, the water quality management plans shall be reasonably compatible with the other governmental plans for the area, such as area or regional transportation, public utility, zoning, public education, recreation, housing, and other related development plans.

SECTION 1.083. Subsections (a), (b), and (c), Section 26.037, Water Code, are amended to read as follows:

(a) After a water quality management plan has been prepared or significantly revised as authorized in Section 26.036 of this code, it shall be submitted to the commission [~~board~~] and to such local governments and other federal, state, and local governmental agencies as in the judgment of the commission [~~executive director~~] may be affected by or have a legitimate interest in the plan.

(b) After a reasonable period of time as determined by the commission [~~board~~] for the persons to whom the plan was submitted to review and consult on the plan, a public hearing shall be held on whether the plan should be approved or whether the plan should be modified in any way. Notice of the hearing shall be given to the person or persons who prepared or revised the plan and to the persons to whom the plan was submitted for review.

(c) After the public hearing if the commission [~~board~~] finds that the plan complies with the policy and purpose of this chapter and the rules and policies of the commission [~~board~~], it shall approve the plan. If the commission [~~board~~] does not so find, it may disapprove the plan, modify the plan as necessary so that it will comply, or return it for further development and later resubmission to the commission [~~board~~], in accordance with the procedure in Section 26.036 of this code.

SECTION 1.084. Section 26.038, Water Code, is amended to read as follows:

Sec. 26.038. FISCAL CONTROL ON WATER QUALITY MANAGEMENT PLANNING. In administering the program for making grants and loans to and contracting with local governments, regional planning commissions, and planning agencies as authorized in Subsection (c) of Section 26.036 of this code, the commission [~~board~~] shall adopt rules and procedures for the necessary engineering review and supervision, fiscal control, and fund accounting. The fiscal control and fund accounting procedures are supplemental to other procedures prescribed by law.

SECTION 1.085. Subsections (b) and (c), Section 26.039, Water Code, are amended to read as follows:

(b) Whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the commission [~~department~~] as soon as possible and not later than 24 hours after the occurrence.

(c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission [~~board~~] may adopt or issue. The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.

SECTION 1.086. Sections 26.040 and 26.041, Water Code, are amended to read as follows:

Sec. 26.040. CONTROL OF CERTAIN WASTE DISCHARGES BY RULE. Whenever the commission [~~board~~] determines that the quality of water in an area is adversely affected or threatened by the combined effects of several relatively small-quantity discharges of wastes being made for which it is not practical to issue individual permits or that the general nature of a particular type of activity which produces a waste discharge is such that requiring individual permits is unnecessarily burdensome both to the waste discharger and the commission [~~department~~], the commission [~~board~~] may by rule regulate and set the requirements and conditions for the discharges of waste.

Sec. 26.041. HEALTH HAZARDS. The commission [~~department~~] may use any means provided by this chapter to prevent a discharge of waste that is injurious to public health.

SECTION 1.087. Section 26.042, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.042. MONITORING AND REPORTING. The commission [~~board~~] may prescribe reasonable requirements for a person making waste discharges to monitor and report on his waste collection, treatment, and disposal activities. When in the judgment of the commission significant water quality management benefits will result or water quality management needs justify, the commission may also prescribe reasonable requirements for any person or persons making waste discharges to monitor and report on the quality of any water in the state which the commission has reason to believe may be materially affected by the waste discharges.

SECTION 1.088. Section 26.042, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.042. MONITORING AND REPORTING. (a) The commission [~~board~~] may prescribe reasonable requirements for a person making discharges of any waste or of any pollutant to monitor and report on his activities concerning collection, treatment, and disposal of the waste or pollutant.

(b) The commission [~~board~~] may, by regulation, order, permit, or otherwise require the owner or operator of any source of a discharge of pollutants into any

water in the state or of any source which is an industrial user of a publicly owned treatment works to:

(1) establish and maintain such records;

(2) make such reports;

(3) sample any discharges in accordance with such methods, at such locations, at such intervals, and in such manner as the commission [~~board~~] shall prescribe; and

(4) provide such other information relating to discharges of pollutants into any water in the state or to introductions of pollutants into publicly owned treatment works as the commission [~~board~~] may reasonably require.

(c) When in the judgment of the commission significant water quality management benefits will result or water quality management needs justify, the commission may also prescribe reasonable requirements for any person or persons making discharges of any waste or of any pollutant to monitor and report on the quality of any water in the state which the commission has reason to believe may be materially affected by the discharges.

SECTION 1.089. Subsections (b), (c), (d), and (f), Section 26.044, Water Code, are amended to read as follows:

(b) The commission [~~board~~] shall issue rules concerning the disposal of sewage from boats located or operated on inland fresh waters in this state. The rules of the commission [~~board~~] shall include [~~but not be limited to~~] provisions for the establishment of standards for sewage disposal devices, the certification of sewage disposal devices, including on-shore pump-out facilities, and the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device and on each on-shore pump-out device.

(c) The commission [~~board~~] may delegate the administration and performance of the certification function to the executive director or to any other governmental entity. The commission [~~board~~] may prescribe and require the payment, by applicants for certification, of reasonable fees based on the costs of administering and performing the certification function. All certification fees shall be paid to the entity performing the certification function. All fees collected by any state agency shall be deposited in a special fund for use by that agency in administering and performing the certification function and shall not be deposited in the General Revenue Fund of the state.

(d) Before issuing any rules under Subsection (b) of this section, the commission [~~board~~] or any person authorized by it under Section 26.021 of this code shall hold hearings on those rules [~~thereon~~] in Austin and in five other locations in the state in order to provide the best opportunity for all citizens of the state to appear and present evidence to the commission [~~board~~].

(f) Copies of each rule issued by the commission [~~board~~] under this section shall be filed in the offices of the commission [~~department~~] in Austin, [~~Texas,~~] in the office of the Secretary of State in Austin, and the office of the county clerk in each county in the state. The commission [~~board~~] shall provide for publication of notice of each rule issued under this section in at least one newspaper of general circulation in each county of the state and shall furnish the county judge of each county of the state a copy of the rules.

SECTION 1.090. Subsection (e), Section 26.045, Water Code, is amended to read as follows:

(e) The hearings required by this section and other acts of the commission in carrying out the provisions of this section shall be handled as provided in the rules of the commission [~~board~~].

SECTION 1.091. Section 26.046, Water Code, is amended to read as follows:

Sec. 26.046. HEARINGS ON PROTECTION OF EDWARDS AQUIFER FROM POLLUTION. (a) As used in this section, "Edwards Aquifer" means that

portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, and Hays counties, respectively, and as defined in the most recent rules of the commission [board] for the protection of the quality of the potable underground water in those counties.

(b) Annually, the commission [board] shall hold a public hearing in Kinney, Uvalde, Medina, Bexar, Kendall, Comal, or Hays County, and a hearing in any other of those counties whose commissioners court requests that a hearing be held in its county, to receive evidence from the public on actions the commission [board] should take to protect the Edwards Aquifer from pollution. Notice of the public hearing shall be given and the hearing shall be conducted in accordance with the rules of the commission [department].

SECTION 1.092. Section 21.099, Water Code (effective on delegation of NPDES authority), is amended to read as follows:

Sec. 26.047 [21.099]. PERMIT CONDITIONS AND PRETREATMENT STANDARDS CONCERNING PUBLICLY OWNED TREATMENT WORKS. (a) The commission [board] shall impose as conditions in permits for the discharge of pollutants from publicly owned treatment works requirements for information to be provided by the permittee concerning new introductions of pollutants or substantial changes in the volume or character of pollutants being introduced into such treatment works.

(b) The commission [board] is authorized to impose as conditions in permits for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under state or federal law or any regulations or guidelines promulgated thereunder.

(c) The commission [board] is authorized to apply, and to enforce pursuant to Subchapter D [E] of this chapter [code], against industrial users of publicly owned treatment works, toxic effluent standards and pretreatment standards for the introduction into such treatment works of pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works.

SECTION 1.093. Subsections (b) and (c), Section 26.081, Water Code, are amended to read as follows:

(b) Within any standard metropolitan statistical area in the state, the commission [department] is authorized to implement this policy in the manner and in accordance with the procedure provided in Sections 26.081 through 26.086 of this code.

(c) In those portions of the state which are not within a standard metropolitan statistical area, the commission [department] shall observe this state policy by encouraging interested and affected persons to cooperate in developing and using regional and area-wide systems. The commission [department] may not use the procedure specified in Sections 26.081 through 26.086 of this code in these areas to implement this policy. However, this does not affect or diminish any authority which the commission [department] may otherwise have and exercise under other provisions of this chapter.

SECTION 1.094. Sections 26.082 and 26.083, Water Code, are amended to read as follows:

Sec. 26.082. HEARING TO DEFINE AREA OF REGIONAL OR AREA-WIDE SYSTEMS. (a) Whenever it appears to the commission [board] that because of the existing or reasonably foreseeable residential, commercial, industrial, recreational, or other economic development in an area a regional or area-wide waste collection, treatment, or disposal system or systems are necessary to prevent pollution or maintain and enhance the quality of the water in the state, the

commission [board] may hold a public hearing in or near the area to determine whether the policy stated in Section 26.081 of this code should be implemented in that area.

(b) Notice of the hearing shall be given to the local governments which in the judgment of the commission [board] may be affected.

(c) If after the hearing the commission [board] finds that a regional or area-wide system or systems are necessary or desirable to prevent pollution or maintain and enhance the quality of the water in the state, the commission [board] may enter an order defining the area in which such a system or systems are necessary or desirable.

Sec. 26.083. HEARING TO DESIGNATE SYSTEMS TO SERVE THE AREA DEFINED; ORDER; ELECTION; ETC. (a) At the hearing held under Section 26.082 of this code or at a subsequent hearing held in or near an area defined under Section 26.082 of this code, the commission [board] may consider whether to designate the person to provide a regional or area-wide system or systems to serve all or part of the waste collection, treatment, or disposal needs of the area defined.

(b) Notice of the hearing shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the commission [board] may be affected.

(c) If after the hearing the commission [board] finds that there is an existing or proposed system or systems then capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of all or part of the area defined and that the owners or operators of the system or systems are agreeable to providing the services, the commission [board] may enter an order designating the person to provide the waste collection, treatment, or disposal system or systems to serve all or part of the area defined.

(d) After the commission [board] enters an order under Subsection (c) of this section and if the commission [board] receives a timely and sufficient request for an election as provided in Section 21.206, the commission [board] shall designate a presiding judge for an election, to determine whether the proposed regional or area-wide system or systems operated by the designated regional entity should be created.

SECTION 1.095. Subsection (a), Section 26.084, Water Code, is amended to read as follows:

(a) After the commission [board] has entered an order as authorized in Section 26.083 of this code, the commission may, after public hearing and after giving notice of the hearing to the persons who in the judgment of the commission may be affected, take any one or more of the following actions:

(1) enter an order requiring any person discharging or proposing to discharge waste into or adjacent to the water in the state in an area defined in an order entered under Section 26.082 of this code to use a regional or area-wide system designated under Section 26.083 of this code for the disposal of his waste;

(2) refuse to grant any permits for the discharge of waste or to approve any plans for the construction or material alteration of any sewer system, treatment facility, or disposal system in an area defined in an order entered under Section 26.082 of this code unless the permits or plans comply and are consistent with any orders entered under Sections 26.081 through 26.086 of this code; or

(3) cancel or suspend any permit, or amend any permit in any particular, which authorizes the discharge of waste in an area defined in an order entered under Section 26.082 of this code.

SECTION 1.096. Section 21.206, Water Code (Section 26.087, Vernon's Texas Water Code), is amended to read as follows:

Sec. 26.087 [~~21.206~~]. ELECTION FOR APPROVAL OF REGIONAL OR AREA-WIDE SYSTEM OR SYSTEMS. (a) After the commission [board], under

Sections 26.082 [~~21.202~~] and 26.083 [~~21.203~~] of this code, enters an order: defining an area for a regional or area-wide system or systems; designating a regional entity to operate the regional or area-wide system or systems; and appointing a presiding judge for the election, an election shall be held within the boundaries of the proposed regional or area-wide system or systems to be operated by the designated regional entity upon the filing of a timely and sufficient request for an election except as provided in Subsection (i) of this section.

(b) Any person located within the boundaries of the proposed regional or area-wide system or systems requesting an election for the approval of the proposed regional or area-wide system or systems to be operated by the designated regional entity shall file a written request with the commission [~~board~~] within 30 days of the date the commission [~~board~~] enters an order under Section 26.083 of this code [~~21.203~~]. The request shall include a petition signed by 50 persons holding title to the land within the proposed regional or area-wide system or systems, as indicated by the county tax rolls.

(c) Notice of the election shall state the day and place or places for holding the election, and the proposition to be voted on. The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which the regional or area-wide system or systems is to be located. The first publication of the notice shall be at least 14 days before the day set for the election. Notice of the election shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the board may be affected.

(d) Absentee balloting in the election shall begin 10 days before the election and shall end as provided in the Texas Election Code. The ballots for the election shall be printed to provide for voting for or against the regional or area-wide system to be operated by the designated regional entity.

(e) Immediately after the election, the presiding judge shall make returns of the result to the executive director [~~of the board~~]. The executive director shall canvass the returns and report to the commission [~~board~~] his findings of the results at the earliest possible time.

(f) If a majority of the votes cast in the election favor the creation of the regional or area-wide system or systems operated by the designated regional entity, then the commission [~~board~~] shall declare the regional system is created and enter the results in its minutes. If a majority of the votes cast in the election are against the creation of the regional or area-wide system or systems operated by the designated regional entity, then the commission [~~board~~] shall declare that the regional system was defeated and enter the result in its minutes.

(g) The order canvassing the results of the confirmation election shall contain a description of the regional system's boundaries and shall be filed in the deed records of the county or counties in which the regional system is located.

(h) The legislature, through the General Appropriations Act, may provide funds for the conduct of elections required under this section. If no funds are appropriated for this purpose, the costs of conducting the election shall be assessed by the commission [~~board~~].

(i) This subsection applies to regional or area-wide system or systems and regional entities which have been designated prior to the effective date of this Act. An election to approve creation of a regional or area-wide system or systems and the designation of a regional entity to operate those systems as provided in this section shall not be required for those regional systems or entities to which this subsection applies.

SECTION 1.097. Section 26.121, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.121. UNAUTHORIZED DISCHARGES PROHIBITED. (a) Except as authorized by a rule, permit, or order issued by the commission [~~department~~], no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, permit, or order of the commission [~~department~~].

SECTION 1.098. Section 26.121, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.121. UNAUTHORIZED DISCHARGES PROHIBITED. (a) Except as authorized by a rule, permit, or order issued by the commission [~~department~~], no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, permit, or order of the commission [~~department~~].

(d) Except as authorized by a rule, permit, or order issued by the commission [~~department~~], no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.

(e) No person may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter or of any rule, regulation, permit, or other order of the commission [~~board~~].

SECTION 1.099. Section 26.124, Water Code, is amended to read as follows:

Sec. 26.124. ENFORCEMENT BY OTHERS. (a) Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the commission [~~department~~] has occurred or is

occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the commission [~~department~~], may have a suit instituted in a district court through its own attorney for the injunctive relief or civil penalties or both, as authorized in Subsection (a) of Section 26.123 of this code, against the person who committed or is committing or threatening to commit the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the commission [~~department~~] is a necessary and indispensable party.

(b) Whenever it appears that a violation or a threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the commission [~~department~~] has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the commission [~~department~~], may have a suit instituted in a district court for injunctive relief or civil penalties or both, as authorized in Section 26.123(a) of this code, against the person who committed or is committing or is threatening to commit the violation. The suit shall be brought in the name of the State of Texas through the county attorney or the district attorney, as appropriate, of the county where the defendant resides or in the county where the violation or threat of violation occurs.

SECTION 1.100. Subsection (b), Section 26.125, Water Code, is amended to read as follows:

(b) In any suit brought to enjoin a violation or threat of violation of this chapter or any rule, permit, or order of the commission [~~department~~], the court may grant the commission [~~department~~], the Parks and Wildlife Department, or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders, after notice and hearing temporary injunctions, and permanent injunctions.

SECTION 1.101. Subsection (a), Section 26.126, Water Code, is amended to read as follows:

(a) All civil penalties recovered in suits instituted by the State of Texas under this chapter through the commission [~~department~~] or the Parks and Wildlife Department shall be paid to the General Revenue Fund of the State of Texas.

SECTION 1.102. Sections 26.127 and 26.130, Water Code, are amended to read as follows:

Sec. 26.127. COMMISSION [~~DEPARTMENT~~] AS PRINCIPAL AUTHORITY. The commission [~~department~~] is the principal authority in the state on matters relating to the quality of the water in the state. The executive director has the responsibility for establishing a water quality sampling and monitoring program for the state. All other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the commission [~~department~~].

Sec. 26.130. DUTY OF DEPARTMENT OF HEALTH [~~RESOURCES~~]. The Texas Department of Health [~~Resources~~] shall continue to apply the authority vested in it by Chapter 178, Acts of the 49th Legislature, 1945, as amended (Article 4477-1, Vernon's Texas Civil Statutes), in the abatement of nuisances resulting from pollution not otherwise covered by this chapter. The Texas Department of Health [~~Resources~~] shall investigate and make recommendations to the commission [~~department~~] concerning the health aspects of matters related to the quality of the water in the state.

SECTION 1.1021. Subsection (a), Section 26.212, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

(a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which causes or which will cause water pollution unless the waste is discharged in compliance with a permit or order issued by the commission [~~department~~] or the Railroad Commission of Texas.

SECTION 1.1022. Subsections (a), (c), (d), and (e), Section 26.212, Water Code (effective on delegation of NPDES permit authority), are amended to read as follows:

(a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which causes or which will cause water pollution unless the waste is discharged in compliance with a permit or order issued by the commission [~~department~~] or the Railroad Commission of Texas.

(c) No person may wilfully or negligently cause, suffer, allow, or permit the discharge from a point source, of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter, or of any rule, regulation, permit, or other order of the commission [~~department~~].

(d) No person may knowingly make any false statement, representation, or certification in any application, notice, record, report, plan, or other document filed or required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the commission [~~department~~].

(e) No person may falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the commission [~~department~~].

SECTION 1.1023. Subsection (a), Section 26.214, Water Code, is amended to read as follows:

(a) A person who violates any rule entered by the commission [~~board~~] under Section 26.031 of this code or order adopted by a county under Section 26.032 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each day that a violation occurs constitutes a separate offense.

SECTION 1.103. Sections 26.131, 26.135, and 26.171-26.173, Water Code, are amended to read as follows:

Sec. 26.131. DUTIES OF RAILROAD COMMISSION. The Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources, and, except to the extent the activities are regulated by the Texas Department of Health under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), from activities associated with uranium exploration consisting of the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of uranium ore. The Railroad Commission of Texas may issue permits for the discharge of waste resulting from these activities, and discharge of waste into water in this state resulting from these activities shall meet the water quality standards established by the commission [~~board~~].

Sec. 26.135. EFFECT ON OTHER LAWS. (a) Nothing in this chapter affects the powers and duties of the commission [~~department~~] and the Railroad Commission of Texas with respect to injection wells as provided in Chapter 27 of this code.

(b) The commission [~~department~~] and the Water Well Drillers Board shall continue to exercise the authority granted to them in The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes).

Sec. 26.171. INSPECTION OF PUBLIC WATER. A local government may inspect the public water in its area and determine whether or not:

(1) the quality of the water meets the state water quality standards adopted by the commission [~~board~~];

(2) persons discharging effluent into the public water located in the areas of which the local government has jurisdiction have obtained permits for discharge of the effluent; and

(3) persons who have permits are making discharges in compliance with the requirements of the permits.

Sec. 26.172. RECOMMENDATIONS TO COMMISSION [~~BOARD~~]. A local government may make written recommendations to the commission [~~board~~] as to what in its judgment the water quality standards should be for any public water within its territorial jurisdiction.

Sec. 26.173. POWER TO ENTER PROPERTY. (a) A local government has the same power as the commission [~~department~~] has under Section 26.014 of this code to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the commission [~~department~~].

(b) When requested by the executive director, the result of any inspection or investigation made by the local government shall be transmitted to the commission [~~department~~] for its consideration.

SECTION 1.104. Subsections (a) and (b), Section 26.175, Water Code, are amended to read as follows:

(a) A local government may execute cooperative agreements with the commission [~~department~~] or other local governments:

(1) to provide for the performance of water quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems.

(b) When in the opinion of the executive director it would facilitate and enhance the performance by a local government of its water quality management, inspection, and enforcement functions pursuant to a cooperative agreement between the local government and the commission [~~department~~] as authorized in Subsection (a) of this section, the executive director may assign and delegate to the local government during the period of the agreement such of the pertinent powers and functions vested in the commission [~~department~~] under this chapter as in the judgment of the executive director may be necessary or helpful to the local government in performing those management, inspection, and enforcement functions.

SECTION 1.105. Subsection (b), Section 26.176, Water Code, is amended to read as follows:

(b) The local government in its rules may establish the charges and assessments which may be made to and collected from all persons who discharge waste to the disposal system or who have conduits or other facilities for discharging waste connected to the disposal system, referred to in this subsection as "users." The charges and assessments shall be equitable as between all users and shall correspond as near as can be practically determined to the cost of making the waste disposal services available to all users and of treating the waste of each user or class of users. The charges and assessments may include user charges, connection fees, or any other methods of obtaining revenue from the disposal system available to the local government. In establishing the charges and assessments, the local government shall take into account:

(1) the volume, type, character, and quality of the waste of each user or class of users;

(2) the techniques of treatment required;

(3) any capital costs and debt retirement expenses of the disposal system required to be paid for from the charges and assessments;

(4) the costs of operating and maintaining the system to comply with this chapter and the permits, rules, and orders of the commission [~~department~~]; and

(5) any other costs directly attributable to providing the waste disposal service under standard, accepted cost-accounting practices.

SECTION 1.106. Subsection (b), Section 26.177, Water Code, is amended to read as follows:

(b) The water pollution control and abatement program of a city shall encompass the entire city and may include areas within its extraterritorial jurisdiction which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the commission [~~department~~];

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to Subdivision (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the commission [~~department~~], and whether they should be covered by a permit from the commission;

(4) in cooperation with the commission [~~department~~], a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings; and

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater.

SECTION 1.107. Subsections (a), (b), (d), (f), (h), and (j), Section 26.264, Water Code, are amended to read as follows:

(a) The commission [~~department~~] shall be the state's lead agency in spill response, shall conduct spill response for the state, and shall otherwise administer this subchapter. The commission [~~department~~] shall cooperate with other agencies, departments, and subdivisions of this state and of the United States in implementing this subchapter. In the event of a discharge or spill and after reasonable effort to obtain entry rights from each property owner involved, if any, the executive director may enter affected property to carry out necessary spill response actions.

(b) The commission [~~board~~] may issue rules necessary and convenient to carry out the purposes of this subchapter.

(d) The executive director with the approval of the commission [~~board~~] may contract with any public agency or private persons or other entity for the purpose of implementing this subchapter.

(f) The commission [~~department~~] and the State Department of Highways and Public Transportation, in cooperation with the governor, the United States Coast Guard, and the Environmental Protection Agency, shall develop a contractual agreement whereby personnel, equipment, and materials in possession or under control of the State Department of Highways and Public Transportation may be diverted and utilized for spill and discharge cleanup as provided for in this subchapter. Under the agreement, the following conditions shall be met:

(1) the commission [~~department~~] and the State Department of Highways and Public Transportation shall develop and maintain written agreements and contracts on how such utilization will be effected, and designating agents for this purpose;

(2) personnel, equipment, and materials may be diverted only with the approval of the commission [~~department~~] and the State Department of Highways and Public Transportation, acting through their designated agents, or by action of the governor;

(3) all expenses and costs of acquisition of such equipment and materials or resulting from such cleanup activities shall be paid from the fund, subject to reimbursement as provided in this subchapter; and

(4) subsequent to such activities, a full report of all expenditures and significant actions shall be prepared and submitted to the governor, the Legislative Budget Board, and the state auditor, and shall be reviewed by the commission [~~board~~].

(h)(1) In developing rules and plans under this subchapter and in engaging in cleanup activities, the commission [~~board~~] shall recognize the authority of the predesignated federal on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills. The executive director shall place the resources of the state at the disposal of the on-scene coordinator, if he is present, or shall engage in cleanup activities when directed to do so by the on-scene coordinator.

(2) Nothing in this subchapter shall prevent the executive director from appointing a state-designated on-scene coordinator and acting independently if no on-scene coordinator is present and no action is being taken by an agency of the federal government.

(3) The commission [~~department~~] shall seek reimbursement from the designated agencies of the federal government for the reasonable costs incurred in cleanup operations, including but not limited to costs of personnel, equipment, the use of equipment, and supplies and restoration of land and aquatic resources held in trust or owned by the state.

(j) This subchapter is cumulative of all other powers of the commission [~~department~~].

SECTION 1.108. Subsection (c), Section 26.265, Water Code, is amended to read as follows:

(c) The executive director with the approval of the commission [~~board~~] may expend money in the fund only for the purpose of obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills, including restoration of land and aquatic resources held in trust or owned by the state.

SECTION 1.109. Subsections (b), (c), and (d), Section 26.266, Water Code, are amended to read as follows:

(b) In the event that the responsible party is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of such party is inadequate, the commission [~~department~~] may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.

(c) Any discharge or spill of a hazardous substance, the source of which is unknown, occurring in waters of the state or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter waters of the state may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the commission's [~~board's~~] approval, from the fund, subject to the authority of the commission [~~board~~] to seek reimbursement from an agency of the federal government, and from the responsible party if the identity of that party is discovered.

(d) In any activity undertaken pursuant to this section, the commission [~~department~~] shall act in accordance with the national contingency plan authorized by the Federal Water Pollution Control Act, as amended, and with Section 26.264(h) of this code.

SECTION 1.110. Section 26.302, Water Code, is amended to read as follows:

Sec. 26.302. ADMINISTRATIVE PROVISIONS. (a) The commission [~~department~~] shall administer this subchapter.

(b) The commission [~~department~~] shall cooperate with cities and towns and with agencies, departments, and political subdivisions of this state and the United States and its agencies in implementing this subchapter and the environmental response law.

(c) The commission [~~board~~] may adopt rules necessary to carry out this subchapter.

SECTION 1.111. Subsections (a), (b) and (c), Section 26.303, Water Code, are amended to read as follows:

(a) The commission [~~department~~] may enter into contracts and cooperative agreements with the federal government to carry out removal and remedial action for a specific disposal facility as authorized by Section 104(c)(3) of the environmental response law or to carry out removal and remedial action with regard to a disposal facility under Section 104(d)(1) of the environmental response law.

(b) After notice and hearing, the commission [~~board~~] may authorize the executive director to enter into contracts and agreements on behalf of the commission [~~department~~] under Subsection (a) of this section pursuant to terms and conditions stated in the commission's [~~board's~~] order.

(c) If the commission [~~department~~] enters into a contract or cooperative agreement under Section 104(c)(3) of the environmental response law, the commission [~~board~~] shall include in the contract or agreement terms and conditions:

(1) to assure future maintenance of the removal and remedial actions provided for the expected life of those actions as determined by the federal government;

(2) to assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances, pollutants, or contaminants; and

(3) to assure payment by the state of:

(A) 10 percent of the costs of the remedial actions, including future maintenance; or

(B) at least 50 percent or more of the costs as determined appropriate by the federal government, taking into account the degree of responsibility of the state for any amount spent in response to a release at a disposal facility that was owned by the state at the time of disposal of hazardous substances at the disposal facility.

SECTION 1.112. Subsections (b) and (d), Section 26.304, Water Code, are amended to read as follows:

(b) The fund shall include money appropriated to it by the legislature and any other money received by the commission [~~department~~] from the federal government.

(d) Money in the fund may not be used for normal administrative and operating expenses of the commission [~~department~~].

SECTION 1.113. Sections 26.305-26.307, Water Code, are amended to read as follows:

Sec. 26.305. CONSULTATION WITH FEDERAL GOVERNMENT. Before entering into a contract or cooperative agreement under Section 26.303 of

this code, the commission [~~department~~] shall consult and work with the federal government in determining the response that will be necessary under the contract or cooperative agreement with regard to the particular disposal facility.

Sec. 26.306. STATE TO PROVIDE INFORMATION. The commission [~~department~~] shall collect and shall file with the federal government any information required by the environmental response law and rules adopted under that law.

Sec. 26.307. STATE RESPONSE. The commission [~~department~~] may exercise any authority granted under this chapter if necessary to accomplish the purposes and requirements of the contract or cooperative agreement with the federal government.

SECTION 1.114. Sections 27.002, 27.011-27.015, and 27.017, Water Code, are amended to read as follows:

Sec. 27.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Water Commission.

(2) [~~"Board" means the Texas Water Development Board.~~

[~~(3)~~] "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(3) [~~(4) "Department" means the Texas Department of Water Resources.~~

[~~(5)~~] "Railroad commission" means the Railroad Commission of Texas.

(4) [~~(6)~~] "Pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(5) [~~(7)~~] "Industrial and municipal waste" means any liquid, gaseous, solid, or other waste substance, or combination of these substances, which may cause or might reasonably be expected to cause pollution of fresh water and which result from:

(A) processes of industry, manufacturing, trade, or business;

(B) development or recovery of natural resources other than oil or gas; or

(C) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, and other municipal corporations.

(6) [~~(8)~~] "Oil and gas waste" means waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material.

(7) [~~(9)~~] "Fluid" means a material or substance that flows or moves in a liquid, gaseous, solid, semi-solid, sludge, or other form or state.

(8) [~~(10)~~] "Fresh water" means water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(9) [~~(11)~~] "Casing" means material lining used to seal off strata at and below the earth's surface.

(10) [~~(12)~~] "Disposal well" means an injection well that is used for the injection of industrial and municipal waste or oil and gas waste.

(11) [~~(13)~~] "Injection well" means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or some

other method, and used to inject, transmit, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well initially drilled to produce oil and gas which is used to transmit, inject, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well used for the injection of any other fluid; but the term does not include any surface pit, surface excavation, or natural depression used to dispose of industrial and municipal waste or oil and gas waste.

(12) [~~(14)~~] "Extraction of minerals" means the use of an injection well for the development or recovery of natural resources other than resources subject to the jurisdiction of the railroad commission, and includes solution mining of minerals, in situ uranium mining, and mining of sulfur by the Frasch process, but does not include the solution mining of salt when leaching a cavern for the storage of hydrocarbons.

Sec. 27.011. PERMIT FROM COMMISSION. Unless the activity is subject to the jurisdiction of the railroad commission or authorized by a rule of the commission [~~department~~], no person may continue utilizing an injection well or begin drilling an injection well or converting an existing well into an injection well to dispose of industrial and municipal waste, to extract minerals, or to inject a fluid without first obtaining a permit from the commission.

Sec. 27.012. APPLICATION FOR PERMIT. The commission [~~department~~] shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Sec. 27.013. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the executive director considers necessary to discharge his duties under this chapter and the rules of the commission [~~board~~].

Sec. 27.014. APPLICATION FEE. With each application for a disposal well permit, the commission [~~department~~] shall collect a fee of $25 for the benefit of the state.

Sec. 27.015. LETTER FROM RAILROAD COMMISSION. A person making application to the commission [~~department~~] for a disposal well permit under this chapter shall submit with the application a letter from the railroad commission stating that drilling or using the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any oil or gas formation.

Sec. 27.017. RECOMMENDATIONS FROM OTHER AGENCIES. The executive director shall submit to the Texas Department of Health, the Water Well Drillers Board, and to other persons which the commission [~~board~~] may designate, copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application and shall have reasonable time to do so as the commission [~~board~~] may prescribe.

SECTION 1.115. Subsection (b), Section 27.018, Water Code, is amended to read as follows:

(b) The commission [~~board~~] by rule shall provide for giving notice of the opportunity to request a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and affected persons. The commission [~~board~~] shall define "affected person" by rule.

SECTION 1.116. Sections 27.019 and 27.020, Water Code, are amended to read as follows:

Sec. 27.019. RULES, ETC. (a) The commission [~~department~~] shall adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this chapter.

(b) Copies of any rules under this chapter proposed by the commission [~~board~~] shall before their adoption be sent to the railroad commission, [~~the~~

~~executive director,~~] the Texas Department of Health, the Water Well Drillers Board, and any other persons the commission [~~board~~] may designate. Any agency or person to whom the copies of proposed rules are sent may submit comments and recommendations to the commission [~~board~~] and shall have reasonable time to do so as the commission [~~board~~] may prescribe.

Sec. 27.020. MINING OF SULFUR. The commission [~~department~~] is authorized to develop a regulatory program with respect to the injection of fluid associated with the mining of sulfur by the Frasch process in accordance with the provisions of this chapter. The commission [~~department~~] may not impose any requirements more stringent than those promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, 42 U.S.C. 300h et seq., as amended, unless the commission [~~department~~] determines that more stringent regulations are necessary to protect human health or the environment.

SECTION 1.117. Subsection (b), Section 27.034, Water Code, is amended to read as follows:

(b) Copies of any rules under this chapter proposed by the railroad commission shall, before their adoption, be sent to the commission [~~department~~], the Texas Department of Health, the Water Well Drillers Board, and any other persons the railroad commission may designate. Any agency or person to whom the copies of proposed rules and regulations are sent may submit comments and recommendations to the railroad commission and shall have reasonable time to do so as the railroad commission may prescribe.

SECTION 1.118. Subsection (f), Section 27.0511, Water Code, is amended to read as follows:

(f) No person may continue utilizing or begin utilizing industrial or municipal waste as an injection fluid for enhanced recovery purposes without first obtaining a permit from the commission [~~department~~].

SECTION 1.119. Section 27.052, Water Code, is amended to read as follows:

Sec. 27.052. COPIES OF PERMIT; FILING REQUIREMENTS. (a) The commission [~~department~~] shall furnish the railroad commission, the Texas Department of Health, and the Water Well Drillers Board with a copy of each permit the commission issues. The railroad commission shall furnish the commission [~~department~~] with a copy of each permit the railroad commission issues and the executive director shall in turn forward copies to the Texas Department of Health and the Water Well Drillers Board.

(b) Before beginning injection operations, a person receiving a permit to inject industrial and municipal waste shall file a copy of the permit with the health authorities of the county, city, and town where the well is located.

SECTION 1.120. Sections 27.071-27.073, Water Code, are amended to read as follows:

Sec. 27.071. POWER TO ENTER PROPERTY. Members of the commission [~~board~~] and the railroad commission and employees of the commission [~~department~~] and the railroad commission may enter public or private property to inspect and investigate conditions relating to injection well or disposal well activities within their respective jurisdictions or to monitor compliance with a rule, permit, or other order of the commission [~~department~~] or railroad commission. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Sec. 27.072. POWER TO EXAMINE RECORDS. Members of the commission [~~board~~] and the railroad commission and employees of the commission [~~department~~] and railroad commission may examine and copy those records or memoranda of a business they are investigating as provided by Section 27.071 of

this code that relate to the operation of an injection or disposal well, or any other records required to be maintained by law.

Sec. 27.073. FINANCIAL RESPONSIBILITY. A person to whom an injection well permit is issued may be required by the commission [~~department~~] or railroad commission to maintain a performance bond or other form of financial security to ensure that an abandoned well is properly plugged.

SECTION 1.121. Subsection (a), Section 27.101, Water Code, is amended to read as follows:

(a) A person who violates any provision of this chapter, any rule of the commission [~~board~~] or the railroad commission made under this chapter, or any term, condition, or provision of a permit issued under this chapter shall be subject to a civil penalty in any sum not exceeding $5,000 for each day of noncompliance and for each act of noncompliance.

SECTION 1.1211. Subsection (a), Section 27.105, Water Code, is amended to read as follows:

(a) A person who knowingly or intentionally violates this chapter, a rule of the commission [~~board~~] or railroad commission, or a term, condition, or provision of a permit issued under this chapter is subject to a fine of not more than $5,000 for each violation and for each day of violation.

SECTION 1.122. Section 28.001, Water Code, is amended to read as follows:

Sec. 28.001. DEFINITIONS. In this chapter:

(1) [~~"Department" means the Texas Department of Water Resources.~~

[~~(2)~~] "Commission" means the Texas Water Commission.

(2) [~~(3)~~] "Executive Director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(3) [~~(4) "Board" means the Texas Water Development Board.~~

[~~(5)~~] "Shaft" means any vertically oriented excavation, whether constructed by drilling or mining techniques, where the depth of the excavation is greater than its diameter, the excavation penetrates into or through the base of the uppermost water-bearing strata, and the primary purpose of the excavation is the transport of workers and materials to and from a destination, at depth, for purposes of geological studies, access to existing and planned subsurface mine workings, or for ventilation of those workings.

(4) [~~(6)~~] "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of natural and artificial surface water that is inland or coastal, fresh or salt, and navigable or nonnavigable, and includes the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(5) [~~(7)~~] "Surface facilities" means the on-site above-ground appurtenances, structures, equipment, and other fixtures that are or will be used for storage or processing or in conjunction with the shaft operation.

SECTION 1.123. Sections 28.011, 28.022-28.025, and 28.027, Water Code, are amended to read as follows:

Sec. 28.011. UNDERGROUND WATER: REGULATIONS. The commission [~~department~~] shall make and enforce rules and regulations for conserving, protecting, preserving, and distributing underground, subterranean, and percolating water located in this state and shall do all other things necessary for these purposes.

Sec. 28.022. APPLICATION FOR PERMIT. The commission [~~department~~] shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Sec. 28.023. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the commission [~~department~~] considers necessary to discharge its duties under this chapter and the rules of the commission [~~board~~].

Sec. 28.024. APPLICATION FEE. With each application for a shaft permit, the commission [~~department~~] shall collect a fee as set by the executive director to reasonably offset the costs to the commission [~~department~~] for processing the application. The fee may not be less than $10,000.

Sec. 28.025. LETTER FROM RAILROAD COMMISSION. A person making application to the commission [~~department~~] for a shaft permit shall submit with the application a letter from the railroad commission stating that such shaft construction will not endanger or injure any oil or gas formation or significantly limit the potential for future recovery of or exploration for oil or gas.

Sec. 28.027. RECOMMENDATIONS FROM OTHER AGENCIES. The executive director shall submit to such state agencies and other persons that the commission [~~board~~] may designate copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application and shall have reasonable time to do so as the commission [~~board~~] may prescribe.

SECTION 1.124. Subsection (b), Section 28.028, Water Code, is amended to read as follows:

(b) The commission [~~board~~] by rule shall provide for giving notice of a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and interested persons.

SECTION 1.125. Section 28.030, Water Code, is amended to read as follows:

Sec. 28.030. RULES, ETC. (a) The commission [~~board~~] shall adopt rules reasonably required for the performance of the powers, duties, and functions of the commission [~~department~~] under this chapter.

(b) Such rules shall be published as proposed rules, as prescribed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), no later than 120 days after the enactment of this section and shall provide reasonable time for the commission [~~board~~] to receive comments and recommendations from interested agencies and the public before adoption by the commission [~~board~~].

(c) No shaft permit shall be issued by the commission pursuant to this chapter nor shall a permit hearing be held on a shaft application until the commission [~~board~~] has adopted rules for the issuance of such shaft permit.

(d) The [~~department or~~] commission may refuse to accept a shaft permit application or hold a shaft permit application hearing if the planned siting of the shaft is the subject of litigation.

SECTION 1.126. Subsection (a), Section 28.032, Water Code, is amended to read as follows:

(a) The commission [~~department~~] shall furnish the railroad commission with a copy of each shaft permit the commission issues.

SECTION 1.127. Sections 28.033-28.035, 28.038, 28.051, and 28.052, Water Code, are amended to read as follows:

Sec. 28.033. RECORD OF STRATA. (a) The commission shall require a person applying for a shaft permit to drill or have drilled a test hole on center or offset to the shaft and provide the following to the commission [~~department~~] and the railroad commission in the application:

(1) a description of the lithology into or through the lower confining strata;

(2) results of rock testing;

(3) geophysical logs; and

(4) other information that may be required by the commission [~~department~~].

(b) The commission shall require a person receiving a shaft permit to keep and furnish to the commission [~~department~~] and the railroad commission a complete and accurate record of the depth, thickness, and character of the different strata or rock units penetrated in constructing the shaft.

Sec. 28.034. GEOPHYSICAL AND DRILLING LOG. If the shaft is to be constructed over, around, or within 2,000 feet of an existing drilled borehole or boreholes, the commission shall require the applicant for a shaft permit to furnish such geophysical logs as may be required by the commission [~~department~~], including electric logs, and the drilling log and well completion record of all existing boreholes to the commission [~~department~~], along with a complete and accurate core data record of the depth, thickness, and character of the different strata or rock units penetrated as a part of the shaft application.

Sec. 28.035. SEISMIC REFLECTION SURVEY. The commission [~~department~~] shall require as a part of any shaft application a seismic reflection survey and velocity control data conforming, at minimum, to specifications established by the commission [~~department~~] in the rules provided for in Subsection (a) of Section 28.030 of this chapter.

Sec. 28.038. ENVIRONMENTAL REPORT. If an environmental report, environmental assessment, or environmental impact statement of any kind that includes an analysis of the environmental impacts of the shaft construction or operation is required by any federal or state agency before approval to construct the shaft, the environmental document, along with evidence of the needed approvals that have been granted, must be submitted to the commission [~~department~~] as part of the shaft permit application, and the commission [~~department~~] shall make the environmental document available for public review and comment for a period of not less than 30 days before the application for the shaft permit is considered.

Sec. 28.051. POWER TO ENTER PROPERTY. Members of the commission, employees and agents of the commission [~~and department~~], and authorized agents or employees of local governments may enter public or private property at any time to inspect and investigate conditions relating to shaft activities or to monitor compliance with a rule, permit, or other order of the commission[~~, board, or department~~]. Members, employees, or agents acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Sec. 28.052. POWER TO EXAMINE RECORDS. Members of the commission, employees and agents of the commission [~~and department~~], and authorized agents or employees of local governments may examine and copy those records or memoranda of a shaft permittee or his contractors they are investigating or monitoring as provided by Section 28.051 of this chapter that relate to the construction and operation of a shaft or any other records required to be maintained by law.

SECTION 1.128. Subsection (a), Section 28.053, Water Code, is amended to read as follows:

(a) The commission may require in a shaft permit that the permittee reimburse the commission [~~department~~] for reasonable costs of monitoring and on-site, full-time surveillance to determine compliance with a rule, permit, or other order of the commission [~~board or department~~].

SECTION 1.129. Subsection (a), Section 28.061, Water Code, is amended to read as follows:

(a) A person who violates any provision of this chapter, any rule of the [~~department or~~] commission made under this chapter, or any term, condition, or provision of a permit issued under this chapter shall be subject to a civil penalty in a sum not exceeding $10,000 for each day of noncompliance and for each act of noncompliance.

SECTION 1.130. Subsection (b), Section 28.062, Water Code, is amended to read as follows:

(b) In any suit brought to enjoin a violation or threat of violation of this chapter or any rule, permit, or order of the commission[~~, board, or department~~], the court may grant the commission [~~department~~], without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders, after notice and hearing, temporary injunctions, and permanent injunctions.

SECTION 1.131. Subsection (a), Section 28.065, Water Code, is amended to read as follows:

(a) A person who knowingly or intentionally violates this chapter, a rule of the [~~board or~~] commission, or a term, condition, or provision of a permit issued under this chapter is subject to a fine of not more than $10,000 for each violation and for each day of violation.

SECTION 1.132. Subsections (c) and (d), Section 28.066, Water Code, are amended to read as follows:

(c) A local government or any person may file a written complaint with the commission [~~department~~] and request an investigation of an alleged violation by a permittee under this Act. The commission [~~department~~] shall reply to the complaint in writing within 30 days after receipt of the complaint and shall provide a copy of any investigation reports relevant to the complaint together with a determination of whether or not the alleged violation was committed.

(d) If the commission [~~department~~] does not have a suit brought in court under this Act within 60 days after the written complaint is filed under Subsection (c) of this section, the local government or person may bring suit in the appropriate court in the county in which the alleged violation occurred or is about to occur in the manner provided for suits by the commission [~~department~~] under Sections 28.061 and 28.062 of this Act. Penalties collected in a suit under this subsection shall be paid to the state. In a suit brought by a local government or person under this subsection, the court shall include in any final judgment in favor of the local government or person an award to cover reasonable court costs and attorney's fees.

SECTION 1.133. Subdivision (5), Section 30.003, Water Code, is amended to read as follows:

(5) "River basins" and "coastal basins" mean the river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Water Development Board [~~Texas Department of Water Resources~~], including but not limited to the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes, and portions of them, as well as the lands drained by them.

SECTION 1.134. Subsection (a), Section 30.004, Water Code, is amended to read as follows:

(a) This chapter is cumulative of other statutes governing the Texas Department of Health Resources, the Texas Water Development Board, and the Texas [~~Department of~~] Water Commission [~~Resources~~] relating to:

(1) the issuance of bonds;

(2) the collection, transportation, treatment, or disposal of waste; and

(3) the design, construction, acquisition, or approval of facilities for these purposes.

SECTION 1.135. Sections 30.106, 42.009, 44.009, and 45.006, Water Code, are amended to read as follows:

Sec. 30.106. SUPERVISION BY TEXAS [~~DEPARTMENT OF~~] WATER COMMISSION [~~RESOURCES~~]. The Texas [~~Department of~~] Water Commission

[~~Resources~~] is authorized to exercise continuing supervision on behalf of the state of comprehensive plans prepared under this chapter.

Sec. 42.009. COOPERATION OF WATER [~~RIGHTS~~] COMMISSION. The Texas Water [~~Rights~~] Commission shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

Sec. 44.009. COOPERATION OF WATER [~~RIGHTS~~] COMMISSION. The Texas Water [~~Rights~~] Commission shall cooperate with the members in the performance of their duties and shall furnish them any available data and information they need.

Sec. 45.006. COOPERATION OF WATER [~~RIGHTS~~] COMMISSION. The Texas Water [~~Rights~~] Commission shall cooperate with the commissioner in the performance of his duties and shall furnish him any available data and information he needs.

SECTION 1.136. Subsection (a), Section 46.008, Water Code, is amended to read as follows:

(a) The executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~] or a designated representative selected from the staff of the Texas Water Commission [~~department~~] shall also serve as a commissioner and represent this state on the commission established by Article IX of the compact.

SECTION 1.137. Sections 46.010, 47.006, 47.008, 50.001, and 50.105, Water Code, are amended to read as follows:

Sec. 46.010. COOPERATION OF TEXAS [~~DEPARTMENT OF~~] WATER COMMISSION [~~RESOURCES~~]. The Texas [~~Department of~~] Water Commission [~~Resources~~] shall cooperate with the commissioners in the performance of their duties and shall furnish them any factual data and information that are available.

Sec. 47.006. EXECUTIVE DIRECTOR. (a) The executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~] or a designated representative selected from the staff of the Texas Water Commission [~~department~~] shall also serve as a commissioner and represent this state on the commission established by Section 6 of the compact.

(b) The executive director or the designated representative may exercise the powers and shall discharge the duties provided by the compact.

(c) The executive director or the designated representative is not entitled to additional compensation for performing the duties under the compact but is entitled to reimbursement for actual and necessary expenses incurred while traveling in the discharge of official duties.

Sec. 47.008. COOPERATION OF TEXAS [~~DEPARTMENT OF~~] WATER COMMISSION [~~RESOURCES~~]. The Texas [~~Department of~~] Water Commission [~~Resources~~] shall cooperate with the commissioners in the performance of their duties and shall furnish them any factual data and information that is available.

Sec. 50.001. DEFINITIONS. As used in this chapter:

(1) "District" means any district or authority created by authority of either Article III, Section 52, (Subsection (b), Subdivisions (1) and (2)), or Article XVI, Section 59, of the Texas Constitution.

(2) "Commission" means the Texas Water Commission.

(3) "Board" means the governing body of a district.

(4) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

[~~(5) "Department" means the Texas Department of Water Resources.~~]

Sec. 50.105. INFORMATION OPEN TO PUBLIC. The executive director shall adopt a system for filing the information required by Sections 50.101-50.104 of this code, and shall allow public inspection of this file during the office hours of the commission [~~department~~].

SECTION 1.138. Subdivision (6), Section 51.001, Water Code, is amended to read as follows:

(6) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

SECTION 1.139. Subdivision (2), Section 52.001, Water Code, is amended to read as follows:

(2) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

SECTION 1.140. Subdivision (5), Section 54.001, Water Code, is amended to read as follows:

(5) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

SECTION 1.141. Subsection (e), Section 54.019, Water Code, is amended to read as follows:

(e) At least 30 days before the date of the hearing, the petitioner shall send the notice of the hearing by certified mail, return receipt requested, to all fee simple landowners, as reflected on the county tax rolls, whose property is located within the proposed district except property owners who have signed the petition for creation. Ownership of the property shall be certified by the tax assessor and collector from the tax rolls as of the date of the filing of the petition with the Texas [~~Department of~~] Water Commission [~~Resources~~].

SECTION 1.142. Section 54.024, Water Code, is amended to read as follows:

Sec. 54.024. SUPERVISION BY COMMISSION [~~DEPARTMENT~~]. The rights, powers, privileges, authority, and functions conferred on a district by granting of a petition for creation shall be subject to the continuing right of supervision of the state to be exercised by and through the Texas [~~Department of~~] Water Commission [~~Resources~~].

SECTION 1.143. Subsection (a), Section 54.517, Water Code, is amended to read as follows:

(a) During construction of projects and improvements approved by the commission, no substantial alterations may be made in the plans and specifications without the approval of the department in accordance with commission [~~board~~] rules.

SECTION 1.144. Subdivision (4), Section 55.001, Water Code, is amended to read as follows:

(4) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

SECTION 1.145. Section 55.503, Water Code, is amended to read as follows:

Sec. 55.503. TEXAS [~~DEPARTMENT OF~~] WATER COMMISSION [~~RESOURCES~~] TO INVESTIGATE AND REPORT ON DISTRICTS ISSUING BONDS. (a) The executive director shall investigate and report on the organization and feasibility of all districts issuing bonds under Texas law.

(b) Any district which desires to issue bonds shall submit to the commission a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications prepared in connection with the report.

(c) The executive director shall examine these documents and shall visit the project and carefully inspect it, and may request and shall be supplied with additional data and information necessary to a reasonable and careful investigation of the project and proposed improvements.

(d) The executive director shall file in his office written suggestions for changes and improvements and furnish a copy to the board of directors of the district.

(e) If the commission finally approves or refuses to approve the project or the issuance of the bonds for any improvement, it shall make a full written report, file

the report in its office, and furnish a copy of the report to the board of directors of the district.

SECTION 1.146. Subsection (b), Section 56.022, Water Code, is amended to read as follows:

(b) The engineer shall obtain information regarding land and outlets inside the proposed district from the Texas [~~Department of~~] Water Commission [~~Resources~~] and from other sources, and he shall cooperate with the Texas [~~Department of~~] Water Commission [~~Resources~~] in the discharge of its duties.

SECTION 1.147. Section 57.001, Water Code, is amended to read as follows:

Sec. 57.001. DEFINITIONS. In this chapter:

(1) "District" means levee improvement district.

(2) "Board" means the board of directors of a levee improvement district.

(3) "Water development board" means the Texas Water Development Board.

(4) "Commissioners court" means the commissioners court of the county in which the district is located or the commissioners court of the county of jurisdiction.

(5) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(6) [~~"Department" means the Texas Department of Water Resources.~~

[~~(7)~~] "Commission" means the Texas Water Commission.

SECTION 1.148. Subsection (b), Section 57.092, Water Code, is amended to read as follows:

(b) The powers granted in this section are subject to the supervision and direction of the commission [~~department~~] or other authority created by law.

SECTION 1.149. Section 57.151, Water Code, is amended to read as follows:

Sec. 57.151. AUTHORITY OF ENGINEER. The engineer, subject to the authority of the commission [~~department~~], shall control the engineering work of the district.

SECTION 1.150. Section 58.452, Water Code, is amended to read as follows:

Sec. 58.452. COMMISSION [~~DEPARTMENT~~] SUPERVISION OF PROJECTS AND IMPROVEMENTS. (a) During construction of projects and improvements approved by the commission, no substantial alterations may be made in the plans and specifications without the approval of the commission.

(b) The executive director may inspect the improvements at any time during construction to determine if the project is being constructed in accordance with the plans and specifications by the commission.

(c) If the executive director finds that the project is not being constructed in accordance with the approved plans and specifications, he shall give written notice immediately by certified mail to each member of the board of the district and the district's manager.

(d) If within 10 days after the notice is mailed the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the commission shall give written notice of this fact to the attorney general.

(e) After the attorney general receives this notice, he may bring an action for injunctive relief or quo warranto proceedings against the directors. Venue for either suit is exclusively in a district court in Travis County.

SECTION 1.151. Sections 64.002, 64.014, 64.015, and 64.263, Water Code, are amended to read as follows:

Sec. 64.002. TERRITORY INCLUDED IN AUTHORITY. The authority shall include all of the area in Texas that has beneath it the subsurface formation

known as the Ogallala Formation as that area is determined, fixed, and certified by the Texas Water Commission [~~Development Board~~], together with all of any county, a part of which is included in that area, provided that the area in Borden, Crosby, Dickens, and Garza Counties, and any county which does not have at least a portion of the Ogallala Formation beneath it shall not be initially included in the import area. A county or any portion of a county which is not included in the import area shall not be subject to assessment or taxation by the authority unless subsequently annexed to the authority.

Sec. 64.014. FINDINGS AND ACTION BY COMMISSION [~~DEVELOPMENT BOARD~~]. (a) If the commission [~~development board~~] finds, after public hearing, that the authority is feasible and practicable, that it would be a benefit to the area included in the authority, and that it would be a public benefit or utility, the commission [~~development board~~] shall make these findings and shall grant the petition, otherwise the petition shall be denied.

(b) The commission's [~~development board's~~] findings of benefit to the land included in the authority are final and conclusive unless judicial review is sought in the manner provided in Subchapter I [~~J~~] of Chapter 5 of this code for appeals from other orders of the commission [~~development board~~], and after the commission's [~~development board's~~] order of creation is final, no land may be excluded from the authority, but land may be added and annexed in the manner provided in this chapter.

Sec. 64.015. DIVIDING AUTHORITY INTO PRECINCTS. At the time a petition for creation is granted, the commission [~~development board~~], in its order, shall divide the authority into 15 precincts, with each precinct having approximately the same number of persons residing in its area as each of the other precincts.

Sec. 64.263. FURNISHING DESCRIPTION. The board shall furnish the commission [~~development board~~] a detailed description of land annexed to the authority within 30 days after the annexation.

SECTION 1.152. Subsection (c), Section 64.121, Water Code, is amended to read as follows:

(c) Copies of the written report of the audit, certified to by the accountant or accountants, shall be placed and kept on file at the office of the authority and shall be open to public inspection at all reasonable times. A copy of the audit shall be filed with the commission [~~Department of Water Resources~~].

SECTION 1.153. Subdivision (5), Section 65.001, Water Code, is amended to read as follows:

(5) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

SECTION 1.154. Subsection (a), Section 131.139, Natural Resources Code, is amended to read as follows:

(a) The commission immediately shall submit copies of the permit application to the Parks and Wildlife Department, Texas Water Commission [~~Quality Board, Texas Water Development Board~~], General Land Office, Texas Air Control Board, Texas Historical Commission, [~~Texas Water Rights Commission,~~] State Soil and Water Conservation Board, Bureau of Economic Geology, Texas Department of Health Resources, and other state agencies whose jurisdiction the commission feels the particular mining operation may affect.

SECTION 1.155. Subdivision (3), Section 57.001, Water Code, is amended to read as follows:

(3) "Water commission [~~development board~~]" means the Texas Water Commission [~~Development Board~~].

SECTION 1.156. Subdivision (2), Section 64.003, Water Code, is amended to read as follows:

(2) "Commission" means the Texas Water Commission [~~"Development board" means the Texas Water Development Board~~].

SECTION 1.157. Subsections (a), (b), (c), and (e), Section 64.011, Water Code, are amended to read as follows:

(a) On its own motion or on receiving a petition signed by at least 50 landowners in the proposed import area, the commission [~~development board~~], after notice and hearings, shall define and certify the import area.

(b) The commission [~~development board~~] shall schedule and conduct a minimum of five hearings within the import area to allow adequate opportunity for testimony from those who wish to appear. Notice of the hearings shall be published in a newspaper or newspapers with general circulation within the import area at least 14 days before the day of the hearing.

(c) Additional special hearings may be conducted in each county for which a petition containing the signatures of not less than 10 percent of the registered voters in that county is submitted if the petition is submitted within 30 days after the commission [~~development board~~] hearings begin, requesting a special hearing to be conducted in that county. Notice of each special hearing, if any, shall be published in a newspaper with general circulation within the county in which the special hearing is to be held at least 14 days before the day of the special hearing.

(e) The commission [~~development board~~] shall give consideration to all relevant evidence presented at the public hearing held by it and shall not authorize an election until it determines that adequate water would be contractually available on an equitable basis for all the water needs existing within the authority for import into the area.

SECTION 1.158. Subsections (a) and (d), Section 64.016, Water Code, are amended to read as follows:

(a) Within 180 days from the effective date of the order of the commission [~~development board~~] granting the petition for creation of the authority, the board of the authority shall order an election to be held throughout the authority within 60 days, at which there is to be submitted the question of whether or not the establishment of the authority is confirmed, the question of election of directors, the question of levying, assessing, and collecting an ad valorem tax throughout the authority, and any other questions required by this chapter or by the board.

(d) If a majority of the votes cast in the election favor confirmation of the authority, the board shall declare the results, and the authority is created and shall have all of the powers and authority conferred by this chapter. If a majority of the votes cast in the election do not confirm the authority, no further election may be held for confirmation for at least 12 months, and if the authority is not confirmed within five years from the day of the commission's [~~development board's~~] order granting the petition to create the authority or if the voters refuse to authorize the levy, assessment, and collection of an ad valorem tax through the authority within the five-year period, the authority is null and void, and the commission [~~development board~~] is to enter an order to this effect.

SECTION 1.159. Subsection (a), Section 64.051, Water Code, is amended to read as follows:

(a) The authority's powers and duties shall be exercised through a board of directors. The first directors shall be appointed by the commission [~~development board~~] in its order of creation, naming one director from each precinct, and subsequent directors shall be elected from each of the precincts into which the authority is divided, with one director being elected from each precinct.

SECTION 1.160. Section 2, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. As used in this Act, unless the context requires a different definition:

(1) [~~"Board" means the Texas Water Development Board.~~

[~~(2)~~] "Board of health" means the Texas Board of Health.

(2) [~~(3)~~] "Class I industrial solid waste" means any industrial solid waste designated as Class I by the Executive Director of the Texas Department of Water

Resources as any industrial solid waste or mixture of industrial solid wastes which because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste.

(3) [~~(4)~~] "Commission" means the Texas Water Commission.

(4) [~~(5)~~] "Commissioner" means the Commissioner of Health.

(5) [~~(6)~~] "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(6) [~~(7)~~] "Department" means the Texas Department of Health.

(7) [~~(8)~~] "Department of water resources" means the Texas Department of Water Resources.

(8) [~~(9)~~] "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(9) [~~(10)~~] "Executive director" means the Executive Director of the Texas Department of Water Resources.

(10) [~~(11)~~] "Garbage" means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(11) [~~(12)~~] "Hazardous waste" means any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(12) [~~(13)~~] "Industrial solid waste" means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(13) [~~(14)~~] "Local government" means a county; an incorporated city or town; or a political subdivision exercising the authority granted under Section 6 of this Act.

(14) [~~(15)~~] "Management" means the systematic control of any or all of the following activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(15) [~~(16)~~] "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(16) [~~(17)~~] "Person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(17) [~~(18)~~] "Person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a solid waste facility is to be located including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage.

(18) [~~(19)~~] "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste,

designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. Unless the state agency determines that regulation of such activity under this Act is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the Administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(19) [~~(20)~~] "Radioactive waste" means that waste which requires specific licensing under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), and the rules adopted by the Texas Board of Health under that law.

(20) [~~(21)~~] "Rubbish" means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600°F to 1800°F).

(21) [~~(22)~~] "Sanitary landfill" means a controlled area of land upon which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the commission [~~board~~].

(22) [~~(23)~~] "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(23) [~~(24)~~] "Solid waste" means any garbage, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Texas Railroad Commission.

(24) [~~(25)~~] "Solid waste facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and consist of several processing, storage, or disposal operational units; e.g., one or more landfills, surface impoundments, or combinations of them.

(25) [~~(26)~~] "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the commission [~~board~~] or board of health.

(26) [~~(27)~~] "Storage" means the holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere.

SECTION 1.161. Subsections (a) and (b), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) As used in this section, the term "state agency" refers to either the department or the commission [~~department of water resources~~] and "state agencies" means both the department and the commission [~~department of water resources~~].

(b) The department is authorized to develop a state municipal solid waste plan, and the commission [~~department of water resources~~] is authorized to develop a state industrial solid waste plan. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

SECTION 1.162. Subdivision (2), Subsection (f), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) No person shall process, store, or dispose of hazardous industrial solid wastes under this subsection without having first obtained a hazardous waste permit issued by the commission; provided, however, that any person who has on or before November 19, 1980, commenced on-site processing, storing or disposing of hazardous waste under this subsection and who has filed a hazardous waste permit application in accordance with the rules of the commission [~~board~~] may continue to process, store, or dispose of hazardous waste until such time as the commission approves or denies the application. Upon its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit. The commission [~~board~~] by rule shall establish procedures for public notice and any public hearing authorized by this subsection. The commission may include requirements in the permit for any remedial actions by the applicant that are determined by the commission to be necessary to protect the public health and safety and the environment.

SECTION 1.163. Subsections (b) and (c), Section 3, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The commission [~~department of water resources~~] is hereby designated the state solid waste agency with respect to the management of industrial solid waste, and shall be the coordinating agency for all industrial solid waste activities. The commission [~~department of water resources~~] shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste management by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The commission [~~department of water resources~~] has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The commission [~~department of water resources~~] shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the commission [~~department of water resources~~] by this Act.

(c) Where both municipal solid waste and industrial solid waste, except Class I industrial solid waste which is not routinely collected with municipal solid waste, are involved in any activity of management of solid waste, the department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act. Class I industrial solid waste under the jurisdiction of the commission [~~department of water resources~~] may be accepted in a municipal solid waste facility if authorized in writing by the department with the written concurrence of the commission [~~department of water resources~~]. Solid waste, including hazardous waste, under the jurisdiction of the department may be

accepted in an industrial solid waste facility, if authorized in writing by the commission [~~department of water resources~~] with the written concurrence of the department.

SECTION 1.164. Subsections (a), (c), (d), and (f), Section 5, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Every county has the solid waste management powers which are enumerated in this Section 5. However, the exercise of the licensing authority and other powers granted to counties by this Act does not preclude the department or the commission [~~department of water resources~~] from exercising any of the powers vested in the department or the commission [~~department of water resources~~] under other provisions of this Act, including specifically the provisions authorizing the department and the commission [~~department of water resources~~] to issue permits for the construction, operation, and maintenance of facilities for the processing, storage, or disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of the County Solid Waste Control Act (Article 4477-8, Vernon's Texas Civil Statutes) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The department or the commission [~~department of water resources~~], by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting.

(c) A county may develop county solid waste plans and coordinate those plans with the plans of local governments, regional planning agencies, other governmental entities, the department, and the commission [~~department of water resources~~].

(d) Except as provided in Subsection (a) of this section, a county is empowered to require and issue licenses authorizing and governing the operation and maintenance of facilities used for the processing, storage, or disposal of solid waste, excluding hazardous waste, in areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. If a county elects to exercise licensing authority, it must adopt, promulgate, and enforce rules for the management of solid waste. The rules shall be compatible with and not less stringent than those of the department or the commission [~~department of water resources~~], as appropriate, and must be approved by, the department or the commission [~~department of water resources~~] as appropriate. The following additional provisions apply if a county exercises the power authorized in this Subsection (d):

(1) The county shall mail a copy of the license application with pertinent supporting data to the department, the commission [~~department of water resources~~], and the Texas Air Control Board. The governmental entities to whom the information is mailed shall have no less than 60 days to submit comments and recommendations on the license application before the county acts on the application unless waived by the commenting agency.

(2) A separate license shall be issued for each solid waste facility. The license shall include the names and addresses of the person or persons who own the land where the solid waste facility is located and the person who is or will be the operator or person in charge of the facility; a legal description of the land on which the facility is located; and the terms and conditions on which the license is issued, including the duration of the license. The county is authorized to charge a fee for a license of not to exceed $100.00, as set by the commissioners court of the county. Receipts from the fees shall be placed in the general revenue fund of the county.

(3) The county may amend, extend, or renew any license it issues in accordance with rules prescribed by the county. The procedures prescribed in

Paragraph (1) of this Subsection (d) apply also to applications to amend, extend, or renew a license.

(4) No license for the use of a facility for the processing, storage, or disposal of solid waste may be issued, amended, renewed, or extended without the prior approval, as appropriate, of the department or the commission [~~department of water resources~~]. If a license is issued, amended, renewed, or extended by a county in accordance with this Subsection (d), the owner or operator of the facility does not need to obtain a permit from the department or the commission [~~department of water resources~~] for the same facility.

(5) A license issued under this Act is issued only to the person in whose name the application is made and is issued only for the facility described in the permit. A license may not be transferred without prior notice to and prior approval by the county which issued it.

(6) The county has the authority, for good cause, after hearing with notice to the licensee and to the governmental entities named in Paragraph (1) of this Subsection (d), to revoke or amend any license it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or rules controlling the processing, storage, or disposal of solid waste. For like reasons, the department and the commission [~~department of water resources~~] each may, for good cause, after hearing with notice to the licensee, the county which issued the license, and the other governmental entities named in Paragraph (1) of this Subsection (d), revoke or amend any license issued by a county, but only as to those facilities which fall, under the terms of this Act, within the jurisdiction of the state agency acting.

(f) A county is authorized to enforce the requirements of this Act and the rules promulgated by the board of health and the commission [~~board~~] as related to the management of solid waste.

SECTION 1.165. Section 7, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. (a) The authorized agents or employees of the department, the commission [~~department of water resources~~], and local governments have the right to enter at all reasonable times in or upon any property, whether public or private, within the governmental entity's jurisdiction, including in the case of an incorporated city or town, its extraterritorial jurisdiction, for the purpose of inspecting and investigating conditions relating to solid waste management and control. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

(b) The authorized agents or employees of the department and the commission [~~department of water resources~~] may have access to, examine, and copy during regular business hours any records pertaining to hazardous waste management and control.

(c) Records copied pursuant to Subsection (b) of this section shall be public records, except that, if a showing satisfactory to the commissioner of the department or to the executive director is made by the owner of such records that the records would divulge trade secrets if made public, then the department or the commission [~~department of water resources~~] shall consider such copied records as confidential. Nothing in this subsection shall require the commission [~~department of water resources~~] or the department to consider the composition or characteristics of solid waste being processed, stored, disposed, or otherwise handled to be held confidential.

SECTION 1.166. Subsection (a), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Civil Penalties; Injunction. (1) No person may cause, suffer, allow, or permit the collection, storage, handling, transportation, processing, or disposal of solid waste or the use or operation of a solid waste facility for the storage, processing, or disposal of solid waste or for the extraction of materials under Subsection (j) of Section 4 of this Act, in violation of this Act or of the rules, permits, licenses or other orders of the department or the commission [~~department of water resources~~], or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs.

(2) Any person who violates any provision of this Act or of any rule, permit, license, or other order of the department or the commission [~~department of water resources~~], or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, which is not a requirement applicable to hazardous waste, is subject to a civil penalty of not less than $100.00 nor more than $2,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8. Any person who violates any requirement applicable to hazardous waste shall be subject to a civil penalty of not less than $100.00 nor more than $25,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8(a).

(3) Whenever it appears that a person has violated, or is violating or threatening to violate, any provision of this Act, or of any rule, permit, or other order of the department or the commission [~~department of water resources~~], then the department or the commission [~~department of water resources~~] may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty as provided by this subsection, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, permit, or other order of the department or the commission [~~department of water resources~~], the district court shall grant appropriate injunctive relief. At the request of the commissioner or the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in this subsection.

(4) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, permit, license, or other order of the department, the commission [~~department of water resources~~], a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the commission [~~department of water resources~~] and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (3) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(5) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, permit, license, or other order of the department, the commission [~~department of water resources~~], a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the area of the extraterritorial jurisdiction of an incorporated city or town, or is causing or will cause injury to or an adverse effect on the health, welfare or physical property of the city or town or its inhabitants, then the city or town, in the same manner as the commission [~~department of water resources~~] and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in

Subsection (3) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(6) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, permit, license or other order of the commission [~~department of water resources~~], the department, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(7) In a suit brought by a local government under Subsection (4) or (5) of this section, the commission [~~department of water resources~~] and the department are necessary and indispensable parties.

(8) Any party to a suit may appeal from a final judgment as in other civil cases.

(9) All civil penalties recovered in suits instituted under this Act by the State of Texas through the commission [~~department of water resources~~] or the department shall be paid to the General Revenue Fund of the State of Texas. All civil penalties recovered in suits first instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments on the other, with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent equally to the local government or governments first instituting the suit.

SECTION 1.167. Sections 9 and 10, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. A person affected by any ruling, order, decision, or other act of the department or the commission [~~department of water resources~~] may appeal by filing a petition in a district court of Travis County. A person affected by any ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted in Section 6 of this Act, may appeal by filing a petition in a district court having jurisdiction in the county or political subdivision. The petition must be filed within 30 days after the date of the action, ruling, order, or decision of the governmental entity complained of. Service of citation must be accomplished within 30 days after the date the petition is filed. The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed, unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay. In an appeal from an action by the department, the commission [~~department of water resources~~], a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the issue is whether the action is invalid, arbitrary or unreasonable.

Sec. 10. This Act is cumulative of and supplemental to any other laws and parts of laws relating to the same subject and does not repeal those other laws or parts of laws. Nothing in this Act diminishes or limits, or is intended to diminish or limit, the authority of the department, the commission [~~department of water resources~~], the Texas Air Control Board, or local governments in performing any of the powers, functions, and duties vested in those governmental entities by other laws.

SECTION 1.168. Effective on the delegation of NPDES permit authority to the Texas Water Commission by the administrator of the United States

Environmental Protection Agency under Section 402(b) of the Federal Water Pollution Control Act, Section 5.175, Water Code, as added by Section 1.001 of this Act, is revised to read as follows:

Sec. 5.175. DOCUMENTS, ETC., STATE PROPERTY; OPEN FOR INSPECTION. (a) All information, documents, and data collected by the commission in the performance of its duties are the property of the state.

(b) Except as provided by Subsection (c) of this section, records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours.

(c) If a showing satisfactory to the executive director is made by any person that those records, reports, data, or other information, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commission shall consider those records, reports, data, or other information as confidential.

(d) This chapter may not be construed to make confidential any effluent data, including effluent data in records, reports, or other information, and including effluent data in permits, draft permits, and permit applications.

(e) Records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the state or of the United States with responsibilities in water pollution control. However, this disclosure or transmittal may be made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee or authorized representative on behalf of, and under the authority of, the receiving agency or political entity.

(f) The executive director may not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law.

SECTION 1.169. Effective on the delegation of NPDES permit authority to the Texas Water Development Board by the administrator of the United States Environmental Protection Agency under Section 402(b) of the Federal Water Pollution Control Act, Section 6.153, Water Code, as added by Section 1.002 of this Act, is revised to read as follows:

Sec. 6.153. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) Except as otherwise specifically provided in this code and subject to the specific limitations provided in this code, on application of any person, the board shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the board. A certified copy with the seal of the board and the signature of the chairman of the board or the executive administrator is admissible as evidence in any court or administrative proceeding.

(b) The board shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the board, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Statutes.

SECTION 1.170. Section 5.053, Water Code (effective on delegation of NPDES permit authority), is repealed.

PART 2. DISTRICTS AND AUTHORITIES

ARTICLE A. STUDY COMMITTEE

SECTION 2.001. RIVER AUTHORITY STUDY COMMITTEE. The River Authority Study Committee is created.

SECTION 2.002. COMPOSITION. The committee is composed of:

(1) four members appointed by the governor, three of whom are governing board members or general managers of river authorities created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment;

(2) three members appointed by the lieutenant governor, two of whom are state senators and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment; and

(3) three members appointed by the speaker of the house of representatives, two of whom are state representatives and one of whom is a representative of the general public who has a background with a demonstrated involvement in efforts to safeguard the environment.

SECTION 2.003. CHAIRMAN. The governor shall appoint the chairman of the committee.

SECTION 2.004. MEETINGS. The committee shall meet at least quarterly and at other times at the call of the chair.

SECTION 2.005. POWERS AND DUTIES. (a) The committee shall study the various river authorities and conservation and reclamation districts listed in this subsection to determine if their powers and duties are appropriate for management of the state's water resources and to determine if the state's role relative to the creation and operation of those authorities should be changed. The river authorities and districts to be studied are:

(1) the Angelina and Neches River Authority;
(2) the Bandera County River Authority;
(3) the Brazos River Authority;
(4) the Central Colorado River Authority;
(5) the Guadalupe-Blanco River Authority;
(6) the Kimble County River Authority;
(7) the Lavaca-Navidad River Authority;
(8) the Lower Colorado River Authority;
(9) the Mason County River Authority;
(10) the Nueces River Authority;
(11) the Palo Duro River Authority;
(12) the Red River Authority of Texas;
(13) the Sabine River Authority;
(14) the San Antonio River Authority;
(15) the San Jacinto River Authority;
(16) the Trinity River Authority of Texas;
(17) the Upper Colorado River Authority;
(18) the Upper Guadalupe River Authority;
(19) the Lower Neches Valley Authority;
(20) the Colorado River Municipal Water District;
(21) the North Texas Municipal Water District;
(22) the Tarrant County Water Control and Improvement District No. 1; and
(23) the Gulf Coast Waste Disposal Authority.

(b) Not later than December 1, 1986, the committee shall complete and have ready to submit a report to the 70th Legislature. In addition to any other matters that the committee may include in its report, the committee shall include in the report findings and supporting data relating to whether:

(1) the legislature should make river authorities more accountable to the state and, if so, the methods of accountability that should be adopted; and

(2) the state should be more involved in the creation and operation of those authorities.

SECTION 2.006. STAFF. The Texas Water Commission shall provide staff for the committee as necessary to assist the committee in the performance of its duties.

SECTION 2.007. EXPIRATION. This article of Part 2 of this Act expires January 1, 1987.

ARTICLE B. RIVER AUTHORITY POWERS

SECTION 2.008. Section 50.381, Water Code, is amended to read as follows:

Sec. 50.381. RIVER AUTHORITIES AND CERTAIN DISTRICTS: [~~STATE AUDITOR MAY~~] AUDIT. (a) The state auditor shall audit, on a regular basis, the financial transactions of the river authorities and districts listed in Subsection (b) of this section. The state auditor shall determine the times at which the audits shall be conducted.

(b) The river authorities and districts subject to this section are:

(1) the Angelina and Neches River Authority;
(2) the Bandera County River Authority;
(3) the Brazos River Authority;
(4) the Central Colorado River Authority;
(5) the Guadalupe-Blanco River Authority;
(6) the Kimble County River Authority;
(7) the Lavaca-Navidad River Authority;
(8) the Lower Colorado River Authority;
(9) the Mason County River Authority;
(10) the Nueces River Authority;
(11) the Palo Duro River Authority;
(12) the Red River Authority of Texas;
(13) the Sabine River Authority;
(14) the San Antonio River Authority;
(15) the San Jacinto River Authority;
(16) the Trinity River Authority of Texas;
(17) the Upper Colorado River Authority;
(18) the Upper Guadalupe River Authority;
(19) the Lower Neches Valley Authority;
(20) the Colorado River Municipal Water District;
(21) the North Texas Municipal Water District;
(22) the Tarrant County Water Control and Improvement District No. 1; and
(23) the Gulf Coast Waste Disposal Authority.

(c) [~~If the State Auditor considers it necessary, he may have an audit made of any river authority in this state.~~] The audit shall be conducted [~~made~~] in the manner provided by law for audit of the state government.

(d) The river authority or district shall reimburse the State Auditor for the actual cost incurred in conducting an audit of the authority or district under this section. The State Auditor shall bill the river authority or district for this amount on approval of the Legislative Audit Committee. Money received as reimbursement shall be deposited in the general revenue fund.

ARTICLE C. LEVEE IMPROVEMENT DISTRICTS

SECTION 2.009. Subsection (c), Section 57.156, Water Code, is amended to read as follows:

(c) An approved plan of reclamation cannot be modified or changed in any manner if the cost of the plan is over $100,000, until [~~$1,000, unless~~] a petition, signed by [~~the owners of~~] a majority of the board [~~acreage in the district~~] is presented to [~~and approved by~~] the commission. The modified plan must then be approved by the commission.

PART 3. WATER RIGHTS
ARTICLE A. PERMIT CONSIDERATIONS

SECTION 3.001. Chapter 11, Water Code, is amended by adding Section 11.150 to read as follows:

Sec. 11.150. EFFECTS OF PERMITS ON WATER QUALITY. In consideration of an application for a permit under this subchapter, the commission shall assess the effects, if any, of the issuance of the permit on water quality in this state.

ARTICLE B. PERMIT HEARINGS

SECTION 3.003. Subsections (d) and (f), Section 11.143, Water Code, are amended to read as follows:

(d) Except as otherwise specifically provided by this subsection, before [~~Before~~] the commission may approve the application and issue the permit, it shall give notice and hold a hearing as prescribed by this section. The commission may act on the application without holding a public hearing if:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to each person whose claim or appropriation has been filed with the department and whose diversion point is downstream from that described in the application; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing is not requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(f) If on the date specified in the notice prescribed by Subsection (d) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene. [~~The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first class mail to each person whose claim or appropriation has been filed with the department and whose diversion point is downstream from that described in the application.~~]

SECTION 3.004. Section 11.132, Water Code, is amended to read as follows:

Sec. 11.132. NOTICE [~~OF HEARING~~]. (a) Notice shall be given to the persons who in the judgment of the commission may be affected by an application, including those persons listed in Subdivision (2), Subsection (d), of this section. The commission, on the motion of a commissioner or on the request of the executive director or any affected person, shall hold a public hearing on the application. [~~The commission shall give notice of the hearing on the application as prescribed by this section.~~

[~~(b) In the notice, the commission shall:~~

[~~(1) state the name and address of the applicant;~~

[~~(2) state the date the application was filed;~~

[~~(3) state the purpose and extent of the proposed appropriation of water;~~

[~~(4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;~~

~~[(5) specify the time and place of the hearing; and~~

~~[(6) give any additional information the commission considers necessary.]~~

(b) ~~[(c)]~~ If the proposed use is for irrigation, the commission shall include in the notice a general description of the location and area of the land to be irrigated.

(c) In the notice, the commission shall:

(1) state the name and address of the applicant;

(2) state the date the application was filed;

(3) state the purpose and extent of the proposed appropriation of water;

(4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;

(5) specify the time and location where the commission will consider the application; and

(6) give any additional information the commission considers necessary.

(d) The commission may act on the application without holding a public hearing if:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to:

(A) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed in the department; and

(B) all navigation districts within the river basin concerned; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing has not been requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(e) The inadvertent failure of the commission to mail a notice under Subdivision (2), Subsection (d), of this section to a navigation district that is not a claimant or appropriator of water does not prevent the commission's consideration of the application.

(f) If, on the date specified in the notice prescribed by Subsection (c) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene. ~~[(d) The notice shall be published once a week for two consecutive weeks before the date stated in the notice for the hearing in some newspaper having a general circulation in the section of the state where the source of water is located.~~

~~[(e) The commission shall also mail a copy of the notice by first-class mail, postage prepaid, to each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed in the office of the commission. The notice shall also be mailed by first-class mail, postage prepaid, to all navigation districts within the watershed concerned. The inadvertent failure of the commission to mail a notice to a navigation district which is not a claimant or appropriator of water does not prevent the hearing on the application.~~

~~[(f) The notice shall be mailed and first published not less than 20 days before the date set for the hearing.]~~

ARTICLE C. WATER RATE AND SERVICE REGULATION

SECTION 3.005. Title 2, Water Code, is amended by adding Chapter 13 to read as follows:

CHAPTER 13. WATER RATES AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 13.001. LEGISLATIVE POLICY AND PURPOSE. (a) This chapter is adopted to protect the public interest inherent in the rates and services of water and sewer utilities.

(b) The legislature finds that:

(1) water and sewer utilities are by definition monopolies in the areas they serve;

(2) the normal forces of competition that operate to regulate prices in a free enterprise society do not operate for the reason stated in Subdivision (1) of this subsection; and

(3) water and sewer utility rates, operations, and services are regulated by public agencies, with the objective that this regulation will operate as a substitute for competition.

(c) The purpose of this chapter is to establish a comprehensive regulatory system that is adequate to the task of regulating water and sewer utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

Sec. 13.002. DEFINITIONS. In this chapter:

(1) "Person" includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.

(2) "Municipality" means cities existing, created, or organized under the general, home-rule, or special laws of this state.

(3) "Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town, or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(4) "Rate" means every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected whether directly or indirectly by any utility for any service, product, or commodity described in Subdivision (3) of this section and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.

(5) "Commission" means the Texas Water Commission.

(6) "Regulatory authority" means, in accordance with the context in which it is found, either the commission or the governing body of a municipality.

(7) "Affected person" means any utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a utility with respect to any service performed by the utility or that desires to enter into competition.

(8) "Affiliated interest" or "affiliate" means:

(A) any person or corporation owning or holding directly or indirectly five percent or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a utility;

(C) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly five percent or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of five percent of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(9) "Allocations" means, for all utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities or between municipalities and unincorporated areas, where those items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

(10) "Commissioner" means a member of the commission.

(11) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships but does not include municipal corporations unless expressly provided in this chapter.

(12) "Facilities" means all the plant and equipment of a utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any utility.

(13) "Municipally owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(14) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of certificates of convenience and necessity and rate setting.

(15) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this chapter and includes the denial of relief or the dismissal of a complaint.

(16) "Service" means any act done, rendered, or performed, anything furnished or supplied, and any facility used, furnished, or supplied by a utility in the performance of its duties under this chapter to its patrons, employees, other utilities, and the public, as well as the interchange of facilities between two or more utilities.

(17) "Test year" means the most recent 12-month period beginning with a calendar quarter or a fiscal year quarter for which operating data for a utility are available.

(18) "Water supply or sewer service corporation" means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

(19) "Executive director" means the executive director of the Texas Water Commission.

(20) "Board" means the Texas Water Development Board.

Sec. 13.003. APPLICABILITY OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all proceedings under this chapter except to the extent inconsistent with this chapter.

[Sections 13.004-13.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 13.011. EMPLOYEES. (a) The executive director, subject to approval by the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out this chapter.

(b) The executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The duties of the executive director and the staff include:

(1) accumulation of evidence and other information from water and sewer utilities and from the commission and the board and from other sources for the purposes specified by this chapter;

(2) preparation and presentation of evidence before the commission or its appointed examiner in proceedings;

(3) conducting investigations of water and sewer utilities under the jurisdiction of the commission;

(4) preparation of recommendations that the commission undertake an investigation of any matter within its jurisdiction;

(5) preparation of recommendations and a report for inclusion in the annual report of the commission;

(6) protection and representation of the public interest, together with the public interest advocate, before the commission; and

(7) other activities that are reasonably necessary to enable the executive director and the staff to perform their duties.

Sec. 13.012. ORDERS; TRANSCRIPT AND EXHIBITS; PUBLIC RECORDS. (a) All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed.

(b) The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters that were at any time pending before the commission and to records, reports, and inspections required by Subchapter E of this chapter shall be public records, subject to Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 13.013. ANNUAL REPORT. (a) In its annual report to the governor, the commission shall summarize its proceedings concerning the operations of the

commission and the water and sewer utility industry, including a list of its receipts and the sources of its receipts and its expenditures and the nature of those expenditures, and shall set forth any other information the commission considers of general interest.

(b) In the annual report issued in the year immediately preceding each regular session of the legislature, the commission shall include any suggestions for modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as the commission considers appropriate for protecting and furthering the interest of the public.

Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION. The attorney general shall represent the commission under this chapter in all matters before the state courts and any court of the United States.

[Sections 13.015-13.040 reserved for expansion]

SUBCHAPTER C. JURISDICTION

Sec. 13.041. GENERAL POWER; RULES; HEARINGS. (a) The commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of this power and jurisdiction.

(b) The commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

(c) The commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering this chapter or the rules, orders, or other actions of the commission.

Sec. 13.042. JURISDICTION OF MUNICIPALITY; SURRENDER; ORIGINAL AND APPELLATE JURISDICTION OF COMMISSION. (a) Subject to the limitations imposed in this chapter and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

(b) At any time after the second anniversary of the date this chapter takes effect, a municipality may elect to have the commission exercise exclusive original jurisdiction over water or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. On receipt of a petition signed by the lesser of 20,000 or 10 percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time by vote of the electorate reinstate the jurisdiction of the governing body; provided, however, that any municipality that reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may by vote of the electorate reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

(d) The commission shall have exclusive appellate jurisdiction to review orders or ordinances of those municipalities as provided in this chapter.

(e) The commission shall have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

Sec. 13.043. MUNICIPALITY-OWNED UTILITIES. This subchapter may not be construed to confer on the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate land and supervise water and sewer utilities within their boundaries, except as provided in this chapter.

[Sections 13.044-13.080 reserved for expansion]

SUBCHAPTER D. MUNICIPALITIES

Sec. 13.081. FRANCHISES. This chapter may not be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for their use, but no provision of any franchise agreement may limit or interfere with any power conferred on the commission by this chapter. If a municipality performs regulatory functions under this chapter, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this chapter.

Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT AREAS. (a) Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this chapter.

(b) If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under this chapter to the extent that this chapter applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the commission or other standards and rules not inconsistent with them.

(c) Notwithstanding any election, the commission may consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and may also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider water and sewer utilities' revenues and return on investment in nonexempt areas.

(d) Utilities serving exempt areas are subject to the reporting requirements of this chapter. Those reports shall be filed with the governing body of the municipality as well as with the commission.

(e) This section does not limit the duty and power of the commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

Sec. 13.083. RATE DETERMINATION. A municipality regulating its water and sewer utilities under this chapter shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for this determination shall be based on the procedures and requirements of this chapter, and the municipality shall retain any personnel necessary to make the determination of reasonable rates required under this chapter.

Sec. 13.084. AUTHORITY OF GOVERNING BODY; COST REIMBURSEMENT. The governing body of any municipality shall have the right

to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination of these experts to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility ratemaking proceedings. The water and sewer utility engaged in those proceedings shall be required to reimburse the governing body for the reasonable costs of those services.

Sec. 13.085. ASSISTANCE BY COMMISSION. On request, the commission may advise and assist municipalities in connection with questions and proceedings arising under this chapter. This assistance may include aid to municipalities in connection with matters pending before the commission, the courts, or the governing body of any municipality, including making members of the staff available to them as witnesses and otherwise providing evidence.

Sec. 13.086. APPEAL. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. Citizens of a municipal utility district may appeal any action of the district's governing body affecting the rates for water or sewer service to the commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipal utility district.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the commission by filing a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of the municipality.

(c) The appeal process shall be instituted within 30 days of the final decision by the governing body by filing a petition for review with the commission and by serving copies on all parties to the original rate proceeding.

(d) The commission shall hear an appeal de novo and shall fix in its final order the rates the municipality should have fixed in the ordinance from which the appeal was taken.

(e) Ratepayers of a municipal utility district outside the district's boundaries may appeal any action by the district's governing body affecting water or sewer rates or service of the district through filing with the commission a petition for review signed by the lesser of 10,000 or 5 percent of the ratepayers served by such municipal utility district outside the district's boundaries. For purposes of this section each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. Such petition for review shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.

[Sections 13.087-13.130 reserved for expansion]

SUBCHAPTER E. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES

Sec. 13.131. RECORDS OF UTILITY; RATES, METHODS, AND ACCOUNTS. (a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the commission uniform accounts of all business transacted. The commission may also prescribe forms of books, accounts, records, and memoranda to be kept by those utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda that in the judgment of the commission may be necessary to carry out this chapter.

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the commission. However, the commission may prescribe forms of books,

accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(c) The commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility and shall require every utility to carry a proper and adequate depreciation account in accordance with those rates and methods and with any other rules the commission prescribes. Those rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate-setting and appeal proceedings.

(d) Every utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. A profit or loss may not be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by a utility to the extent that the merchandise is not integral to the provision of utility service.

(e) Every utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the commission and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(f) In determining the allocation of tax savings derived from application of methods such as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion those benefits between consumers and the utilities accordingly. If any portion of the investment tax credit has been retained by a utility, that amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied to the extent allowed by the Internal Revenue Code.

(g) For the purposes of this section, "utility" includes "municipally owned utility."

Sec. 13.132. . POWERS OF COMMISSION. (a) The commission may:

(1) require that water and sewer utilities report to it any information relating to themselves and affiliated interests both inside and outside this state that it considers useful in the administration of this chapter;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any utility and any affiliated interest be filed with it and require that such a contract or arrangement that is not in writing be reduced to writing;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation, other than salary or wages subject to the withholding of federal income tax, made to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body be filed with it.

(b) On the request of the governing body of any municipality, the commission may provide sufficient staff members to advise and consult with the municipality on any pending matter.

Sec. 13.133. INSPECTIONS; EXAMINATION UNDER OATH; COMPELLING PRODUCTION OF RECORDS; INQUIRY INTO

MANAGEMENT AND AFFAIRS. (a) Any regulatory authority and, when authorized by the regulatory authority, its counsel, agents, and employees may, at reasonable times and for reasonable purposes, inspect and obtain copies of the papers, books, accounts, documents, and other business records and inspect the plant, equipment, and other property of any utility within its jurisdiction. The regulatory authority may examine under oath or may authorize the person conducting the investigation to examine under oath any officer, agent, or employee of any utility in connection with the investigation.

(b) The regulatory authority may require, by order or subpoena served on any utility, the production within this state at the time and place it may designate of any books, accounts, papers, or records kept by that utility outside the state or verified copies of them if the commission so orders. A utility failing or refusing to comply with such an order or subpoena violates this chapter.

(c) A member, agent, or employee of the regulatory authority may enter the premises occupied by a utility to make inspections, examinations, and tests and to exercise any authority provided by this chapter.

(d) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after giving reasonable notice to the utility.

(e) The utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before beginning an inspection, examination, or test.

(f) The regulatory authority may inquire into the management and affairs of all utilities and shall keep itself informed as to the manner and method in which they are conducted.

Sec. 13.134. REPORT OF ADVERTISING OR PUBLIC RELATIONS EXPENSES. (a) The regulatory authority may require an annual report from each utility company of all its expenditures for business gifts and entertainment and institutional, consumption-inducing, and other advertising or public relations expenses.

(b) The regulatory authority shall not allow as costs or expenses for ratemaking purposes any of the expenditures that the regulatory authority determines not to be in the public interest. The cost of legislative advocacy expenses shall not in any case be allowed as costs or expenses for ratemaking purposes.

(c) Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

Sec. 13.135. UNLAWFUL RATES, RULES, AND REGULATIONS. A utility may not charge, collect, or receive any rate for utility service or impose any rule or regulation other than as provided in this chapter.

Sec. 13.136. FILING SCHEDULE OF RATES, RULES, AND REGULATIONS. Every utility shall file with each regulatory authority schedules showing all rates that are subject to the original or appellate jurisdiction of the regulatory authority and that are in force at the time for any utility service, product, or commodity offered by the utility. Every utility shall file with and as a part of those schedules all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by the utility.

Sec. 13.137. OFFICE OF UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall have an office in a county of this state 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) 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.

Sec. 13.138. COMMUNICATIONS BY UTILITIES WITH REGULATORY AUTHORITY; REGULATIONS AND RECORDS. (a) The regulatory authority shall prescribe regulations governing communications by utilities and their affiliates and their representatives with the regulatory authority or any member or employee of the regulatory authority.

(b) The records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the names of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the utility, affiliate, or representative. The records shall be available to the public on a monthly basis.

Sec. 13.139. STANDARDS OF SERVICE. (a) Every utility shall furnish the service, instrumentalities, and facilities as are safe, adequate, efficient, and reasonable.

(b) The regulatory authority, after reasonable notice and hearing on its own motion or on complaint, may:

(1) ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all utilities with respect to the service to be furnished;

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement of service; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any service of any utility.

(c) Any standards, classifications, regulations, or practices observed or followed by any utility may be filed by it with the regulatory authority and shall continue in force until amended by the utility or until changed by the regulatory authority in accordance with this section.

Sec. 13.140. EXAMINATION AND TEST OF EQUIPMENT. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of service of any utility and may enter any premises occupied by any utility for the purpose of making the examinations and tests and exercising any power provided for in this chapter and may set up and use on those premises any apparatus and appliances necessary for those purposes. The utility may be represented at the making of the examinations, tests, and inspections.

(b) The utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for those duties.

(c) Any consumer or user may have a meter or measuring device tested by the utility once without charge after a reasonable period to be fixed by the regulatory authority by rule and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing of those meters and other measuring devices on the request of the consumer.

(d) If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period

of presumed accuracy fixed by the regulatory authority since the last test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

[Sections 13.141-13.180 reserved for expansion]

SUBCHAPTER F. PROCEEDINGS BEFORE REGULATORY AUTHORITY

Sec. 13.181. POWER TO ENSURE COMPLIANCE; RATE REGULATION. Subject to this chapter, the commission has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter. For this purpose the regulatory authority may fix and regulate rates of water and sewer utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body.

Sec. 13.182. JUST AND REASONABLE RATES. 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. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers. 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.

Sec. 13.183. FIXING OVERALL REVENUES. In fixing the rates of a public utility, the regulatory authority shall fix its overall revenues at a level that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.

Sec. 13.184. FAIR RETURN; BURDEN OF PROOF. (a) The regulatory authority may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

(b) In fixing a reasonable return on invested capital, the regulatory authority shall consider, in addition to other applicable factors, the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management.

(c) In any proceeding involving any proposed change of rates, the burden of proof shall be on the utility to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable.

Sec. 13.185. COMPONENTS OF INVESTED CAPITAL AND NET INCOME. (a) The components of invested capital and net income shall be determined according to the rules stated in this section.

(b) Utility rates shall be based on the original cost of property used by and useful to the utility in providing service, including, if necessary to the financial integrity of the utility, construction work in progress at cost as recorded on the books of the utility. The inclusion of construction work in progress is an exceptional form of rate relief to be granted only on the demonstration by the utility by clear and convincing evidence that the inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress may not be included in the rate base for major projects under construction to the extent that those projects have been inefficiently or imprudently planned or managed. Invested capital is the actual money cost or the actual money value of any consideration paid, other than money, of the property at the time it shall have been dedicated to public use, whether by the utility that is the present owner or by a predecessor, less depreciation.

(c) Cost of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(d) Net income is the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with Subsections (e) through (h) of this section.

(e) Payment to affiliated interests for costs of any services, or any property, right, or thing, or for interest expense may not be allowed either as capital cost or as expense except to the extent that the regulatory authority finds that payment to be reasonable and necessary. A finding of reasonableness and necessity must include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.

(f) If the utility is a member of an affiliated group that is eligible to file a consolidated income tax return and if it is advantageous to the utility to do so, income taxes shall be computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a utility is a member due to the elimination in the consolidated return of the intercompany profit on purchases by the utility from an affiliate shall be applied to reduce the cost of those purchases. The investment tax credit allowed against federal income taxes to the extent retained by the utility shall be applied as a reduction in the rate-based contribution of the assets to which the credit applies to the extent and at the rate as allowed by the Internal Revenue Code.

(g) The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes.

(h) The regulatory authority may not include for ratemaking purposes:

(1) legislative advocacy expenses, whether made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) costs of processing a refund or credit under Section 13.187 of this chapter; or

(3) any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, including executive salaries, advertising expenses, legal expenses, and civil penalties or fines.

Sec. 13.186. UNREASONABLE OR VIOLATIVE EXISTING RATES; INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. (a) If the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any utility for any service are unreasonable or in any way in violation of any law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be observed and in force, and shall fix the same by order to be served on the utility. Those rates constitute the legal rates of the utility until changed as provided in this chapter.

(b) If a utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains it from another source, the regulatory authority may investigate the cost of that production or generation in any investigation of the reasonableness of the rates of the utility.

Sec. 13.187. STATEMENT OF INTENT TO CHANGE RATES; MAJOR CHANGES; HEARING; SUSPENSION OF RATE SCHEDULE; DETERMINATION OF RATE LEVEL. (a) A utility may not make changes in its rates except by filing a statement of intent with the regulatory authority having

original jurisdiction at least 35 days before the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and any other information that may be required by the regulatory authority's rules. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of the proposed change once a week for four consecutive weeks in a newspaper with general circulation in each county containing territory affected by the proposed change, and to any other affected persons as required by the regulatory authority's rules. This subsection does not apply to a water or sewer utility that:

(1) has fewer than 150 customers;

(2) is not a member of a group filing a consolidated tax return; and

(3) is not under common control or ownership with another water or sewer utility.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rates to take effect before the end of the 35-day period under any conditions it may prescribe, subject to suspension as provided in this chapter. All changes shall be indicated immediately on its schedules by the utility. For the purpose of this subsection, a major change is an increase in rates that would increase the aggregate revenues of the applicant more than the greater of $100,000 or two and one-half percent, but is not a change in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held on notice to the public.

(c) If a schedule is filed with the regulatory authority that modifies or results in a change in any rates then in force, the regulatory authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date on which the change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, hold a hearing to determine the propriety of the change. The regulatory authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change is filed.

(d) Pending the hearing and decision, the regulatory authority, after delivery to the affected utility of a statement in writing of its reasons, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the regulatory authority finds that a longer time will be required for a final determination, the regulatory authority may further extend the period for an additional 30 days. If the regulatory authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be considered to have been approved by the regulatory authority. This approval is subject to the authority of the regulatory authority to continue a hearing in progress. The regulatory authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the regulatory authority, the rates in force at the time the suspended schedule was filed shall continue in force unless the regulatory authority establishes a temporary rate. The regulatory authority shall give preference to the hearing and decision of a question arising under this section over all other questions pending before it and decide the question as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed change would have gone into effect,

the utility concerned may put a changed rate, not to exceed the proposed rate, into effect on filing with the regulatory authority a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned on refund. The bond shall be in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the regulatory authority finds the rates to be unreasonable or in any way in violation of any law, the regulatory authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served on the utility. These rates are to be observed until changed, as provided by this chapter.

(g) A water or sewer utility exempted in Subsection (a) of this section may change its rates by filing a statement of change with the commission at least 30 days after providing notice of the change to its customers. The changed rates may be put into effect on the filing of the statement of change. At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding. On a finding by the commission that the changed rates are not just and reasonable, the commission shall set the utility's rates according to its usual procedure. The utility shall refund or credit against future bills all sums collected since the filing of the statement of change in excess of the rate finally set plus interest at the current rate as finally determined by the commission. No filing for a rate change under this subsection may be made for a period of six months from the last filing by the same utility.

Sec. 13.188. RATES FOR AREAS NOT WITHIN MUNICIPALITY. Water and sewer utility rates for areas not within any municipality may not exceed, without commission approval, 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Sec. 13.189. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES OR SERVICES. (a) A water and sewer utility as to rates or services may not make or grant any unreasonable preference or advantage to any corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage.

(b) A utility may not establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Sec. 13.190. EQUALITY OF RATES AND SERVICES. (a) A water and sewer utility may not directly or indirectly by any device or in any manner charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable to that service when filed in the manner provided in this chapter, and a person may not knowingly receive or accept any service from a utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a utility on the effective date of this chapter may be continued until schedules are filed.

(b) This chapter does not prevent a cooperative corporation from returning to its members the whole or any part of the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

Sec. 13.191. DISCRIMINATION; RESTRICTION ON COMPETITION. A water and sewer utility may not discriminate against any person or corporation that sells or leases equipment or performs services in competition with the utility, and a utility may not engage in any other practice that tends to restrict or impair that competition.

Sec. 13.192. PAYMENTS IN LIEU OF TAXES. Payments made in lieu of taxes by a water and sewer utility to the municipality by which it is owned may not

be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the utility is owned.

[Sections 13.193-13.240 reserved for expansion]

SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

Sec. 13.241. DEFINITIONS. In this subchapter:

(1) "Retail public utility" means any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation operating, maintaining, or controlling in this state facilities for providing retail water and sewer utility service.

(2) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation that is providing utility services other than water and sewer services and that is under the jurisdiction of the Railroad Commission of Texas or the Public Utility Commission of Texas, but does include a water supply or sewer service corporation.

Sec. 13.242. CERTIFICATE REQUIRED. Unless otherwise specified, a public utility may not in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

Sec. 13.243. EXCEPTIONS FOR EXTENSION OF SERVICE. (a) A public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; or

(3) operation, extension, or service in progress on the effective date of this chapter.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

Sec. 13.244. APPLICATION; MAPS; EVIDENCE AND CONSENT. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment of a certificate.

(b) Not later than 90 days after the effective date of this chapter, or at a later date on request in writing by a public utility when good cause is shown, or at any later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

(c) Each applicant for a certificate shall file with the commission evidence required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

Sec. 13.245. PRIOR CONSTRUCTION OR OPERATION. On application made to the commission, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted

to any public utility or retail public utility actually providing service to any geographical area on September 1, 1975, or to any person or corporation actively engaged on September 1, 1975, in the construction, installation, extension, or improvement of or addition to any facility or system used or to be used in providing public utility service.

Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL; FACTORS CONSIDERED. (a) If an application for a certificate of public convenience and necessity is filed, the commission shall give notice of the application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 13.245 of this code, the commission may grant applications and issue certificates only if the commission finds that a certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue a certificate as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on other factors such as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate.

Sec. 13.247. AREA INCLUDED WITHIN CITY, TOWN, OR VILLAGE. (a) If an area has been or is included within the boundaries of a city as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area before the inclusion may continue and extend service in its area of public convenience and necessity within the annexed or incorporated area pursuant to the rights granted by its certificate and this chapter.

(b) Notwithstanding any other provision of law, a public utility may continue and extend service within its area of public convenience and necessity and utilize the roads, streets, highways, alleys, and public property to furnish retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets, by giving to the public utility 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

(c) This section may not be construed as limiting the power of cities to incorporate or extend their boundaries by annexation, or as prohibiting any city from levying taxes and other special charges for the use of the streets as are authorized by Section 182.025, Tax Code.

Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

Sec. 13.249. PRELIMINARY ORDER FOR CERTIFICATE. If a public utility desires to exercise a right or privilege under a franchise or permit that it contemplates securing but that has not as yet been granted to it, the public utility may apply to the commission for an order preliminary to the issuance of the

certificate. The commission then may issue an order declaring that it will, on application under such rules as it prescribes, issue the desired certificate, on terms and conditions it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

Sec. 13.250. CONTINUOUS AND ADEQUATE SERVICE; DISCONTINUANCE, REDUCTION, OR IMPAIRMENT OF SERVICE. (a) The holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

(1) nonpayment of charges;

(2) nonuse; or

(3) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the commission prescribes.

Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

Sec. 13.252. INTERFERENCE WITH OTHER PUBLIC UTILITY. If a public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the line, plant, or system affected.

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area if service in that area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide the improved service; and

(2) order two or more public utilities to establish specified facilities for the interconnecting service.

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) If the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

[Sections 13.255-13.300 reserved for expansion]

SUBCHAPTER H. SALE OF PROPERTY AND MERGERS

Sec. 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION. (a) A utility may not sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000 or merge or consolidate with another utility operating in this

state unless the utility reports the transaction to the commission within a reasonable time.

(b) On the filing of a report with the commission, the commission shall investigate the transaction with or without public hearing to determine whether the transaction is consistent with the public interest.

(c) In reaching its determination, the commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, or consolidated.

(d) If the commission finds that the transaction is not in the public interest, the commission shall take the effect of the transaction into consideration in the ratemaking proceedings and disallow the effect of the transaction if it will unreasonably affect rates or service.

(e) This section may not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the utility by construction.

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. A utility may not purchase voting stock in another utility doing business in this state unless the utility reports the purchase to the commission.

Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may not loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the utility unless the utility reports the transaction to the commission within a reasonable time.

[Sections 13.304-13.340 reserved for expansion]

SUBCHAPTER I. RELATIONS WITH AFFILIATED INTERESTS

Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

[Sections 13.343-13.380 reserved for expansion]

SUBCHAPTER J. JUDICIAL REVIEW

Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

Sec. 13.382. COSTS AND ATTORNEY'S FEES. (a) Any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by the commission are excessive and who is a prevailing party in proceedings for review of a commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before the commission and the court. The amount of the attorney's fees shall be fixed by the court.

(b) On a finding by the court that an action under this subchapter was groundless and brought in bad faith and for the purpose of harrassment, the court may award to the defendant utility reasonable attorney's fees.

[Sections 13.383-13.410 reserved for expansion]

SUBCHAPTER K. VIOLATIONS AND ENFORCEMENT

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. If it appears to the commission that any utility or any other person or corporation is

engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the commission entered or adopted under this chapter or that any utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission against the utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

Sec. 13.412. RECEIVERSHIP. (a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if an appointment is necessary:

(1) to guarantee the collection of assessments, fees, penalties, or interest;

(2) to guarantee continued service to the customers of the utility; or

(3) to prevent continued or repeated violation of the final order.

(c) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(d) After appointment and execution of bond, the receiver shall take possession of the assets of the utility specified by the court. 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 utility and shall strictly observe the final order involved.

(e) On a showing of good cause by the utility, the court may dissolve the receivership and order the assets and control of the business returned to the utility.

Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of all or part of the real or personal property of a water or sewer utility against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

(1) payment of fees to the receiver for his services;

(2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and

(3) payment of costs incurred in ensuring that any property owned or controlled by a water or sewer utility is not used in violation of a final order of the commission.

Sec. 13.414. PENALTY AGAINST UTILITY OR AFFILIATED INTEREST. (a) Any utility or affiliated interest that knowingly violates this chapter, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, direction, or requirement of the commission or decree or judgment of a court is subject to a civil penalty of not less than $1,000 nor more than $5,000 for each offense.

(b) A utility or affiliated interest commits a separate offense each day it continues to violate Subsection (a) of this section.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the commission in a court of competent jurisdiction to recover the penalty under this section.

Sec. 13.415. PERSONAL PENALTY. Any person who wilfully and knowingly violates this chapter is guilty of a third degree felony.

Sec. 13.416. PENALTIES CUMULATIVE. All penalties accruing under this chapter are cumulative and a suit for the recovery of any penalty does not bar or

affect the recovery of any other penalty or bar any criminal prosecution against any utility or any officer, director, agent, or employee or any other corporation or person.

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person fails to comply with any lawful order of the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES. Fines and penalties collected under this chapter in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.

Sec. 13.419. VENUE. Suits for injunction or penalties under this chapter may be brought in Travis County, in any county where this violation is alleged to have occurred, or in the county or residence of any defendant.

[Sections 13.420-13.450 reserved for expansion]

SUBCHAPTER L. COMMISSION FINANCING

Sec. 13.451. ASSESSMENTS ON PUBLIC UTILITIES. An assessment is imposed on each public utility under the commission's jurisdiction serving the ultimate consumer in an amount equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in this state to pay the costs and expenses incurred in the administration of this chapter. The commission, subject to the approval of the legislature, shall subsequently adjust this assessment to provide a level of income sufficient to fund commission operation.

Sec. 13.452. PAYMENT DATES; DELINQUENCY. (a) Except as provided by Subsection (b) of this section, assessments are due on August 15 of each year.

(b) A utility may make quarterly payments due on August 15, November 15, February 15, and May 15 of each year.

(c) There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of 10 percent a year on the assessment and penalty due.

Sec. 13.453. COLLECTION AND PAYMENT INTO GENERAL REVENUE FUND. (a) All fees, penalties, and interest paid under Sections 13.451 and 13.452 of this code shall be collected by the comptroller of public accounts and paid into the General Revenue Fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 13.451 of this code when made.

(b) Chapters 111, 112, and 113, Tax Code, apply to the administration, collection, and enforcement of the assessment imposed under this code except as modified by this code.

Sec. 13.454. APPROVAL OF BUDGET. The budget of the commission is subject to legislative approval as part of the General Appropriations Act.

Sec. 13.455. ACCOUNTING RECORDS; AUDIT. The commission shall keep the accounting records required by the state auditor and is subject to periodic audit.

[Sections 13.456-13.490 reserved for expansion]

SUBCHAPTER M. MISCELLANEOUS PROVISIONS

Sec. 13.491. COMPLAINT BY ANY AFFECTED PERSON. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted by any utility in violation or claimed violation of any law that the regulatory authority has jurisdiction to administer or of any order, ordinance, or rule of the regulatory authority.

Sec. 13.492. RECORD OF PROCEEDINGS; RIGHT TO HEARING. A record shall be kept of all proceedings before the regulatory authority, and all the parties are entitled to be heard in person or by attorney.

Sec. 13.493. JUDICIAL STAY OR SUSPENSION OF ORDER, RULING, OR DECISION. During the pendency of an appeal, the district court, the court of appeals, or the supreme court may stay or suspend in whole or in part the operation of the regulatory authority order, ruling, or decision. In granting or refusing a stay or suspension the court shall act in accordance with the practice of courts exercising equity jurisdiction.

Sec. 13.494. CERTAIN WATER AND SEWER UTILITY PROPERTY INCLUDED IN RATE BASE; VALUATION USED; DEPRECIATION EXPENSE. (a) This section applies notwithstanding any other provision of this chapter.

(b) Water and sewer utility property in service that was acquired from an affiliate or developer before September 1, 1976, included by the utility in its rate base shall be included in all ratemaking formulas and at the installed cost of the property rather than the price set between the entities. Unless the funds for this property are provided by explicit customer agreements, the property shall be considered invested capital and shall not be considered contributions in aid of construction or customer-contributed capital.

(c) Depreciation expense included in cost of service shall include depreciation on all currently used, depreciable utility property owned by the utility.

PART 4. WATER DEVELOPMENT

SECTION 4.001. Chapter 16, Water Code, is amended by adding Section 16.1341 to read as follows:

Sec. 16.1341. PAYMENT FOR RELEASES AND PASS-THROUGHS FROM STATE RESERVOIRS. (a) If the commission orders, for the purpose of maintaining the ecological health of any bay and estuary system, a release or pass-through of appropriated water from an existing reservoir owned in part by the board on September 1, 1985, the board shall pay the amount necessary to pay all maintenance and operating costs associated with the storage and release of the water.

(b) If the order under Subsection (a) of this section results in a dedication that reduces the reservoir's firm yield water supply capability, the board is responsible for repayment of that portion of the construction cost indebtedness associated with that dedication.

PART 5. WATER QUALITY
ARTICLE A. CIVIL PENALTIES

SECTION 5.001. Sections 26.122 and 26.123, Water Code (effective until delegation of NPDES permit authority), are amended to read as follows:

Sec. 26.122. CIVIL PENALTY. A person who violates any provision of this chapter or any rule, permit, or order of the commission [~~department~~] is subject to a civil penalty of not less than $50 nor more than $10,000 [~~$1,000~~] for each act of violation and for each day of violation to be recovered as provided in this subchapter.

Sec. 26.123. ENFORCEMENT BY COMMISSION [~~DEPARTMENT~~]. (a) The commission shall diligently and uniformly enforce each of its rules, permits, and orders.

(b) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, permit, or order of the commission [~~department~~], then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $10,000 [~~$1,000~~] for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(c) [~~(b)~~] On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit,

or order of the commission [department], the district court shall grant the injunctive relief the facts may warrant.

(d) [(c)] At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (b) [(a)] of this section.

SECTION 5.002. Sections 26.122 and 26.123, Water Code (effective on delegation of NPDES permit authority), are amended to read as follows:

Sec. 26.122. CIVIL PENALTY. (a) A person who violates any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 26.121 [21.251], or who violates any rule, permit, or order of the commission [department] is subject to a civil penalty of not less than $50 nor more than $10,000 [$1,000] for each act of violation and for each day of violation to be recovered as provided in this subchapter.

(b) A person who violates Subsection (d) or Subsection (e) of Section 26.121 [21.251] of this chapter is subject to a civil penalty of not more than $10,000 for each act of violation and for each day of violation, to be recovered as provided in this subchapter; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than $10,000 [$1,000] for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the commission [department] prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act, or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator of the United States Environmental Protection Agency.

Sec. 26.123. ENFORCEMENT BY COMMISSION [DEPARTMENT]. (a) The commission shall diligently and uniformly enforce each of its rules, permits, or orders.

(b) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 26.121 [21.251], or has violated or is violating, or is threatening to violate, any rule, permit, or order of the commission [department], then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $10,000 [$1,000] for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(c) [(b)] Whenever it appears that a person has violated or is violating, or is threatening to violate, Subsection [Subchapter] (d) or Subsection [Subchapter] (e) of Section 26.121 [21.251] of this chapter, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not more than $10,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than $10,000 [$1,000] for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the commission [board] prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act, or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES

permit delegation by the Administrator of the United States Environmental Protection Agency.

(d) [~~(c)~~] On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit, or order of the commission [~~department~~], the district court shall grant the injunctive relief the facts may warrant.

(e) [~~(d)~~] At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (b) [~~(a)~~] or (c) [~~(b)~~] of this section.

SECTION 5.003. Section 26.213, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.213. CRIMINAL PENALTY. A person who violates the provisions of Section 26.212 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $10,000 [~~$1,000~~]. Each day that a violation occurs constitutes a separate offense.

SECTION 5.004. Section 26.213, Water Code (effective on delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.213. CRIMINAL PENALTY. (a) A person who violates the provisions of Subsection (a) or Subsection (b) of Section 26.212 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $10,000 [~~$1,000~~]. Each day that a violation occurs constitutes a separate offense.

(b) A person who violates the provisions of Subsection (c), (d), or (e) of Section 26.212 is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25,000; provided, however, that violations of limitations or conditions included in permits issued by the commission prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act, or violations of limitations or conditions included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator, shall be punishable by a fine of not less than $10 nor more than $10,000 [~~$1,000~~]. Each day that a violation occurs constitutes a separate offense.

SECTION 5.005. Subsections (a), (b), and (e), Section 26.268, Water Code, are amended to read as follows:

(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the commission [~~department~~].

(b) Any person who violates any provision of this subchapter or of a commission [~~department~~] rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than $100 nor more than $10,000 [~~$2,000~~] for each act of violation and for each day of violation.

(e) The penalties authorized by this subchapter for discharges and spills shall not apply to any discharge or spill promptly reported and removed by the responsible party in accordance with the rules and orders of the commission [~~department~~], unless the department finds that the discharge or spill is the result of the negligence of the responsible party.

ARTICLE B. COMMENTS ON USE OF FRESH WATER

SECTION 5.006. Section 27.0511, Water Code, is amended to read as follows:

Sec. 27.0511. CONDITIONS OF CERTAIN PERMITS. (a) If the railroad commission receives an application for an injection well permit for a well that is to be used for enhanced recovery of oil, before a permit for the well may be granted, the railroad commission shall require the applicant for the permit to provide written information relating to the material that the applicant plans to inject into the well

for enhanced recovery purposes and to other material available to the applicant that might be used to inject into the well for enhanced recovery and shall make the determination required by Subsection (c) [~~(b)~~] of this section.

(b) At the time the railroad commission receives an application under Subsection (a) of this section, it shall give notice to the commission that an application covered by this section is being considered and shall supply the commission with a copy of the application and a request for commmission comment on the application. On receiving the information requested under Subsection (a) of this section, the railroad commission shall notify the commission that the information has been received and make the information available for the commission's inspection. The commission shall examine the application and information. Before the railroad commission considers the application, the commission shall submit to the railroad commission written comments regarding the use of fresh water under the permit and any problems that the commission anticipates will result from the use of fresh water under the permit. However, if the commission does not submit its written comments within 30 days after the request, the railroad commission may consider the application without the commission comments.

(c) On receiving the information required by Subsection (a) of this section, the railroad commission shall consider the information at the same time it considers whether or not to grant the permit, and if the applicant proposes to inject fresh water into the injection well for enhanced recovery, the railroad commission shall consider whether or not there is some other solid, liquid, or gaseous substance that is available to the applicant and that is economically and technically feasible for the applicant to use for enhanced recovery purposes.

(d) [~~(c)~~] If the railroad commission finds that there is a solid, liquid, or gaseous substance other than fresh water available and economically and technically feasible for use in enhanced recovery under the permit, the railroad commission shall include as a condition of the permit, if granted, that the permittee use the other substance found to be available and economically and technically feasible and that the applicant not use fresh water or that the applicant use fresh water only to the extent specifically stated in the permit.

(e) [~~(d)~~] This section does not apply to injection well permits that are in effect on September 1, 1983. If fresh water is being injected into an injection well in an enhanced recovery program that is in effect on September 1, 1983, and after that time, another substance or material is used for injection for a period of time, the injection well permit is not canceled, and a new permit under this chapter is not required if the operator plans at a later date to resume the use of fresh water for injection in that enhanced recovery program.

(f) [~~(e)~~] Injection well permits for wells that are used for enhanced recovery remain in force until canceled by the railroad commission.

(g) [~~(f)~~] No person may continue utilizing or begin utilizing industrial or municipal waste as an injection fluid for enhanced recovery purposes without first obtaining a permit from the commission [~~department~~].

ARTICLE C. ADMINISTRATIVE PENALTIES

SECTION 5.007. Chapter 26, Water Code, is amended by adding Section 26.136 to read as follows:

Sec. 26.136. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter or a rule or order adopted or a permit issued under this chapter, the commission may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed $10,000 a day for a person who violates this chapter or a rule, order, or permit. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based that conclusion, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (c) of this section, and the executive director shall analyze each factor for the benefit of the commission.

(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged either may give to the commission written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice to the person charged of its decision.

(h) If the person charged requests, or the commission orders, a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and has assessed a civil penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of his right to judicial review of the commission's order. If the commission is required to give notice of a civil penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commission for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commission within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (g) or (j) of this section, the commission or the executive director may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(n) Notwithstanding any other provision to the contrary, the commission may compromise, modify, or remit, with or without condition, any civil penalty imposed under this section.

(o) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

SECTION 5.008. Chapter 27, Water Code, is amended by adding Section 27.1015 to read as follows:

Sec. 27.1015. ADMINISTRATIVE PENALTY. (a) If a person violates the provisions of this chapter under the jurisdiction of the commission, a rule adopted by the commission, or an order adopted or permit issued by the commission under this chapter, the commission may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed $10,000 a day for a person who violates this chapter or a rule, order, or permit. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based that conclusion, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (c) of this section, and the executive director shall analyze each factor for the benefit of the commission.

(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged either may give to the commission written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice to the person charged of its decision.

(h) If the person charged requests, or the commission orders, a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and has assessed a civil penalty,

the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of his right to judicial review of the commission's order. If the commission is required to give notice of a civil penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commission for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commission within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (g) or (j) of this section, the commission or the executive director may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(n) Notwithstanding any other provision to the contrary, the commission may compromise, modify, or remit, with or without condition, any civil penalty imposed under this section.

(o) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

SECTION 5.009. Chapter 28, Water Code, is amended by adding Section 28.067 to read as follows:

Sec. 28.067. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter or a rule or order adopted or a permit issued under this chapter, the commission may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed $10,000 a day for a person who knowingly violates this chapter or a rule, order, or permit. For all other violations, the penalty may be in an amount not to exceed $5,000 a day. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard created to the health or safety of the public;

(2) the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the violator to rectify the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based that conclusion, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors set forth in Subsection (c) of this section, and the executive director shall analyze each factor for the benefit of the commission.

(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged either may give to the commission written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice to the person charged of its decision.

(h) If the person charged requests, or the commission orders, a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either may find that no violation has occurred, that a violation has occurred but no penalty should be assessed, or that a violation has occurred and a penalty should be assessed. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In making any penalty decision, the commission shall analyze each of the factors set forth in Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and has assessed a civil penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of his right to judicial review of the commission's order.

If the commission is required to give notice of a civil penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commission for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commission within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (g) or (j) of this section, the commission or the executive director may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(n) Notwithstanding anything to the contrary, the commission may compromise, modify, or remit, with or without condition, any civil penalty imposed under this section.

(o) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violations for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

ARTICLE D. CERTIFICATE OF COMPETENCY

SECTION 5.010. Chapter 26, Water Code, is amended by adding Section 26.0301 to read as follows:

Sec. 26.0301. CERTIFICATE OF COMPETENCY. (a) The holders of permits to discharge wastewater from a sewage treatment facility shall employ a treatment plant operator holding a valid certificate of competency issued under the direction of the commission.

(b) Every person, company, corporation, firm, or partnership that employs sewage treatment plant operators and is in the business of providing as a sewage treatment facility operations must hold a valid certificate of competency issued under the direction of the commission. Any employee of a person, company, corporation, firm, or partnership who will be operating a sewage treatment facility must hold a valid certificate of competency issued under the direction of the commission.

(c) The commission may suspend or revoke the certificate of competency for sewage treatment facility operation of an individual treatment facility operator or

a sewage treatment facility operations company, after notice and hearing before the commission, if the holder of a certificate of competency is responsible for violating a discharge permit of a sewage treatment plant.

(d) The holder of a certificate of competency is not subject to the revocation or suspension of the certificate of competency under Subsection (c) of this section if:

(1) the holder of a certificate is unable to properly operate the sewage treatment facility due to the refusal of the permittee to authorize necessary expenditures to operate the sewage treatment facility properly; or

(2) failure of the sewage treatment facility to comply with its discharge permit results from faulty design of the sewage treatment facility.

PART 6. SOLID WASTE DISPOSAL

SECTION 6.001. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Section 8b to read as follows:

Sec. 8b. (a) If a person violates the provisions of this Act relating to solid waste under the jurisdiction of the commission or a rule or order relating to solid waste under the jurisdiction of the commission adopted or a solid waste permit or registration issued by the commission under this Act, the commission may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed $10,000 a day for a person who violates this chapter or a rule, order, or permit. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which he based that conclusion, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (c) of this section, and the executive director shall analyze each factor for the benefit of the commission.

(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged either may give to the commission written consent to the executive director's report, including the recommended penalty, or may make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice to the person charged of its decision.

(h) If the person charged requests, or the commission orders, a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and has assessed a civil penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of his right to judicial review of the commission's order. If the commission is required to give notice of a civil penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

(A) forward the amount of the penalty to the commission for placement in an escrow account; or

(B) instead of payment into an escrow account, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commission within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond as provided by Subsection (g) or (j) of this section, the commission or the executive director may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(n) Notwithstanding any other provision to the contrary, the commission may compromise, modify, or remit, with or without condition, any civil penalty imposed under this section.

(o) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

PART 7. TEXAS DEPARTMENT OF HEALTH

SECTION 7.001. Section 3, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. (a) The department is hereby designated the state solid waste agency with respect to the management of municipal solid waste other than hazardous municipal waste, and shall be the coordinating agency for all municipal solid waste activities other than activities relating to hazardous municipal waste. The department shall be guided by the board of health in its activities relating to municipal solid waste other than hazardous municipal waste. The department shall seek the accomplishment of the purposes of this Act through the control of all aspects of municipal solid waste management other than management of hazardous municipal waste by all practical and economically feasible methods consistent with the powers and duties given the department under this Act and other existing legislation. The department has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department shall consult with the department of water resources with respect to the water pollution control and water quality aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department by this Act.

(b) The department of water resources is hereby designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and shall be the coordinating agency for all industrial solid waste activities and hazardous municipal waste activities. The department of water resources shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste management and hazardous municipal waste management by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The department of water resources has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department of water resources shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department of water resources by this Act.

(c) Where both municipal solid waste and industrial solid waste, except Class I industrial solid waste which is not routinely collected with municipal solid waste and hazardous waste, are involved in any activity of management of solid waste, the department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act. Class I industrial solid waste and hazardous waste [~~under the jurisdiction of the department of water resources~~] may be accepted in a municipal solid waste facility if authorized in writing by the department with the written concurrence of the department of water resources. Solid waste[~~, including hazardous waste,~~] under the jurisdiction of the department may be accepted in an industrial solid waste facility, if authorized in writing by the department of water resources with the written concurrence of the department.

(d) The department is designated under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), as the state agency with respect to regulating radioactive waste activities that are not preemptively regulated by the federal government. The department of water resources has all powers under the Solid Waste Disposal Act, as amended (Article 4477-7, Vernon's Texas Civil Statutes), necessary or convenient to carry out responsibilities concerning the regulation of the management of hazardous [~~solid~~] waste components of any radioactive wastes under the department's [~~its~~] jurisdiction. The department of water resources shall consult with the department with regard to regulation and management under this subsection and may not adopt any rules or engage in any management activities under this subsection that are in conflict with state or federal laws and rules relating to regulation of radioactive wastes.

SECTION 7.002. Subsections (b) and (c), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The department is authorized to develop a state [~~municipal~~] solid waste plan for all solid waste under its jurisdiction, and the department of water resources is authorized to develop a state [~~industrial~~] solid waste plan for all solid waste under its jurisdiction. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

(c) Each state agency may adopt and promulgate rules consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act. In developing rules relating to hazardous waste, the department of water resources [~~each state agency~~] shall consult with the department, the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources. The department of water resources [~~Within one year after the effective date of this Act, each state agency~~] shall adopt rules that:

(1) condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater;

(2) define the characteristics that make an area unsuitable for a hazardous waste management facility including, but not limited to, consideration of:

(A) flood hazards;

(B) discharge from or recharge to a groundwater aquifer; or

(C) soil conditions;

(3) prohibit issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the department of water resources [~~agency~~] unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics; and

(4) require persons who generate, transport, process, store, or dispose of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that such wastes are transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

In adopting rules under Paragraphs (1)-(3) of this section, the department of water resources [~~state agencies~~] may distinguish between solid waste facilities based

on type or hazard of hazardous wastes managed and the type of waste management method used.

SECTION 7.003. Subsection (b), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Criminal Penalties. (1) Any person who knowingly:

(A) transports, or causes to be transported for storage, processing, or disposal, any hazardous waste to any location which does not have a permit as required by the department of water resources [~~a state agency~~] exercising jurisdiction under Section 4 of this Act;

(B) stores, processes, or disposes, or causes to be stored, processed, or disposed, any hazardous waste without having obtained a permit as required by the department of water resources [~~a state agency~~] exercising jurisdiction under Section 4 of this Act or in knowing violation of any material condition or requirement of a permit;

(C) makes, or causes to be made, any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with any requirement of this Act applicable to hazardous waste; or

(D) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, any hazardous waste (whether such activity took place before or after the date of enactment of this section) and who knowingly destroys, alters, or conceals, or causes to be destroyed, altered, or concealed, any record required to be maintained under the rules promulgated by the department of water resources [~~state agency~~] under this Act,

shall be subject, upon conviction, to a fine of not less than $100.00 nor more than $25,000.00 for each act of violation and each day of violation, or to imprisonment not to exceed 180 days, or both. If the conviction is for a violation committed after a first conviction of such person under this Section 8(b), punishment shall be by a fine of not less than $200.00 nor more than $50,000.00 for each day of violation, or by imprisonment not to exceed one year, or both.

SECTION 7.004. Subsection (a), Section 12, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Every person, firm, corporation, public or private, contemplating the establishment of any drinking water supply or sewage disposal system for public use shall, previous to construction thereof, submit completed plans and specifications therefor to the State Department of Health and the said Department shall approve same; provided said plans conform to the water safety and stream pollution laws of this state. The said water supply or sewage disposal system shall be established only after approval has been given by the State Department of Health. To avoid duplication of review by state agencies, the State Department of Health approval is not required for drinking water supply or sewage disposal systems for public use if the plans and specifications are required by law to be approved by the Texas Water Commission.

SECTION 7.005. Section 20, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. [~~(a) The management of every public sewerage treatment plant shall employ a sewerage plant operator holding a valid certificate of competency issued under the direction of the Texas State Department of Health. Such sewerage plant operator shall be in charge of said plant. This certificate shall not apply to sewerage treatment plants using septic tanks and subsoil treatment.~~

[~~(b)~~] The Texas State Department of Health shall take all necessary procedures essential to the protection of any spring, well, pond, lake, reservoir, or

other streams in Texas, from any condition or pollution resulting from sewage, that may endanger the public health, and shall have full authority to enforce all the laws of this state relating thereto.

PART 8. WATER WELL DRILLERS

SECTION 8.001. Section 2, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. DEFINITIONS. The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from the context. The singular form shall also mean plural form and the masculine gender shall also include the feminine and neuter genders.

(a) "Person" shall mean any individual, whether or not connected with a firm, partnership, association, corporation, or any other group or combination acting as a unit.

(b) "Board" shall mean the Texas Water Well Drillers Board.

(c) "Executive director" shall mean the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

(d) "Commission" [~~"Department"~~] shall mean the Texas [~~Department of~~] Water Commission [~~Resources~~].

(e) "Water well" shall mean any artificial excavation constructed for the purpose of exploring for or producing ground water. The term, however, shall not include any test or blast holes in quarries or mines, or any well or excavation for the purpose of exploring for, or producing oil, gas, or any other minerals unless the holes are used to produce ground water.

(f) "Water well driller" shall mean any person (including owner, operator, and drilling supervisor) who engages for compensation in the drilling, boring, coring, or construction of any water well in this State. The term, however, shall not include any person who drills, bores, cores, or constructs a water well on his own property for his own use or a person who assists in the construction of a water well under the direct supervision of a licensed water well driller and is not primarily responsible for the drilling operations.

(g) "Licensed water well driller" shall mean any person who holds a license issued by the State of Texas pursuant to the provisions of this Act.

(h) "Pollution" shall mean the changing of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in a way that makes the water harmful to humans, animal life, vegetation, or property or to the public health, safety, or welfare or that impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(i) "Well log" shall mean a log accurately kept, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the Board, on forms prescribed by the Board.

(j) "Water Well Drillers Board" shall mean an examining board consisting of nine (9) members, all of whom shall be voting members appointed by the Governor with the advice and consent of the Senate as hereinafter provided.

(k) "License fee" shall mean the initial fee to be paid by a driller under this Act.

(l) "Renewal fee" shall mean that fee paid by a previously licensed driller.

(m) "Examination fee" shall mean that non-refundable fee required of each applicant for each examination.

SECTION 8.002. Subsections (c), (d), (e), and (g), Section 3, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) At the time of making application, each applicant shall pay to the commission [~~department~~] the required examination fee which shall be

non-refundable; and the successful candidates upon notification of eligibility shall pay to the commission [~~department~~] the license fee.

(d) All licenses issued under this Act shall expire on August 31 of each year; and on or before that day, each person holding a license shall pay to the commission [~~department~~] an annual renewal fee. The commission [~~department~~] shall notify each licensee in writing of the licensee's impending license expiration at least 30 days before the expiration and shall attempt to obtain from each licensee a signed statement confirming receipt of the notice. A person may renew his unexpired license by paying to the commission [~~department~~] before the expiration date of the license the required renewal fee. If a person's license has been expired for 90 days or less, the person may renew the license by paying to the commission [~~department~~] the required renewal fee and a fee that is one-half of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the commission [~~department~~] all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(e) The commission [~~department~~] shall maintain a current register of licensees.

(g) A duplicate license to replace a lost or destroyed license shall be issued by the commission [~~department~~] upon proper application and payment of a fee.

SECTION 8.003. Sections 4 and 5, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4. ENDORSEMENT. The Board may develop rules specifying grounds by which the commission [~~department~~] may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Sec. 5. REPORTING OF WELL LOGS. Every licensed water well driller drilling, deepening or otherwise altering a water well within this State shall make and keep, or cause to be made and kept, a legible and accurate well log, and within 30 days from the completion or cessation of drilling, deepening or otherwise altering such a water well, shall deliver or transmit by certified mail a copy of such well log to the commission [~~department~~], and the owner thereof or the person having had such well drilled. Each copy of a well log, other than a commission [~~department~~] copy, shall include the name, mailing address, and telephone number of the Board and the department. The well log required herein shall at the request in writing to the commission [~~department~~], by certified mail, by the owner or the person having such well drilled be held as confidential matter and not made of public record.

SECTION 8.004. Subsections (d) and (n), Section 6, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) A Board member or an employee of the Board or the commission [~~department~~] connected with the administration of this Act may not be an officer, employee, or paid consultant of a trade association in the water well drilling industry and may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(n) Administration of examination:

(1) The commission [~~department~~] shall offer examinations prepared by the Board at least once a year and more frequently if more than 10 persons petition the Board for an additional examination, or the Board should so provide.

(2) The examination shall be so administered so that the one who grades an examination does not know whose paper he is grading.

(3) The commission [~~department~~] shall maintain files of examination papers. Not later than the 30th day after the date a licensing examination is administered under this Act, the commission [~~department~~] shall notify each examinee of the results of the examination. A person, at any time within six months of the date that he is notified of the results of an examination, is entitled to inspect his examination paper during normal business hours at the commission's [~~department's~~] offices for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading. If requested in writing by a person who fails the licensing examination administered under this Act, the commission [~~department~~] shall furnish the person with an analysis of the person's performance on the examination.

SECTION 8.005. Subsection (c), Section 9, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Service of citation on the Board must be accomplished within thirty (30) days after the date the petition was filed. Citation may be served on the Executive Director [~~of the department~~] or on any member of the Water Well Drillers Board.

SECTION 8.006. Sections 10, 11, 12, and 17, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 10. DUTIES OF THE COMMISSION [~~DEPARTMENT~~]. (a) The commission [~~department~~] shall furnish the Board with necessary clerical services, including space for holding examinations; printing examinations; printing and mailing licenses; sending notices; collecting fees and issuing receipts; employing secretarial assistance; replying to routine requests for information; printing forms and information; typing all letters to be reproduced; maintaining records and completed examinations; and keeping records of receipts and disbursements; providing necessary legal services; and providing necessary investigative services, and the commission [~~department~~] shall promulgate procedures and standards for plugging water wells.

(b) The Board shall have access to information kept by the commission [~~department~~] under this Act.

(c) The commission [~~department~~] shall adopt the necessary procedural rules in order to carry out the imposed duties under this Section of this Act.

(d) The commission [~~department~~] shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The commission [~~department~~] shall make the information available to the general public and appropriate state agencies.

(e) If a written complaint is filed with the Board relating to a licensee, the commission [~~department~~], at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an undercover investigation. The commission [~~department~~] shall maintain an information file about each complaint filed with the Board relating to a licensee.

Sec. 11. DISPOSITION OF REVENUES. (a) The state auditor shall audit the financial transactions of the Board and commission [~~department~~] in connection with the administration of this Act during each fiscal biennium.

(b) All money collected by the commission [~~department~~] under the provisions of this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the water well drillers fund and may be used only to administer this Act.

(c) On or before January 1 of each year, the commission [~~department~~] shall submit in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for funds received and disbursed under this Act by the commission [~~department~~] and the Board during the preceding year.

Sec. 12. CIVIL PENALTY. Any person who fails to comply with the provisions of this Act, or with any rule or regulation promulgated by the board or the commission [~~department~~] under this Act, shall be subject to a civil penalty in any sum not exceeding Ten Thousand Dollars ($10,000) [~~One Thousand Dollars ($1,000)~~] for each day of noncompliance and for each act of noncompliance, as the court may deem proper. A firm, partnership, association, corporation, or other group or combination with which the person was connected in relation to the act of noncompliance is also subject to the civil penalty. The action may be brought by the board in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides. Full authority is also given the executive director to enforce by injunction, mandatory injunction or other appropriate remedy, in courts having jurisdiction in the county where the offending activity is occurring, the provisions of this Act. At the request of the board or the executive director, the Attorney General shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the injunctive relief and civil penalty, authorized in this section. Any party to a suit may appeal from a final judgment as in other civil cases. The obtaining of a license under the provisions of this Act by a person shall not act to relieve that person from liability under any statutory law or the Common Law.

Sec. 17. TRANSFER OF FUNCTIONS. In the event that the functions of the commission [~~Texas Department of Water Resources~~] necessary to the proper implementation of its duties under this Act are transferred to any other agency, the authority given herein to the commission [~~Texas Department of Water Resources~~] shall be transferred to such other agency.

PART 9. IRRIGATORS

SECTION 9.001. Subdivision (3), Section 1, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), are amended to read as follows:

(3) "Executive director" means the executive director of the Texas [~~Department of~~] Water Commission [~~Resources~~].

SECTION 9.002. Subsections (b) and (g), Section 3, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Each member of the board and his or her successor shall be appointed by the governor with the advice and consent of the senate. Two members shall be members of the public not licensed under this Act, and four members shall be licensed irrigators who have been actively engaged in the practice of irrigation of the type licensed under this Act for a period of at least five years. [~~A person is not eligible for appointment to the board if the person has contributed more than $1,000 on behalf of the political candidacy of the governor who makes the appointments under this Act.~~] Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(g) Each member shall receive as compensation for his or her services an amount provided by the General Appropriations Act [~~$25 a day~~] for each day he or she is actively engaged in official duties in addition to actual travel expenses.

SECTION 9.003. Subsections (a) and (b), Section 5, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The board may employ an executive secretary to perform the duties and functions provided by this Act and as directed by the board. [~~On approval of the board the executive secretary may contract with the executive director for staff necessary to assist in the administration of this Act. In the event staff is unavailable through contract, the executive secretary with approval of the board and the executive director may employ such staff.~~]

(b) The executive director shall provide necessary services [~~as available~~] to assist the executive secretary and the board in performing their duties and functions under this Act.

SECTION 9.004. Subsection (d), Section 6, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is repealed.

SECTION 9.005. Subsection (c), Section 8, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The board shall provide in its rules for the preparation, administration, and grading of examinations to acquire certificates of registration under this Act. The fee for taking the examination shall be set by the board not to exceed $100 [~~is $50~~] for the irrigator certificate of registration and not to exceed $75 [~~$35~~] for the installer certificate of registration.

SECTION 9.006. Subsection (b), Section 9, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The application for registration under this section shall be accompanied by a fee of not to exceed $100 [~~$50~~] for a licensed irrigator or $75 [~~$35~~] for a licensed installer as determined by the board.

SECTION 9.007. Subsection (c), Section 10, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) A person may renew his or her certificate at any time during the months of July and August of each year by payment of the fee adopted by the board in an amount of not more than $150 [~~$100~~] for a licensed irrigator or $100 [~~$50~~] for a licensed installer.

SECTION 9.008. Section 12, Chapter 197, Acts of the 66th Legislature, 1979 (Article 8751, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. PENALTY; INJUNCTION. (a) A person who represents himself or herself as a licensed irrigator or licensed installer in this state without being licensed or exempted under this Act, who presents or attempts to use as his or her own the certificate of registration or the seal of another person who is a licensed irrigator or licensed installer, who gives false or forged evidence of any kind to the board or to any member of the board in obtaining or assisting in obtaining for another a certificate of registration, [~~or who violates a provision of this Act or a rule adopted under this Act~~] shall be guilty of a Class C misdemeanor. Each day a violation of this subsection occurs constitutes a separate offense.

(b) A person who violates this Act or a rule or order of the commission adopted under this Act is subject to a civil penalty of not to exceed $1,000 for each offense. Each day a violation is committed is a separate offense.

(c) An action to recover the penalty under Subsection (b) of this section may be brought by the board in any court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

(d) The board may enforce this Act or a valid rule or order of the commission by injunction or other appropriate remedy. The action may be brought by the board in a court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

(e) At the request of the board, the attorney general shall institute and conduct a suit in the name of the state to recover the civil penalty as provided under Subsection (b) of this section or for injunctive relief or other appropriate remedy, or for both

[~~The board or the executive director may request the attorney general to seek injunctive relief to prevent any of the acts of violation listed in Subsection (a) of this section~~].

PART 10. MISCELLANEOUS PROVISIONS

SECTION 10.001. With regard to any permits and licenses issued by the Texas Water Commission on or before the effective date of this Act, the four-month period of noncompliance provided by Section 5.117, Water Code, as added by this Act, may not begin to accrue until September 1, 1985.

SECTION 10.002. The rules required to be adopted by Sections 5.103 and 6.101, Water Code, must be adopted and in force not later than January 1, 1986. All rules of the Texas Department of Water Resources that are in effect on September 1, 1985 shall remain in effect until the Texas Water Commission and the Texas Water Development Board adopt new rules for their areas of responsibility.

SECTION 10.003. (a) The purpose of Article C, Part 3, of this Act is to transfer water and sewer utility regulation from the Public Utility Commission of Texas under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) to the Texas Water Commission, and Chapter 13, Water Code, as added by this Act, is not intended to expand the jurisdiction, rights, powers, or duties of the Texas Water Commission in excess of those exercised by the Public Utility Commission of Texas before March 1, 1986. Further, Chapter 13, Water Code, is not intended to affect the jurisdiction and responsibilities for water rate regulation presently vested in the Texas Water Commission under Title 2 of the Water Code. The transfer of water and sewer utility regulation from the Public Utility Commission of Texas to the Texas Water Commission does not impair or affect any act done or obligation, right, permit, license, standard or requirement, or penalty accrued or existing under the authority of the Public Utility Regulatory Act, and any prior action of the Public Utility Commission of Texas remains in force pertaining to water and sewer utilities for the purpose of sustaining any proper action concerning such obligation, right, permit, license, standard or requirement, or penalty. No judicial action or proceeding instituted before March 1, 1986, is affected by the enactment of Chapter 13, Water Code.

(b) On March 1, 1986, all equipment, data, documents, facilities, and other items of the Public Utility Commission of Texas pertaining to water and sewer utilities shall be transferred to the Texas Water Commission.

(c) On March 1, 1986, the Texas Water Commission shall implement the powers and duties delegated to it by this Act. The commission, to the extent it considers advisable and under terms and conditions considered necessary and desirable, may contract with the Public Utility Commission of Texas to provide for the disposition of all water and sewer utility matters docketed and pending before the Public Utility Commission of Texas on March 1, 1986, and the Public Utility Commission of Texas shall cooperate with the Texas Water Commission in assisting in the orderly transition of regulatory power contemplated by this Act. The contract may provide that the staff of the Public Utility Commission of Texas shall continue to process, analyze, investigate, provide evidence, and conduct hearings on the pending water and sewer utility matters consistent with this Act. Any matter that requires a final decision, however, shall be reduced to a written proposal for decision conforming to the requirements of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), which, together with the record, shall be submitted to the Texas Water Commission for final decision.

(d) The Texas Water Commission and the governing bodies of appropriate municipalities, if any, shall assume jurisdiction, and all powers and duties of regulation under Chapter 13, Water Code, on March 1, 1986.

(e) Nothing in this Act shall affect the jurisdiction of the Texas Water Commission otherwise afforded under Sections 11.036, 11.041, 12.013, and 50.275, Water Code.

SECTION 10.004. (a) The effective date of the reorganization of the Texas water agencies under this Act is September 1, 1985.

(b) It is the intent of the legislature that the Texas Water Commission and the Texas Water Development Board be separate agencies of the state.

(c) The development fund manager and his staff and other legal, engineering, and administrative staff that are necessary to assist the Texas Water Development Board in administering the water assistance program, the Texas Water Development Bond program, and other water financing programs assigned to the board by law and in carrying out its planning and other specific functions under the Water Code shall be transferred to the board from the Texas Department of Water Resources.

(d) The Texas Water Development Board and the Texas Water Commission shall enter into any contracts or other agreements that are necessary to make transfers between the Texas Water Development Board and the Texas Water Commission and to carry out an orderly transition. This section is subject to the limitations established in the General Appropriations Act.

(e) The Texas Water Commission, the Texas Water Development Board, the executive director, and the executive administrator shall cooperate in an orderly transition to the new agency organization provided by this Act. The Texas Water Commission shall continue to process, analyze, investigate, provide evidence and information, and carry out other duties for the Texas Water Development Board until this transition is completed.

(f) The reorganization of the Texas Department of Water Resources into the Texas Water Commission and Texas Water Development Board does not affect or impair any act done, bonds authorized or issued, or obligation, right, permit, license, standard, rule, criterion, order, resolution, or penalty that has accrued or that exists under the authority of the Texas Department of Water Resources, Texas Water Commission, or Texas Water Development Board as they existed before the effective date of this Act, and those bonds, obligations, rights, permits, licenses, standards, rules, and criteria remain in effect until such time as they are paid, recalled, changed, altered, renewed, amended, canceled, revoked, repealed, or abolished under the Water Code, other laws of this state, and outstanding contracts, agreements, and resolutions.

(g) The members of the Texas Water Commission and the Texas Water Development Board serving as members of that commission and that board on the effective date of this Act shall continue in office until the expiration of their respective terms.

SECTION 10.005. Sections 26.136, 27.1015, and 28.067, Water Code, and Section 8b, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), adopted by this Act, and amendments changing penalty amounts in Sections 26.122, 26.123, and 26.268, Water Code, and Section 12, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), apply only to violations under those sections committed on or after September 1, 1985. Violations committed under Sections 26.122, 26.123, and 26.268, Water Code, and Section 12, The Water Well Drillers Act, before September 1, 1985, are subject to prosecution under those sections as they existed when the violation occurred and those laws are continued in effect for that purpose.

SECTION 10.006. (a) This Act does not repeal any provision of **H.B No. 2**, Acts of the 69th Legislature, Regular Session, 1985, and except as provided by Subsection (b) of this section, if there is a conflict between this Act and **H.B No. 2**, Acts of the 69th Legislature, Regular Session, 1985, **H.B No. 2** prevails.

(b) The reorganization of the Texas Department of Water Resources, the Texas Water Commission, and the Texas Water Development Board under Part 1 of this Act applies to the implementation of **H.B No. 2**, Acts of the 69th Legislature, Regular Session, 1985, and the powers and duties provided under **H.B No. 2** shall be implemented by the Texas Water Commission, and the Texas Water Development Board under the organizational structure provided by this Act.

SECTION 10.007. This Act takes effect September 1, 1985.

SECTION 10.008. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Schlueter

Amend **C.S.S.B. 249** on page 214, line 18, by adding a new Section 11.149 to read as follows:

"In its consideration of an application for a permit to store, take or divert water in excess of 5000 acre feet per year, the Commission shall assess the effects, if any, on the insurance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse impacts on such habitat. In determining whether to require an applicant to mitigate adverse impacts on a habitat, the Commission may consider any net benefit to the habitat produced by the project. The Commission shall offset against any mitigation required by the U.S. Fish and Wildlife Service pursuant to 33 C.F.R. Sections 320-330 against any mitigation authorized by this section."

Floor Amendment No. 2 - Messer

Amend **C.S.S.B. 249** as follows:

(1) On page 227, between lines 6 and 7, insert the following:

Sec. 13.015. INFORMAL PROCEEDING. A proceeding involving a water or sewer utility, a retail public water or sewer utility as defined by Section 49, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), or a water supply or sewer service corporation may be an informal proceeding, except that the proceeding is subject to Section 13.012 of this code, the public notice requirements of this chapter, and the rules and orders of the regulatory authority involved.

(2) On page 227, line 7, strike "13.015" and substitute "13.016".

Floor Amendment No. 3 - D. Hudson

Amend **C.S.S.B. 249** as follows:

(1) On page 229, between lines 19 and 20, insert the following:

Sec. 13.044. NON-PROFIT WATER SUPPLY CORPORATIONS. On petition of five percent of the ratepayers of a nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), the commission shall assume jurisdiction over the nonprofit water supply corporation under this chapter. If there are more than 100 ratepayers of the nonprofit water supply corporation, the petition is sufficient if signed by 100 of those ratepayers.

(b) The commission by rule shall adopt the manner and form for submitting and processing a petition under this section.

(c) If a nonprofit water supply corporation comes under the jurisdiction of the commission under this section, the jurisdiction of the commmission may be rescinded on a petition meeting the same cirteria as required by Subsection (a) of this section for a petition for the assumption of jurisdiction. However, if the jurisdiction is rescinded, the recision is not applicable to any case involving the nonprofit water supply corporation that is pending before the commission on or before the date of recision.

(2) On page 229, line 20, strike "13.044" and substitue "13.045".

Floor Amendment No. 4 - Craddick

Amend **C.S.S.B. 249** as follows:

(1) On page 210, strike line 3 and substitute the following:

SECTION 2.001. WATER DISTRICT AND RIVER AUTHORITY STUDY COMMITTEE. The Water District and River

(2) On page 210, line 7, between "of" and "river" insert "water districts and".

(3) On page 210, strike lines 10 through 12 and substitute "whom is a representative of the general public with a demonstrated involvement in business and industry.".

(4) On page 210, strike lines 19 through 21 and substitute "whom is a representative of the general public with a demonstrated involvement in municipal water concerns or agriculture.".

(5) On page 210, strike line 27.

(6) On page 211, strike line 1 and substitute "study the various districts and authorities created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution to determine if".

(7) On page 211, strike lines 5 through 27 and substitute "be changed.".

(8) On page 212, strike lines 1 and 2.

(9) On page 212, line 8, between "make" and "river" insert "water districts and".

(10) On page 212, line 12, between "those" and "authorities" insert "districts and".

Floor Amendment No. 5 - Messer

Amend **C.S.S.B. 249** as follows:

(1) On page 290, between lines 25 and 26, insert the following:

SECTION 5.013. Chapter 27, Water Code, is amended by adding a new Section 27.036 to read as follows:

Sec. 27.036. JURISDICTION OVER BRINE MINING. (a) The railroad commission has jurisdiction over brine mining and may issue permits for injection wells used for brine mining.

(b) A person may not begin to drill an injection well to be used for brine mining unless that person has a valid permit for the well issued by the railroad commission under this chapter.

(c) The railroad commission shall adopt rules that are necessary to administer and regulate brine mining.

(d) For purposes of regulation by the railroad commission, an injection well for brine mining is designated as a Class V well under the underground injection control program administered by the railroad commission.

(2) On page 319, between lines 26 and 27, insert the following:

SECTION 10.007. (a) Adoption of Section 27.036, Water Code, does not invalidate any permit for an injection well used for brine mining that was issued by the Texas Water Commission before September 1, 1985. Within 90 days after the effective date of this Act, the Railroad Commission of Texas shall issue a substitute permit under the name and authority of the railroad commission to each person

who on the effective date of this Act holds a valid permit issued by the Texas Water Commission for an injection well used for brine mining.

(b) Application for injection well permits covering brine mining submitted to the Texas Department of Water Resources before the effective date of this Act for which permits have not been issued by the Texas Water Commission shall be transmitted to the Railroad Commission of Texas for processing and determination under Section 27.036 and other pertinent sections of Chapter 27, Water Code.

(c) On September 1, 1985, the Railroad Commission of Texas shall assume jurisdiction over all injection wells used for brine mining for which permits were previously issued by the Texas Water Commission.

(3) Renumber the current Sections 10.007 and 10.008 accordingly.

Floor Amendment No. 6 - Messer

Amend **C.S.S.B. 249**, on pages 295 through 302, by striking Part 7 and substituting the following:

PART 7. TEXAS DEPARTMENT OF HEALTH

SECTION 7.001. Section 3, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. (a) The department is hereby designated the state solid waste agency with respect to the management of municipal solid waste other than hazardous municipal waste, and shall be the coordinating agency for all municipal solid waste activities other than activities relating to hazardous municipal waste. The department shall be guided by the board of health in its activities relating to municipal solid waste other than hazardous municipal waste. The department shall seek the accomplishment of the purposes of this Act through the control of all aspects of municipal solid waste management other than management of hazardous municipal waste by all practical and economically feasible methods consistent with the powers and duties given the department under this Act and other existing legislation. The department has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department shall consult with the commission [~~department of water resources~~] with respect to the water pollution control and water quality aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department by this Act.

(b) The commission [~~department of water resources~~] is hereby designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and shall be the coordinating agency for all industrial solid waste activities and hazardous municipal waste activities. The commission [~~department of water resources~~] shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste management and hazardous municipal waste management by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The commission [~~department of water resources~~] has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The commission [~~department of water resources~~] shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the commission [~~department of water resources~~] by this Act.

(c) Where both municipal solid waste and industrial solid waste, except Class I industrial solid waste which is not routinely collected with municipal solid waste and hazardous waste, are involved in any activity of management of solid waste, the

department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act. Class I industrial solid waste and hazardous waste [~~under the jurisdiction of the department of water resources~~] may be accepted in a municipal solid waste facility if authorized in writing by the department with the written concurrence of the commission [~~department of water resources~~]. Solid waste[~~, including hazardous waste,~~] under the jurisdiction of the department may be accepted in an industrial solid waste facility, if authorized in writing by the commission [~~department of water resources~~] with the written concurrence of the department.

(d) The department is designated under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), as the state agency with respect to regulating radioactive waste activities that are not preemptively regulated by the federal government. The commission [~~department~~] has all powers under the Solid Waste Disposal Act, as amended (Article 4477-7, Vernon's Texas Civil Statutes), necessary or convenient to carry out responsibilities concerning the regulation of the management of hazardous [~~solid~~] waste components of any radioactive wastes under the department's [its] jurisdiction. The commission shall consult with the department with regard to regulation and management under this subsection and may not adopt any rules or engage in any management activities under this subsection that are in conflict with state or federal laws and rules relating to regulation of radioactive wastes.

SECTION 7.002. Subsections (b) and (c), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The department is authorized to develop a state [~~municipal~~] solid waste plan for all solid waste under its jurisdiction, and the commission [~~department of water resources~~] is authorized to develop a state [~~industrial~~] solid waste plan for all solid waste under its jurisdiction. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

(c) Each state agency may adopt and promulgate rules consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act. In developing rules relating to hazardous waste, the commission [~~each state agency~~] shall consult with the department, the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources. The commission [~~Within one year after the effective date of this Act, each state agency~~] shall adopt rules that:

(1) condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater;

(2) define the characteristics that make an area unsuitable for a hazardous waste management facility including, but not limited to, consideration of:

(A) flood hazards;

(B) discharge from or recharge to a groundwater aquifer; or

(C) soil conditions;

(3) prohibit issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules

adopted by the commission [~~agency~~] unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics; and

(4) require persons who generate, transport, process, store, or dispose of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that such wastes are transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

In adopting rules under Paragraphs (1)-(3) of this section, the commission [~~state agencies~~] may distinguish between solid waste facilities based on type or hazard of hazardous wastes managed and the type of waste management method used.

SECTION 7.003. Subsection (b), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Criminal Penalties. (1) Any person who knowingly:

(A) transports, or causes to be transported for storage, processing, or disposal, any hazardous waste to any location which does not have a permit as required by the commission [~~a state agency~~] exercising jurisdiction under Section 4 of this Act;

(B) stores, processes, or disposes, or causes to be stored, processed, or disposed, any hazardous waste without having obtained a permit as required by the commission [~~a state agency~~] exercising jurisdiction under Section 4 of this Act or in knowing violation of any material condition or requirement of a permit;

(C) makes, or causes to be made, any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with any requirement of this Act applicable to hazardous waste; or

(D) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, any hazardous waste (whether such activity took place before or after the date of enactment of this section) and who knowingly destroys, alters, or conceals, or causes to be destroyed, altered, or concealed, any record required to be maintained under the rules promulgated by the commission [~~state agency~~] under this Act, shall be subject, upon conviction, to a fine of not less than $100.00 nor more than $25,000.00 for each act of violation and each day of violation, or to imprisonment not to exceed 180 days, or both. If the conviction is for a violation committed after a first conviction of such person under this Section 8(b), punishment shall be by a fine of not less than $200.00 nor more than $50,000.00 for each day of violation, or by imprisonment not to exceed one year, or both.

SECTION 7.004. Subsection (a), Section 12, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Every person, firm, corporation, public or private, contemplating the establishment of any drinking water supply or sewage disposal system for public use shall, previous to construction thereof, submit completed plans and specifications therefor to the State Department of Health and the said Department shall approve same; provided said plans conform to the water safety and stream pollution laws of this state. The said water supply or sewage disposal system shall be established only after approval has been given by the State Department of Health. To avoid duplication of review by state agencies, the State Department of Health approval is not required for drinking water supply or sewage disposal systems for public use if the plans and specifications are required by law to be approved by the Texas Water Commission.

SECTION 7.005. Section 20, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. [~~(a) The management of every public sewerage treatment plant shall employ a sewerage plant operator holding a valid certificate of competency issued under the direction of the Texas State Department of Health. Such sewerage plant operator shall be in charge of said plant. This certificate shall not apply to sewerage treatment plants using septic tanks and subsoil treatment.~~

[~~(b)~~] The Texas State Department of Health shall take all necessary procedures essential to the protection of any spring, well, pond, lake, reservoir, or other streams in Texas, from any condition or pollution resulting from sewage, that may endanger the public health, and shall have full authority to enforce all the laws of this state relating thereto.

Floor Amendment No. 7 - Berlanga

Amend **C.S.S.B. 249** by inserting the following as a new Section 8.004 and renumbering the old Section 8.004 and following sections accordingly:

8.004 Subsection (d) of Section 52.118, Texas Water Code, is amended to read as follows:

52.118(d) Nothing in this chapter applies to wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, salt water, or other fluid, or for any other purpose, under permits issued by the Texas Railroad Commission. The district shall not require a permit to drill a well to supply water for drilling any of these wells permitted by the Texas Railroad Commission. When the well ceases to be used for these purposes, it may then be used as an ordinary water well if it meets the spacing and other rules of the district; and its use is subject to the rules of the district.

(Note: 1. Subsection 52.118(d) merely exempts from regulation by a local ground water conservation district those wells already regulated statewide by the Railroad Commission or the Texas Water Commission. This avoids dual, and potentially confusing regulation. When regulation of such a well by the Railroad Commission or Water Commission ends, the well is subject to local regulation.

2. "Uranium," is added to reflect it is mined in situ through a well bore and in situ mining is already regulated by the Texas Water Commission.)

Floor Amendment No. 8 - Messer

Amend **C.S.S.B. 249** by inserting the following appropriately numbered sections:

1. Contingent upon the passage of **S.B. 249**, Sixty-ninth Legislature, Regular Session, the amounts of $509,077 for 1986 and $536,318 for 1987 are hereby appropriated to the Water Commission as line item 3.j. Water and Sewer Utilities Regulation, out of the General Revenue Fund for the regulation of water and sewer utilities.

4. Contingent upon the passage of **S.B. 249**, Sixty-ninth Legislature, Regular Session, in addition to the amounts appropriated above in item 3.h. Permits, the amounts of $16,446 for 1986 and $16,446 for 1987 are hereby appropriated out of the General Revenue Fund for the approval of purchase, ownership and sale of certain mining equipment of river authorities.

5. Contingent upon the passage of **S.B. 249**, Sixty-ninth Legislature, Regular Session, in addition to the amounts appropriated above in item 4. Public Interest Advocated, the amounts of $14,724 for 1986 and $14,724 for 1987 are hereby appropriated out of the General Revenue Fund to the Department of Water Resources for necessary office support.

Floor Amendment No. 9 - C. Johnson

Amend **C.S.S.B. 249** as follows:

(1) On page 290, between lines 25 and 26, insert the following:

SECTION 5.011. Section 26.0191, Water Code, is amended to read as follows:

Sec. 26.0191. TEMPORARY AND EMERGENCY ORDERS AND AUTHORIZATIONS TO DISCHARGE UNTREATED OR PARTIALLY TREATED WASTEWATER. (a) The commission may issue temporary or emergency orders relating to the discharge of waste or pollutants [~~without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances,~~] when this is necessary to enable action to be taken more expeditiously than is otherwise provided by this chapter to effectuate the policy and purposes of this chapter.

(b) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, into or adjacent to water in this state shall submit a sworn application to the commission containing the following information and any other information the commission requires:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) a statement that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(3) an estimate of the dates on which the proposed discharge will begin and end;

(4) a statement of the volume and quality of the proposed discharge;

(5) an explanation of measures proposed to minimize the volume and duration of the discharge; and

(6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use.

(c) The commission may issue emergency orders relating to the discharge of waste or pollutants without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, only if the commission finds the applicant's statement made under Subsection (b)(1) of this section to be correct.

(d) [~~(b)~~] If the commission issues an [~~a temporary or~~] emergency order under this authority without a hearing, the order shall fix a time and place for a hearing to be held before the commission, which shall be held as soon after the [~~temporary or~~] emergency order is issued as is practicable.

(e) [~~(c)~~] At the hearing, the commission shall affirm, modify, or set aside the [~~temporary or~~] emergency order. Any hearing on an emergency order shall be conducted in accordance with [~~If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of~~] the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), or [~~and~~] the rules of the department. Any set of department rules concerning a hearing on an emergency order must include provisions for presentation of evidence by the applicant under oath, presentation of rebuttal evidence, and cross-examination of witnesses.

(f) [~~(d)~~] If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this section, the [~~The~~] executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility into or adjacent to water in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, [~~or~~] severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility, [~~and~~] that there are no feasible alternatives to the discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant. If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in Subsection (d) [~~(b)~~] of this section as soon as practicable but in no event later than 10 days after issuance of the authorization to affirm, modify or set aside the authorization. The requirements of Subsection (a) of this section shall be satisfied by the applicant on or before such hearing date.

(g) [~~(e)~~] The requirements of Section 26.022 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an emergency permit under this section, but such general notice of the hearing shall be given as the commission, under Subsections (c) [~~(a)~~] and (e) [~~(c)~~] of this section [~~or the executive director under Subsection (d) of this section~~], considers practicable under the circumstances.

(h) Temporary orders other than emergency orders require a hearing before issuance of the order. The commission shall give notice not less than 20 days before the date set for the hearing.

SECTION 5.012. Sections 26.028(a) and (d), Water Code, are amended to read as follows:

(a) Except as provided in Subsections (b) and (c) of this section, notice shall be given to the persons who in the judgment of the commission may be affected by an application for a permit, permit amendment, or renewal of a permit. For any application involving an average daily discharge of five million gallons or more, the notice shall be given not later than 20 days before the date on which the commission acts on the application, to each county judge in the county or counties located within 100 statute miles of the point of discharge who have requested in writing that the commission give that notice and through which water, into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge. The commission, on the motion of a commissioner, or on the request of the executive director or any affected person, shall hold a public hearing on the application for a permit, permit amendment, or renewal of a permit.

(d) For the purposes of Subsection (a), the commission may act on the application without holding a public hearing if all of the following conditions are met:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge;

(2) not less than 30 days before the date of action on the application by the commission, the applicant has served or mailed the commission's notice of the application to persons who in the judgment of the commission may be affected, including the county judges as required by Subsection (a) of this section. As part of his application the applicant shall submit an affidavit which lists the names and addresses of the persons who may be affected by the application and includes the source of the list;

(3) within 30 days after the date of the newspaper publication of the commission's notice, neither a commissioner, the executive director, nor an affected person who objects to the application has requested a public hearing.

(2) On page 319, between lines 13 and 14, insert the following:

SECTION 10.006. Section 5.012 of this Act applies only to notice of an application for a permit, permit amendment, or permit renewal to discharge waste or pollutants into or adjacent to water in this state filed on or after the effective date of this Act. Notice of an application filed before the effective date of this Act is governed by Section 26.028, Water Code, as that law existed before amendment by this Act, and that law is continued in effect for that purpose.

(3) Renumber the current Section 10.006 and subsequent sections accordingly.

Floor Amendment No. 10 - Buchanan

Amend **C.S.S.B. 249** as follows:

(1) On page 46, SECTION 1.002, new Section 6.189, line 1, strike "shall" and substitute "may."

(2) On page 46, SECTION 1.002, new Section 6.189, insert the following between lines 6 and 7:

The board shall be named a party in any hearing before the commission in which the board requests party status. The board may appeal any ruling, decision, or other act of the commission.

Amendment No. 11 - Messer

Amend **C.S.S.B. 249** as follows:

(1) Add the following section to the bill, appropriately numbered, immediately before the emergency clause section.

SECTION ____. The following sums, or as much of them as may be necessary for the object and purposes shown, are appropriated from the General Revenue Fund and from other funds as specified, for the expenses of the named executive and administrative departments and agencies of the State.

The amounts appropriated by this section prevail over conflicting amounts appropriated by **H.B. 20**, Acts of the 69th Legislature, Regular Session, 1985, regardless of the relative dates of enactment.

Agencies receiving appropriations under this section shall be subject to all the provisions of Article V of **H.B. 20**, including eh salary rates authorized therein and shall receive the proportional amount of the allocation for salary increases appropriated by Section 95 of Article V of **H.B. 20**.

(2) Amend **S.B. 249** by adding a new section, appropriately numbered to read as follows:

SECTION ____. Contingent on **H.B. 2359**, 69th Legislature, Regular Session, 1985, becoming law, Section 3(a) of the bill is amended to read as follows:

(a) Money collected and deposited in the hazardous waste generation and facility fees fund shall be restricted to the administration of hazardous waste management programs and shall be used only for the following purposes:

(1) Parks and Wildlife Department for monitoring impact of hazardous waste activity on fish and wildlife in an amount not to exceed $200,000 for the 1986-87 biennium; and

(2) Texas Department of Water Resources for regulation of hazardous waste, including contracting for enforcement-related activities with other state agencies, in an amount not to exceed $3.4 [2.9] million per annum[; and]

[(3) Texas Department of Health for regulation of hazardous wastes in an amount not to exceed $500,000 per annum].

The amendments were read.

Senator Sharp moved to concur in the House amendments.

The motion prevailed.

SENATE RULE 74a SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendment to **S.C.R. 168**.

SENATE CONCURRENT RESOLUTION 168 WITH HOUSE AMENDMENT

Senator Caperton called **S.C.R. 168** from the President's table for consideration of the House amendment to the resolution.

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

Floor Amendment - Millsap

Substitute the following for **S.C.R. 168**:

WHEREAS, No organization is more widely acclaimed and esteemed for its accomplishments than the 4-H program of the Texas Agricultural Extension Service; and

WHEREAS, The Texas 4-H program is sponsoring a legislative seminar to educate its members in the process of democratic government, both in theory and in practice; and

WHEREAS, This valuable and comprehensive educational program will attract participants from throughout the state to acquaint 4-H members with legislative procedures; and

WHEREAS, The 4-H legislative seminar is to be held in Austin on July 15, 16, and 17, 1986; and

WHEREAS, The governor, lieutenant governor, speaker of the house, and members of the Texas Legislature are invited to attend the seminar and encouraged to lend their leadership and expertise in the discussion of selected issues; and

WHEREAS, The major phase of the 4-H seminar is the mock legislative session to be conducted on July 16 and 17 in the chambers of the house of representatives and the senate in the State Capitol; and

WHEREAS, The Texas Legislature heartily endorses the goals and ideals of the Texas 4-H legislative seminar; now, therefore, be it

RESOLVED by the 69th Legislature, That, in accordance with senate and house rules of procedure and policies of the Senate Administration Committee and House Administration Committee, Texas 4-H be hereby granted permission to use the chambers of the senate and house of representatives in the State Capitol on Wednesday, July 16, and Thursday, July 17, 1986, for its legislative seminar, unless the Texas Senate and House of Representatives are in session on those dates.

The amendment was read.

Senator Caperton moved to concur in the House amendment.

The motion prevailed.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 250, Honoring John R. Butler, Jr., Member of the State Highway and Public Transportation Commission.

H.C.R. 251, Honoring Robert H. Dedman, Member of the State Highway and Public Transportation Commission.

H.C.R. 255, Honoring Central Freight Lines on its 60th anniversary.

S.C.R. 170, Recognizing the superlative achievements of Mr. Robert Rodriguez and commending him on establishing the first Hispanic-owned investment banking house in the United States and in Texas.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RULE 74a SUSPENDED

On motion of Senator Glasgow and by unanimous consent, Senate Rule 74a was suspended as it relates to the House amendment to **S.B. 162**.

SENATE BILL 162 WITH HOUSE AMENDMENT

Senator Glasgow called **S.B. 162** 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 - Gibson

Amend **S.B. 162**, page 2 lines 21 through 24 by striking the words "provided that such drive-in/walk-up facility may not be located outside the town or city of the bank's domicile in any town or city which does not share a common boundary line with the town or city where the bank's domicile is located."

Add the following in lieu of:

"Provided no such facility shall be located within the boundary lines of any city or town which according to the 1980 census has a population of less than five thousand and in which a bank is already located."

The amendment was read.

Senator Glasgow moved to concur in the House amendment.

The motion prevailed.

HOUSE BILL 2091 ON SECOND READING

The Senate resumed consideration of **H.B. 2091** on its second reading and passage to third reading. (The bill having been postponed until 2:15 o'clock p.m. today)

Question - Shall the bill as amended be passed to third reading?

Senator Brooks offered the following amendment to Floor Amendment No.1:

Floor Amendment No. 5

Amend Floor Amendment No. 1 to **C.S.H.B. 2091** by deleting under SECTION 12, Section 32.038, Human Resources Code, in its entirety.

The amendment was read.

Senator Edwards moved to table the amendment.

The motion to table failed by the following vote: Yeas 10, Nays 18.

Yeas: Barrientos, Caperton, Edwards, Glasgow, Mauzy, Parmer, Sarpalius, Sharp, Truan, Washington.

Nays: Blake, Brooks, Brown, Farabee, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Sims, Traeger, Uribe, Whitmire, Williams.

Absent: Harris, Henderson, Santiesteban.

Floor Amendment No. 5 was then adopted.

Senator Brooks offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 6

Amend Floor Amendment No. 1 to **C.S.H.B. 2091**, Article 18, SECTION 4 of **C.S.H.B. 2091**, by substituting the following for subdivision (a):

"(a) If appropriate data is not available from existing credible sources the department may establish a sampling method to collect hospital discharge abstract records relating to specific inpatient discharges from hospitals. The hospital discharge abstract records requested by the department must contain the data required by the department, including:"

The amendment was read and was adopted.

Senator Brooks offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 7

Amend Floor Amendment No. 1 to **C.S.H.B. 2091**, ARTICLE 13, by adding a new SECTION 2 and renumbering the remaining SECTIONS of the ARTICLE accordingly. The new SECTION 2 will read as follows:

"SECTION 7A. Hospital Construction Plan approval. (a) The Texas Board of Health shall adopt a fee schedule by rule for hospital plan reviews which is based on the estimated construction costs. If an estimated construction cost cannot be established the estimated cost shall be based on $105 per square foot. If a hospital undertakes a series of small projects, that require approval under this section, the

estimated construction cost shall be accumulated over a 12-month period from the date of submitting the plans to the Licensing Agency for review. The fee schedule adopted shall not exceed the following:

Cost of Construction	Fee
(1) Less than $150,000	$ 50
(2) $150,001 - $600,000	150
(3) $600,001 - $2,000,000	350
(4) 2,000,001 - $5,000,000	500
(5) 5,000,001 - $10,000,000	750
(6) 10,000,001 - and over	1,000

(b) The Texas Board of Health shall adopt a fee schedule by rule for field surveys of construction plans reviewed under this section which shall be no less than $100 and no more than $300 for each survey conducted.

The amendment was read and was adopted.

Senator Parker offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 8

Amend Floor Amendment No. 1, **C.S.H.B. 2091** in Article 4 Section 11 by amending Section 16(i)(3) by substituting the following for subdivision (3):

"(3) A person who sues under this subsection has the burden of proof, but there is a rebuttable presumption that a person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person made a report in good faith. In order for this rebuttable presumption to arise the following conditions must be met:

(1) The defendant employer must be shown to have had actual knowledge, prior to the termination of employment, that a complaint or report of abuse or neglect of a patient was made by the employee to a state or local governmental authority who accepts such complaints and reports.

(2) The employee shall not have been the subject of any report or complaint of alleged abuse or neglect of a patient.

(3) The employee shall have informed the appropriate management person in this facility.

Any rebuttable presumption that arises under the previous Section can be rebutted by the employer's articulation of a legitimate business or patient care reason for discharge of the employee.

The amendment was read.

Senator Edwards offered the following substitute amendment to Floor Amendment No. 8:

Floor Amendment No. 9

Amend Floor Amendment No. 1 to **C.S.H.B. 2091** by adding subsection (5), page 19 to read as follows:

(5) A person reporting the abuse or neglect of a nursing home patient that took part in causing that abuse or neglect shall have no cause of action under subsection (1).

The amendment was read.

On motion of Senator Parker, the substitute amendment to Floor Amendment No. 8 was tabled by the following vote: Yeas 17, Nays 13.

Yeas: Blake, Brooks, Brown, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, McFarland, Parker, Sims, Traeger, Whitmire, Williams.

Nays: Barrientos, Caperton, Edwards, Farabee, Lyon, Mauzy, Montford, Parmer, Sarpalius, Sharp, Truan, Uribe, Washington.

Absent: Santiesteban.

Floor Amendment No. 8 was then adopted by the following vote: Yeas 18, Nays 12.

Yeas: Blake, Brooks, Brown, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, McFarland, Montford, Parker, Sims, Traeger, Whitmire, Williams.

Nays: Barrientos, Caperton, Edwards, Farabee, Lyon, Mauzy, Parmer, Sarpalius, Sharp, Truan, Uribe, Washington.

Absent: Santiesteban.

Senator Parker offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 10

Amend Floor Amendment No. 1 to **C.S.H.B. 2091** by adding a new Article 20 and renumbering the existing Article 20 as Article 21. The new Article 20 reads as follows:

ARTICLE 20

SECTION 1. SHORT TITLE. This Act may be cited as the Occupational Disease Reporting Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Commissioner" means the commissioner of health.

(3) "Department" means the Texas Department of Health.

(4) "Occupational diseases" means those diseases and abnormal health conditions that are caused by or are related to conditions in the workplace.

(5) "Reportable disease" means a disease or condition for which the board requires a report.

SECTION 3. REPORTABLE DISEASE; DUTIES OF BOARD. (a) Asbestosis, silicosis, and elevated blood lead levels in adults are occupational diseases that are reportable to the department.

(b) The board may adopt rules that require other occupational diseases to be reported under this Act. Before the board requires other occupational diseases to be reported, the board must find that the disease:

(1) has a well-understood etiology;

(2) results predominantly from occupational conditions; and

(3) is preventable.

(c) The board shall maintain and revise, as necessary, the list of reportable occupational diseases.

(d) The board shall adopt rules necessary to administer and implement this Act.

SECTION 4. DUTIES OF DEPARTMENT. (a) The department may enter into contracts or agreements with persons as necessary to implement this Act. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private

sources for the purpose of identifying, reporting, or preventing those occupational diseases that have been determined by the board to be injurious or to be a threat to the public health, subject to any limitations or conditions prescribed by the legislature.

(c) Subject to the confidentiality requirements of this Act, the department shall evaluate the reports of occupational diseases to establish the nature and magnitude of the hazards associated with those diseases, to prevent the occurrence of those hazards, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this Act and other law.

SECTION 5. REPORTING REQUIREMENTS. (a) The following persons shall report cases or suspected cases of occupational diseases to the department:

(1) a physician who diagnoses or treats a reportable disease; and

(2) a person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microsopical, cultural, serological, or other evidence suggestive of a reportable disease.

(b) The department may contact a physician attending a person with a case or suspected case of an occupational disease. From information received from laboratory notifications, the department may not, without the attending physician's consent, contact a person from whom a specimen was obtained if the notification indicates that the person has an attending physician.

(c) The board shall prescribe the form and method of reporting. The board may require the reports to contain any information necessary to achieve the purposes of this Act, including the name, address, age, sex, race, occupation, employer, and attending physician of the person.

SECTION 6. CONFIDENTIALITY. (a) All information and records relating to reportable diseases are strictly confidential. That information may not be released or made public on subpoena or otherwise, except that release may be made under the following circumstances:

(1) release is made of information for statistical purposes so that no person can be identified;

(2) release is made of information with the consent of all persons identified in the information released; or

(3) release is made of information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party.

(b) The board shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this Act are kept confidential and protected from release to unauthorized persons.

SECTION 7. INVESTIGATIONS. (a) The department shall investigate the causes of occupational diseases and methods of prevention.

(b) The commissioner or his designee may enter at reasonable times and inspect within reasonable limits a public place or building, including a public conveyance, in his duty to prevent an occupational disease. In this section, "public place or building" means all or any portion of an area, a structure, or a conveyance, regardless of ownership, that is not used for private residential purposes.

(c) Persons authorized to conduct investigations under this section may take samples or specimens of materials present on the premises, including samples of soil, water, air, unprocessed or processed foodstuffs, manufactured items of clothing, and household goods. If samples or specimens are taken, a corresponding sample shall be offered to the person in control of the premises for independent analysis. Persons securing the required samples and specimens may reimburse or offer to reimburse the owner for the materials taken, but the reimbursement may not exceed the actual monetary loss sustained by the owner.

The amendment was read and was adopted.

Senator Parmer offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 11

Amend Floor Amendment No. 1, subsection (a) of Section 4.03 of the quoted subchapter D of Section 2, Article 2 of **C.S.H.B. 2091**, at page 7, to read as follows:

"(a) The department shall adopt rules establishing reasonable procedures for the collection of data from facilities as defined by this Act and for the dissemination of data determined to be necessary to facilitate and expedite proper and effective health planning and resource develpment."

The amendment was read and was adopted.

Senator Barrientos offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 12

Amend Floor Amendment No. 1 **C.S.H.B. 2091** by adding a new section 4 to Article 7 as follows:

Section 4. Section 22, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) The Texas Department of Health shall adopt reasonable rules to require railroads to provide adequate sanitation facilities for railroad maintenance-of-way employees. The department may sue in a court of competent jurisdiction to compel compliance with a rule adopted under this subsection.

The amendment was read and was adopted by the following vote: Yeas 17, Nays 13.

Yeas: Barrientos, Brooks, Caperton, Edwards, Howard, Kothmann, Lyon, Mauzy, Parmer, Sarpalius, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Blake, Brown, Farabee, Glasgow, Harris, Henderson, Jones, Krier, Leedom, McFarland, Montford, Parker, Sharp.

Absent: Santiesteban.

(Senator Jones in Chair)

Senator Parmer offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 13

Amending Floor Amendment No. 1 to **C.S.H.B. 2091** by adding a new ARTICLE, numbered appropriately, to read as follows:

ARTICLE_____

SECTION 1. DEFINITIONS. In this Article:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Commissioner" means the commissioner of health.

(4) "Person" means an individual, partnership, corporation, trust, estate, joint-stock company, foundation, political subdivision, or association of indivduals.

(5) "Commercial kennel" means an establishment operated by a retail vendor of dogs or canine services, a canine dealer, or a guard dog company where dogs are used for breeding or are boarded for a fee.

(6) "Noncommercial kennel" means a kennel at, in, or adjoining the private residence of the owner where dogs are kept only for the hobby of the householder in using them for hunting, tracking, exhibition in dog shows, or field or obedience trials and where a dog or litter of puppies is only occasionally raised or sold.

(7) "Retail vendor of dogs or canine services" means a person who, at daily or other regular intervals, sells, exchanges, or offers to sell or exchange dogs for use as household pets to the public at retail or who, at daily or other regular intervals, offers boarding, training, or grooming services for dogs to the public for a fee.

(8) "Canine dealer" means a person who sells, exchanges, furnishes, or offers to sell, exchange, or furnish dogs to a retail vendor of dogs or canine services or another canine dealer.

(9) "Guard dog company" means a guard dog company as defined by the Private Investigators and Private Security Agencies Act, as amended (Article 4413(29bb), Vernon's Texas Civil Statutes), that furnishes a dog for use as a security or protective device.

SECTION 2. LICENSING OF COMMERCIAL KENNELS. (a) A person may not operate a commercial kennel without a license issued by the department for each separate location at which a kennel is to be operated.

(b) Application for a license to operate a commercial kennel must be made on forms prescribed by the board and must be accompanied by a reasonable and nonrefundable original or renewal license fee set by the board in an amount not to exceed $100. A license is not transferable and is valid for a period of one year from the date of issuance unless suspended or revoked. A license may be renewed by submitting a renewal application and paying the renewal fee before the expiration of the license currently in force.

(c) As a condition to the granting or renewing of a license, the facilities and personnel of the applicant must meet the standards prescribed by the board under Section 3 of this Act for the housing, sanitation, health and disease control, humane care and treatment, and control of dogs.

(d) Each original or renewal application must be accompanied by a signed statement issued by a veterinanrian licensed to practice in this state that states that the veterinarian has inspected the facilities of the applicant and finds them to be in compliance with the standards prescribed by Section 3 of this Act. The applicant shall choose and compensate the inspecting veterinarian.

SECTION 3. STANDARDS. The board shall establish standards for the operation of commercial kennels, designed to ensure the:

(1) maintenance of sanitary conditions in the facilities used for the keeping of dogs;

(2) provision of proper heating and ventilation for those facilities;

(3) provision of humane care and treatment of dogs, including adequate nutrition and water;

(4) exercise of reasonable care to release for sale or trade only dogs that are free of disease or injuries;

(5) exercise of reasonable care to protect the health of the dogs in the facility and to prevent the spread of disease among the dogs; and

(6) provision of adequate space that is appropriate to the size, weight, and species of the dogs in the facility.

SECTION 4. DEPARTMENT'S AND BOARD'S POWERS AND DUTIES. (a) If the department has reasonable grounds to believe that the standards under Section 3 of this Act have been violated, the department or its agents may enter the facility or other premises regulated by this Act at reasonable

times to determine compliance with the standards. For this purpose, the department shall hire or contract with a practicing veterinarian or veterinary technician, licensed to practice within this state, with an ongoing familiarity with animal husbandry.

(b) The board shall establish a reasonable fee for licensing that is sufficient to pay all costs of the commercial kennel licensing program established by this Act.

(c) The board may prescribe other rules that it considers necessary to carry out this Act.

(d) The board may enter into contracts or agreements necessary to carry out this Act. The department may pay for material, equipment, and services covered by a contract or agreement from any available funds.

SECTION 5. DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE. (a) If the commissioner finds after inspection that an applicant for a license has failed to comply with the minimum standards established by the board under Section 3 of this Act, the commissioner may not issue the license and shall give written notice of the decision and the reasons for it to the applicant. If requested by the applicant, the commissioner shall conduct a hearing on the denial of a license not later than the 31st day after the day the request is received. If after a hearing the commissioner finds noncompliance with the standards, the commissioner may not issue a license to the applicant.

(b) If the commissioner finds after inspection that a licensed commercial kennel has failed to comply with the minimum standards, the commissioner shall give written notice to the licensee of a revocation hearing to be held not earlier than the seventh day and not later than the 31st day after the day the notice is given. If after the hearing the commissioner finds noncompliance with the standards, the commissioner shall revoke the license.

(c) If the commissioner finds after inspection that a licensee has committed gross violations of the standards, the commissioner may, after giving notice to the licensee, suspend the license pending a hearing for a period of not more than 31 days and shall give written notice of a revocation hearing to be held not earlier than the seventh day and not later than the 31st day after the day notice is given. If before a revocation hearing is begun the commission finds that a licensee has brought a location into compliance with the standards established by the board under this Act, the commissioner shall reinstate the license of that location. If after the hearing the commissioner finds noncompliance with the standards, the commissioner shall revoke the license.

(d) If the commissioner suspends or revokes a license for a location, the commissioner may seek from a justice of the peace a writ ordering the sheriff or other peace officer to seize any or all of the dogs being kept at the location. The justice of the peace shall issue the writ if the justice finds probable cause to believe that any or all of the dogs are in danger of being harmed by a gross violation of standards required for licensing. Employees of the department are entitled to accompany the peace officer carrying out the seizure. If the department revokes the license after a hearing and if the commissioner's action is not overturned as provided by Section 6 of this Act, the commissioner shall order a public sale of the dogs by auction. Before the public sale, the commissioner shall attempt to ascertain the ownership of confiscated dogs that are not owned by the person whose license is revoked and shall return those dogs to their owners. Proceeds from the sale of the dogs shall be applied first to the expenses incurred in conducting the sale. The commissioner shall return any excess to the person whose license was revoked. That person or the person's agent may not participate in the auction.

(e) If the commissioner is unable to sell the animal at auction, he may cause the animal to be destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of animals.

(f) This section does not preclude an informal disposition of a matter by an agreed order between a licensee and the department.

SECTION 6. APPEAL. A person whose application for an original or renewal license has been denied or revoked by the department is entitled to judicial review in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 7. EXEMPTIONS. This Act does not apply to:

(1) a facility to which Chapter 677, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-6b, Vernon's Texas Civil Statutes), applies;

(2) a veterinary hospital operated by a veterinarian licensed to practice in this state that is used in the veterinarian's daily veterinarian medical practice;

(3) a noncommercial kennel; or

(4) exhibitors and professional handlers at mobile or temporary locations at dog shows, matches, exhibitions, or field trials.

SECTION 8. FEES. The department shall receive and account for the fees and other funds received under this Act. The fees and other funds shall be deposited in the State Treasury and are hereby appropriated to the Department of Health to be used for the administration of this Act.

SECTION 9. PENALTY. (a) A person who knowingly or intentionally operates a commercial kennel in violation of Subsection (a) of Section 2 of this Act commits an offense.

(b) An offense under this section is a Class B misdemeanor. Each day of violation is a separate offense.

SECTION 10. GRACE PERIOD. A person who on August 31, 1985, operates a commercial kennel that will be required by Section 2 of this Act to be licensed may operate without a license until October 1, 1985. To operate after October 1, 1985, the person must have a current license.

The amendment was read and was adopted.

Senator Glasgow offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 14

Amend Floor Amendment No. 1 to **C.S.H.B. 2091** Section 1.10 of Section 6 of Article 1 of **C.S.H.B. 2091** to read as follows:

"Sec. 1.10. COST CONTAINMENT. In awarding contracts or grants for services, or in selecting providers of services under any program administered by the department, the department shall give preference to those providers who can provide services of the same quality in the most cost-effective manner and shall not discriminate among licensed health care providers who can provide the services under the authority of their license."

The amendment was read and was adopted.

Senator Traeger offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 15

Amend Floor Amendment No. 1, **C.S.H.B. 2091** in Article 4 Section 10, Section 12A, (b) line 21 by deleting $10,000 and substituting $1,000.00.

The amendment was read.

(President in Chair)

Senator Brooks offered the following substitute amendment for Floor Amendment No. 15:

Floor Amendment No. 16

Amend Floor Amendment No. 1 to **C.S.H.B. 2091** in Article 4, Section 10, subsection 12A(b) by deleting $10,000.00 and substituting $2,500.00.

The amendment was read.

On motion of Senator Washington, the substitute amendment for Floor Amendment No. 15 was tabled by the following vote: Yeas 19, Nays 11.

Yeas: Barrientos, Caperton, Edwards, Farabee, Glasgow, Howard, Jones, Lyon, Mauzy, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Blake, Brooks, Brown, Harris, Henderson, Kothmann, Krier, Leedom, Montford, Sims, Traeger.

Absent: McFarland.

On motion of Senator Washington, Floor Amendment No. 15 was tabled by the following vote: Yeas 18, Nays 12.

Yeas: Barrientos, Caperton, Edwards, Farabee, Glasgow, Howard, Lyon, Mauzy, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Blake, Brooks, Brown, Harris, Henderson, Jones, Kothmann, Krier, Leedom, Montford, Sims, Traeger.

Absent: McFarland.

Senator Whitmire offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 17

Amend Floor Amendment No. 1 to **C.S.H.B. 2091** as follows:

(1) On page 48 line 36 insert the following after "equipment.":

"It is further found, determined, and declared that participating health-care providers, as herein defined, may have recurring cash-flow deficits, and that the present and prospective health, safety, and general welfare of the people of this state require as a public purpose the promotion and development of new methods of decreasing or eliminating such cash-flow deficits. It is further found, determined, and declared that participating health-care providers, as herein defined, have responsibilities to their employees to make pension fund contributions, as herein defined, and that the present and prospective health, safety, and general welfare of this state require as a public purpose the promotion and development of new methods of funding such pension fund contributions."

(2) On page 48 line 46 between "defined," and "which", insert the following:

"funds to decrease or eliminate cash-flow deficits, as herein defined, and pension fund contributions, as herein defined,"

(3) on page 50 between lines 13 and 14 insert the following:

"(11) 'Cost' also means the cost of funds to decrease or eliminate cash-flow deficits of participating health-care providers or to fund pension fund contributions.

(12) 'Pension fund contributions' means contributions required to be made by participating health-care providers, which contributions are subject to the

Employee Retirement Income Security Act of 1974, or by governmental participating health-care providers, which contributions are not subject to the Employee Retirement Income Security Act of 1974."

(4) on page 53 between lines 49 and 50 insert new sections SECTIONS 12 and 13 and 14:

SECTION 12. Section 9, Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 9. PROVISION OF HEALTH-RELATED EQUIPMENT FOR OPERATION BY HEALTH-CARE PROVIDERS IN HEALTH FACILITIES; POWERS OF FINANCING COUNCIL. In addition to the other powers and duties of the financing council, the financing council is specifically authorized to initiate a program of providing health-related equipment to be operated by participating health-care providers in health facilities located within the state or providing funds to decrease or eliminate cash-flow deficits of participating health-care providers or to fund pension fund contributions for participating health-care providers. In this regard, the financing council shall be authorized to exercise the following powers:

"(1) to establish financial eligibility standards for participating health-care providers;

"(2) to obtain or aid in obtaining from any department, payment or repayment of loan payments, rent payments on any lease or principal, redemption premium, or interest, or any part thereof, on any bonds;

"(3) to enter into any agreement, contract, or other instrument with respect to any insurance and to accept payment in the event of damage to or destruction of any health-related equipment;

"(4) to enter into any agreement, contract, or other instrument with respect to any insurance, guarantee, or letter of credit, to accept payment in such manner and form as provided therein in the event of default by a participating health-care provider or other entity to which a loan has been made, and to assign any such insurance or guarantee as security for bonds issued by the financing council;

"(5) to procure letters of credit from any national or state banking association or other entity authorized to issue a letter of credit to secure the payment of any bonds issued by the financing council or to secure the payment of any loan, lease, or purchase payment owed by a participating health-care provider to the financing council, including the power to pay the cost of obtaining such letter of credit;

"(6) to enter into an agreement with any entity securing the payment of bonds issued pursuant to this Act, authorizing said entity to approve the participating health-care providers that can receive reimbursement for or finance or refinance health-related equipment, funds to decrease or eliminate cash-flow deficits, or funds to fund pension fund contributions with proceeds from the bonds secured by said entity and to approve any banks, savings and loan associations, or other entities to which the financing council may loan its funds to finance or refinance directly or indirectly the cost of health-related equipment, funds to decrease or eliminate cash-flow deficits, or funds to fund pension fund contributions for participating health-care providers; and

"(7) to loan to any participating health-care provider or a bank or savings and loan association or other entity under an installment purchase contract or loan agreement money to reimburse, finance, or refinance directly or indirectly the cost of specific items of health-related equipment, funds to decrease or eliminate cash-flow deficits, or funds to fund pension fund contributions for a participating health-care provider and to take back a secured or unsecured promissory note evidencing such loan upon such terms and conditions as the financing council may approve."

SECTION 13. Subsections (a), (c), (e), and (f), Section 12, Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) The financing council is hereby authorized to issue, sell, and deliver its bonds in accordance with the terms of this Act for the purpose of paying all or any part of the cost of health-related equipment, funds to decrease or eliminate cash-flow deficits, or funds to fund pension fund contributions and to make either directly or indirectly through banks, savings and loan associations, or other entities loans to particpating health-care providers as provided elsewhere in this Act."

"(c) The principal of and redemption premium, if any, and interest on such bonds shall be payable solely from and may be secured by a pledge of all or any part of the proceeds of bonds, revenues derived from the lease or sale of health-related equipment or realized from a loan made by the financing council to finance or refinance in whole or in part health-related equipment, funds to decrease or eliminate cash-flow deficits, or funds to fund pension fund contributions, revenues derived from operating health-related equipment, including insurance proceeds, or any other revenues as may be provided by a participating health-care provider, or a bank, savings and loan association, or other entity to which a loan is made, any one or more."

"(e) The proceeds of the bonds of each issue shall be used solely for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of health-related equipment, funds to decrease or eliminate cash-flow deficits, or funds to fund pension fund contributions and, at the option of the financing council, for the deposit to a reserve fund or reserve funds for the bonds. Such proceeds shall be disbursed in such manner and under such restrictions, if any, as may be determined by the financing council. The financing council shall be paid, out of money from the proceeds of the sale and delivery of its bonds issued in accordance with this Act, an amount of money equal to all of the financing council's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds, including without limitation all financing, legal, financial advisory, printing, and other expenses and costs in issuing such bonds, plus an amount of money equal to the compensation paid to the employees, if any, of the financing council for the time such employees have spent on activities relating to the issuance, sale, and delivery of such bonds.

"(f) any bond resolution or related trust agreement, trust indenture, indenture of mortgage, or deed of trust may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to: (1) pledging or assigning the revenues generated by health-related equipment or pledging or assigning the mortgage, lease, or other security given or to be given by participating health-care providers (whether or not identifed at the time of issuance of such bonds) with respect to which such bonds are to be issued or other specified revenues of the financing council; (2) the rentals, fees, and other amounts to be charged, the schedule of principal payments, and the sums to be raised in each year thereby and the use, investment, and disposition of such sums; (3) setting aside the reserves or sinking funds and the regulation, investment, and disposition thereof; (4) limitations on the use of health-related equipment, funds to decrease or eliminate cash-flow deficits, or funds to fund pension fund contributions financed or to be financed by the proceeds of the sale of such bonds; (5) limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied; (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the terms upon which additional bonds may rank on a parity with or be subordinate or superior to other bonds; (7) the refunding of outstanding bonds; (8) the procedure, if any, by which the terms of any contract with

bondholders may be amended or abrogated, the amounts of bonds the holders of which must consent thereto, the manner in which such consent may be given, and restrictions on the individual rights of action by bondholders; (9) omissions which shall constitute a default in the duties of the financing council to holders of its bonds and providing the rights and remedies of such holders in the event of defalut; and (10) any other matters relating to the bonds which the financing council deems desirable. In addition to the foregoing, bonds of the financing council may be secured by a pooling of leases, of loan agreements, or of mortgages or other securities (whether or not such leases, loan agreements, or mortgages or other securities exist at the time of sale and delivery of such bonds or are agreed to by the financing council or granted to the financing council thereafter) whereby the financing council may assign its rights as lessor and pledge rents under two or more leases of health-related equipment with two or more participating health-care providers as lessees or assign its rights as lender and pledge loan payments under two or more loan agreements relating to two or more items of health-related equipment with two or more participating health-care providers as borrowers or assign its rights as mortgagee and pledge mortgages from two or more participating health-care providers, banks, savings and loan associations, or other entities, upon such terms as may be provided for in bond resolutions or other instruments under which such bonds are issued."

SECTION 14. Section 12, Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), is amended by adding Subsection (b-1) to read as follows:

"(b-1) Each loan to a participating health care provider to decrease or eliminate cash-flow deficits shall mature not more than eighteen (18) months after the date of such loan."

The amendment was read and was adopted.

Senator Jones offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 18

Amend Floor Amendment No. 1 to **C.S.H.B. 2091** by inserting a new ARTICLE 20 therein to read as follows and renumbering the existing succeeding ARTICLE(S) in consecutive numerical order:

ARTICLE 20

SECTION 1. SHORT TITLE. This Act may be cited as the Opticians' Registry Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Dispensing Optician" or ophthalmic dispenser" means any person, except as permitted under Section 11 of this Act, who provides or offers to provide ophthalmic dispensing services or products to the public.

(2) "Ophthalmic dispensing" means the design, verification, fitting, adjustment, and delivery of ophthalmic lenses, frames, and other specially fabricated ophthalmic or optical devices prescribed by a licensed physician or optometrist. It includes:

(a) Prescription analysis and interpretation;

(b) The taking of measurements to determine the size, shape, and specifications of the ophthalmic lenses, frames, or lens forms best suited to the wearer's needs;

(c) The preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating ophthalmic products;

(d) The verification of the quality of finished ophthalmic products;

(e) The adjustment of lenses or frames to the intended wearer's face or eyes; and

(f) The adjustment, repair, replacement, reproduction or duplication of previously prepared ophthalmic lenses, frames, or other specially fabricated ophthalmic or optical devices; the replacement, reproduction, duplication of previously dispensed contact lenses according to the original written prescription for contact lenses.

(3) "Prescription" means written or, in case of an emergency for replacement of lost or damaged lenses, verbal directions from a licensed physician or optometrist for therapeutic or corrective lenses. A prescription consists of a description of the refractive power of an ophthalmic product and if necessary, of the vertex distance, cylinder, axis, and prism. A prescription for contact lenses must specify that it is for contact lenses. A prescription for contact lenses written by a licensed optometrist must be fully written as required by the Texas Optometry Act, in which case a dispensing optician registered under this Act may fabricate or order the contact lenses and dispense them with appropriate instructions for the care and handling of the lenses, but shall make no measurements of the eye or the cornea or evaluate the physical fit of the lenses, by any means whatsoever.

(4) "Board" means the Texas Board of Health.

(5) "Department" means the Texas Department of Health.

(6) "Advisory Council" means the Advisory Council of Opticians Registry.

SECTION 3. PROHIBITED ACTS. (a) A person may not, except as permitted under Section 11 of this Act, provide or offer to provide ophthalmic dispensing services to the public unless the person is registered with and complies with this Act.

(b) A person may not, unless registered under this Act, use any words, letters, abbreviations, or insignia that imply that the person may render ophthalmic dispensing services.

(c) A person may not engage in dispensing contact lenses from an Optometrist's fully written contact lens prescription in any manner that would adjust or alter the specific, written instructions of the Optometrist.

SECTION 4. DUTIES OF BOARDS: FEES: ADVISORY COUNCIL.

(a) The board shall adopt rules to implement standards adopted under this Act. The board shall adopt rules relating to minimum requirements for the registration of dispensing opticians and the probation, suspension, denial, or revocation of registration.

(b) The board shall appoint a nine-member advisory council to be known as the Advisory Council of the Opticians' Registry. The members shall be appointed from different geographical areas to ensure representation of urban and rural interests.

(c) Each application must be accompanied by a nonrefundable license fee in an amount set by the board. The license fee shall be paid annually on renewal of the license.

(d) The optician registry fund is established as a special fund in the state treasury. All fees collected under this article shall be deposited to the credit of the optician registry fund and may be appropriated to the department only to administer and enforce this article.

(e) The board shall appoint members of the council as follows:

(1) Three must be consumers;

(2) One must be an optometrist licensed in this state;

(3) Five must be dispensing opticians of which at least two must be registered under this act as spectacle dispensers and at least two must be registered under this act as contact lens dispensers.

(f) The board shall adopt by rule the forms required by this Act.

SECTION 5. POWERS AND DUTIES OF THE DEPARTMENT. (a) The department shall administer this Act; evaluate the qualifications of applicants, and provide for the examination of applicants.

(b) The department shall investigate persons engaging in practices that violate this Act.

(c) The department shall employ administrative and clerical staff as necessary to carry out this Act.

SECTION 6. EXAMINATIONS. (a) The department shall administer a written qualifying spectacle-dispensing examination and a written qualifying contact lens examination at least once a year to applicants for registration. The qualifying examinations shall be professionally constructed and validated and objectively administered and scored.

(b) If a person fails to pass a qualifying examination, the person may reapply to take a subsequent examination. An applicant who fails two successive examinations may not reapply until the applicant completes any remedial work required by the department.

SECTION 7. CERTIFICATE OF REGISTRATION. (a) On application and payment of a registration fee, the department shall issue a certificate of registration to an applicant who passes the examination required under Section 6 of this Act.

(b) A person may qualify and be registered as a contact lens dispenser, as a spectacle dispenser, or as both a contact lens dispenser and a spectacle dispenser.

(c) A person issued a certificate by the department shall display the certificate in an appropriate public manner as specified by the board.

(d) A certificate of registration is the property of the department and must be surrendered on demand.

SECTION 8. RENEWAL OF REGISTRATION. (a) A certificate of registration issued under this Act is valid for one year from the date of issuance. To renew the registration, the registrant must submit an application for renewal in the manner prescribed by the board. The application must be accompanied by a renewal fee and evidence that the applicant has acceptably completed any continuing education courses required by the rule of the board.

(b) The department shall adopt a system under which registrations expire and are renewed on various dates of the year.

(c) A person registered under this Act who does not renew the registration by the expiration date may renew the registration not later than 90 days after the expiration date by meeting the requirements set forth in this section and by paying a late penalty fee as prescribed by the board.

(d) The registration of a person who fails to meet the renewal requirements is void, and such a person may practice as a dispensing optician as provided by this Act until the person submits a new application, pays the appropriate fees, and meets the current requirements for registration.

SECTION 9. ENFORCEMENT; PENALTY. (a) The attorney general, or the district or county attorney for the county in which an alleged violation of this Act occurs, on the verified complaint of any person, shall enforce this Act and rules adopted under this Act by appropriate judicial proceedings in a court of competent jurisdiction.

(b) A person commits an offense if the person violates this Act. An offense under this Act is a Class B misdemeanor.

(c) The attorney general or prosecutor may sue in a court of competent jurisdiction to enjoin or restrain a person from violating this Act or a rule adopted under this Act.

(d) In addition to granting injunctive relief or any other remedy provided by law, a court may impose a civil penalty for a violation of this Act or a rule adopted under this Act.

SECTION 10. DENIAL, SUSPENSION, REVOCATION, AND PROBATION. (a) The department may refuse to issue a certificate of registration

to an applicant, or may suspend or revoke a certificate of registration, or place on probation an individual who is registered under this Act for:

(1) Obtaining a certificate by means of fraud, misrepresentation, or concealment of material facts;

(2) Selling, bartering, or offering to sell or barter a certificate of registration;

(3) Violating any lawful order or rule rendered or adopted by the board; or

(4) Violating Section 3 of this Act.

(b) A person whose application of registration is denied, suspended, or revoked is entitled to a hearing before the department if the person submits a written request for a hearing to the department. A hearing is governed by department rules for a contested hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13A, Vernon's Texas Civil Statutes).

SECTION 11. APPLICATION OF THIS ACT. This Act does not prevent, limit, or restrict;

(1) any person licensed in this state under any other law from engaging in the profession or occupation for which the person is licensed; or

(2) An individual, firm, or corporation from employing a person registered under this Act.

(3) Any employee of an optometrist licensed in this state from performing the duties of employment required by said optometrist nor does it require such employee to be registered under this Act.

(4) A licensed physician from treating or prescribing for his patients or directing or instructing others under his control, supervision, or direction from aiding or ministering to the needs of his patients according to his directions, orders, instructions, or prescriptions. When the physician's directions, orders, instructions, or prescriptions are to be followed, performed, carried out, or filled by a registered dispensing optician separate from and independent of the physician's office, those directions, orders, instructions, or prescriptions shall be of a scope and content and communicated to the particular designated dispensing optician in a form and manner that, in the professional judgment of the physician, best serve the health, safety, and welfare of the physician's patient.

SECTION 12. This ARTICLE takes effect on January 1, 1986.

SECTION 13. The fees authorized in this Act are appropriated to the department for the administration of this Act for the fiscal years ending September 1, 1986 and 1987.

The amendment was read.

On motion of Senator Glasgow, the amendment was tabled by the following vote: Yeas 16, Nays 15.

Yeas: Blake, Brown, Glasgow, Henderson, Howard, Kothmann, Krier, Mauzy, Montford, Parker, Parmer, Sarpalius, Sims, Traeger, Truan, Williams.

Nays: Barrientos, Brooks, Caperton, Edwards, Farabee, Harris, Jones, Leedom, Lyon, McFarland, Santiesteban, Sharp, Uribe, Washington, Whitmire.

Senator Henderson offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 19

Amend the Washington Amendment to **C.S.H.B. 2091** on page 61, line 13 by striking 1997 and inserting 1985.

The amendment was read.

On motion of Senator Washington, the amendment was tabled by the following vote: Yeas 24, Nays 7.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Howard, Jones, Kothmann, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Brown, Harris, Henderson, Krier, Leedom, Lyon, McFarland.

Question recurrring on the adoption of Floor Amendment No. 1 as amended, the amendment was adopted by the following vote: Yeas 25, Nays 6.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Howard, Jones, Kothmann, Lyon, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Brown, Harris, Henderson, Krier, Leedom, McFarland.

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

The bill as amended was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2091 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2091** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Howard, Jones, Kothmann, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Brown, Harris, Henderson, Krier, Leedom, Washington.

The bill was read third time and was passed.

CONFERENCE COMMITTEE ON HOUSE BILL 393

Senator Caperton 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 **H.B. 393** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 393** 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 Caperton, Chairman; Farabee, Glasgow, McFarland and Washington.

CONFERENCE COMMITTEE ON HOUSE BILL 1811

Senator Caperton 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 **H.B. 1811** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1811** 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 Caperton, Chairman; Brown, Jones, Mauzy and Parker.

SENATE RULE 74a SUSPENDED

On motion of Senator Mauzy and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 581**.

SENATE BILL 581 WITH HOUSE AMENDMENTS

Senator Mauzy called **S.B. 581** 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 - Oliver

Amend **S.B. 581** by renumbering Sections 2 and 3 as Sections 3 and 4 and by adding a new Section 2 to read as follows:

SECTION 1. Subsection (a), Section 3e, Article 42.12, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"(a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring confinement in the Texas Department of Corrections is imposed for conviction (of a felony) shall continue for 180 days from the date the defendant is committed to the Texas Department of Corrections [~~execution of the sentence actually begins~~]. After the expiration of 60 days but prior to the expiration of 180 days from the date the defendant is committed to the Texas Department of Corrections [~~execution of the sentence actually begins~~], the judge of the court that imposed such sentence may on his own motion or on written motion of the defendant, suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further incarceration in a penitentiary. For the purpose of determining when 60 days have expired under this subsection, the court may count all or part of the time served by the defendant in county jail after sentencing but prior to commitment in the Texas Department of Corrections. Probation may be granted under this section only if:

"(1) the defendant is otherwise eligible for probation under this article; and

"(2) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony; and

"(3) the offense for which the defendant was convicted was other than those defined by Section 19.02, 20.04, 22.021, 22.03, 22.04(a)(1), (2), or (3), 29.03, 36.02, 38.07, 71.02 or a felony of the second degree under Section 38.10, Penal Code."

Floor Amendment No. 2 - Hightower

Amend **S.B. 581** by amending SECTION 2 and SECTION 3 and adding SECTION 4 and 5 to read as follows:

SECTION 2. Section 38.04, Penal Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) For the purposes of this section, it is presumed that the actor recklessly engaged in conduct if the actor knowingly operated a motor vehicle while intoxicated during the commission of the offense. In this subsection, "intoxicated" has the meaning assigned that term by Article 67011-1, Revised Statutes.

(d) An offense under this section is a Class B misdemeanor unless the actor, during the commission of the offense, recklessly engaged in conduct that placed

another in imminent danger of serious bodily injury, or recklessly engaged in conduct that resulted in bodily injury to a person other than the actor, in which event the offense is a Class A misdemeanor.

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 the effective date.

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

SECTION 4. This Act takes effect September 1, 1985.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendments were read.

Senator Mauzy moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 581** 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 Mauzy, Chairman; Caperton, Lyon, Washington and Whitmire.

SENATE BILL 300 WITH HOUSE AMENDMENTS

Senator Sarpalius called **S.B. 300** 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 - Messer

Substitute the following for **S.B. 300**:

A BILL TO BE ENTITLED
AN ACT

relating to the operation, administration, and continuation of the Texas Advisory Board of Occupational Therapy and the licensing of occupational therapists and occupational therapy assistants; amending the Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes) by amending Subsection (g), Section 3; Subsections (b), (d), (e), and (l), Section 5; Subsection (a), Section 22; and Sections 11, 14, 16, 18, 25, and 30; and by adding Subsection (m) to Section 5 and Section 25A.

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

SECTION 1. Subsection (g), Section 3, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

"(g) The board is subject to the Texas Sunset Act[~~, as amended~~] (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished, and this Act expires effective September 1, 1997 [~~1985~~]."

SECTION 2. Section 5, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (d), (e), and (l) and adding Subsection (m) to read as follows:

"(b) The board may collect fees for licenses, license renewals, examinations, and all other administrative expenses. If the General Appropriations Act does not set the amount of those fees, the board shall set the fees in amounts that will recover the amount appropriated for the operation of the board from the General Revenue fund. [~~shall prescribe and publish fees for the following:~~]

"[~~(1) application for licensure fee (nonrefundable);~~

"[~~(2) initial license fee;~~

"[~~(3) renewal of license fee;~~

"[~~(4) late renewal fee;~~

"[~~(5) endorsement license fee; and~~

"[~~(6) temporary license fee.~~

"[~~These fees shall be determined by and limited to the board's operational costs in implementing the provisions of this Act~~]."

"(d) The board may investigate complaints; issue, suspend, deny, and revoke licenses; reprimand licensees and place them on probation; issue subpoenas; and hold hearings. The board shall keep an information file about each complaint that is filed with the board relating to a licensee or an entity regulated by the board. If a written complaint is filed with the board relating to a licensee or entity regulated by the board, the board shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. The board shall notify the parties to the complaint at least as frequently as quarterly until the final disposition of the complaint.

"(e) The board shall propose rules consistent with this Act to carry out its duties in administering this Act, shall submit said rules to the office of the Attorney General of Texas for review, and shall then adopt rules consistent with the advice of the attorney general. In adopting its rules, the board shall consider any applicable policies and procedures of the commission."

"(l) The board shall prepare or approve continuing education programs for licensees and shall require each licensee to participate in an approved continuing education program in order to renew a license issued under this Act [~~may recognize, prepare, implement, and require continuing education programs for persons it licenses~~].

"(m) The board shall develop and implement policies that clearly define the respective responsibilities of the governing body of the board and the staff of the board."

SECTION 3. Section 11, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 11. OPEN MEETINGS. (a) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967[~~, as amended~~] (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act[~~, as amended~~] (Article 6252-13a, Vernon's Texas Civil Statutes).

"(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on issues that are under the jurisdiction of the board."

SECTION 4. Section 14, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 14. APPROPRIATIONS TO TEXAS REHABILITATION COMMISSION. The commission shall receive an account for funds derived under this Act. The commission shall deposit all funds collected under this Act to the credit of the General Revenue fund. [~~The funds shall be deposited in the State~~

~~Treasury to the credit of a special fund known as the Occupational Therapy Licensing Fund and may be used only for the administration of this Act and are hereby appropriated for this purpose.~~]

SECTION 5. Section 16, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 16. REQUIREMENTS FOR LICENSURE. An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application on a form provided by the board, showing to the satisfaction of the board that the applicant [~~he or she~~] meets the following requirements:

"(1)[~~(a) Residence: Applicant need not be a resident of this state.~~

"[~~(b) Character: Applicant shall be of good moral character.~~

" [~~(c)~~] Education: Applicant shall present evidence satisfactory to the board of having successfully completed the academic requirements of an educational program in occupational therapy recognized by the board. The

"[~~(1) Such~~] evidence for a license as an occupational therapist shall be [~~one of the following:~~

"[~~(A)~~] a baccalaureate degree in occupational therapy,[;

"[~~(B)~~] a certificate evidencing successful completion of required undergraduate occupational therapy course work awarded to persons with a baccalaureate degree which is not in occupational therapy,[;] or

"[~~(C)~~] a postgraduate degree in occupational therapy. The

"[~~(2) Such~~] evidence for a license as an occupational therapy assistant shall be either [~~one of the following:~~

"[~~(A)~~] an associate degree in occupational therapy, or[;

"[~~(B)~~] an occupational therapy assistant certificate.

"(2) [~~(d)~~] Experience: Applicant shall submit to the board evidence of having successfully completed a period of supervised field work experience arranged by the recognized educational institution where the applicant [~~he or she~~] met the academic requirements.

"[~~(1)~~] For an occupational therapist, a minimum of six months of supervised field work experience is required.

"[~~(2)~~] For an occupational therapy assistant, a minimum of two months of supervised field work experience is required.

"(3) [~~(e)~~] Examination: An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination as provided for in Section 17 of this Act."

SECTION 6. Section 18, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 18. LICENSE BY ENDORSEMENT. (a) A person who is licensed or otherwise registered as an occupational therapist or as an occupational therapy assistant by another state, the District of Columbia, or a commonwealth or territory of the United States whose requirements for licensing or registration were at the date of licensing or registration substantially equal to the requirements prescribed by this Act may receive an occupational therapist license without examination, on submission of an application on a form prescribed by the board and payment of an endorsement license fee prescribed by the board.

"(b) The board may also waive examination requirements for a person who is certified by a national association approved by the board and who is currently practicing in a state that does not require a license or other form of registration."

SECTION 7. Subsection (a), Section 22, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

"(a) The board may [~~shall~~] issue a temporary license without examination to a person who is a recent graduate of an institution of higher education in the United

States if the person has applied for a license, has applied to take the licensing examination, and meets the requirements for license under Section 16 of this Act. A person who holds a temporary license may practice only under the supervision of a person who holds a regular license. A temporary license expires on notification of the results of the licensing examination [~~has applied for a license and meets the qualifications prescribed by Section 16, except Subsection (e) of Section 16, of this Act. This license expires on completion of scoring of the next administered examination whether the applicant passes the examination or not~~]. Issuance of a temporary license following failure of part or all the examination shall be according to rules adopted by the board."

SECTION 8. Section 25, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 25. RENEWAL OF EXPIRED LICENSE. (a) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee plus a late fee in an amount that is one-half of the license fee.

"(b) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a late fee that is equal to the license fee.

"(c) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by applying for a license, submitting to reexamination, and complying with the requirements and procedures for obtaining an original license. However, the board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and has been legally practicing in the other state for the two years preceding the application for renewal. The person shall pay to the board a renewal fee that is equal to the license fee.

"(d) Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address. [~~A license that has expired for less than three years from the date of the application for renewal may be renewed by submission of an application on a form prescribed by the board and payment of a renewal fee established by the board.~~

"[~~(b) A license that has expired for more than three consecutive years may be reinstated only by complying with the requirements for issuing an original license.~~]"

SECTION 9. The Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes) is amended by adding Section 25A to read as follows:

"Section 25A. INACTIVE STATUS LIST. (a) A person who holds a license under this Act and who is not actively engaged in the practice of occupational therapy may apply to the board in writing to be placed on an inactive status list maintained by the board. The person must apply for inactive status before the expiration of the person's license. A person on inactive status is not required to pay the annual renewal fee.

"(b) A person on inactive status may not perform any activities regulated under this Act.

"(c) If a person on inactive status desires to reenter active practice, the person shall notify the board in writing. The board shall remove the person from the inactive status list on payment of an administrative fee and on compliance with educational or other requirements set by the board by rule."

SECTION 10. Section 30, Occupational Therapy Title Act (Article 8851, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 30. [~~GROUNDS FOR~~] DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE; [~~OR~~] DISCIPLINE OF A LICENSEE. (a) If the board proposes to deny a license or to suspend or revoke a license, the applicant or

licensee is entitled to a hearing before the board or before a hearing officer appointed by the board. All final decisions shall be made by the board.

"(b) After hearing, a license may be denied, suspended, or revoked or a licensee otherwise disciplined if the applicant or licensee has:

"(1) used drugs or intoxicating liquors to an extent that affects his or her professional competence;

"(2) been convicted of a crime, other than minor offenses defined as 'minor misdemeanors,' 'violations,' or 'offenses,' in any court if the acts for which he or she was convicted are found by the board to have a direct bearing on whether he or she should be entrusted to service the public in the capacity of an occupational therapist or occupational therapy assistant;

"(3) obtained or attempted to obtain a license by fraud or deception;

"(4) been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant;

"(5) been adjudicated mentally incompetent by a court of competent jurisdiction;

"(6) practiced occupational therapy in a manner detrimental to the public health and welfare;

"(7) advertised in a manner that in any way tends to deceive or defraud the public; or

"(8) had his or her license to practice occupational therapy revoked or suspended or had other disciplinary action taken against him or her or had his or her application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation."

SECTION 11. A person who holds a temporary license on the effective date of this Act may practice under the terms of that license until the license expires.

SECTION 12. All balances accrued to the credit of the Occupational Therapy Licensing Fund on the effective date of this Act are hereby reverted to the General Revenue fund.

SECTION 13. This Act takes effect September 1, 1985.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment - G. E. Thompson

Amend **C.S.S.B. 300** by adding new Section 13 and renumbering the succeeding Sections accordingly:

SECTION 13. Chapter 338, Acts of the 64th Legislature, Regular Session, 1975 (Article 6675a-5e.1, Vernon's Texas Civil Statutes), is amended by adding Section 11 to read as follows:

Sec. 11. PRESUMPTION. In a prosecution of an offense under Section 10 of this Act, it is presumed that the registered owner of the motor vehicle that is the subject of the prosecution is the person who parked the vehicle at the time and place the offense occurred.

The amendments were read.

Senator Sarpalius moved to concur in the House amendments.

The motion prevailed.

SENATE RULE 74a SUSPENDED

On motion of Senator Sharp and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 384**.

SENATE BILL 384 WITH HOUSE AMENDMENTS

Senator Sharp called **S.B. 384** 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. - C. Evans

Amend **S.B. 384** as follows:

(1) On page 9, between lines 21 and 22, insert a new Section 12 to read as follows and renumber current Section 12 and subsequent sections accordingly:

SECTION 12. Chapter 81, Human Resources Code, is amended by adding Section 81.0091 to read as follows:

Sec. 81.0091. SALARIES. Not more than 25 percent of the total amount appropriated to the commission for each fiscal year, excluding an amount equal to the total amount of gifts, grants, and donations accepted by the commission to supplement salaries for that fiscal year, may be used for salaries of commission employees, including the executive director. However, the commission may accept private gifts, grants, and donations to supplement salaries of commission employees, including the executive director, and those amounts are not included in the 25-percent limitation imposed by this section.

(2) On page 11, line 25, substitute six-month for one year.

(3) On page 11, line 26, substitute shall for may.

(4) On page 12, at the end of line 1, add the following:

The commission may determine appropriate placements for those telecommunications devices removed from selected state agencies due to non-use. The primary criteria for making these placements shall be a determination of where the greatest number of deaf and hearing-impaired persons will receive maximum benefits by the placement and may include placements in entities other than state agencies and units of local government.

(5) On page 15, at the end of line 18, add the following:

The commission may not award contracts or grants to former employees of the commission.

Floor Amendment No. 2 - McKinney

Amend **S.B. 384** on page 3, line 18 by changing 1997 to 1987.

Floor Amendment No. 3 - T. Smith

Amend **S.B. 384** as follows:

On page 5, line 17, strike the word "manual". On page 6, line 4, strike the words "sign language".

Amend **S.B. 384** on page 16 between lines 18 and 19 by inserting a new SECTION 19 to read as follows and renumbering current SECTION 19 and subsequent sections accordingly:

SECTION 19. The Texas Commission for the Deaf is hereby appropriated $38,000 in fiscal year 1986 and $38,000 in fiscal year 1987 to fund the outdoor training program for deaf individuals.

The amendments were read.

Senator Sharp moved to concur in the House amendments.

The motion prevailed.

SENATE RULE 74a SUSPENDED

On motion of Senator Jones and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 1125.**

SENATE BILL 1125 WITH HOUSE AMENDMENTS

Senator Jones called **S.B. 1125** 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 - Schlueter

Amend **S.B. 1125** by adding a new Section 5 and renumbering Section 5 as Section 6.

SECTION 5. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

Committee Amendment - McKinney

Amend **S.B. 1125** by deleting all language in Section 5 and Section 6 and renumbering Section 7 as Section 5.

The amendments were read.

Senator Jones moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1125** 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 Jones, Chairman; Howard, Krier, Leedom and McFarland.

CONFERENCE COMMITTEE ON HOUSE BILL 25

Senator Washington 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 **H.B. 25** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 25** 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 Washington, Chairman; Leedom, Mauzy, Farabee and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 1843

Senator Traeger 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 **H.B. 1843** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 1843** 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 Traeger, Chairman; Brooks, Caperton, Farabee and Montford.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has adopted the Conference Committee Report on **H.B. 1593** by a record vote of 96 ayes, 53 noes.

The House has concurred in Senate amendments to **H.B. 1717** by a record vote of 132 ayes, 1 noes, and 1 present not voting.

The House has concurred in Senate amendments to **H.B. 539** by a record vote of 145 ayes, 0 noes, and 1 present not voting.

The House has concurred in Senate amendments to **H.B. 740** by a record vote of 140 ayes, 0 noes, and 1 present not voting.

The House has concurred in Senate amendments to **H.B. 46** by a record vote of 145 ayes, 0 noes, and 1 present not voting.

The House has concurred in Senate amendments to **H.B. 2447** by a record vote of 147 ayes, 1 noes, and 1 present not voting.

The House has concurred in Senate amendments to **H.B. 1485** by a record vote of 134 ayes, 5 noes and 1 present not voting.

The House has concurred in Senate amendments to **H.B. 267** by a record vote of 141 ayes, 0 noes, and 1 present not voting.

The House has concurred in Senate amendments to **H.B. 1867** by a record vote of 135 ayes, 0 noes, and 1 present not voting.

The House has concurred in Senate amendments to **H.J.R. 72** by a record vote of 141 ayes, 0 noes, and 1 present not voting.

The House has concurred in Senate amendments to **H.B. 1837** by a record vote of 140 ayes, 1 noes, and 1 present not voting.

The motion to reconsider the vote by which the House concurred in Senate amendments to **H.B. 1543** prevailed and the House has concurred in Senate amendments by a record vote of 140 ayes, 0 noes, and 1 present not voting.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE ON HOUSE BILL 805

Senator Sharp 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 **H.B. 805** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 805** 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 Sharp, Chairman; Brown, Farabee, Leedom and Lyon.

CONFERENCE COMMITTEE REPORT
SENATE BILL 1435

Senator Jones submitted the following Conference Committee Report:

Austin, Texas
May 26, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1435** have met and 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.

JONES	GIBSON
McFARLAND	WILLIAMSON
MONTFORD	RILEY
KRIER	STILES
BLAKE	ADKISSON
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the issuance of bonds for additional building projects or energy efficiency improvement projects by the Texas Public Building Authority and handling of funds and bond proceeds.

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

"SECTION 1. Sections 2, 9, 11, 12, 23, 24, 25, 26, and 28, Texas Public Building Authority Act (Article 601d, Vernon's Texas Civil Statutes), are amended to read as follows:

"Sec. 2. PURPOSE. The purpose of this Act is to provide a method of financing for the acquisition, construction, repair, renovation, or other

improvement of buildings for the use of state agencies and institutions in Travis County, Texas, and of energy efficiency improvement projects for the exclusive use by those state agencies or institutions listed in Section 24 of this Act in various counties of the State of Texas.

"Sec. 9. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the authority to finance the acquisition, construction, repair, renovation, or other improvement of buildings for the use of state agencies and institutions in Travis County, Texas, and energy efficiency improvement projects for the exclusive use of state agencies or institutions at the specific locations listed in Section 24 of this Act in various counties of the State of Texas.

"Sec. 11. SCOPE OF POWER. (a) The board's authority under Section 9 of this Act is limited to the financing of a project and does not affect the authority of the State Purchasing and General Services Commission, or any other state agency or institution, to carry out its statutory authority, including its authority to construct buildings, relating to the project.

"(b) The State Purchasing and General Services Commission or other agency or institution involved shall carry out its statutory authority regarding a project financed under this Act as if the project were financed by legislative appropriation.

"(c) The board and the State Purchasing and General Services Commission, with respect to building projects, or another agency or institution involved, with respect to energy efficiency improvement projects, shall adopt a memorandum of understanding that defines the division of authority between the board and the commission or agency or institution to carry out the intent of this section.

"Sec. 12. MANNER OF REPAYMENT OF BONDS. (a) The board may provide for the payment of the principal of and interest on the bonds issued under Section 9 of this Act relating to a project [~~building~~]:

"(1) by pledging all or any part of the designated rents, issues, and profits from leasing the project [~~building~~] to the state through the State Purchasing and General Services Commission or occupying or using state agency or institution; or

"(2) from any other source of funds lawfully available to the board.

"(b) From funds appropriated for the purpose of paying utility expenses or rental charges on improvements acquired, constructed, renovated, or repaired under this Act, the State Purchasing and General Services Commission or occupying or using state agency or institution shall pay to the board an amount determined by the board to be sufficient to pay the principal of and interest on the bonds and to maintain any reserve fund required for servicing the debt.

"(c) The commission shall set the rents, with respect to building projects, and the appropriate state agency or institution shall set rents or other charges, with respect to energy efficiency projects, in amounts sufficient to provide the revenue required by the board.

"(d) All lease contracts entered into under this Act shall be subject to the appropriation by the legislature of funds necessary to cover the provisions of the lease, except that if at any time the state fails or refuses to pay the rental provided in such a lease contract or fails or refuses to renew an existing lease contract at a rental provided to be paid, the board may lease or sublease the property covered by the lease contract to any person or entity on terms that the board determines.

"(e) The board may lease space in projects financed [~~constructed~~] under this Act to any person or entity under the terms that the board determines if the space cannot be leased to the State Purchasing and General Services Commission or other state agency or institution.

"Sec. 23. BOND PROCEEDS. On issuance of bonds necessary to finance the projects authorized by this Act, the board shall certify to the State Purchasing and General Services Commission, with respect to building projects, or to the appropriate agency or institution, with respect to energy efficiency improvement

projects; and to the comptroller of public accounts that the funds are available and shall deposit the bond proceeds in the state treasury to the account of the State Purchasing and General Services Commission, with respect to building projects, or to the appropriate agency or institution, with respect to energy efficiency improvement projects, for the specific projects. Once the funds are deposited and the comptroller of public accounts has certified that the funds are available and after transfer of reserve funds and capitalized interest as certified to be reasonably required by the authority and payment of the costs of issuance of the bonds upon receipt of a certificate of the authority specifying the costs, the State Purchasing and General Services Commission, with respect to building projects, or the appropriate agency or institution, with respect to energy efficiency improvement projects, shall begin the projects, and the funds so deposited are appropriated to the State Purchasing and General Services Commission or the appropriate agency or institution for those purposes. The State Treasurer shall invest, with the concurrence of the board, the unexpended bond proceeds and investment income thereon, credited to the account of the State Purchasing and General Services Commission, with respect to building projects, or to the appropriate agency or institution, with respect to energy efficiency improvement projects, in investments approved by law for the investment of state funds. Investment income needed for project costs as determined by the board shall be credited to the account of the State Purchasing and General Services Commission, with respect to building projects, or to the appropriate agency or institution, with respect to energy efficiency improvement projects. Investment income not needed for project costs as determined by the board shall be credited to and accounted for in the state lease fund in the State Treasury. Notwithstanding the provisions of Article 2543d, Revised Statutes, depository interest earned on the unexpended bond proceeds [~~funds~~] shall be credited to and accounted for in the state lease fund in the state treasury.

"Sec. 24. SPECIFIC PROJECTS. (a) The following projects are approved for financing under this Act:

(I) Buildings:

Project	Estimated Cost of Project
(1) Construction related to the Texas Youth Commission, Texas Rehabilitation Commission state office building	$ 10,500,000
(2) Purchase and renovation of the Texas Employment Commission property	26,750,000
(3) Addition to Supreme Court Building and associated parking structure	55,177,000
(4) Texas Education Agency Building renovation	5,385,000
(5) Addition to State Library Records Storage Center	7,046,000
(6) Addition to Central Services Building	2,630,943
(7) John H. Winters Human Services Warehouse	4,705,000
(8) New office building at Texas Department of Health Complex	10,218,000
(9) Expansion of Texas Youth Commission, Texas Rehabilitation Commission	18,683,000
Total	141,094,943

(II) Energy Efficiency Improvement Projects:

Project	Estimated Cost of Project
(1) University of Houston	1,775,057
(2) Texas Woman's University	395,045
(3) East Texas State University	419,871
(4) University of Houston, Clear Lake	566,465
(5) Texas Tech University	479,014
(6) Texas Southern University	1,223,129
(7) Texas Tech Health Science Center (Lubbock)	587,724
(8) Texas A&I University	577,700
(9) Prairie View A&M University	901,860
(10) Texas Department of Health	530,100
(11) Midwestern State University	479,000
(12) Texas Department of MHMR	3,885,987
Total	11,820,952

"(b) In recognition that the amounts herein are estimated and that bonds may be issued to fund associated costs, including but not limited to reasonably required reserve funds, capitalized interest, administrative costs of the authority, and issuing expenses, the principal amount of any bond issue may be one and one-half the amount of the estimated cost for the project(s) being financed.

"Sec. 25. RENT AND FEES. The State Purchasing and General Services Commission, with respect to building projects, or the appropriate state agency or institution, with respect to energy efficiency improvement projects, shall establish schedules necessary to properly charge state agencies occupying or using projects authorized by this Act for the expenses incurred in financing the project. Using state agencies shall pay to the State Purchasing and General Services Commission, with respect to building projects, or to the appropriate state agency or institution, with respect to energy efficiency improvement projects, from all funds appropriated to the agency for those purposes, in their proper proportion, the amount determined by the State Purchasing and General Services Commission or the appropriate state agency or institution as the necessary payment for the period or periods when [~~the commission has determined~~] the payments are due. Payments received by the commission or agency or institution under this section shall be deposited to the credit to the state lease fund. The legislature may, in the alternative, provide for direct appropriation of the necessary funds for using agencies to the state lease fund.

"Sec. 26. STATE LEASE FUND. The state lease fund created by Article II, Chapter 700, Acts of the 68th Legislature, Regular Session, 1983 (Article 601c, Vernon's Texas Civil Statutes), may be used to finance appropriations to the State Purchasing and General Services Commission or other state agencies or institutions for payment of rents and fees to the authority. In addition, the legislature may transfer funds on deposit in the state lease fund to the Texas capital trust fund [~~General Revenue Fund~~] for such other purposes as the legislature may determine after all bonds have been duly paid or provided for.

"Sec. 28. CONVEYANCE OF PROPERTY. (a) When the principal of and interest on bonds relating to a project financed under this Act are paid in full and the building or facility involved in the project is free of all liens, the board shall certify to the State Purchasing and General Services Commission or occupying or using state agency or institution that rentals are no longer required to service the bond debt.

"(b) On making the determination called for in Subsection (a) of this section, the board shall, for the sum of $1.00, convey title of the completed project, including any real property involved in the project, to the State Purchasing and General Services Commission or designated occupying or using state agency or institution.

"SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 13 ON SECOND READING

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

H.B. 13, Relating to authorizing the court of criminal appeals to promulgate rules of procedure in criminal cases.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Amend **H.B. 13** by striking everything below the enacting clause and substituting therefor the following:

SECTION 1. RULES OF APPELLATE PROCEDURE IN CRIMINAL CASES. Articles of the Code of Criminal Procedure, 1965, as amended, that govern posttrial appellate and review procedure in criminal cases are hereby repealed pursuant to Section 4 of this Act. The court of criminal appeals is granted rulemaking power to promulgate rules of posttrial, appellate, and review procedure in criminal cases except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.

SECTION 2. AMENDMENTS; NEW RULES. The court of criminal appeals may promulgate a comprehensive body of rules of posttrial, appellate, and review procedure in criminal cases and from time to time may promulgate a specific rule or rules of posttrial, appellate, or review procedure in criminal cases or an amendment or amendments to a specific rule or rules. Rules and amendments adopted under this section are effective at the time the court of criminal appeals deems expedient in the interest of a proper administration of justice. The rules and amendments to rules remain in effect unless and until disapproved, modified, or changed by the legislature. The clerk of the court of criminal appeals shall file with the secretary of state the rules or amendments to rules promulgated by the court of criminal appeals under this section. The secretary of state shall report the rules or amendments to rules to the next regular session of the legislature by mailing a copy of the rules or amendments to rules to each elected member of the legislature on or before December 1 immediately preceding the session.

SECTION 3. PUBLICATION. The rules of posttrial, appellate, and review procedure in criminal cases shall be published in the Texas Register and in the Texas Bar Journal. The court of criminal appeals may adopt the method it deems expedient for the printing and distribution of the rules.

SECTION 4. REPEAL OF CERTAIN ARTICLES. (a) The repeal of any article listed in Subsection (b) of this section is effective if:

(1) the court promulgates a comprehensive body of rules of posttrial, appellate, and review procedure in criminal cases under Section 2 of this Act on or before January 1, 1986; and

(2) at the time the court promulgates the rules, the court files with the secretary of state a list of articles repealed under this section, the effective date of such repeal being simultaneous with the effective date of the comprehensive body of rules promulgated by the court of criminal appeals pursuant to this Act.

(b) The option granted under Subsection (a) of this section applies only to Articles 36.20, 42.04a, and 42.06 and to articles in Chapters 40, 41, and 44 of the Code of Criminal Procedure, 1965, as amended; provided, however, that the following articles of the Code of Criminal Procedure, 1965, as amended, shall not be repealed: 44.01, 44.04, 44.10, 44.12 through 44.20, 44.25, 44.251, 44.28, 44.29, 44.35, 44.39, and 44.41 through 44.44.

SECTION 5. RULES OF EVIDENCE IN CRIMINAL CASES. The court of criminal appeals has the full rulemaking power in the promulgation of rules of evidence in the trials of criminal cases, except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.

SECTION 6. AMENDMENTS; NEW RULES. The court of criminal appeals may promulgate a comprehensive body of rules of evidence in the trials of criminal cases and from time to time may promulgate a specific rule or rules of evidence or an amendment or amendments to a specific rule or rules. Rules and amendments adopted under this section are effective at the time the court of criminal appeals deems expedient in the interest of a proper administration of justice. The rules and amendments to rules remain in effect unless and until disapproved by the legislature. The secretary of state shall report the rules or amendments to rules to the next regular session of the legislature by mailing a copy of the rules or amendments to rules to each elected member of the legislature on or before December 1 immediately preceding the session.

SECTION 7. PUBLICATION. The rules of evidence in the trials of criminal cases shall be published in the Texas Register and in the Texas Bar Journal. The court of criminal appeals may adopt the method it deems expedient for the printing and distribution of the rules.

SECTION 8. AMENDMENT TO EXISTING LAW. (a) Section (a), Article 26.13, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

"(1) the range of the punishment attached to the offense;

"(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of any plea bargaining agreements between the state and the defendant and, in the event that such an agreement exists, the court shall inform the defendant whether it will follow or reject such agreement in open court and before any finding on the plea. Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere[~~, and neither the fact that the defendant had entered a plea of guilty or nolo contendere nor any statements made by him at the hearing on the plea of guilty or nolo contendere may be used against the defendant on the issue of guilt or punishment in any subsequent criminal proceeding~~]; and

"(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial."

(b) Subsection (a), Section 3, Article 37.07, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may, as permitted by the Rules of Evidence, be offered by the state and the defendant as to the prior criminal record of the defendant, his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged."

(c) Subsection (a) of this section is effective only if:

(1) the court of criminal appeals promulgates a comprehensive body of rules of evidence in the trial of criminal cases under Section 2 of this Act on or before January 1, 1986; and

(2) at the time the court promulgates the rules, the court files with the secretary of state its designation that Section (a), Article 26.13, Code of Criminal Procedure, 1965, is amended under this section.

(d) Subsection (b) of this section is effective only if:

(1) the court of criminal appeals promulgates a comprehensive body of rules of evidence in the trial of criminal cases under Section 2 of this Act on or before January 1, 1986; and

(2) at the time the court promulgates the rules, the court files with the secretary of state its designation that Subsection (a), Section 3, Article 37.07, Code of Criminal Procedure, 1965, is amended under this section.

SECTION 9. REPEAL OF CERTAIN LAWS. (a) The court of criminal appeals may designate for repeal any law listed in subsection (b) of this section if:

(1) the court promulgates a comprehensive body of rules of evidence in the trial of criminal cases under Section 2 of this Act on or before January 1, 1986; and

(2) at the time the court promulgates the rules, the court files with the secretary of state a list of statutes repealed under this section.

(b) The option granted under Subsection (a) of this section applies only to:

(1) Section 22.065, Penal Code;

(2) Articles 16.05, 36.03, 36.04, 38.01, 38.02, 38.06, 38.09, 38.10, 38.11, 38.111, 38.13, 38.20, 38.24, 38.26, 38.28, and 38.29, Code of Criminal Procedure, 1965; and

(3) Section 26, Public Accountancy Act of 1979 (Article 41a-1, Vernon's Texas Civil Statutes);

Section 3.07, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes);

Article 3714, Revised Statutes;

Article 3715, Revised Statutes;

Article 3715a, Revised Statutes;

Article 3716, Revised Statutes;

Article 3718, Revised Statutes;

Article 3719, Revised Statutes;

Article 3720, Revised Statutes;

Article 3721, Revised Statutes;

Article 3722, Revised Statutes;

Article 3723, Revised Statutes;

Article 3724, Revised Statutes;

Article 3725, Revised Statutes;

Article 3726, Revised Statutes;

Section 1, Chapter 125, Acts of the 55th Legislature, Regular Session, 1957 (Article 3726a, Revised Statutes);

Section 1, Chapter 179, Acts of the 41st Legislature, Regular Session, 1929 (Article 3726b, Vernon's Texas Civil Statutes);

Article 3727, Revised Statutes;

Article 3728, Revised Statutes;

Article 3729, Revised Statutes;

Article 3730, Revised Statutes;

Article 3731, Revised Statutes;

Chapter 471, Acts of the 52nd Legislature, Regular Session, 1951 (Article 3731a, Vernon's Texas Civil Statutes);

Chapter 418, Acts of the 55th Legislature, Regular Session, 1957 (Article 3731b, Vernon's Texas Civil Statutes);

Section 1, Chapter 393, Acts of the 56th Legislature, Regular Session, 1959 (Article 3731c, Vernon's Texas Civil Statutes);

Article 3732, Revised Statutes;

Chapter 109, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 3734a, Vernon's Texas Civil Statutes);

Article 3737, Revised Statutes;

Chapter 203, Acts of the 40th Legislature, Regular Session, 1927 (Article 3737a, Vernon's Texas Civil Statutes);

Chapter 106, General laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 3737b, Vernon's Texas Civil Statutes);

Section 1, Chapter 449, Acts of the 45th Legislature, Regular Session, 1937 (Article 3737c, Vernon's Texas Civil Statutes);

Chapter 321, Acts of the 52nd Legislature, Regular Session, 1951 (Article 3737e, Vernon's Texas Civil Statutes);

Section 1, Chapter 511, Acts of the 61st Legislature, Regular Session, 1969 (Article 3737f, Vernon's Texas Civil Statutes);

Chapter 364, Acts of the 64th Legislature, Regular Session, 1975 (Article 3737g, Vernon's Texas Civil Statutes);

Section 5.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

Sections 9.01 and 9.02, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

Chapter 239, Acts of the 66th Legislature, Regular Session, 1979 (Article 5561h, Vernon's Texas Civil Statutes); and

Section 151, Chapter 421, Acts of the 50th Legislature, Regular Session, 1947 (Article 6701d, Vernon's Texas Civil Statutes).

SECTION 10. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted.

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

The bill as amended was passed to third reading.

HOUSE BILL 13 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 13** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.J.R. 27**. House Conferees: Rudd, Chairman; Smithee, Keller, Thompson of Taylor, Johnson of Collin.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1342**. House Conferees: Rudd, Chairman; Uher, Colbert, Delco, Kuempel.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1028**. House Conferees: Hackney, Chairman; Russell, Schlueter, Messer, Laney.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 699**. House Conferees: McWilliams, Chairman; Gilley, McKinney, Messer, C. Johnson.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 105**. House Conferees: Bush, Chairman; Adkisson, Dutton, Perez and Hury.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1170**. House Conferees: Messer, Chairman; McDonald, Waldrop, Madla and T. Smith of Travis.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 738**. House Conferees: P. Hill, Chairman; Leonard, Wolens, Oliviera and Colbert.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 192**. House Conferees: Tallas, Chairman; Keller, Laney, Johnson and Short.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 212**. House Conferees: Thompson of Taylor, Chairman; T. Smith, Granoff, Arnold and Willis.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE HOUSE BILL 682 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business and Senate Rule 14.2 relating to the Intent Calendar were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 682, Relating to paperwork reduction efforts in public schools.

The bill was read second time.

Senator Parker offered the following amendment to the bill:

Amend the caption of **C.S.H.B. 682** to read as follows: "relating to public school personnel, including paperwork, certification and employment, benefits, and duties."

The amendment was read and was adopted.

The bill as amended was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 682 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 682** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

COMMITTEE SUBSTITUTE HOUSE BILL 2104 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business and Senate Rule 14.2 relating to the Intent Calendar were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2104, Relating to school bonds purchased at a premium or a discount.

The bill was read second time and was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2104 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2104** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

COMMITTEE SUBSTITUTE HOUSE BILL 408 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business and Senate Rule 14.2 relating to the Intent Calendar were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 408, Relating to student discipline, student testing and minimum grade requirements and student transfers.

The bill was read second time and was passed to third reading.

RECORD OF VOTE

Senator Parmer asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1592 ON SECOND READING

Senator Lyon moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1592, Relating to certification requirements for peace officers.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Parker, Parmer, Santiesteban, Sarpalius, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Glasgow, Montford, Sharp, Sims, Traeger.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 1

H.B. 1592, by Hightower, is amended as follows:

Section 1, Subsection (a)(21), page 4, line 17, is amended by inserting the words "with the exception of sheriffs," after the word "Constitution" and before the word "after".

Section 2, Subsection (p), is amended by inserting the words "sheriffs, or to" after the word "to" and before the word "a" on line 8, page 9.

Section 2, Subsection (f) is amended by adding the following wording to the end of line 27, page 6: ", nor shall it affect sheriffs elected after September 1, 1985."

Section 2, Subsection (b)(2), is amended by omitting the word "June" and substituting the word "July" on line 27, page 5, and by doing the same on line 8, page 6.

The amendment was read and was adopted.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1592** as follows:

(1) Insert 2 new sections appropriately numbered to read as follows:

SECTION ____. Chapter 546, Acts of the 59th Legislature, Regular Session, 1965 (Article 4413(29aa), Vernon's Texas Civil Statutes), is amended by adding Section 6C to read as follows:

Sec. 6C. (a) The Commission shall adopt a code of conduct for peace officers. The code must contain standards for the professional performance of duties and powers imposed on peace officers.

(b) A violation of the code of conduct adopted under this section is a violation of this Act for the purpose of disciplinary proceedings under Section 6A of this Act, and a person who files a complaint alleging that a peace officer has violated the code is entitled to the notice provisions of that section and the right to an appeal of a determination of the Commission under Section 9A of this Act.

SECTION ____. The Commission on Law Enforcement Officer Standards and Education is required to adopt the code of conduct required to be adopted by this Act no later than the 60th day after the effective date of this Act. Conduct constituting a violation of the adopted code of conduct is a ground for discipline by the commission only if the conduct occurs on or after the effective date of this Act.

(2) Renumber the following sections accordingly.

The amendment was read.

On motion of Senator Lyon, the amendment was tabled by the following vote: Yeas 17, Nays 14.

Yeas: Blake, Brown, Caperton, Edwards, Harris, Henderson, Howard, Kothmann, Krier, Leedom, Lyon, Montford, Santiesteban, Sarpalius, Sharp, Sims, Truan.

Nays: Barrientos, Brooks, Farabee, Glasgow, Jones, McFarland, Mauzy, Parker, Parmer, Traeger, Uribe, Washington, Whitmire, Williams.

(Senator Farabee in Chair)

Senator Henderson offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 1592** by adding new Sections 5 and 6 to read as follows and renumbering current Sections 5 and 6 as Sections 7 and 8, respectively:

SECTION 5. Title 120, Revised Statutes, is amended by adding Article 6869d-1 to read as follows:

Art. 6869d-1. COUNTY PARK RANGERS IN LARGE COUNTIES

Sec. 1. The commissioners court of a county with a population of more than 2.2 million, according to the most recent federal census, may establish a department of county park rangers.

Sec. 2. The commissioners court shall appoint the county sheriff or other qualifed person chief of the department. The chief shall administer the department under the supervision of the commissioners court.

Sec. 3. The department shall provide law enforcement services within the county parks of the county.

Sec. 4. (a) To carry out the functions of the department, the chief shall employ county park rangers as peace officers and shall employ administrative staff in numbers approved by the commissioners court.

(b) The county park rangers have the same law enforcement authority that is given by law to deputy sheriffs except that the law enforcement jurisdiction of rangers is limited to the county parks of the county.

(c) The law of this state applying to deputy sheriffs applies, to the extent practicable, to the county park rangers.

SECTION 6. Article 2.12, Code of Criminal Procedure, 1965, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

(1) sheriffs and their deputies;

(2) constables and deputy constables;

(3) marshals or police officers of an incorporated city, town, or village;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Alcoholic Beverage Commission;

(7) each member of an arson investigating unit of a city, county or the state;

(8) any private person specially appointed to execute criminal process;

(9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute;

(10) officers commissioned by the State Purchasing and General Services Commission;

(11) law enforcement officers commissioned by the Parks and Wildlife Commission;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certificated air carrier;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers commissioned as peace officers by the State Treasurer; [~~and~~]

(15) officers commissioned by a water control and improvement district under Section 51.132, Water Code;[~~.~~]

(16) [~~15~~] officers commissioned by a board of trustees under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes);[~~.~~]

(17) [~~15~~] investigators commissioned by the Texas State Board of Medical Examiners;

(18) county park rangers commissioned under Article 6869d-1, Revised Statutes; and

(19) officers commissioned by the comptroller of public accounts.

HENDERSON
PARKER

The amendment was read and was adopted by the following vote: Yeas 27, Nays 4.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Whitmire, Williams.

Nays: Barrientos, Mauzy, Uribe, Washington.

(President in Chair)

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 4

H.B. 1592 is amended as follows:

In Section 2, Subsection (2), page 3, line 3, strike the word "emergency" between the words "an" and "manpower" and strike the word "an" and substitute the word "a", and strike the language after the word "shortage" that reads as follows: "and after the law enforcement agency has exhibited a good-faith effort to fill vacancies with licensed peace officers or reserve law enforcement officers."

The amendment was read and was adopted.

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

The bill as amended was passed to third reading.

RECORD OF VOTES

Senators Glasgow, Mauzy, Montford, Sarpalius and Washington asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1592 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1592** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Truan, Whitmire, Williams.

Nays: Mauzy, Sharp, Sims, Traeger, Uribe, Washington.

Absent: Edwards.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Glasgow, Mauzy, Montford, Sarpalius, Traeger and Washington asked to be recorded as voting "Nay" on the final passage of the bill.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House refused to concur in Senate amendments to **H.B. 393** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Hightower, Chairman; Stiles, Toomey, Hury and Keller.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE CONFEREES DISCHARGED ON SENATE BILL 440

On motion of Senator Traeger and by unanimous consent, the Conference Committee on **S.B. 440** was discharged.

Senator Traeger moved to appoint a Conference Committee on **S.B. 440**.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 440** 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 Traeger, Chairman; Lyon, Kothmann, Sims and Krier.

SENATE RULE 74a SUSPENDED

On motion of Senator Jones and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 1316**.

SENATE BILL 1316 WITH HOUSE AMENDMENTS

Senator Jones called **S.B. 1316** 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 - Schlueter

Amend **S.B. 1316** as follows:

(1) On page 3, line 4, add the following between "1985," and "shall":

"but before November 15, 1987,".

(2) On page 3, add the following between lines 5 and 6:

"(5) All protest payments made pursuant to requirements for the quarterly prepayment of premium tax or pursuant to the requirement for annual premium tax that become due on or after November 15, 1987, are governed by Subsection (a) of this section.".

(3) On page 3, line 6, strike "(5)" and substitute "(6)".

(4) On page 3, line 16, strike "year 1985 and thereafter" and substitute "years 1985 and 1986".

(5) On page 3, add the following between lines 18 and 19:

"(2) All protest payments that are made pursuant to assessments for a calendar year after 1986 are governed by Subsection (a) of this section.".

(6) On page 3, line 19, strike "(2)" and substitute "(3)".

(7) On page 3, strike lines 22-26.

Committee Amendment - Schlueter

S.B. 1316 is amended as follows:

1. SECTION 2 is renumbered as SECTION 3 and a new SECTION 2 is added to read as follows:

"SECTION 2. Subsection (c) of Section 112.060, Tax Code, is amended to read as follows:

(c) Each tax refund warrant shall be drawn against the suspense account. If there are not sufficient funds in the suspense account to pay a refund required to be paid under Subsection (a) of this Section, then the warrant shall be drawn against the general revenue fund or other funds from which refund appropriations may be made."

Senator Jones moved to concur in the House amendments.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Barrientos, Mauzy.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 393

Senator Caperton submitted the following Conference Committee Report:

Austin, Texas
May 26, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 393** have met and 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.

CAPERTON	HIGHTOWER
WASHINGTON	STILES
McFARLAND	TOOMEY
FARABEE	HURY
GLASGOW	KELLER
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
SENATE BILL 699

Senator Lyon submitted the following Conference Committee Report:

Austin, Texas
May 26, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 699** have met and 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.

LYON	McWILLIAMS
SANTIESTEBAN	GILLEY
TRUAN	McKINNEY
URIBE	MESSER
MONTFORD	C. JOHNSON
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of certain iron ore and iron ore gravel mining and reclamation activity; amending Section 4, Texas Surface Coal Mining and Reclamation Act (Article 5920-11, Vernon's Texas Civil Statutes), by amending Subsection (b) and adding Subsection (c).

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

SECTION 1. Section 4, Texas Surface Coal Mining and Reclamation Act (Article 5920-11, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

"(b) The commission has exclusive jurisdiction over iron ore and iron ore gravel mining and reclamation operations in the State of Texas, and the provisions of this Act apply to iron ore and iron ore gravel mining and reclamation operations to the extent that those provisions can be made applicable. The jurisdiction conferred by this subsection does not extend to:

"(1) a mining or reclamation activity in progress on or before September 1, 1985 [~~1983~~]; or

"(2) a mining operation or reclamation activity which is conducted solely upon real property which is owned in fee simple by the person authorizing the operation or reclamation activity and the mining or reclamation activity is confined to a single, contiguous tract of land, so long as such activity is conducted within an area no larger than twenty acres and only if the depth of the mining operation is restricted to 30 inches or less, provided that the fee simple owner receives surface damages [~~smaller than five acres~~].

"(c) It is a defense to civil or criminal penalties under this Act that a person allegedly conducting an iron ore or iron ore gravel mining and reclamation operation in violation of this Act has a written general warranty of ownership of land, separate from any lease, from the person authorizing the operation."

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1593 ADOPTED

Senator Jones called from the President's table the Conference Committee Report on **H.B. 1593** (The Conference Committee Report having been filed with the Senate and read on May 25, 1985)

On motion of Senator Jones, the Conference Committee Report was adopted by the following vote: Yeas 25, Nays 6.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe.

Nays: Barrientos, Kothmann, Mauzy, Washington, Whitmire, Williams.

HOUSE JOINT RESOLUTION 19 ON SECOND READING

Senator Sarpalius asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.J.R. 19, Proposing a constitutional amendment authorizing the issuance of general obligation bonds to provide financing assistance for the purchase of farm and ranch land.

There was objection.

Senator Sarpalius then moved to suspend the regular order of business and take up **H.J.R. 19** for consideration at this time.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Mauzy, Washington.

The resolution was read second time and was passed to third reading.

RECORD OF VOTES

Senators Mauzy and Washington asked to be recorded as voting "Nay" on the passage of the resolution to third reading.

HOUSE JOINT RESOLUTION 19 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.J.R. 19** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Mauzy, Washington.

The resolution was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

HOUSE BILL 196 ON SECOND READING

Senator Sarpalius moved to suspend the regular order of business to take up for consideration at this time:

H.B. 196, Relating to the creation of a farm and ranch finance program.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Mauzy, Washington.

The bill was read second time.

Senator Truan offered the following amendment to the bill:

Amend **H.B. 196**, SECTION 1, Sec. 163.023, Subsection (c) to read as follows:

(c) The local committee shall review the application and determine the eligibility of the applicant and the value of the land. The eligibility of the applicant shall be determined without regard to the race, color, religion, or national origin of the applicant. The local committee shall make a recommendation to the board regarding the applicant's eligibility and the land's value.

The amendment was read and was adopted.

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

The bill as amended was passed to third reading.

RECORD OF VOTES

Senators Mauzy and Washington asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 196 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 196** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Mauzy, Washington.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Mauzy and Washington asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE CONCURRENT RESOLUTION 203 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time:

H.C.R. 203, Establishing a special Joint Interim Committee on the Texas Shrimp and Oyster Industry.

The resolution was read second time and was adopted.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House refused to concur in Senate amendments to **H.B. 1627** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Horn, Chairman; Gibson, Shea, Jackson, Harrison.

The House refused to concur in Senate amendments to **H.B. 805** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Riley, R. Lewis, Messer, Perry, Armbrister.

The House has concurred in Senate amendments to the following House Bills by a non-record vote.

H.B. 1774
H.B. 1963
H.B. 271
H.B. 797
H.B. 2259
H.B. 2053
H.B. 874
H.B. 1225
H.B. 293
H.B. 1583
H.C.R. 42
H.B. 1957
H.B. 1365

H.B. 1052
H.B. 226

The House refused to concur in Senate amendments to **H.B. 1811** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Gavin, Wolens, Smith of Harris, Millsap, Eckels.

The House has concurred in Senate amendments to the following House Bills by a non-record vote.

H.B. 2089
H.B. 553
H.B. 162
H.B. 1911
H.B. 1010
H.B. 743
H.B. 2375
H.B. 309
H.B. 403

The House reconsidered the vote by which the House concurred in Senate amendments to **H.B. 1330** and the House has concurred in Senate amendments to **H.B. 1330** by a record vote of 134 ayes, 5 noes and 3 present not voting.

The House refused to concur in Senate amendments to **H.B. 1843** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Oliver, Arnold, Lee, Messer, Berlanga.

The House refused to adopt the Conference Committee Report on **S.B. 440** by a non-record vote and asked for a new committee. House Conference Committee on **S.B. 440**: Sutton, Chairman; Tejeda, Madla, Lee, Morales.

The House has concurred in Senate amendments to **H.B. 1986** by a non-record vote.

The House concurred in Senate amendments to **H.B. 916** by a non-record vote.

The House reconsidered the vote on **H.B. 1957** and the House has concurred in Senate amendments to **H.B. 1957** by non-record vote.

The House has concurred in Senate amendments to **H.B. 2470** by a record vote of 142 ayes, 0 nays, 1 present-not voting.

The House has adopted the Conference Committee Reports on the following bills by a non-record vote.

S.B. 713
S.B. 632
H.B. 2461

S.B. 1316, Relating to the handling, records, and disposition of protest payments of taxes imposed in certain insurance business and to suits in connection with protest payments. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 387 ON SECOND READING

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

H.B. 387, Relating to the placement of reading devices for blind and visually handicapped persons in public libraries in certain cities and in the libraries of state institutions of higher education.

The bill was read second time.

Senator Leedom offered the following committee amendment to the bill:

Amend **H.B. 387** by inserting a new SECTION 4 and renumbering the emergency clause accordingly as follows:

"SECTION 4. After the certification of the general appropriations act by the comptroller of public accounts and upon his further certification that funds are available to accomplish any or all of the purposes of this Act, there is hereby appropriated a sum not to exceed $1.9 million to the Texas State Library. The state library is directed to give preference to the placement of reading devices in public libraries in cities with the largest populations in descending order according to the most recent federal census."

The amendment was read and was adopted.

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

The bill as amended was passed to third reading.

HOUSE BILL 387 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 387** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 756 ON THIRD READING

Senator Leedom moved to suspend the regular order of business to take up for third reading and final passage:

H.B. 756, Relating to a uniform size for certain supplies and equipment used by state agencies.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Barrientos, Blake, Brown, Edwards, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Uribe, Washington, Whitmire, Williams.

Nays: Brooks, Caperton, Farabee, McFarland, Mauzy, Truan.

The bill was read third time and was passed.

RECORD OF VOTE

Senator Mauzy asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE HOUSE BILL 1569 ON SECOND READING

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

C.S.H.B. 1569, Relating to a work program for felony probationers, to contracting for the provision of insurance and other benefits for probation department personnel, and to the provision of workers' compensation coverage for probationers performing community service work.

The bill was read second time and was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1569 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1569** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

HOUSE BILL 1594 ON SECOND READING

Senator Mauzy moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1594, Relating to payment for overtime work by fire fighters and police officers in certain cities.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Howard, Kothmann, Krier, Lyon, McFarland, Mauzy, Parker, Parmer, Santiesteban, Sarpalius, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Glasgow, Henderson, Jones, Leedom, Montford, Sharp, Sims, Traeger.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Amend **H.B. 1594** by adding the following sections before the emergency clause, and renumbering the subsequent section accordingly:

1. (a) In a city having a population of 900,000 or more according to the most recent federal census, in an appeal of an indefinite suspension, a suspension, a promotional passover, or a recommended demotion of a fire fighter or police officer, the appealing employee may elect to appeal to an independent third party hearing examiner instead of to the city's civil service commission or civil service board. To exercise this choice, the appealing employee must submit a letter to the director of the commission or to the secretary of the board stating the employee's decision to appeal to an independent third party hearing examiner.

(b) The decision of the hearing examiner is final and binding on all parties. If the employee decides to appeal to an independent third party hearing examiner, the employee automatically waives all rights to appeal to district court.

(c) If the appealing employee chooses to appeal to a hearing examiner, the employee and the chief of the appropriate fire or police department shall first attempt to mutually agree on the selection of an impartial hearing examiner. If an agreement is not reached on the selection of the hearing examiner on or before the 10th day after the date the appeal is filed, the director of the commission or the secretary of the board shall immediately request a list of seven qualifed neutral arbitrators from the American Arbitration Association or Federal Mediation and Conciliation Service, or their successor in function. The employee and the chief may mutually agree on one of the seven neutral arbitrators on the list. If they do not agree within five working days after receipt of the list, each party shall alternate striking a name from the list and the name remaining shall be the hearing examiner.

(d) The appeal hearing shall commence as soon as the hearing examiner selected can be scheduled. If the hearing examiner cannot commence the hearing within 45 calendar days after the date of selection, the employee may, within two days of learning of that fact, call for the selection of a new hearing examiner using the same procedure as provided by Subsection (c) of this section.

(e) All fees and expenses of the hearing examiner are shared equally by the appealing officer or employee and by the department employing the officer or employee. The costs of witnesses for either side shall be paid by the party who calls the witnesses.

(f) A state district court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. An appeal must be brought in the state district court having jurisdiction in the municipality in which the department employing the officer or employee is located.

2. Section 16c(a), Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In a city having a population of less than 900,000 [~~1,500,000~~] according to the most recent federal census, in an appeal of an indefinite suspension, a suspension, a promotional passover, or a recommended demotion, the appealing employee may elect to appeal to an independent third party hearing examiner instead of to the commission. To exercise this choice, the appealing employee must submit a letter to the director stating his decision to appeal to an independent third party hearing examiner.

3. Amend Article 1269m, Section 22b, subsection (a) to read as follows:

"(a) In any city having a population of [~~1,500,000~~] 900,000 or more according to the most recent federal census, a fire fighter or police officer is entitled to legislative leave without pay to appear before or to petition the state legislature during any regular or special legislative session as prescribed by this section."

4. (a) An employee of the fire department or police department of an incorporated city or town may not engage in the following political activities relating to campaigns for elective municipal offices while in uniform or on active duty:

(1) make public political speeches supporting or opposing a candidate;

(2) distribute cards or other political literature relating to the campaign of a candidate;

(3) wear a campaign button;

(4) circulate or sign a petition for a candidate; or

(5) solicit campaign contributions or votes for a candidate.

(b) While out of uniform and off active duty, an employee of the fire department or police department may engage in political activities relating to campaigns for elective municipal offices, including all of the activities listed in Subsection (a) of this section.

5. An incorporated city or town may not restrict the right of an employee of the fire department or police department to engage in political activities permitted by this Act.

6. This act does not apply to a city having a population of less than 10,000, according to the most recent federal census. This act does not apply to an incorporated city or town covered by Chapter 325, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 1269m, Vernon's Civil Statutes).

The amendment was read and was adopted.

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

The bill as amended was passed to third reading.

RECORD OF VOTE

Senator Montford asked to be recorded as voting "Nay" on the passage of the bill to third reading.

MOTION TO PLACE HOUSE BILL 1594 ON THIRD READING

Senator Mauzy moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1594** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 24, Nays 7. (Not receiving four-fifths vote of the Members present)

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Kothmann, Krier, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Truan, Uribe, Whitmire, Williams.

Nays: Howard, Jones, Leedom, Sharp, Sims, Traeger, Washington.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 632 ADOPTED

Senator Brooks called from the President's table the Conference Committee Report on **S.B. 632**. (The Conference Committee Report having been filed with the Senate and read on Friday, May 24, 1985.)

On motion of Senator Brooks, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

HOUSE CONCURRENT RESOLUTION 78 ON SECOND READING

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

H.C.R. 78, Providing for memorial on Capitol grounds dedicated to veterans of Korean and Vietnam wars.

The resolution was read second time and was adopted.

MOTION TO PLACE HOUSE BILL 2465 ON SECOND READING

Senator Jones moved to suspend the regular order of business to take up for consideration at this time:

H.B. 2465, Relating to the sale of political subdivision bonds owned by the Texas Water Development Board and the disposition of the proceeds of such sale.

The motion was lost by the following vote: Yeas 17, Nays 13. (Not receiving two-thirds vote of Members present)

Yeas: Blake, Brown, Caperton, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, McFarland, Montford, Sarpalius, Sims, Traeger, Williams.

Nays: Barrientos, Brooks, Edwards, Lyon, Mauzy, Parker, Parmer, Santiesteban, Sharp, Truan, Uribe, Washington, Whitmire.

Absent: Farabee.

HOUSE BILL 473 ON SECOND READING

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

H.B. 473, Relating to a program to reward state employees for employee recommendations that improve state government efficiency.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend SECTION 4. **H.B. 473** COMMISSION POWERS AND DUTIES, by adding:

(d) The commission may accept contributions and/or assistance from private institutions and organizations, and may request and receive aid and assistance from the Governor's office, the Texas Advisory Commission on Intergovernmental Relations, and other state agencies so as to provide for an effective implementation of this Act.

The amendment was read and was adopted.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 473** by deleting "$10,000" in subsection (e) of SECTION 2 and substituting "$5000.00"

The amendment was read and was adopted.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 473** by deleting "the executive director of the Texas Merit System Council" in subparagraph (a) of SECTION 3 and substituting therefor the following:

"the State Treasurer"

(Page 1, lines 61, 62)

The amendment was read and was adopted.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 4

Amend **H.B. 473** by adding new Sections 11 through 19 and renumbering subsequent sections.

SECTION 11 DEFINITIONS. In this Act:

(1) "Agency" means a board, commission, department, institution, office, or other agency of the state government, including institutions of higher education as defined by Section 61.003, Education Code.

(2) "Grievance" means a written allegation by an employee concerning the employee's wages, hours of work, or conditions of work, including, but not limited to:

(A) termination of employment, including resolution of issues after the employee has been terminated;

(B) alleged discrimination;

(C) failure to receive a promotion or increase in salary;

(D) change in duties or status;

(E) working conditions;

(F) change in agency practices;

(G) work-related incident; or

(H) demotion.

(3) "Executive director" means the chief administrative officer of an agency.

(4) "Supervisor" means the immediate supervisor of the aggrieved employee.

(5) "Aggrieved employee" means an employee of an agency who files a grievance in accordance with this Act.

(6) "Employee" means any agency employee, whether full-time or part-time, but does not include a probationary employee or seasonal employee, or an individual elected by the qualified voters to public office in the state or a political subdivision of the state, an individual chosen by that officer to be on the officer's personal staff, an appointee on the policy-making level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of public office.

(7) "Committee" means the State Grievance Committee.

SECTION 12. MINIMUM STANDARDS. Each agency with 10 or more budgeted positions shall establish a grievance procedure that meets or exceeds the minimum standards prescribed by this section. To meet the minimum standards, each agency must establish an internal grievance procedure that provides that:

(1) grievance policies are written and communicated to employees through manuals, employee handbooks, memorandums, or other written material;

(2) each grievance is submitted in writing not later than the 30th day after the date of discovery of the grievance;

(3) the grievance procedure has a structure that is consistently followed, includes an internal appeal, and defines the last level of internal appeal;

(4) each employee has the opportunity to fully present and discuss the grievance during each step of the procedure;

(5) the employee receives written notice of each step of the procedure at least one week before the step occurs;

(6) the person in charge of each step of the procedure sends the employee a written response to the employee's grievance not later than the 10th day after the day on which the step occurs;

(7) the last level of internal appeal occurs before the agency's executive director and that due process procedures necessary to protect the employee's rights are followed, including a requirement that:

(A) all testimony is given under oath on penalty of perjury;

(B) the parties receive notice of the right to be represented and to cross-examine witnesses;

(C) irrelevant and immaterial evidence is excluded; and

(D) the parties are entitled to compel the attendance and testimony of witnesses who are under the control, direction, or supervision of the opposing party and who are otherwise capable of testifying;

(8) the procedure prescribes specific time limits, which include the completion of internal agency procedures within 30 days from the date the grievance is filed;

(9) the employee may use the grievance procedure without fear of reprisal;

(10) each step of the procedure is held in a location accessible to each employee;

(11) a complete record of the proceedings is kept;

(12) the personnel office of the legal office is available to assist the employee or the agency throughout the process; and

(13) each employee and supervisor who participates in the procedure is adequately trained in the procedure.

SECTION 13. REVIEW AND IMPLEMENTATION OF PROCEDURE. (a) If the agency has less than 10 budgeted employee positions, the agency shall send documentation of that fact to the governor. If the governor is satisfied that the agency has less than 10 budgeted employee positions, the governor shall certify that the agency is exempt from this Act. The governor may request further documentation from the agency if the governor is not satisfied with the documentation provided.

(b) Before a procedure adopted under Section 2 of this Act by a nonexempt agency may take effect, the agency must submit its proposed procedure to the governor for approval. Not later than the 30th day after the day the agency submits the procedure, the governor shall determine if the minimum standards prescribe by Section 2 of this Act have been met. If the governor finds that the minimum standards have been met, the governor shall certify the procedure as submitted and shall forward notice of certification to the agency. If the governor takes exception to the submitted procedure, he shall note the exception in writing and forward the notice of disapproval and an explanation of why certification was denied to the agency. The agency must submit a new procedure for review not later than the 30th day after the day the agency receives notice of disapproval.

(c) A nonexempt agency must receive approval as prescribed by Subsection (b) of this section and implement its procedure not later than the 180th day after the effective date of this Act.

SECTION 14. GRIEVANCE REVIEW PROCEDURES; EXECUTIVE DIRECTOR'S DUTIES. (a) Each agency that is subject to this Act shall establish a grievance procedure.

(b) The executive director of each agency shall designate the persons who act as personnel director and supervisors and shall furnish a memorandum to each agency employee informing the employee of the provisions of this Act, the agency grievance procedure under which that employee must file grievances, and the identities of the personnel director and the supervisor of that employee.

SECTION 15. REVIEW BY STATE GRIEVANCE COMMITTEE. (a) The State Grievance Committee is created. The committee is composed of seven members, two appointed by the speaker of the house of representatives, two appointed by the lieutenant governor, and three appointed by the governor. The governor shall designate the presiding officer of the committee. Members of the committee serve at the pleasure of the appointing official. A member of the committee is entitled to the state per diem as provided by the General Appropriations Act. The committee shall meet at least once in each calendar quarter, and may meet more frequently at the call of the presiding officer. On meeting, the committee shall review each pending grievance. The committee shall attempt to render a decision on each pending grievance at the quarterly meeting.

(b) If a grievance is not satisfactorily resolved under the grievance procedure of the agency of the aggrieved employee, the employee may take the grievance to the State Grievance Committee by mailing a written request for review to the

presiding officer of the committee at that officer's designated mailing address. The request for review must contain the names of the agency and the employee involved, a short statement regarding the grievance, the date that the grievance occurred, if possible, and a description of the relief requested.

(c) The committee shall conduct a hearing to determine the facts and shall render a decision in writing to the parties. The burden of proof is on the agency to show that good reason exists for the action or failure to act which is the subject of the grievance. The decision of the committee is final and binding on the agency and the employee. The committee may prescribe an appropriate remedy if the committee finds a violation of applicable laws, this Act, or agency policies, procedures, rules, regulations, or practices. A remedy may include, but is not limited to, reinstatement, back pay, reassignment, or change in job classification.

SECTION 16. TIME OFF FROM WORK. Employees involved in a grievance are entitled to reasonable leave with pay to prepare for and to attend a grievance meeting or hearing.

SECTION 17. EMPLOYEE'S RIGHT TO PRESENT GRIEVANCES. An employee of an agency is entitled to present a grievance, with or without representation, in accordance with Chapter 135, Acts of the 50th Legislature, 1947 (Article 5154c, Vernon's Texas Civil Statutes).

SECTION 18. RETALIATION PROHIBITED. A person may not discipline, penalize, or prejudice an employee in his employment for exercising rights under this Act or coerce or attempt to restrain the employee in the exercise of those rights. A person may not discipline, penalize, or prejudice a supervisor or director of personnel for rendering a decision favorable to an aggrieved employee or coerce or attempt to restrain him in making a decision under this Act.

SECTION 19. EXCLUSION FROM COVERAGE. This Act does not apply to a grievance discovered by an employee before September 1, 1985.

The amendment was read.

POINT OF ORDER

Senator Leedom raised the Point of Order that the amendment was not germane to the bill.

The President sustained the Point of Order.

Senator Farabee offered the following amendment to the bill:

Floor Amendment No. 5

Amend **H.B. 473** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. DEFINITIONS. In this Act:

(1) "Agency coordinator" means an individual employed by a state agency who is designated by the executive director of that agency to act as the liaison between that agency and the commission.

(2) "Award" means a bonus or certificate of appreciation.

(3) "Bonus" means a monetary award that is granted to an eligible state employee in payment for an employee recommendation.

(4) "Certificate of appreciation" means a nonmonetary award that is granted to an eligible state employee in recognition of an employee recommendation.

(5) "Commission" means the State Employee Incentive Commission.

(6) "Employee recommendation" means a proposal made by an eligible state employee that, on implementation, results in increased productivity, a reduction in state expenditures, an increase in state revenues, or an improvement in the quality of state services.

(7) "Program" means the State Employee Incentive Program.

(8) "State agency" means a department, commission, board, office, or other agency in the executive branch of government that is created under the constitution or a statute of this state.

SECTION 2. PROGRAM; AWARDS. (a) In order to reduce state expenditures, increase state revenues, and improve the quality of state services and to recognize the contributions made by certain state employees in achieving those goals, the State Employee Incentive Program is created.

(b) From funds appropriated for this purpose, the State Employee Incentive Commission may grant awards to eligible state employees who make recommendations that reduce state expenditures, increase state revenues, or improve the quality of state services. An award is proportionately related to the financial savings or benefit of the recommendation, based on the net annual savings after implementation costs. Only an approved and implemented employee recommendation is eligible for an award.

(c) A bonus is granted for savings that can be computed using a cost-benefit analysis. Intangible savings or benefits that cannot be computed using such an analysis are not eligible for a bonus, but may be recognized by a certificate of appreciation.

(d) The commission may issue a certificate of appreciation to each state employee who is granted an award under this Act.

(e) An employee whose recommendation results in a net annual savings, or increase in revenues, of $100 or more is eligible for a bonus of 10 percent of the net savings, or revenue increase, up to a maximum award of $10,000. An employee whose recommendation results in a net annual savings, or increase in revenues, of less than $100 is not eligible for a bonus but is eligible for a certificate of appreciation.

SECTION 3. COMMISSION. (a) The State Employee Incentive Commission is created. The commission is composed of the state auditor, the comptroller of public accounts, the executive director of the Texas Merit System Council, the agency administrator of the Texas Employment Commission, the executive director of the Texas Department of Labor and Standards, the executive director of the Legislative Budget Board, and three public members who must have experience in the administration of incentive programs and other related programs used in private industry. The governor, lieutenant governor, and speaker of the house of representatives shall each appoint one public member for a two-year term. A vacancy in the term of a public member shall be filled by the official who made the original appointment.

(b) The commission shall act as the final arbiter of any dispute arising from the implementation of the program or from eligibility determinations.

SECTION 4. COMMISSION POWERS AND DUTIES. (a) The commission may develop policies and organize procedures to implement a statewide program to reward state employees in the manner provided by this Act for employee recommendations that reduce state expenditures, increase state revenues, or improve the quality of state services.

(b) The commission shall establish recordkeeping procedures as necessary to implement this Act.

(c) The commission may adopt rules and hire staff as necessary to implement this Act.

SECTION 5. AGENCY COORDINATOR. (a) Each state agency may designate an agency coordinator. The agency coordinator may:

(1) promote agency employee participation in the program;

(2) obtain an impartial evaluation of each proposed employee recommendation;

(3) promote the implementation of adopted recommendations by the agency;

(4) monitor the cost savings and other benefits that result from the implementation of an employee recommendation;

(5) file reports with the commission as required by the rules of the commission; and

(6) arrange and conduct intra-agency award ceremonies to recognize agency employees who are granted awards under this Act.

(b) The agency coordinator may make the initial determination of the eligibility of an employee recommendation or of an agency employee who makes a recommendation. An employee who is aggrieved by the eligibility determination of the agency coordinator may request a redetermination by the commission.

SECTION 6. EMPLOYEE ELIGIBILITY. (a) Each full-time state employee is eligible to participate in the program except an employee:

(1) who has authority to implement the recommendation being made;

(2) who is on an unpaid leave of absence;

(3) whose job description includes responsibility for cost analysis, efficiency analysis, savings implementation, or other related programs within the employee's agency;

(4) involved in, or who has access to, agency research and development programs, if that information is used as the basis of the recommendation; or

(5) whose job description includes developing the type of change in the agency administration that is recommended by the recommendation.

(b) An elected or appointed agency official is not eligible to participate in the program.

SECTION 7. RECOMMENDATION REQUIREMENTS; PROCEDURES. (a) To be eligible for consideration under the program, an employee recommendation must be submitted to the agency coordinator in writing in the format prescribed by the commission. The employee must sign the recommendation. The recommendation must propose a reasonable method of implementation and must describe the type of cost savings or other benefits foreseen by the employee if the recommendation is adopted. The agency coordinator may transmit all reasonable employee recommendations, together with the evaluation of each of those recommendations, to the commission for further analysis and implementation proposals not later than the 90th day after the day on which the recommendation was received by the agency coordinator.

(b) The commission may note any recommendation that requires legislative action. If, as a direct result of the employee's recommendation, legislation is passed to implement the recommendation, the commission may consider the recommendation for an award.

(c) If the same recommendation is submitted by two or more employees, the first received by the agency coordinator is eligible for consideration. If the recommendation is received on the same day from employees working at different locations, a bonus based on the recommendation may be divided equally among the employees submitting the recommendation. Each of the employees is also eligible for a certificate of appreciation.

(d) Two or more employees may submit a joint recommendation. A bonus based on such a recommendation may be divided equally among those employees. Each of the employees is also eligible for a certificate of appreciation.

(e) If, after any necessary analysis, the commission determines that an employee recommendation has merit, the commission may refer the recommendation to the appropriate state agencies for proposed adoption and implementation. Final adoption of an employee recommendation is at the discretion of the chief administrative officers of each agency. An agency that implements a recommendation proposed under this Act may provide any

information requested by the commission that is necessary to compute the amount of savings or other benefits derived from the recommendation.

(f) The commission may notify in writing each employee who proposes an employee recommendation of its final determination on adoption or rejection of an employee recommendation not later than the 30th day after the day on which the final determination is rendered.

SECTION 8. INELIGIBLE RECOMMENDATIONS. An employee is not eligible to receive an award under this Act for a recommendation that:

(1) does not describe a method to achieve the desired savings or benefit;

(2) proposes ideas under implementation or consideration on the date that the recommendation is submitted;

(3) relates only to personnel matters or grievances, including employee classification or compensation;

(4) proposes a correction for a condition that resulted only because applicable established procedures were not properly followed; or

(5) proposes implementation of a policy or procedure that has already been adopted by the employee's agency.

SECTION 9. EMPLOYEE RIGHTS. (a) An employee who proposes a recommendation under this Act may request the commission to maintain the confidentiality of the employee in the evaluation or award process. The commission shall maintain such an employee's confidentiality to the greatest extent possible.

(b) An employee's right to an award may be established based on the employee's status at the time that the original employee recommendation was received by the agency coordinator. A former employee remains eligible for an award if the recommendation is implemented not later than two years after the date of final disposition of the recommendation. If an employee who is granted a bonus dies before the date on which the bonus is received, the bonus shall be paid to the deceased employee's estate.

(c) An employee who has proposed a recommendation, and who has reasonable grounds to believe that the importance of the recommendation has been overlooked, misunderstood, or misinterpreted may request the commission to re-evaluate the recommendation. The employee must make the request in writing not later than the 30th day after the day on which the employee receives notification from the commission that the recommendation has been rejected. The employee shall provide any additional information that the employee considers useful to the re-evaluation.

SECTION 10. RIGHTS OF THE STATE. (a) The state may change or terminate the employee recommendation program at any time without prior notice. An employee may be compensated for a recommendation under the program only as provided by this Act. An employee may not appeal a decision of the commission to a court of law.

(b) The submission of an employee recommendation in the manner provided by this Act constitutes an agreement between this state and the employee making the recommendation that all claims by the employee that are based on the recommendation, including patent claims, copyright claims, trademark claims, and other analogous claims, are assigned to the state.

SECTION 11. EFFECTIVE DATE. This Act takes effect September 1, 1985. The State Employee Incentive Program shall be fully implemented by January 1, 1986.

SECTION 12. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted.

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

The bill as amended was passed to third reading.

HOUSE BILL 473 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 473** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

HOUSE BILL 1594 ON THIRD READING

Senator Mauzy moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1594, Relating to payment for overtime work by fire fighters and police officers in certain cities.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Kothmann, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Brown, Howard, Jones, Leedom, Sims, Washington.

Absent: Krier.

The bill was read third time.

Senator Glasgow offered the following amendment to the bill:

Amend **H.B. 1594** by substituting "50,000" for "10,000" on line 15.

The amendment was read and was adopted by unanimous consent.

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

The bill as amended was then finally passed.

RECORD OF VOTES

Senators Brown, Howard, Leedom, McFarland and Sims asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 465 WITH HOUSE AMENDMENT

Senator Glasgow called **S.B. 465** 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 - R. Smith

Amend **S.B. 465** on third reading, as follows:

(1) On page 1, strike "360th" on lines 11 and 13, and substitute "361st".

(2) On page 1, strike "361st" on line 20, and substitute "362nd"

(3) On page 2, line 3, strike "360th" and substitute "361st".
(4) On page 2, line 9, strike "361st" and substitute "362nd".

The amendment was read.

Senator Glasgow moved to concur in the House amendment.

The motion prevailed.

HOUSE BILL 2431 ON SECOND READING

Senator Brown moved to suspend the regular order of business to take up for consideration at this time:

H.B. 2431, Relating to filing with and disclosure by the Railroad Commission of Texas of certain electric logs.

The motion prevailed by the following vote: Yeas 22, Nays 8.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Santiesteban, Sarpalius, Sharp, Traeger, Truan, Whitmire, Williams.

Nays: Barrientos, Glasgow, Mauzy, Parker, Parmer, Sims, Uribe, Washington.

Absent: Harris.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2431**, in added Section 91.552 by striking "each electric log made" and substituting "each electric log made after September 1, 1985".

The committee amendment was read and was adopted.

Senator Brown offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **H.B. 2431** by adding a new Sec. 91.555 as follows and renumbering the subsequent section as Sec. 91.556:

Sec. 91.555. MANAGEMENT AND STORAGE OF ELECTRIC LOGS. The commission may contract with any person for the management and storage of the electric logs filed with the commission.

The amendment was read and was adopted.

VOTE BY WHICH SENATE ADOPTED AMENDMENT RECONSIDERED

On motion of Senator Brown and by unanimous consent, the vote by which Committee Amendment No. 1 was adopted was reconsidered.

Question - Shall the amendment be adopted?

On motion of Senator Brown and by unanimous consent, Committee Amendment No. 1 was withdrawn.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2431** by striking Section 91.552 and substituting the following: Sec. 91.552. ELECTRIC LOGS REQUIRED TO BE FILED;

CRITERIA. (a) Except as otherwise provided by this subchapter, at the time a person files with the commission a completion report for a well or, in the case of a dry hole, an application to plug a well, the person shall also file with the commission a copy of a basic electric log made in conjunction with the drilling of the well that meets basic criteria established by the commission.

(b) The commission by rule shall establish criteria for basic electric logs to be filed with the commission.

(c) Amend **H.B. 2431**, in Section 91.552 by striking "each electric log made" and substituting "each electric log made after September 1, 1985."

TRUAN
URIBE

The amendment was read and was adopted.

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

The bill as amended was passed to third reading.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 2431 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2431** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Blake, Brooks, Brown, Caperton, Edwards, Farabee, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Barrientos, Glasgow, Washington.

Absent: Harris.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Glasgow and Washington asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 2036 ON SECOND READING

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

H.B. 2036, Relating to minor adjustments of school district boundaries by agreement of the affected districts.

The bill was read second time.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2036** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 23.024(a), Education Code, is amended to read as follows:

(a) This section applies [~~only~~] to any [~~an~~] independent school district [~~with 3,500 or more students in average daily attendance~~].

SECTION 2. The section heading for Section 23.024, Education Code, is amended to read as follows:

Subsection 23.024. SINGLE-MEMBER TRUSTEE DISTRICTS [~~DISTRICT WITH 3,500 or MORE STUDENTS~~]

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted.

Senator Parker offered the following amendment to the bill:

Amend **H.B. 2036** by striking all above the enacting clause and substituting in lieu thereof the following:

AN ACT

relating to authorizing members of the board of trustees of certain school districts to be elected from single-member trustee districts.

The amendment was read and was adopted.

The bill as amended was passed to third reading.

HOUSE BILL 2036 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2036** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

VOTE ON FINAL PASSAGE OF HOUSE BILL 473 RECONSIDERED

On motion of Senator Farabee and by unanimous consent, the vote by which **H.B. 473** was finally passed was reconsidered.

Question - Shall **H.B. 473** be finally passed?

Senator Farabee offered the following amendment to the bill:

Amend **H.B. 473** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. DEFINITIONS. In this Act:

(1) "Agency coordinator" means an individual employed by a state agency who is designated by the executive director of that agency to act as the liaison between that agency and the commission.

(2) "Award" means a bonus or certificate of appreciation.

(3) "Bonus" means a monetary award that is granted to an eligible state employee in payment for an employee recommendation.

(4) "Certificate of appreciation" means a nonmonetary award that is granted to an eligible state employee in recognition of an employee recommendation.

(5) "Commission" means the State Employee Incentive Commission.

(6) "Employee recommendation" means a proposal made by an eligible state employee that, on implementation, results in increased productivity, a reduction in state expenditures, an increase in state revenues, or an improvement in the quality of state services.

(7) "Program" means the State Employee Incentive Program.

(8) "State agency" means a department, commission, board, office, or other agency in the executive branch of government that is created under the constitution or a statute of this state.

SECTION 2. PROGRAM; AWARDS. (a) In order to reduce state expenditures, increase state revenues, and improve the quality of state services and to recognize the contributions made by certain state employees in achieving those goals, the State Employee Incentive Program is created.

(b) From funds appropriated for this purpose, the State Employee Incentive Commission may grant awards to eligible state employees who make recommendations that reduce state expenditures, increase state revenues, or improve the quality of state services. An award is proportionately related to the financial savings or benefit of the recommendation, based on the net annual savings after implementation costs. Only an approved and implemented employee recommendation is eligible for an award.

(c) A bonus is granted for savings that can be computed using a cost-benefit analysis. Intangible savings or benefits that cannot be computed using such an analysis are not eligible for a bonus, but may be recognized by a certificate of appreciation.

(d) The commission may issue a certificate of appreciation to each state employee who is granted an award under this Act.

(e) An employee whose recommendation results in a net annual savings, or increase in revenues, of $100 or more is eligible for a bonus of 10 percent of the net savings, or revenue increase, up to a maximum award of $5,000. An employee whose recommendation results in a net annual savings, or increase in revenues, of less than $100 is not eligible for a bonus but is eligible for a certificate of appreciation.

SECTION 3. COMMISSION. (a) The State Employee Incentive Commission is created. The commission is composed of the state auditor, the comptroller of public accounts, state treasurer, the agency administrator of the Texas Employment Commission, the executive director of the Texas Department of Labor and Standards, the executive director of the Legislative Budget Board, and three public members who must have experience in the administration of incentive programs and other related programs used in private industry. The governor, lieutenant governor, and speaker of the house of representatives shall each appoint one public member for a two-year term. A vacancy in the term of a public member shall be filled by the official who made the original appointment.

(b) The commission shall act as the final arbiter of any dispute arising from the implementation of the program or from eligibility determinations.

SECTION 4. COMMISSION POWERS AND DUTIES. (a) The commission may develop policies and organize procedures to implement a statewide program to reward state employees in the manner provided by this Act for employee recommendations that reduce state expenditures, increase state revenues, or improve the quality of state services.

(b) The commission shall establish recordkeeping procedures as necessary to implement this Act.

(c) The commission may adopt rules and hire staff as necessary to implement this Act.

(d) The commission may accept contributions and/or assistance from private institutions and organizations, and may request and receive aid and assistance from

the Governor's office, the Texas Advisory Commission on Intergovernmental Relations, and other state agencies so as to provide for an effective implementation of this Act.

SECTION 5. AGENCY COORDINATOR. (a) Each state agency may designate an agency coordinator. The agency coordinator may:

(1) promote agency employee participation in the program;

(2) obtain an impartial evaluation of each proposed employee recommendation;

(3) promote the implementation of adopted recommendations by the agency;

(4) monitor the cost savings and other benefits that result from the implementation of an employee recommendation;

(5) file reports with the commission as required by the rules of the commission; and

(6) arrange and conduct intra-agency award ceremonies to recognize agency employees who are granted awards under this Act.

(b) The agency coordinator may make the initial determination of the eligibility of an employee recommendation or of an agency employee who makes a recommendation. An employee who is aggrieved by the eligibility determination of the agency coordinator may request a redetermination by the commission.

SECTION 6. EMPLOYEE ELIGIBILITY. (a) Each full-time state employee is eligible to participate in the program except an employee:

(1) who has authority to implement the recommendation being made;

(2) who is on an unpaid leave of absence;

(3) whose job description includes responsibility for cost analysis, efficiency analysis, savings implementation, or other related programs within the employee's agency;

(4) involved in, or who has access to, agency research and development programs, if that information is used as the basis of the recommendation; or

(5) whose job description includes developing the type of change in the agency administration that is recommended by the recommendation.

(b) An elected or appointed agency official is not eligible to participate in the program.

SECTION 7. RECOMMENDATION REQUIREMENTS; PROCEDURES. (a) To be eligible for consideration under the program, an employee recommendation must be submitted to the agency coordinator in writing in the format prescribed by the commission. The employee must sign the recommendation. The recommendation must propose a reasonable method of implementation and must describe the type of cost savings or other benefits foreseen by the employee if the recommendation is adopted. The agency coordinator may transmit all reasonable employee recommendations, together with the evaluation of each of those recommendations, to the commission for further analysis and implementation proposals not later than the 90th day after the day on which the recommendation was received by the agency coordinator.

(b) The commission may note any recommendation that requires legislative action. If, as a direct result of the employee's recommendation, legislation is passed to implement the recommendation, the commission may consider the recommendation for an award.

(c) If the same recommendation is submitted by two or more employees, the first received by the agency coordinator is eligible for consideration. If the recommendation is received on the same day from employees working at different locations, a bonus based on the recommendation may be divided equally among the employees submitting the recommendation. Each of the employees is also eligible for a certificate of appreciation.

(d) Two or more employees may submit a joint recommendation. A bonus based on such a recommendation may be divided equally among those employees. Each of the employees is also eligible for a certificate of appreciation.

(e) If, after any necessary analysis, the commission determines that an employee recommendation has merit, the commission may refer the recommendation to the appropriate state agencies for proposed adoption and implementation. Final adoption of an employee recommendation is at the discretion of the chief administrative officers of each agency. An agency that implements a recommendation proposed under this Act may provide any information requested by the commission that is necessary to compute the amount of savings or other benefits derived from the recommendation.

(f) The commission may notify in writing each employee who proposes an employee recommendation of its final determination on adoption or rejection of an employee recommendation not later than the 30th day after the day on which the final determination is rendered.

SECTION 8. INELIGIBLE RECOMMENDATIONS. An employee is not eligible to receive an award under this Act for a recommendation that:

(1) does not describe a method to achieve the desired savings or benefit;

(2) proposes ideas under implementation or consideration on the date that the recommendation is submitted;

(3) relates only to personnel matters or grievances, including employee classification or compensation;

(4) proposes a correction for a condition that resulted only because applicable established procedures were not properly followed; or

(5) proposes implementation of a policy or procedure that has already been adopted by the employee's agency.

SECTION 9. EMPLOYEE RIGHTS. (a) An employee who proposes a recommendation under this Act may request the commission to maintain the confidentiality of the employee in the evaluation or award process. The commission shall maintain such an employee's confidentiality to the greatest extent possible.

(b) An employee's right to an award may be established based on the employee's status at the time that the original employee recommendation was received by the agency coordinator. A former employee remains eligible for an award if the recommendation is implemented not later than two years after the date of final disposition of the recommendation. If an employee who is granted a bonus dies before the date on which the bonus is received, the bonus shall be paid to the deceased employee's estate.

(c) An employee who has proposed a recommendation, and who has reasonable grounds to believe that the importance of the recommendation has been overlooked, misunderstood, or misinterpreted may request the commission to re-evaluate the recommendation. The employee must make the request in writing not later than the 30th day after the day on which the employee receives notification from the commission that the recommendation has been rejected. The employee shall provide any additional information that the employee considers useful to the re-evaluation.

SECTION 10. RIGHTS OF THE STATE. (a) The state may change or terminate the employee recommendation program at any time without prior notice. An employee may be compensated for a recommendation under the program only as provided by this Act. An employee may not appeal a decision of the commission to a court of law.

(b) The submission of an employee recommendation in the manner provided by this Act constitutes an agreement between this state and the employee making the recommendation that all claims by the employee that are based on the recommendation, including patent claims, copyright claims, trademark claims, and other analogous claims, are assigned to the state.

SECTION 11. EFFECTIVE DATE. This Act takes effect September 1, 1985. The State Employee Incentive Program shall be fully implemented by January 1, 1986.

SECTION 12. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by unanimous consent.

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

The bill as amended was again finally passed.

HOUSE BILL 938 ON SECOND READING

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

H.B. 938, Relating to the administration, allocation, and distribution of money in the public transportation fund.

The bill was read second time and was passed to third reading.

HOUSE BILL 938 ON THIRD READING

Senator Traeger moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 938** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

HOUSE BILL 525 ON SECOND READING

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

H.B. 525, Relating to the offense of unlawful carrying of weapons on certain premises where alcoholic beverages are served or sold.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **H.B. 525** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 46.02, Penal Code, is amended to read as follows:

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a firearm other than a handgun while in that part of a premises licensed or issued a permit by the state for the sale or service of alcoholic beverages from which the alcoholic beverages are obviously served or sold.

(c) It is an affirmative defense to prosecution under Subsection (b) of this section that the firearm was not a prohibited weapon under Section 46.06 of this code and:

(1) was carried in a motor vehicle, as that term is defined in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);

(2) the firearm was unloaded and was being carried at a legitimate auction or sale involving firearms by a person who intended to sell, transfer, or display the firearm at the auction or sale or was being carried at an auction or sale involving firearms by a person who had just purchased, received, or displayed the firearm at the auction or sale; or

(3) the bolt or firing pin of the firearm was detached from the firearm and was not readily accessible to the person carrying the firearm or the firearm was altered in some other way requiring significant reassembly before the firearm was capable of being fired.

(d) [~~(b)~~] Except as provided in Subsection (e) and Subsection (f) of this section [~~(c)~~], an offense under this section is a Class A misdemeanor.

(e) [~~(c)~~] An offense under Subsection (a) of this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.

(f) An offense under Subsection (b) of this section is a felony of the third degree.

SECTION 2. This Act takes effect September 1, 1985.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted.

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

The bill as amended was passed to third reading.

RECORD OF VOTE

Senator Sharp asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 525 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 525** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Sharp, Washington.

The bill was read third time.

Question - Shall the bill as amended be finally passed?

FURTHER CONSIDERATION OF HOUSE BILL 525 POSTPONED

On motion of Senator Caperton and by unanimous consent, further consideration of **H.B. 525** was postponed until 10:00 o'clock a.m. tomorrow, Monday, May 27, 1985.

HOUSE BILL 1429 ON SECOND READING

Senator Glasgow moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1429, Relating to the sale or distribution of rabies vaccine for animals; providing a penalty.

The motion prevailed by the following vote: Yeas 21, Nays 9.

Yeas: Barrientos, Brooks, Caperton, Glasgow, Harris, Henderson, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sharp, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Blake, Brown, Farabee, Howard, Jones, Mauzy, Sarpalius, Sims, Traeger.

Absent: Edwards.

The bill was read second time and was passed to third reading by the following vote: Yeas 21, Nays 8.

Yeas: Barrientos, Brooks, Caperton, Glasgow, Henderson, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sharp, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Blake, Brown, Farabee, Howard, Jones, Sarpalius, Sims, Traeger.

Absent: Edwards, Harris.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

H.C.R. 33	**H.C.R. 75**	**H.C.R. 106**	**H.C.R. 133**	**H.C.R. 156**
H.C.R. 172	**H.C.R. 209**	**H.C.R. 216**	**H.C.R. 217**	**H.C.R. 220**
H.C.R. 221	**H.C.R. 223**	**H.C.R. 224**	**H.C.R. 236**	**H.C.R. 245**
H.B. 10	**H.B. 61**	**H.B. 151**	**H.B. 156**	**H.B. 168**
H.B. 181	**H.B. 231**	**H.B. 235**	**H.B. 449**	**H.B. 478**
H.B. 488	**H.B. 505**	**H.B. 556**	**H.B. 560**	**H.B. 569**
H.B. 580	**H.B. 650**	**H.B. 690**	**H.B. 695**	**H.B. 773**
H.B. 917	**H.B. 948**	**H.B. 1023**	**H.B. 1114**	**H.B. 1120**
H.B. 1148	**H.B. 1164**	**H.B. 1201**	**H.B. 1205**	**H.B. 1214**
H.B. 1287	**H.B. 1303**	**H.B. 1310**	**H.B. 1333**	**H.B. 1349**
H.B. 1374	**H.B. 1403**	**H.B. 1509**	**H.B. 1591**	**H.B. 1618**
H.B. 1695	**H.B. 1718**	**H.B. 1760**	**H.B. 1823**	**H.B. 1844**
H.B. 1861	**H.B. 1955**	**H.B. 2067**	**H.B. 2076**	**H.B. 2077**
H.B. 2107	**H.B. 2174**	**H.B. 2198**	**H.B. 2222**	**H.B. 2256**
H.B. 2329	**H.B. 2344**	**H.B. 2387**	**H.B. 2390**	**H.B. 2391**
H.B. 2394	**H.B. 2399**	**H.B. 2410**	**H.B. 2418**	**H.B. 2450**
H.B. 2451	**H.B. 2453**	**H.B. 2454**	**S.C.R. 57**	**S.C.R. 65**

S.C.R. 74	S.C.R. 83	S.C.R. 92	S.C.R. 97	S.C.R. 99
S.C.R. 100	S.C.R. 118	S.C.R. 123	S.C.R. 126	S.C.R. 127
S.C.R. 128	S.C.R. 129	S.C.R. 130	S.C.R. 140	S.C.R. 172
S.C.R. 175	S.C.R. 177	S.C.R. 178	S.B. 16	S.B. 108
S.B. 119	S.B. 127	S.B. 169	S.B. 217	S.B. 254
S.B. 267	S.B. 320	S.B. 344	S.B. 381	S.B. 387
S.B. 394	S.B. 419	S.B. 454	S.B. 464	S.B. 524
S.B. 549	S.B. 569	S.B. 577	S.B. 631	S.B. 651
S.B. 823	S.B. 842	S.B. 844	S.B. 876	S.B. 969
S.B. 1484	S.B. 1018	S.B. 1083	S.B. 1122	S.B. 1152
S.B. 1169	S.B. 1186	S.B. 1222	S.B. 1257	S.B. 1280
S.B. 1297	S.B. 1302	S.B. 1303	S.B. 1320	S.B. 1344
S.B. 1348	S.B. 1356	S.B. 1357	S.B. 1358	S.B. 1359
S.B. 1360	S.B. 1377	S.B. 1378	S.B. 1388	S.B. 1400
S.B. 1420	S.B. 1421	S.B. 1426	S.B. 1443	S.B. 1458
S.B. 1466	S.B. 994 (Signed subject to Art. III, Sec. 49a of the Constitution)			

MEMORIAL RESOLUTIONS

H.C.R. 244 - (Howard): Memorial resolution for Dr. Howard C. Bennett.

S.R. 540 - By Montford: Memorial resolution for Dr. A. C. Surman.

WELCOME AND CONGRATULATORY RESOLUTIONS

H.C.R. 225 - (Krier): Extending congratulations to Charles N. Boggess.

H.C.R. 242 - (Farabee): Extending congratulations to Austin College football team.

H.C.R. 252 - (Traeger): Extending congratulations to Manuel B. Bravo, Jr.

H.C.R. 248 - (Parmer): Extending congratulations to Mark Thompson, Fort Worth Star-Telegram Pulitizer Prize winner.

H.C.R. 233 - (Jones): Extending congratulations to Howard H. Miles.

H.C.R. 238 - (Washington): Extending congratulations to Dr. Norman Hackerman.

H.C.R. 240 - (Jones): Extending congratulations to Lisa Ford.

H.C.R. 249 - (Henderson): Extending congratulations to Klein Oak High School.

H.C.R. 243 - (Washington): Extending congratulations to House Post Office.

S.R. 537 - By Sarpalius: Requesting Mexico to loan to Texas the New Orleans Grey battle flag that flew over Alamo in 1836.

S.R. 538 - By Santiesteban: Extending congratulations to F. Murray Abraham.

S.R. 541 - By Truan: Extending congratulations to Robert G. "Bob" Cherry.

ADJOURNMENT

On motion of Senator Mauzy, the Senate at 7:22 o'clock p.m. adjourned until 10:00 o'clock a.m. tomorrow.