SEVENTY-THIRD DAY
(Thursday, May 25, 1989)

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

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

A quorum was announced present.

Father Bob Scott, St. Austin's Catholic Church, Austin, offered the invocation as follows:

Lord, as we near the end of this session we are a bit frazzled and anxious to get out of here and go home.

Give us patience with those who disagree with us, and help us to remember that we are here to serve the good of all Texans and not just ourselves. Amen.

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

REPORTS OF STANDING COMMITTEES

Senator Glasgow submitted the following report for the Committee on Jurisprudence:

H.B. 405
H.B. 1856
H.B. 3153
H.B. 2683
H.B. 165
H.B. 2295
H.B. 1626
H.B. 1440
H.B. 2094
C.S.H.B. 775
C.S.H.B. 1520

Senator Brooks submitted the following report for the Committee on Health and Human Services:

S.B. 885
H.B. 1787
H.B. 2382
H.C.R. 16
C.S.H.B. 27

Senator Johnson, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 2435
C.S.H.B. 2600
C.S.H.B. 878

C.S.H.B. 3204
H.B. 1770
H.B. 2777
H.B. 2505

Senator Caperton submitted the following report for the Committee on Finance:

H.B. 1269
H.B. 2575
H.B. 1831
H.B. 2043
H.B. 2620
H.B. 2705
H.B. 2624
H.B. 2304
H.B. 2064 (Amended)
C.S.H.B. 2211
C.S.H.B. 432

Senator Santiesteban submitted the following report for the Committee on Natural Resources:

H.B. 3206
H.B. 3207
H.B. 2434
H.B. 1237
H.B. 1687
H.B. 3126
H.B. 3183
H.B. 3179
H.B. 3178
H.B. 3172
H.B. 3155
H.B. 3128
H.B. 3122
H.B. 3104
H.B. 3088
H.B. 2303
H.B. 2330
H.B. 2341
H.B. 2355
H.B. 3085
H.B. 3182
H.B. 2171
H.B. 2262
H.B. 1139
H.B. 464
H.B. 1922 (Amended)
C.S.H.B. 3171
C.S.H.B. 2498

Senator Johnson, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 2608
C.S.H.B. 2541

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

S.R. 699
C.S.H.C.R. 238
H.C.R. 246
H.C.R. 116
H.C.R. 115

Senator Parker submitted the following report for the Committee on Education:

H.B. 2195
H.B. 2181
H.B. 1396
H.C.R. 188
C.S.H.B. 2974
H.C.R. 194
H.B. 2791
H.B. 2645
H.B. 2816
H.B. 2322
H.B. 2321
H.B. 2912
C.S.H.B. 2192
C.S.H.B. 884

Senator Montford submitted the following report for the Committee on State Affairs:

H.B. 2263
H.B. 2481
H.B. 2482
H.B. 1848
H.B. 694
H.B. 2437
H.B. 2441
H.B. 2046
H.C.R. 270
H.J.R. 51
H.B. 1111
H.B. 2629 (Amended)
H.B. 430
H.B. 2988 (Amended)
H.B. 1860
C.S.H.B. 3039
H.B. 1600 (Amended)
H.B. 1531
H.B. 691
C.S.H.B. 151
C.S.H.B. 2991

Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

H.B. 2805

C.S.H.J.R. 36
H.B. 59
C.S.H.B. 3012
H.B. 1423
C.S.H.B. 2060
C.S.H.B. 3135
H.B. 2588
H.B. 1801
C.S.H.B. 3187
C.S.H.B. 911
C.S.H.B. 316
C.S.H.B. 3144

Senator Harris submitted the following report for the Committee on Economic Development:

H.B. 2840
H.B. 395
H.B. 1383
H.B. 966
H.B. 1694
H.B. 2936
H.B. 3167
H.B. 2433
H.B. 2179 (Amended)
H.B. 2286 (Amended)
H.B. 1827 (Amended)
H.B. 2603 (Amended)
C.S.H.B. 2017
C.S.H.B. 1728
C.S.H.B. 2803
C.S.H.B. 2260

SENATE RESOLUTIONS ON FIRST READING

On motion of Senator Edwards and by unanimous consent, the following resolutions were introduced, read first time and referred to the Committee indicated:

S.R. 736 by Edwards — State Affairs
Stating that the Public Utility Commission has and should have the discretion to award reasonable litigation costs to participants before it.

S.R. 745 by Brown — Administration
Directing the Criminal Justice Committee to conduct an interim study on the ever-increasing diabolic cult activities.

S.R. 746 by Johnson, Caperton, Washington — Finance
Creating the Special Advisory Committee on the Creation and Expansion of Minority and Women-Owned Business Ownership Opportunities.

S.R. 747 by Caperton — Administration
Creating the Special Committee on State Procurement Policies and Practices.

S.R. 748 by Truan, Edwards, Tejeda, Uribe, Whitmire — Administration
Directing the Health and Human Services Subcommittee on Health Services to study the statewide need for psychiatric and counselling services for children.

S.R. 749 by Truan, Edwards, Tejeda, Uribe, Washington — Administration
Directing the Health and Human Services Subcommittee on Health Services to study the control and regulation of worker and public exposure to radiation with special regard to currently unregulated sources of radiation.

S.C.R. 171 by Caperton — Jurisprudence
Urging the Supreme Court of Texas to adopt rules of civil procedure that conform to federal rules of civil procedure.

S.C.R. 172 by Caperton, Brooks — Administration
Requesting the Lieutenant Governor and Speaker to establish the Legislative Oversight Committee on OBRA program implementation.

S.C.R. 173 by Haley, Washington — Education
Directing the Central Education Agency to require each school district to provide alcohol and drug abuse education.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1989

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 refused to concur in Senate amendments to **H.B. 1** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Smith of Brazos, Chair; Schlueter, Perry, Wolens, A. Smith.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 40**. The following have been appointed on the part of the House: Rodriguez, Chair; Arnold, Glossbrenner, Grusendorf, Hammond.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1405**. The following have been appointed on the part of the House: Williamson, Chair; Alexander, Telford, Cavazos, Dutton.

The House has adopted the Conference Committee Report on **H.B. 248** by a record vote of 141 Ayes, 0 Nays, 1 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 193** by a non-record vote.

The House concurred in Senate amendments to **H.B. 581** by a record vote of 145 Ayes, 0 Nays, 1 Present-not voting.

The House has concurred in Senate amendments to the following House bills by non-record votes:

H.B. 1587
H.B. 715
H.B. 842
H.B. 869
H.B. 1364
H.B. 1701
H.B. 2612

H.B. 2972
H.C.R. 41

S.B. 959, Relating to human immunodeficiency virus and acquired immune deficiency syndrome; providing penalties. (As substituted and amended)

H.C.R. 289, Honoring Dr. Jack D. Heacock.

S.C.R. 169, Requesting the governor to return **S.B. 1103** to the Senate for further consideration.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

H.J.R. 19, To Committee on Criminal Justice.
H.J.R. 45, To Committee on Finance.
H.B. 955, To Committee on Economic Development.
H.B. 1120, To Committee on Economic Development.
H.B. 1459, To Committee on Finance.
H.B. 1569, To Committee on Economic Development.
H.B. 2365, To Committee on Economic Development.
H.B. 2377, To Committee on Economic Development.
H.B. 2728, To Committee on State Affairs.

CO-SPONSOR OF HOUSE BILL 1292

On motion of Senator Barrientos and by unanimous consent, Senator Zaffirini will be shown as Co-sponsor of **H.B. 1292**.

CO-SPONSOR OF HOUSE BILL 3209

On motion of Senator Brown and by unanimous consent, Senator Brooks will be shown as Co-sponsor of **H.B. 3209**.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

H.J.R. 4	H.B. 2016	S.B. 946	S.B. 1483
H.C.R. 77	H.B. 2288	S.B. 963	S.B. 1526
H.C.R. 123	H.B. 2780	S.B. 981	S.B. 1569
H.B. 153	H.B. 3112	S.B. 1027	S.B. 1588
H.B. 369	S.C.R. 169	S.B. 1037	S.B. 1599
H.B. 613	S.B. 371	S.B. 1039	S.B. 1601
H.B. 799	S.B. 379	S.B. 1091	S.B. 1611
H.B. 1118	S.B. 544	S.B. 1112	S.B. 1628
H.B. 1153	S.B. 546	S.B. 1175	S.B. 1632
H.B. 1213	S.B. 567	S.B. 1284	S.B. 1644
H.B. 1229	S.B. 612	S.B. 1285	S.B. 1665
H.B. 1312	S.B. 697	S.B. 1287	S.B. 1685
H.B. 1318	S.B. 754	S.B. 1302	S.B. 1692

H.B. 1421	**S.B. 836**	**S.B. 1345**	**S.B. 1695**
H.B. 1794	**S.B. 844**	**S.B. 1357**	**S.B. 1713**
		S.B. 1774	**S.B. 1791**

CONFERENCE COMMITTEE ON HOUSE JOINT RESOLUTION 40

Senator Harris called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.J.R. 40** 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.J.R. 40** 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 resolution: Senators Harris, Chairman; Henderson, Armbrister, Leedom and McFarland.

SENATE BILL 224 WITH HOUSE AMENDMENT

Senator Krier called **S.B. 224** 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 - D. Hudson

Amend **S.B. 224** to delete SECTION 2. of the bill, lines 7-18, page 2, and substitute in lieu thereof the following:

SECTION 2. Section 35.53, Business & Commerce Code, is amended to read as follows:

Sec. 35.53. NOTICE OF LAW APPLICABLE TO CONTRACT. (a) This section applies to a contract only if:

(1) the contract is for the sale, lease, exchange, or other disposition for value of goods for the price, rental, or other consideration of $50,000 or less; and

(2) any element of the execution of the contract occurred in this state and a party to the contract is:

(A) [~~(1)~~] an individual resident of this state; or

(B) [~~(2)~~] an association or corporation created under the laws of this state or having its principal place of business in this state.

(b) If a contract to which this section applies contains a provision making the contract or any conflict arising under the contract subject to the laws of another state, to litigation in the courts of another state, or to arbitration in another state, the provision must be set out conspicuously in [~~boldfaced~~] print, type, or other form of writing that is bold-faced, capitalized, underlined, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice. If the provision is not set out as provided by this subsection [~~in boldfaced print~~], the provision is voidable by a party against whom it is sought to be enforced.

The amendment was read.

Senator Krier 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. 224** 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 Krier, Chairman; Glasgow, Bivins, Sims and Ratliff.

CONFERENCE COMMITTEE REPORT
SENATE BILL 1504

Senator Brooks submitted the following Conference Committee Report:

Austin, Texas
May 23, 1989

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. 1504** 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.

BROOKS	GUERRERO
KRIER	HINOJOSA
JOHNSON	LINEBARGER
TEJEDA	GARCIA
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to family violence shelters.

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

SECTION 1. Section 51.001, Human Resources Code, is amended to read as follows:

Sec. 51.001. PURPOSE. The purpose of this chapter is to promote [~~the~~] development of and access to locally based and supported nonprofit shelters and services for victims of family violence throughout the state.

SECTION 2. Subdivision (1), Section 51.002, Human Resources Code, is amended to read as follows:

(1) "Family violence shelter [~~"Shelter~~] center" means a program that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence.

SECTION 3. Section 51.003, Human Resources Code, is amended to read as follows:

Sec. 51.003. CONTRACTS. (a) The Texas Department of Human Services shall contract for services with family violence shelter centers [~~that provide access to shelter and services to victims of family violence~~] with consideration given to geographic distribution and need. These contracts are to expand existing family violence shelter center services and may not result in reducing financial support a family violence shelter center receives from another source. The contracts shall not provide for more than 75 percent of the cost of the family violence shelter center

program. The department shall develop a declining scale of state financial support for family violence shelter centers, declining over a six-year period from the initiation of each individual contract, with no more than 50 percent of a family violence shelter center program's funding to be provided by the state after the sixth year. The balance each year shall be provided from other sources. The department may adopt rules which will allow exceptions to the above scale in individual instances when a family violence shelter center shall demonstrate that exigent circumstances require such a waiver.

(b) The department shall contract statewide for activities that support and advance the work of family violence shelter centers. A contract must require the provision of technical assistance and training for family violence shelter centers. The contract may require the provision of public education, consultation to the department, research, evaluation, and liaison and training for other professionals who work with victims of family violence, including professionals in the criminal justice, medical, and social services fields, and for community or civic groups [~~for the provision of training, technical assistance, and evaluation related to shelter and service program development and criminal justice processes~~].

SECTION 4. Section 51.004, Human Resources Code, is amended to read as follows:

Sec. 51.004. CONTRACT BIDS. (a) To be eligible for a contract under Section 51.003(a) of this code, a public or private nonprofit organization must operate a family violence shelter center that provides temporary lodging and social services for adults and their children who have left or have been removed from the family home because of family violence. The family violence shelter center must have been in actual operation offering shelter services 24 hours a day with a capacity for not less than five persons for at least nine months before the date that the contract is awarded. The contract application must be submitted on forms prescribed by the department.

(b) The department shall consider the following factors in awarding the contracts:

(1) the shelter center's eligibility for and use of funds from the federal government, philanthropic organizations, and voluntary sources;

(2) community support for the shelter center as evidenced by financial contributions from civic organizations, local governments, and individuals;

(3) evidence that the shelter center provides services that encourage rehabilitation and effectively utilizes community resources;

(4) the endorsement and involvement of local law enforcement officials; and

(5) support for the shelter center through volunteer work, especially volunteer effort by persons who have been victims of family violence[~~; and~~

[~~(6) the shelter center's efforts to provide services to violent family members and to encourage family reconciliation if rehabilitation occurs~~].

(c) The department shall use a noncompetitive procurement procedure if the department determines that there is no competition between eligible family violence shelter centers for a service area. If the department determines that there is competition between eligible family violence shelter centers for a service area, the department shall award a contract through a competitive procurement procedure based on the factors in Subsection (b) of this section.

SECTION 5. Sections 51.005, 51.006, and 51.007, Human Resources Code, are amended to read as follows:

Sec. 51.005. CONTRACT SPECIFICATIONS. (a) The department shall contract only with family violence shelter centers that fulfill the requirements of this chapter.

(b) The contracts shall require the persons operating a family violence shelter center to:

(1) make a quarterly and an annual financial report on a form prescribed by the department;

(2) cooperate with inspections the department makes to ensure services standards and fiscal responsibility; and

(3) provide as a minimum access to the following:

(A) 24-hour-a-day shelter;

(B) a crisis call hotline available 24 hours a day;

(C) emergency medical care;

(D) counseling [~~or psychological~~] services;

(E) emergency transportation;

(F) legal assistance in the civil and criminal justice systems[~~, as available~~];

(G) educational arrangements for children;

(H) information about training for and seeking employment;

(I) cooperation with criminal justice [~~law enforcement~~] officials;

(J) community education;

(K) a referral system to existing community services; and

(L) a volunteer recruitment and training program.

(c) The contracts may require the persons operating a family violence shelter center to use intake and case study forms. Forms required shall be developed by the department with consultation as outlined in Section 51.008 of this subtitle.

Sec. 51.006. REPORT. Prior to each regular session of the legislature, the department shall publish a report that summarizes reports from family violence shelter centers under contract with the department and that analyzes the effectiveness of the contracts authorized by this chapter. The reports must include information on the expenditure of funds authorized under this chapter, the services provided, the number of persons for whom a service was provided, and any other information relating to the provision of family violence services. Copies of the report shall be submitted to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, the Senate Committee on Human Resources, and the House Committee on Human Services or their successor committees.

Sec. 51.007. CONFIDENTIALITY. The department may not disclose any information gained through reports, collected case data, or inspections that would identify a particular center or a person working at or receiving services at a family violence shelter center.

SECTION 6. This Act takes effect September 1, 1989.

SECTION 7. 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 Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
HOUSE BILL 1211

Senator Washington submitted the following Conference Committee Report:

Austin, Texas
May 24, 1989

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. 1211** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

WASHINGTON	MADLA
BROOKS	CAVAZOS
JOHNSON	GARCIA
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 1525

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 24, 1989

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. 1525** 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.

RATLIFF	WENTWORTH
SIMS	JUNELL
BIVINS	HOLZHEAUSER
BROWN	T. SMITH
	SWIFT
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to changing provisions of the Water Code to enable the Texas Water Commission to obtain delegation from the federal government of the National Pollutant Discharge Elimination System (NPDES) regulatory authority in accordance with Section 402(b) of the Federal Water Pollution Control Act.

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

SECTION 1. Section 26.001, Water Code (text of section effective on delegation of NPDES permit authority), is amended by amending Subdivisions (5) and (13) and adding Subdivision (25) to read as follows:

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams,

creeks, estuaries, wetlands, 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.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, 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.

(25) "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.

SECTION 2. Subsection (c), Section 26.0291, Water Code, as amended by Section 2, Chapter 400, and Section 2, Chapter 417, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(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 as follows:

(1) to supplement any other funds available for paying expenses of the commission in inspecting waste treatment facilities; [~~and~~]

(2) to pay for the issuance and renewal of certificates of competency under and to administer Section 26.0301 of this code; and

(3) to pay for processing plans or amendments to plans and inspecting the construction of projects under those plans pursuant to Section 26.0461 of this code and rules of the commission adopted under Sections 26.046 and 26.0461 of this code.

SECTION 3. Chapter 26, Water Code, is amended by adding Section 26.0291 (text of section effective on delegation of NPDES permit authority) to read as follows:

Sec. 26.0291. WASTE TREATMENT INSPECTION FEE. (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 in inspecting waste treatment facilities and enforcing the laws of the state and the rules of the commission 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 by rule shall adopt a fee schedule for determining the amount of the fee to be charged. The amount of the fee may not exceed $15,000 for each waste discharge permit held by a permittee. In determining the amount of a fee under this section, the commission may consider permitting factors such as flow volume, toxic pollutant potential, level of traditional pollutants, and heat load. The commission may consider the designated uses and segment ranking classification of the water affected by discharges from the permitted facility. Finally, the commission also may consider the expenses necessary to obtain and administer the NPDES program.

(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 as follows:

(1) to supplement any other funds available for paying expenses of the commission in inspecting waste treatment facilities;

(2) to pay for the issuance and renewal of certificates of competency under and to administer Section 26.0301 of this code;

(3) to pay for processing plans or amendments to plans and inspecting the construction of projects under those plans pursuant to Section 26.0461 of this code and rules of the commission adopted under Sections 26.046 and 26.0461 of this code; and

(4) to pay for any expenses of the commission necessary to obtain and administer the NPDES program in lieu of the federal government.

(d) The commission may adopt rules necessary to administer this section.

(e) A fee collected under this section is in addition to any other fee that may be charged under this chapter.

SECTION 4. Section 26.121, Water Code (text of section 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, 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. This subdivision does not apply to any NPDES activity.

(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.

(d) Except as authorized [~~by a rule, permit, or order issued~~] by the commission, 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.

SECTION 5. Chapter 26, Water Code, is amended by adding Section 26.1211 (text of section effective on delegation of NPDES permit authority) to read as follows:

Sec. 26.1211. PRETREATMENT EFFLUENT STANDARDS. (a) The commission is authorized to administer a program for the regulation of pretreatment of pollutants which are introduced into publicly owned treatment works.

(b) The commission is authorized to adopt regulations for the administration of this program consistent with 33 U.S.C. Section 1317 and rules adopted thereunder by the Environmental Protection Agency.

SECTION 6. Subdivision (3), Section 26.211, Water Code, is amended to read as follows:

(3) "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof [~~or private corporation~~].

SECTION 7. 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.

SENATE RULE 7.22(b) SUSPENDED

On motion of Senator Leedom and by unanimous consent, Senate Rule 7.22(b) was suspended as it relates to the House amendments to **S.B. 112**.

SENATE BILL 112 WITH HOUSE AMENDMENTS

Senator Leedom called **S.B. 112** 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 - Guerrero

Amend **S.B. 112** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. The Texas Incentive and Productivity Act is enacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS

Sec. 1.001. DEFINITION. In this Act, "commission" means the Texas Incentive and Productivity Commission.

Sec. 1.002. COMMISSION. The Texas Incentive and Productivity Commission is an agency of the state.

Sec. 1.003. COMMISSION MEMBERS. (a) The commission is composed of the governor, the lieutenant governor, the comptroller, the state treasurer, the administrator of the Texas Employment Commission, the chairman of the Texas Higher Education Coordinating Board or his designee, and three public members appointed by the governor who have experience in the administration of bonus, incentive, or related programs used in private industry.

(b) A member of the commission who is an elected official may designate another person to act in the official's place as a full voting member of the commission.

(c) The governor or the governor's designee serves as chairman of the commission.

(d) Public members serve for a two-year term, with the term of one member expiring February 1 of each even-numbered year and the term of two members expiring February 1 of each odd-numbered year.

Sec. 1.004. APPLICATION OF SUNSET ACT. The Texas Incentive and Productivity Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this Act expires September 1, 2001.

Sec. 1.005. EXECUTIVE DIRECTOR; STAFF. (a) The commission may hire an executive director and other staff necessary to perform its functions.

(b) The commission may designate separate division directors to oversee the administration of the state employee incentive program under Article 2 of this Act and the productivity bonus program under Article 3 of this Act.

Sec. 1.006. POWERS AND DUTIES OF COMMISSION. (a) The commission shall develop policies, procedures, and recordkeeping measures to administer this Act.

(b) The commission may adopt rules to carry out the purposes of this Act.

(c) The commission may accept contributions or assistance from private institutions and organizations and may request and receive aid and assistance from the governor's office and other state governmental bodies to provide for the effective implementation of this Act.

Sec. 1.007. REPORT. The commission shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives not later than January 1 preceding each regular session of the legislature a written report regarding the commission's activities, decisions, awards, and recommendations.

Sec. 1.008. REFERENCES IN OTHER LAW. Any reference in law to the State Employee Incentive Commission or the Productivity Bonus Commission means the Texas Incentive and Productivity Commission.

ARTICLE 2. STATE EMPLOYEE INCENTIVE PROGRAM

Sec. 2.001. DEFINITIONS. In this article:

(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 suggestion.

(4) "Certificate of appreciation" means a nonmonetary award that is granted to an eligible state employee in recognition of an employee suggestion.

(5) "Employee suggestion" 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.

(6) "Program" means the state employee incentive program.

(7) "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.

Sec. 2.002. 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 or otherwise available for this purpose, the commission may grant awards to eligible state employees who make suggestions 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 suggestion, based on the net annual savings after implementation costs. Only an approved and implemented employee suggestion is eligible for an award. The commission may grant an award, and the comptroller may transfer funds under this article, before the completion of the first year in which the suggestion is implemented, based on actual or projected savings or increased revenues that are certified by the affected state agency and the commission.

(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 article.

(e) An employee whose suggestion 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

suggestion 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.

(f) Based on a certification by the commission and the affected agency of the amount of actual or projected savings or increased revenues that are attributable to an implemented suggestion, the comptroller shall transfer that amount from the fund or funds affected by the savings or increased revenues. The comptroller shall transfer 40 percent of that amount back to the fund from which the original appropriation to the affected fund or funds was made, 40 percent of that amount to an appropriate fund from which the affected agency may award merit pay increases to persons in the agency, and 20 percent of that amount to a special fund established for the commission in the state treasury from which the commission shall award bonuses awarded under this article. Any amounts that remain in the commission's special fund established under this section on the last day of a state fiscal biennium shall be transferred by the comptroller to the general revenue fund or other funds as appropriate.

(g) The commission shall act as the final arbiter of any dispute arising from the implementation of the program or from eligibility determinations.

Sec. 2.003. AGENCY COORDINATOR. (a) Each state agency shall designate an agency coordinator. The agency coordinator shall:

(1) promote agency employee participation in the program;

(2) obtain an impartial evaluation of each proposed employee suggestion;

(3) promote the implementation of adopted suggestions by the agency;

(4) monitor the cost savings and other benefits that result from the implementation of an employee suggestion;

(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 article.

(b) The agency coordinator shall make the initial determination of the eligibility of an employee suggestion or of an agency employee who makes a suggestion. An employee who is aggrieved by the eligibility determination of the agency coordinator may request a redetermination. The commission shall adopt rules to govern the redetermination process. The agency coordinator shall provide to each employee who makes a suggestion a copy of commission rules relating to redeterminations or reevaluations.

Sec. 2.004. EMPLOYEE ELIGIBILITY. (a) Each full-time state employee who is a classified employee under the Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes) is eligible to participate in the program except an employee:

(1) who has authority to implement the suggestion 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 suggestion; or

(5) whose job description or routine job duties include developing the type of change in the operations of that agency that is recommended by the suggestion.

(b) An elected or appointed agency official is not eligible to participate in the program.

Sec. 2.005. SUGGESTION REQUIREMENTS; PROCEDURES. (a) To be eligible for consideration under the program, an employee suggestion must be

submitted to the agency coordinator in writing in the format prescribed by the commission. The employee must sign the suggestion. The suggestion must propose a reasonable method of implementation and must describe the type of cost savings or other benefits foreseen by the employee if the suggestion is adopted. The agency coordinator shall transmit all employee suggestions, together with the evaluation of each of those suggestions, to the commission for further analysis and comments regarding implementation not later than the 90th day after the date on which the suggestion was received by the agency coordinator.

(b) The commission shall note any suggestion that requires legislative action. If, as a direct result of the employee's suggestion, legislation is passed to implement the suggestion, the commission shall consider the suggestion for an award. The employee's agency coordinator shall notify the commission if implementing legislation is passed.

(c) If the same suggestion relating to the same agency is submitted by two or more employees, the first received by the agency coordinator is eligible for consideration. If the suggestion is received on the same day from two or more employees working at different locations, a bonus based on the suggestion may be divided equally among the employees submitting the suggestion. Each of the employees is also eligible for a certificate of appreciation.

(d) Two or more employees may submit a joint suggestion. A bonus based on such a suggestion 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 suggestion has merit, the commission shall refer the suggestion to the appropriate state agencies for proposed adoption and implementation. Final adoption of an employee suggestion is at the discretion of the chief administrative officers of each agency. An agency that implements a suggestion proposed under this article shall provide any information requested by the commission that is necessary to compute the amount of savings or other benefits derived from the suggestion.

(f) The commission shall notify in writing each employee who proposes an employee suggestion of its final determination on adoption or rejection of an employee suggestion not later than the 30th day after the date on which the final determination is rendered.

Sec. 2.006. INELIGIBLE SUGGESTIONS. An employee is not eligible to receive an award under this article for a suggestion 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 suggestion 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.

Sec. 2.007. EMPLOYEE RIGHTS. (a) An employee who proposes a suggestion under this article 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 suggestion was received by the agency coordinator. A former employee remains eligible for an award if the suggestion is implemented not later than two years after the date of final disposition of the suggestion. 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 suggestion, and who has reasonable grounds to believe that the importance of the suggestion has been overlooked, misunderstood, or misinterpreted may request the reevaluation of the suggestion. The employee must make the request in writing not later than the 30th day after the date on which the employee receives notification that the suggestion has been rejected. The employee shall provide any additional information that the employee considers useful to the reevaluation.

Sec. 2.008. RIGHTS OF THE STATE. (a) The state may change or terminate the employee suggestion program at any time without prior notice. An employee may be compensated for a suggestion under the program only as provided by this article. An employee may not appeal a decision of the commission to a court of law.

(b) The submission of an employee suggestion in the manner provided by this article constitutes an agreement between this state and the employee making the suggestion that all claims by the employee that are based on the suggestion, including patent claims, copyright claims, trademark claims, and other analogous claims, are assigned to the state.

ARTICLE 3. PRODUCTIVITY BONUS PROGRAM

Sec. 3.001. DEFINITIONS. In this article:

(1) "Productivity bonus" means a cash bonus awarded to an eligible state agency or division in recognition of increased productivity.

(2) "State agency" means a department, commission, board, office, or other agency in the executive or judicial branch of government. The term does not include the office of the governor or any institution of higher education as defined by Section 61.003, Education Code.

(3) "Division" means a unit of a state agency that:

(A) has an identifiable self-contained budget; or

(B) maintains its financial records under an accounting system approved by the state auditor that permits the accurate identification of the expenditures and receipts of the unit.

Sec. 3.002. PLAN; RULES. (a) Not later than July 1 of each year, the executive director of a state agency may submit a plan to the commission that outlines a strategy to be followed by that agency or a division within that agency that, if implemented, would cause the agency or division to qualify for a productivity bonus under this article.

(b) The commission may return any plan to the executive director who submits it to request additional information or clarification of details relating to the plan. The commission must approve an agency plan before a state agency may apply for a productivity bonus for the agency or a division of the agency. The commission shall inform the executive director in writing that the plan is approved or rejected not later than the 30th day after the date the plan is received.

Sec. 3.003. APPLICATION. (a) After approval of a plan submitted under Section 3.002 of this article, the executive director of a state agency may apply to the commission for selection for a productivity bonus for the agency or a division within the agency. To apply, the executive director must provide the commission with evaluation components developed by the agency or division that establish a quantitative measure of the agency's or division's productivity and performance.

(b) The application must be made in the form prescribed by the commission. The application must be submitted to the commission not later than the 30th day before the last day of the fiscal year and must be approved by the executive director of the state agency.

Sec. 3.004. QUALIFICATIONS FOR AWARD. (a) To qualify for a productivity bonus, a state agency or division of an agency that elects to participate

in the program must demonstrate to the commission that the agency or division operated at less cost during the fiscal year than the amount appropriated to that agency or division for that fiscal year or, if the appropriation for the fiscal biennium was not specifically divided between the fiscal years, the amount reasonably attributable to that fiscal year from the total appropriation, with no decrease in the level of services required to be rendered by the agency or division during that year.

(b) To qualify for a bonus, the commission must determine that the state agency's or division's claimed cost of operation is not in whole or in part the result of:

(1) a lowering of the quality of the services rendered;

(2) reduced pass-through or transfer expenditures;

(3) receipts realized in excess of budgeted amounts;

(4) failure to implement merited promotions, reclassifications, or authorized salary increases;

(5) postponement of scheduled purchases, repairs, or payments of accounts payable to a future fiscal year;

(6) stockpiling of inventory in the preceding fiscal year in order to reduce requirements during the fiscal year;

(7) substitution of nonstate funds for state appropriations; or

(8) any other practice, event, or device that the commission determines has caused a distortion that results in an inaccurate claimed cost of operation.

(c) The commission shall consider as a legitimate savings a reduction in expenditures made possible by:

(1) reductions in overtime for eligible employees;

(2) elimination of consultant fees;

(3) elimination of budgeted positions;

(4) elimination of unnecessary travel;

(5) elimination of unnecessary printing and mailing;

(6) elimination of payments for unnecessary advertising, membership dues, subscriptions, and other nonessential outlays of state agency or division funds;

(7) increased efficiency in use of energy;

(8) improved office procedures and systems; and

(9) any other practice or device that the commission determines has resulted in verifiable savings.

Sec. 3.005. FUND; DIVISION ACCOUNTS. (a) The productivity bonus fund is created as a special fund in the state treasury to be used for the payment of bonuses as provided by this article. Money from the special fund may be appropriated only as provided by this article.

(b) The state treasurer shall create in the productivity bonus fund a productivity bonus account for each state agency or division participating in the productivity bonus program. During the course of the fiscal year, the executive director of an eligible agency shall monitor agency or division activities during that period and shall estimate the savings resulting from increased economy and efficiency. At the end of the fiscal year, the executive director shall certify the amount of savings to the comptroller, who shall transfer that amount from the appropriation of the state agency to the agency's or division's productivity bonus account.

Sec. 3.006. COMPARISON. (a) At the end of the fiscal year, the commission shall compare the expenditures of each state agency or division that elects to participate in the productivity bonus program for that fiscal year with the agency's or division's appropriation for that fiscal year or the amount attributable to that year from the total appropriation, if appropriate, and shall determine the amount by which the agency or division has reduced its cost of operations during the fiscal year.

(b) The commission shall make any adjustments in its determination that are necessary to eliminate distortions. Those adjustments may include consideration of legislative increases in employee compensation and inflationary increases in the cost of services, materials, and supplies.

Sec. 3.007. BONUS; LEGISLATIVE INTENT. (a) If the commission determines that a state agency or division qualifies for a productivity bonus, the commission shall notify the executive director of the agency.

(b) From the funds in the state agency's or division's productivity bonus account, the commission shall award to the employees of the agency or division an amount not to exceed 25 percent of the amount in that account. An employee must be a classified employee under the Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes) to be eligible for an award or bonus under this article. The awarded amount shall be distributed in equal shares to the eligible current employees of the agency or division. A bonus made to any individual employee may not exceed $5,000. An eligible employee who worked in the agency or division for less than the full fiscal year is entitled to a pro rata share based on the fraction of the fiscal year that the employee worked in the agency or division.

(c) If the commission awards a productivity bonus to a division of a state agency, the balance of the amount in that division's productivity bonus account shall be distributed between the state agency to which the division belongs and the fund from which the original division appropriation was made. One-third of the balance shall be appropriated to that agency to be used by the administration of the agency during the subsequent fiscal year to further agency productivity. The remainder shall be credited to the appropriate fund.

(d) If the commission awards a productivity bonus to an entire state agency, one-third of the balance in that agency's productivity bonus account shall be appropriated to that agency as provided by Subsection (c) of this section, and the remainder shall be credited to the fund from which the original agency appropriation was made.

(e) It is the intent of the legislature that a state agency or division of an agency that reduces its cost of operations and qualifies for a productivity bonus under this article may not be penalized for those savings through a corresponding reduction in appropriations for the subsequent fiscal biennium.

SECTION 2. (a) Chapter 873, Acts of the 69th Legislature, Regular Session, 1985 (Article 6252-28, Vernon's Texas Civil Statutes), is repealed.

(b) Chapter 18, Acts of the 69th Legislature, 3rd Called Session, 1986 (Article 6252-29, Vernon's Texas Civil Statutes), is repealed.

SECTION 3. (a) The State Employee Incentive Commission is abolished.

(b) The Productivity Bonus Commission is abolished.

(c) All records, personnel, property, and unspent appropriations of the State Employee Incentive Commission and of the Productivity Bonus Commission are transferred to the Texas Incentive and Productivity Commission. The initial executive director of the Texas Incentive and Productivity Commission is the person who is executive director of the State Employee Incentive Commission at the time that commission is abolished.

(d) Any rule of the State Employee Incentive Commission or of the Productivity Bonus Commission existing at the time this Act takes effect is continued in effect as a rule of the Texas Incentive and Productivity Commission until superseded by a rule of that commission.

(e) If an employee recommendation or an agency plan is eligible for consideration for an award or bonus by the State Employee Incentive Commission or the Productivity Bonus Commission at the time this Act takes effect, the Texas Incentive and Productivity Commission shall consider the recommendation or plan, under this Act, and determine whether an award or bonus is granted.

(f) In making the initial appointments of public members to the Texas Incentive and Productivity Commission, the governor shall appoint one member to a term expiring on February 1, 1990, and two members to terms expiring on February 1, 1991.

SECTION 4. The unexpended balance of the appropriation of $200,000 made by Section 3, Chapter 2, Acts of the 70th Legislature, 2nd Called Session, 1987, is hereby reappropriated to the Texas Incentive and Productivity Commission, for the period beginning July 21, 1989, and ending August 31, 1989, to be used for the administration of the state employee incentive program.

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment on Third Reading - Richardson

Amend **C.S.S.B. 112** as follows:

(1) On page 5, line 22, delete the period after the word "article" and add the phrase "and administer the commission."

(2) Add a new SECTION 5 as follows:
SECTION 5. This Act takes effect July 21, 1989.

(3) Renumber subsequent sections accordingly.

The amendments were read.

Senator Leedom moved to concur in the House amendments to **S.B. 112**.

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

GUEST PRESENTED

Senator Barrientos was recognized and presented Dr. George F. Smith of Austin.

Dr. Smith, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was welcomed by the Senate and received an expression of gratitude for his service today.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced Mary Connor and her husband, Bill, with their special guests. Their son, Bill and his friend, Catherine, have just received their Master's degrees from Case Western University. They and Catherine's mother, Mrs. Madeleine Verhoye of Paris, France, are visiting Texas.

The Senate extended congratulations to Bill and Catherine and welcomed these special guests.

SENATE BILL 1575 WITH HOUSE AMENDMENT

Senator Uribe called **S.B. 1575** 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 - Smithee

Amend **S.B. 1575** as follows:

(1) Insert new Section 2 to read as follows and renumber current section 2 as 3:

SECTION 2. To the extent of any conflict with this Act, House Bill 1513, Act of the 71st Legislature, Regular Session, 1989, controls over this Act.

The amendment was read.

On motion of Senator Uribe and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1575** viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 413

Senator Harris called from the President's table the Conference Committee Report on **S.B. 413**. (The Conference Committee Report having been filed with the Senate and read on Wednesday, May 24, 1989.)

Senator Harris moved to adopt the Conference Committee Report on **S.B. 413**.

On motion of Senator Harris and by unanimous consent, the motion to adopt the Conference Committee Report was withdrawn.

CONFERENCE COMMITTEE ON HOUSE BILL 1

Senator Lyon 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. 1** 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. 1** 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 Lyon, Chairman; Parker, Caperton, Montford and Krier.

SENATE BILL 1000 WITH HOUSE AMENDMENTS

Senator Carriker called **S.B. 1000** 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 - Parker

Amend **S.B. 1000** as follows:

(1) Insert new Section 4 to read as follows and renumber current Section 4 as Section 5:

SECTION 4. Article 9.59 of the Insurance Code, is amended by adding Section 16 to read as follows:

Sec. 16. HOLDING COMPANY FRANCHISE TAX CREDITS. (a) The definitions for this Section 16 are the same as for Article 21.49-1 of the Insurance Code.

(b) A title insurance holding company, that is subject to Article 21.49-1, Insurance Code and which controls one or more domestic title insurance companies that are subject to the tax on premiums under this Article 9.59, is entitled to a credit against its franchise tax imposed by Chapter 171, Tax Code. The amount of the

credit for each controlled domestic title insurance company is computed by multiplying the amount of tax on premiums paid by that controlled domestic title insurance company in the most recent calendar year ending before the franchise tax report is due, by the percentage ownership of the title insurance holding company in the controlled domestic title insurance company. The percentage of ownership of a controlled domestic title insurance company is determined as of the accounting year-end upon which the franchise tax report is based.

(c) A claim for a credit is subject to the following limitations:

(1) If the total amount of the credit for all controlled title insurance companies exceeds the franchise tax due, the credit is an amount equal to the franchise tax due.

(2) The minimum franchise tax must be paid.

(3) A credit may not be carried forward or backward and apply to another year's franchise tax report.

(d) Nothing under this Article 9.59 may be construed to exempt title insurance holding companies, title insurance companies, or title insurance agents from paying any tax imposed under the Tax Code. Provided, however, title insurance companies and title insurance agents whose principal activity is the business of title insurance are exempted from Chapter 171, Tax Code.

(2) Insert a new Section 6 to read as follows and renumber current Section 5 as Section 7.

SECTION 6. The change is law made by Section 4 of this Act applies to the reporting and calculation of franchise taxes for each initial, second, and regular annual period beginning on or after the effective date of this Act. The law in effect immediately before the effective date applies to any period not covered by the change in law made by Section 4 of this Act, and the former law is continued in effect for that purpose only, except that the comptroller by rule may provide for the earlier application of the change in law made by Section 4 of this Act to an initial or second period in progress on the effective date of this Act.

Floor Amendment on Third Reading - Parker

Amend **S.B. 1000** by adding the following new sections appropriately numbered:

"SECTION ___. Chapter 171 of the Tax Code is amended by adding Section 171.113 to read as follows:

Sec. 171.113. Alternate Method of Determining Surplus and Gross Receipts for Certain Corporations

(a) A corporation that has not more than thirty-five shareholders and which is organized under the Texas Close Corporation Law, Part 12, Texas Business Corporation Act, or a foreign corporation that has no more than thirty-five shareholders and which is organized under the close corporation law of the state of incorporation, or a corporation that elects to be an S corporation under the Internal Revenue Code (26 U.S.C. Section 1361 et seq.) is exempt from the requirements in Sections 171.109(b) and (g) and 171.112(b) that corporations must compute surplus, assets, debts, and gross receipts according to generally accepted accounting principles and may instead elect to compute surplus, assets, debts, and gross receipts in accordance with the method used to compute their federal tax returns. Close corporations and S corporations shall comply with the requirements of Sections 171.109(a), (c), (d), (e), (f), (h) and (i) and with the requirements of Sections 171.112(a), (c), (d) and (e) and with all other provisions of this chapter. The comptroller shall have authority to adopt such rules as may be necessary to specify reporting requirements for close corporations and S corporations reporting on the federal income tax method.

(b) This section does not apply to a subsidiary corporation unless it applies to the subsidiary's parent corporation.

SECTION ___. Tax Code Subsection 171.109(e) is amended to read as follows:

(e) A corporation [~~reporting its surplus according to generally accepted accounting principles~~] may not change the accounting methods used to compute its surplus more often than once every four years without the written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.

SECTION ___. Tax Code Subsection 171.112(e) is amended to read as follows:

(e) A corporation [~~reporting its gross receipts based upon generally accepted accounting principles~~] may not change the accounting methods used to calculate gross receipts more often than once every four years without the express written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.

SECTION ___. Tax Code Subsection 171.109(g) is amended to read as follows:

(g) All oil and gas exploration and production activities by a corporation which is required to or elects to use generally accepted accounting principles to compute surplus must be reported according to the successful efforts or the full cost method of accounting."

The amendments were read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1000** viva voce vote.

RECORD OF VOTE

Senator Caperton asked to be recorded as voting "Nay" on the motion to concur in the House amendments to **S.B. 1000**.

SENATE JOINT RESOLUTION 11 WITH HOUSE AMENDMENT

Senator McFarland called **S.J.R. 11** 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.

Committee Amendment - Berlanga

Amend **S.J.R. 11** by striking all below the resolving clause and substituting in lieu thereof the following:

SECTION 1. That Article VIII, Section 1, of the Texas Constitution is amended to read as follows:

Sec. 1. (a) Taxation shall be equal and uniform.

(b) All real property and tangible personal property in this State, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.

(c) The Legislature may provide for the taxation of intangible property and may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax.

(d) The Legislature by general law shall exempt from ad valorem taxation household goods not held or used for the production of income and personal effects not held or used for the production of income. The Legislature by general law may exempt from ad valorem taxation:

(1) all or part of the personal property homestead of a family or single adult, "personal property homestead" meaning that personal property exempt by law from forced sale for debt; and

(2) subject to Subsection (e) of this section, all other tangible personal property, except structures which are personal property and are used or occupied as residential dwellings and except property held or used for the production of income.

(e) The governing body of a political subdivision may provide for the taxation of all property exempt under a law adopted under Subdivision (2) of Subsection (d) of this section and not exempt from ad valorem taxation by any other law.

(f) [~~(h)~~] The occupation tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business, shall not exceed one half of the tax levied by the State for the same period on such profession or business.

SECTION 2. Article VIII of the Texas Constitution is amended by adding a Section 1-j to read as follows:

Sec. 1-j. (a) To promote economic development in the state, goods, wares, merchandise, other tangible personal property, and ores, other than oil, natural gas, and other petroleum products, are exempt from ad valorem taxation if:

(1) the property is acquired in or imported into this State to be forwarded outside this State, whether or not the intention to forward the property outside this State is formed, or the destination to which the property is forwarded is specified when the property is acquired in or imported into this state;

(2) the property is detained in this State for assembling, storing, manufacturing, processing, or fabrication purposes by the person who acquired or imported the property; and

(3) the property is transported outside of this state not later than 175 days after the date the person acquired or imported the property in this state.

(b) Tangible personal property exempted from taxation in subsection (a) of this section is subject to the following:

(1) A county, common, or independent school district, or junior college district, or municipality, including a home-rule city, may tax such property otherwise exempt, if the governing body of the county, common, or independent school district, or junior college district, or municipality takes official action as provided in this section and in the manner provided by law to provide for the taxation of such property.

(2) Any official action to tax such exempt property must be taken before April 1, 1990. If official action is taken to tax such exempt property before January 1, 1990, such property is taxable effective for the tax year 1990. However, if such official action to tax such exempt property is taken prior to April 1, 1990, but after January 1, 1990, the official action shall not become effective to tax such property until the 1991 tax year.

(3) Any of the above-named political subdivisions shall have the authority to exempt from payment of taxation such property located in such above-named political subdivisions for the taxing year 1989. If a governing body exempts the property from 1989 taxes, the governing body shall waive 1989 taxes already imposed and refund 1989 taxes already paid on such property for that year.

(4) The governing body of a county, common, or independent school district, municipality that acts under (b)(2) of this section to tax the property otherwise exempt by subsection (a) of this section may subsequently exempt the property from taxation by rescinding its action to tax the property. The exemption

applies to each tax year that begins after the date the action is taken and applies to the tax year in which the action is taken if the governing body so provides. A governing body that rescinds its action to tax the property may not take action to tax such property after the rescission.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 7, 1989. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment promoting economic growth, job creation and fair tax treatment for Texans who export goods to other states and nations by restoring and allowing, on a local option basis, an ad valorem tax exemption for certain personal property that is in Texas only temporarily for the purpose of assembling, storing, manufacturing, processing or fabricating."

The amendment was read.

Senator McFarland 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 resolution.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.J.R. 11** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the resolution: Senators McFarland, Chairman; Caperton, Glasgow, Harris and Bivins.

SENATE RESOLUTION 707

Senator Barrientos offered the following resolution:

S.R. 707, Commending Mrs. Vivien Richard for her superb contributions to the educational system of Texas and extending best wishes to her for a rich and rewarding retirement after 34 years.

The resolution was read.

GUESTS PRESENTED

At the President's request, Senator Barrientos escorted Mr. and Mrs. Richard to the President's Rostrum.

The President presented to Mrs. Richard an enrolled copy of **S.R. 707**, adopted by the Senate on May 22, 1989.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider the Executive appointments to agencies, boards and commissions. Notice of submission of these names for consideration was given yesterday by Senator Edwards.

Senator Edwards moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

Senator Edwards requested that the nomination of Dr. Alfred Raymond Johnson, to be a Member of the Texas State Board of Medical Examiners, be severed.

Senator Washington requested that all remaining nominees of the Texas State Board of Medical Examiners be severed.

The requests were granted.

NOMINEES CONFIRMED

The following nominees, not severed and reported yesterday by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Member, State Commission for the Blind: DR. JAMES LAURENCE CALDWELL, Travis County.

Member, Governing Board of the Texas School for the Blind: DR. MICHAEL CONNOLLY, Nacogdoches County.

Members, State Rural Medical Education Board: JAMES WALTER FARRIS, Lamar County; DR. SAM A. NIXON, Harris County.

Savings and Loan Commissioner of the State of Texas: JAMES L. PLEDGER, Travis County.

Members, Texas State Board of Public Accountancy: STANLEY L. BLEND, Bexar County; ROGER B. CLARK, Jones County; WILLIAM R. COX, Harris County; WILLIAM H. QUIMBY, Dallas County; RONNIE RUDD, Harris County.

Members, State Securities Board: DUNCAN E. BOECKMAN, Dallas County; THOMAS McDADE, Harris County.

Member, Texas Motor Vehicle Commission: JOHN C. HORTON III, Travis County.

Members, Board of Pardons and Paroles: DR. JAMES H. GRANBERRY, Lubbock County; RUBEN M. TORRES, Cameron County.

Members, Texas Guaranteed Student Loan Corporation: DR. WRIGHT L. LASSITER, JR., Dallas County; ALAN V. RASH, El Paso County.

Member, Credit Union Commission: WILFRED NAVARRO, Harris County.

Members, Board of Directors, State Bar of Texas: JACK HAMMOND, El Paso County; MRS. CHRISTINE HERNANDEZ, Bexar County.

Member, Texas Real Estate Commission: JOHN L. MINOR, JR., Harris County.

Members, Texas Surplus Property Agency: ANTHONY THOMAS MERCURIO, El Paso County; HERMAN H. WOMMACK, JR., Bowie County.

Member, Family Practice Residency Advisory Committee: CHARLIE ALLEN BRITSCH, Medina County.

Members, Home Health Services Advisory Council: KENNETH A. LEMKE, Victoria County; MS. NINA PERLITZ WICKMAN, Harris County.

Member, State Board of Nurse Examiners: MRS. SARA J. KEELE, Harris County.

Member, Board of Directors, Bandera County River Authority: JOE K. LEIGHTON, Bandera County.

Member, Board of Directors, Brazos River Authority: CHARLES J. FARRAR, Erath County.

Members, Board of Directors, Central Colorado River Authority: ZENO HEMPHILL, Coleman County; CLOYCE M. HUCKABEE, Coleman County; ROSS L. JONES, Coleman County.

Member, Lower Concho River Water and Soil Conservation Authority: BILLY JACKSON MIKESKA, Concho County.

Member, Board of Directors, Trinity River Authority: RAY H. MYERS, Kaufman County.

Member, Texas State Board of Examiners of Professional Counselors: MRS. NORMA LEE WALSTON, Travis County.

Member, Teachers' Professional Practices Commission: ROBERT WILLIAM CASTER, Gillespie County.

Member, Texas Veterans Commission: BARNIE O. HENDERSON, JR., Milam County.

Branch Pilots for Sabine Bar, Pass and Tributaries: CAPTAIN DAVID A. WOOD, Jefferson County; CAPTAIN ROLAND EDWARD RESPESS, Jefferson County.

Branch Pilots for Galveston Bar and Houston Ship Channel: CAPTAIN CHARLES C. LARY III, Harris County; CAPTAIN CHARLES H. PICTON, Harris County.

Members, Rio Grande Valley Municipal Water Authority: DR. JOSEPH B. COULTER, Cameron County; CONNIE de la GARZA, Cameron County.

Member, Board of Regents, Texas State Technical Institute: JOHN E. DAVIS, McLennan County.

Member, Railroad Commission of Texas: KENT RONALD HANCE, SR., Lubbock County.

Member, Texas Board of Mental Health and Mental Retardation: DR. ANNE RINKER RACE, Dallas County.

Members, Board of Regents, Texas Woman's University: DON C. REYNOLDS, Tarrant County; MRS. ELIZABETH "BETTY" BOWLIN SELLERS, Harris County; MRS. KRIS ANNE VOGELPOHL, Galveston County.

Members, State Commission on Judicial Conduct: GARY E. GRIFFITH, Dallas County; DR. RODERICK MATHEW NUGENT, JR., Potter County.

Member, Structural Pest Control Board: JIMMY L. HORNER, Wise County.

Members, Board of Regents, Pan American University: NOE FERNANDEZ, Hidalgo County; MS. BERTA PEREZ LINTON, Tom Green County; MRS. MARSHA ANN RANKIN, Hidalgo County.

Member, Board for Lease for the Department of Parks and Wildlife: CHARLES DURHAM NASH, JR., Hays County.

Members, Texas Animal Health Commission: JOE B. HATHOOT, Hemphill County; DR. ALLAN C. OLTJEN, Randall County; BRUCE BENJAMIN RIGLER, Hale County; MRS. GAYE LYNN SEAWRIGHT, Dallas County.

NOMINATIONS CONFIRMED

Question recurring on the confirmation of Dr. Gilberto Aguirre, Mrs. Penny Angelo, Dr. George Salim Bayoud, Dr. John Hamilton Boyd, Ms. Barbara June

Coe, Dr. R. A. D. Morton, Jr., Dr. Milam B. Pharo, Dr. Luis M. Rios and Dr. C. Richard Stasney, to be Members of the Texas State Board of Medical Examiners, nominees were confirmed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

SENATE RESOLUTION 727

Senator Truan offered the following resolution:

WHEREAS, It is indeed appropriate for the Senate of the State of Texas to congratulate the Corpus Christi Veterans Band which is truly deserving of legislative recognition; and

WHEREAS, The veterans band has been declared the official city band and performs several times a month; and

WHEREAS, The Veterans Band of Corpus Christi was founded by Ramiro Chavez and Marty Romero on June 3, 1986, to perform for all patriotic ceremonies; and

WHEREAS, Mr. Chavez, a former high school band director, and Mr. Romero, a Vietnam veteran, gathered together 23 musicians who were all ex-servicemen and almost all Mexican Americans; and

WHEREAS, A nonprofit organization, the members volunteer their time for practices two hours every week; and

WHEREAS, Believed to be the only all-veteran band in the country, it presently numbers over 90 members, the oldest being 78 years old and the youngest, 23; and

WHEREAS, The band at present has members from all five major armed forces and veterans of World War II, Korea, Berlin Airlift, Vietnam, and peacetime; one active member of the United States Coast Guard and three members of the United States Army Reserve; and

WHEREAS, Band members include Corpus Christi Army Depot and postal service workers, teachers, doctors, an assistant principal, businessmen and women, and city-county employees; and

WHEREAS, Fulfilling a longtime ambition, the band marched in the 1989 Presidential Inaugural Parade in Washington, D.C., and the following day they performed a memorial concert at The Lincoln Memorial to honor the Vietnam Memorial Wall; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 71st Legislature, hereby commend the Corpus Christi Veterans Band on its invaluable service to the people of their community, their state, and their nation; and, be it further

RESOLVED, That a copy of this Resolution be prepared for them as a token of admiration and appreciation from the Texas Senate.

The resolution was read.

GUESTS PRESENTED

At the President's request, Senator Truan escorted Ramiro Chavez and Marty Romero to the President's Rostrum.

These gentlemen, founders of the Veterans Band of Corpus Christi, received the welcome of the Senate as the President presented to them copies of S.R. 727, adopted by the Senate on May 23, 1989.

SENATE CONCURRENT RESOLUTION 153 ON SECOND READING

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

S.C.R. 153, Directing the Texas Higher Education Coordinating Board to study the feasibility of providing State support for the continued functioning of Bishop College in Dallas.

The resolution was read second time and was adopted viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1779 ON THIRD READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.H.B. 1779, Relating to electronic monitoring and community service as a sentencing alternative for certain defendants convicted of misdemeanors; adding a criminal penalty.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Sims.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 489

On motion of Senator Santiesteban and by unanimous consent, the Conference Committee Report on **S.B. 489** was withdrawn and the Senate conferees were discharged.

Senator Santiesteban requested that a new Conference Committee be appointed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 489** 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 Santiesteban, Chairman; Lyon, Uribe, Carriker and Sims.

COMMITTEE SUBSTITUTE HOUSE BILL 1517 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:

C.S.H.B. 1517, Relating to a durable power of attorney.

The bill was read second time.

Senator Washington offered the following amendment to the bill:

Amend **C.S.H.B. 1517** by adding the following language in SECTION 1, subsection (c) (4) so that the subsection reads as follows:

(4) filed for record in the county in which the principal resides, except for a power of attorney executed for medical care.

and by adding a new subsection (g) to read as follows:

(g) The agent may make the following decisions after the death of the principal relating to the death of the principal:

(1) making a disposition of anatomical parts if the principal had not executed, prior to death, a gift under applicable state laws;

(2) authorizing an autopsy; and

(3) directing the disposition of remains and making all arrangements for a funeral or other observances. The agent may act to enforce any contracts or agreements executed by the principal before the principal's death regarding burial and funeral services. A person named as an agent by a durable power of attorney that specifies the attorney's power to consent to make decisions as outlined in this subsection concerning disposition of the body of the deceased person has the right, duty and liability as provided by Article 912a-20, Vernon's Texas Civil Statutes, despite the existence of a person listed by other provisions of that section. The person named as the agent has the responsibility for carrying out the wishes of the deceased.

The amendment was read and was adopted viva voce vote.

RECORD OF VOTES

Senators Brown, Montford and Glasgow asked to be recorded as voting "Nay" on the adoption of the amendment.

On motion of Senator Krier 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 viva voce vote.

RECORD OF VOTES

Senators Brown, Montford and Glasgow asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE
HOUSE BILL 1517 ON THIRD READING

Senator Krier moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1517** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Brown, Glasgow, Montford, Washington.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Caperton, Carriker, Dickson, Edwards, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Brown, Glasgow, Montford.

HOUSE BILL 472 ON SECOND READING

On motion of Senator Harris 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. 472, Relating to the incorporation, organization, operation, reorganization, and dissolution of certain corporations, real estate investment trusts, professional corporations, and professional associations.

The bill was read second time.

Senator Harris offered the following committee amendment to the bill:

Amend **H.B. 472** by adding new Sections 82, 83, 84, and 85 to read as follows and renumbering existing Section 82 accordingly:

SECTION 82. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.113 to read as follows:

Sec. 171.113. ALTERNATE METHOD OF DETERMINING SURPLUS AND GROSS RECEIPTS FOR CERTAIN CORPORATIONS. (a) This section applies only to:

(1) a corporation organized as a close corporation under Part 12, Texas Business Corporation Act, that has not more than 35 shareholders;

(2) a foreign corporation organized under the close corporation law of another state that has not more than 35 shareholders; and

(3) an S corporation as that term is defined by Section 1361, Internal Revenue Code of 1986.

(b) A corporation to which this section applies may elect to compute its surplus, assets, debts, and gross receipts according to the method the corporation uses to report its federal income tax instead of as provided by Sections 171.109(b) and (g) and Section 171.112(b). This section does not affect the application of the other subsections of Sections 171.109 and 171.112 and other provisions of this chapter to a corporation making the election.

(c) The comptroller may adopt rules as necessary to specify the reporting requirements for corporations to which this section applies.

(d) This section does not apply to a subsidiary corporation unless it applies to the parent corporation of the subsidiary.

SECTION 83. Sections 171.109(e) and (g), Tax Code, are amended to read as follows:

(e) A corporation [~~reporting its surplus according to generally accepted accounting principles~~] may not change the accounting methods used to compute its surplus more often than once every four years without the written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.

(g) All oil and gas exploration and production activities conducted by a corporation that reports its surplus according to generally accepted accounting principles as required or permitted by this chapter must be reported according to the successful efforts or the full cost method of accounting.

SECTION 84. Section 171.112(e), Tax Code, is amended to read as follows:

(e) A corporation [~~reporting its gross receipts based upon generally accepted accounting principles~~] may not change its accounting methods used to calculate gross receipts more often than once every four years without the express written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.

SECTION 85. The change in law made by Sections 82 and 83 of this Act apply to the reporting and calculation of franchise taxes for each initial, second, and

regular annual period beginning on or after the effective date of this Act. The law in effect immediately before the effective date of this Act applies to any period not covered by the change in law made by Sections 82 and 83 of this Act, and that law is continued in effect for that purpose only, except that the comptroller by rule may provide for the earlier application of the change in law made by this Act to any initial or second period in progress on the effective date of this Act.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Harris 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 viva voce vote.

HOUSE BILL 472 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 472** 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 2721 ON SECOND READING

On motion of Senator Sims 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. 2721, Relating to the financing of the construction, purchase, and lease of buildings and equipment for state agencies; making an appropriation.

The bill was read second time.

Senator Henderson offered the following amendment to the bill:

Amend **H.B. 2721** by adding the following sections after Section 5 on Page ____, Line _____ and renumbering the remaining sections accordingly.

SECTION 6. Section 3.03 of the State Purchasing and General Services Act (Article 601b Vernon's Texas Civil Statutes) is amended to read as follows:

Sec. 3.03. The commission shall purchase all motor vehicles used for transporting school children, including buses, bus chassis, and bus bodies, tires, and tubes, for school districts participating in the Foundation School Program as provided by Subchapter F, Chapter 21, Texas Education Code. All purchases must comply with the alternative fuels requirements specified by Subchapter F, Chapter 21, Education Code.

SECTION 7. Section 21.174 of the Education Code is amended by adding subsections (c), (d), (e), (f) and (g) to read as follows:

(c)(1) Except as provided in Subsection (4), no county or local district school board may purchase or lease or authorize the purchase or lease after September 1, 1991 of any motor vehicle used for transporting school children for any county or local school district operating more than 50 such vehicles unless that vehicle is capable of using compressed natural gas or other alternative fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates, or any combination thereof.

(2) A county or local district school board may acquire or be provided equipment or refueling facilities necessary to operate such vehicles using compressed natural gas or other alternative fuels:

A) by purchase or lease as authorized by law;

B) by gift or loan of the equipment or facilities; or

C) by gift or loan of the equipment or facilities or other arrangement pursuant to a service contract for the supply of compressed natural gas or other alternative fuels.

(3) If such equipment or facilities are donated, loaned, or provided through other arrangement with the supplier of compressed natural gas or other alternative fuels, the supplier shall be entitled to recoup its actual cost of donating, loaning, or providing the equipment or facilities through its fuel charges under the supply contract.

(4) State Purchasing and General Services Commission shall waive the requirements of this section for any school district if the county or local school district board certifies to the commission that:

A) the county or district's vehicles will be operating primarily in an area in which neither the county or district nor a supplier has, or can reasonably be expected to establish, a central refueling station for compressed natural gas or other alternative fuels, or

B) the county or district is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels pursuant to Subsection (c)(2) of this section at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment of facilities supplied.

(5) Written notice of the date, hour, place, and subject of any county or local school district board meeting called for the purpose of considering certification under subsection (4) of this section shall be furnished to the Secretary of State, who shall then post the notice on a bulletin board to be located in the main office of the Secretary of State at a place convenient to the public and shall have a notice posted on a bulletin board located at a place convenient to the public in its central administrative office. Notice of the meeting must be posted for at least 60 days preceding the scheduled time of the meeting.

(d)(1) Any county or local district school board which operates a fleet of more than 50 motor vehicles used for transporting school children shall achieve the following percentages of such vehicles capable of using compressed natural gas or other alternative fuels by the times specified:

(A) The percentage shall be equal to or greater than 30 percent of the number of such vehicles operated by September 1, 1994; and

(B) Equal to or greater than 50 percent of the number of such vehicles operated by September 1, 1996.

(2) The Texas Air Control Board must review this alternative fuels program by December 31, 1996 and if the Texas Air Control Board determines that the program has been effective in reducing total annual emissions from vehicles in the area, county and local district school boards operating fleets of more than 50 motor vehicles used for transporting school children shall achieve a percentage of such vehicles capable of using compressed natural gas or other alternative fuels equal to or greater than 90 percent of the number of fleet vehicles operated by September 1, 1998, and thereafter.

(3) County and local district school boards shall submit to the Texas Education Agency annual reports summarizing their progress in achieving these percentage requirements and increasing usage of compressed natural gas or other alternative fuels and the Texas Education Agency shall submit the summaries to the Texas Air Control Board by September 1 of each year.

(4) County and local district school boards, the Texas Education Agency and the State Purchasing and General Services Commission shall support the Texas Air Control Board in collecting reasonable information needed to determine air quality benefits from use of alternative fuels in affected districts.

(e) County and local district school boards, the Texas Education Agency and the State Purchasing and General Services Commission in the development of the compressed natural gas or other alternative fuel use program should work with district fleet operators, vehicle manufacturers and converters, fuel distributors, and others, to delineate the vehicles to be covered, taking into consideration range, speciality uses, fuel availability, vehicle manufacturing and conversion capability, safety, resale values and other relevant factors. Districts may also meet the percentage requirements of this section through the conversion of existing vehicles, in accordance with federal and state requirements and applicable safety laws, to use such alternative fuels.

(f) The State Purchasing and General Services Commission may reduce any percentage specified or waive the requirements of Subsection (d) for any county or district upon receipt of certification supported by evidence acceptable to the commission that:

1) the county or district's vehicles will be operating primarily in an area in which neither the county or district nor a supplier has, or can reasonably be expected to establish, a central refueling station for compressed natural gas or other alternative fuels, or

2) the county or district is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels pursuant to Subsection (c)(2) of this section at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment of facilities supplied.

(g) County and local school boards and the State Purchasing and General Services Commission in purchasing, leasing, maintaining or converting vehicles for compressed natural gas or other alternative fuels use shall comply with all applicable safety standards promulgated by the U.S. Department of Transportation and the Texas Railroad Commission, or their successor agencies.

SECTION 8. Section 21.180 is amended by adding subsection (c) to read as follows:

(c) All purchases of motor vehicles must comply with the alternative fuel use requirements of Section 21.174.

SECTION 9. Section 21.181(a) is amended by adding subsection (3) to read as follows:

(a) As an alternative to maintaining and operating a complete public school transportation system under this subchapter, a county or local school board may contract with a public or commercial transportation company or system for all or any part of its public school transportation if the board is able to obtain an economically advantageous contract, provided that the commercial transportation company or system:

(1) requires its school bus drivers to be certified by the Central Education Agency;

(2) uses only those school buses in transporting public school students that satisfy safety requirements imposed by law on school buses operated by public school transportation systems; and

(3) agrees to meet the alternative fuels requirements of Section 21.174 for those buses dedicated to the contract; provided, however, the company or system may claim all exceptions available to county and local district boards under Section 21.174.

SECTION 10. Section 21.182 is amended to read as follows:

(a) As an alternative to purchasing school buses, a county or district school board may contract with any person for use, acquisition, or lease with option or options to purchase any school bus or buses if, at the discretion of the school board, such a contract is determined to be economically advantageous to the school district and complies with the alternative fuels requirements of Section 21.174. Contracts may be in the form of a lease or a lease with option or options to purchase. Contracts in the form of an installment purchase or any form other than a lease or a lease with option or options to purchase shall be subject to the provisions of Section 21.165, as well as rules and regulations of the State Purchasing and General Services Commission.

SECTION 11. Section 14.03 of the State Purchasing and General Services Act (Article 601b Vernon's Texas Civil Statutes) is amended by adding Subsection (c) to read as follows:

(c) The office of vehicle fleet maintenance shall have the authority to take all steps necessary to encourage and facilitate the conversion of and use of motor vehicles which are capable of using alternative fuels, especially compressed natural gas. The office of vehicle maintenance may establish centralized refueling stations throughout the state, may operate regional conversion and repair facilities and may provide all services and support necessary to expedite the utilization of compressed natural gas or other alternative fuels by state agencies and school districts as required by Sections 3.03 and 3.29.

SECTION 12. Section 3.29 of the State Purchasing and General Services Act (Article 601b Vernon's Texas Civil Statutes) is amended by adding Subsections (b), (c), (d), (e) and (f) to read as follows:

(b)(1) A state agency operating a fleet of more than 15 vehicles (except the Department of Public Safety) may not purchase or lease after September 1, 1991 any motor vehicle unless that vehicle is capable of using compressed natural gas or other alternative fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates, or any combination thereof.

(2) A state agency may acquire or be provided equipment or refueling facilities necessary to operate such vehicles using compressed natural gas or other alternative fuels:

A) by purchase or lease as authorized by law;

B) by gift or loan of the equipment or facilities; or

C) by gift or loan of the equipment or facilities or other arrangement pursuant to a service contract for the supply of compressed natural gas or other alternative fuels.

(3) If such equipment or facilities are donated, loaned, or provided through other arrangement with the supplier of compressed natural gas or other alternative fuels, the supplier shall be entitled to recoup its actual cost of donating, loaning, or providing the equipment or facilities through its fuel charges under the supply contract.

(4) The commission may waive the requirements of this section for any state agency upon receipt of certification supported by evidence acceptable to the commission that:

A) the agency's vehicles will be operating primarily in an area in which neither the agency nor a supplier has, or can reasonably be expected to establish, a central refueling station for compressed natural gas or other alternative fuels, or

B) the agency is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment of facilities supplied.

(c)(1) Any state agency which operates a fleet of more than 15 motor vehicles (except the Department of Public Safety) shall achieve the following percentages of vehicles capable of using compressed natural gas or other alternative fuels by the times specified:

(i) The percentage shall be equal to or greater than 30 percent of the number of fleet vehicles operated by September 1, 1994; and

(ii) Equal to or greater than 50 percent of the number of fleet vehicles operated by September 1, 1996; and

(2) The Texas Air Control Board must review this alternative fuels program by December 31, 1996 and if the Texas Air Control Board determines that the program has been effective in reducing total annual emissions from motor vehicles in the area, state agencies operating fleets of more than 15 motor vehicles shall achieve a percentage of fleet vehicles capable of using compressed natural gas or other alternative fuels equal to or greater than 90 percent of the number of fleet vehicles operated by September 1, 1998, and thereafter.

(3) The commission shall support the Texas Air Control Board in collecting reasonable information needed to determine the air quality benefits from use of alternate fuels at affected agencies.

(4) Each state agency in its annual financial report to the legislature must show its progress in achieving these percentage requirements by itemizing purchases, leases, and conversions of motor vehicles and usage of compressed natural gas or other alternative fuels.

(d) The commission in the development of the compressed natural gas or other alternative fuel use program should work with state agency fleet operators, vehicle manufacturers and converters, fuel distributors, and others, to delineate the vehicles to be covered, taking into consideration range, speciality uses, fuel availability, vehicle manufacturing and conversion capability, safety, resale values and other relevant factors. State agencies may meet the percentage requirements of this section through purchase of new vehicles or the conversion of existing vehicles, in accordance with federal and state requirements and applicable safety laws, to use such alternative fuels.

(e) The commission may reduce any percentage specified or waive the requirements of Subsection (c) for any state agency upon receipt of certification supported by evidence acceptable to the commission that:

1) the agency's vehicles will be operating primarily in an area in which neither the agency nor a supplier has, or can reasonably be expected to establish, a central refueling station for compressed natural gas or other alternative fuels, or

2) the agency is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment of facilities supplied.

(f) The commission in purchasing, leasing, maintaining or converting vehicles for compressed natural gas or other alternative fuels use shall comply with all applicable safety standards promulgated by the U.S. Department of Transportation and the Texas Railroad Commission, or their successor agencies.

The amendment was read and was adopted viva voce vote.

On motion of Senator Sims 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 viva voce vote.

HOUSE BILL 2721 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2721** 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 viva voce vote.

HOUSE BILL 2586 ON SECOND READING

On motion of Senator Ratliff 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. 2586, Relating to conversion of certain nonprofit cemetery associations from permanent care to perpetual care.

The bill was read second time.

Senator Haley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2586**, Section 1, Section 28 (On Page 1, Line 50) by adding the words: "if the cemetery is shown to have been in existence for no less than 75 years and the association has operated the cemetery for the previous 10 years"

The amendment was read and was adopted viva voce vote.

Senator Johnson offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 2586** by adding new SECTION 2 to read as follows and renumbering all other sections accordingly:

SECTION 2. Chapter 340, Acts of the 49th Legislature, Regular Session, 1945, (Article 912-A-1 et seq., Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2A. ADMINISTRATION BY BANKING COMMISSIONER. The Banking Commissioner shall administer this Act as it relates to perpetual care cemeteries. The Banking Commissioner may adopt rules relating to the maintenance and inspection of records by perpetual care cemeteries, the filing of statements and reports, and the investment of the perpetual care trust funds.

The amendment was read.

POINT OF ORDER

Senator Ratliff raised a point of order that the amendment was not germane to the bill.

The President sustained the point of order.

On motion of Senator Ratliff 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 viva voce vote.

HOUSE BILL 2586 ON THIRD READING

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2586** 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 1344 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. 1344, Relating to the regulation of funeral directing and embalming.

The bill was read second time.

Senator Caperton offered the following committee amendment to the bill:

Amend **H.B. 1344** as follows:

On page 1, lines 16 through 18, strike the sentence reading "This section does not apply to a person who engages exclusively in the business of transporting human remains from the place of first call directly to a crematorium."

On page 14, lines 4 through 7, strike Article 4582b(E)(6) reading: "6. The commission may require continuing education as a condition for renewal of a license issued under this Act. The commission may adopt rules relating to the continuing education requirements."

The committee amendment was read and was adopted viva voce vote.

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 viva voce vote.

HOUSE BILL 1344 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1344** 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 viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1989

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. 417, Relating to the continuation, operation and administration of the Central Education Agency and to the participation of the Central Education Agency and certain other State agencies in a competitive cost review program; providing a penalty. (As substituted and amended)

H.C.R. 221, Recognizing September 24, 1989, as United States Marshals Bicentennial Day in Texas.

The House laid **S.B. 1100** on the Table Subject to Call.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

MOTION TO PLACE COMMITTEE SUBSTITUTE HOUSE BILL 1023 ON SECOND READING

Senator Leedom moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1023, Relating to taxes on the occupancy of a hotel, motel, or similar establishment.

On motion of Senator Leedom and by unanimous consent the motion to suspend the regular order of business was withdrawn.

HOUSE BILL 993 ON SECOND READING

On motion of Senator Brown 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. 993, Relating to the sale of state-owned real property in Walker County; making an appropriation.

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

HOUSE BILL 993 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 993** 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 3080 ON SECOND READING

On motion of Senator Carriker 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. 3080, Relating to permits to control certain depredating animals and manage certain wildlife from aircraft; increased penalties for the prohibited use of aircraft, and seizure and sale of aircraft, vehicles, and guns for certain offenses.

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

HOUSE BILL 3080 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 3080** 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 viva voce vote.

HOUSE BILL 2884 ON SECOND READING

On motion of Senator Barrientos 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. 2884, Relating to the authority of certain villages to adopt an extraterritorial jurisdiction and the duty of those villages to adopt a pollution control and abatement program.

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

HOUSE BILL 2884 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2884** 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 viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 1712 ON SECOND READING

On motion of Senator Brooks 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 engrossment:

C.S.S.B. 1712, Relating to the creation, administration, powers, duties, operations, functions, and financing of the Texas Health Insurance Risk Pool.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 1712** to read as follows:

(1) On page 2, line 41, by striking "and" following "administrator".

(2) On page 2, line 42, by inserting new subdivisions (7) and (8) to read as follows, and by renumbering subsequent subdivisions accordingly:

(7) one advanced nurse practitioner;
(8) one consumer who is insured by the pool; and

(3) On page 4, line 68, by inserting "current" between "reasonable" and "actuarial".

The amendment was read and was adopted viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.S.B. 1712** as follows:

(1) Delete SECTIONS 3 and 4.

(2) Add new SECTIONS 3 through 6 to read as follows:

SECTION 3. Subchapter A, Chapter 21, Insurance Code, is amended by adding Article 21.07-6 to read as follows:

Art. 21.07-6. THIRD PARTY ADMINISTRATORS

Sec. 1. DEFINITIONS. In this article:

(1) "Administrator" means a person who collects premiums or contributions from or who adjusts or settles claims in connection with life, health, and accident benefits or annuities for residents of this state but does not include:

(A) an employer on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer;

(B) a union on behalf of its members;

(C) an insurance company or a group hospital service corporation subject to Chapter 20 of this code with respect to a policy lawfully issued and delivered by it in and under the law of a state in which the insurer was authorized to do an insurance business;

(D) a health maintenance organization that is authorized to operate in this state under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), with respect to any activity that is specifically regulated under that Act;

(E) an agent licensed under Article 21.07 or Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), who is acting under appointment on behalf of an insurance company authorized to do business in this state and within the customary scope and duties of the insurance agent's authority as an agent and who receives commissions as an agent;

(F) a creditor who is acting on behalf of its debtors with respect to insurance that covers a debt between the creditor and its debtor so long as only the functions of a group policyholder or creditor are performed;

(G) a trust established in conformity with 29 U.S.C. Section 186 and the trustees and employees who are acting under the trust;

(H) a trust that is exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 and the trustees and employees acting under the trust, or a custodian and the custodian's agents and employees who are acting pursuant to a custodian account that complies with Section 401(f), Internal Revenue Code of 1986;

(I) a bank, credit union, savings and loan association, or other financial institution that is subject to supervision or examination under federal or state law by federal or state regulatory authorities so long as that institution is performing only those functions for which it holds a license under federal or state law;

(J) a company that advances and collects a premium or charge from its credit card holders on their authorization, if the company does not adjust or settle claims and acts only in the company's debtor-creditor relationship with its credit card holders;

(K) a person who adjusts or settles claims in the normal course of his practice or employment as a licensed attorney and who does not collect any premium or charge in connection with life, health, or accident benefits or annuities;

(L) an adjuster licensed by the commissioner, if the adjuster is engaged in the performance of his powers and duties as an adjuster within the scope of his license;

(M) a person who provides technical, advisory, utilization review, precertification, or consulting services to an insurer, plan, or plan sponsor and who does not make any management or discretionary decisions on behalf of an insurer, plan, or plan sponsor;

(N) an attorney in fact for a Lloyd's operating under Chapter 18 of this code or a reciprocal or interinsurance exchange operating under Chapter 19 of this code if acting in the capacity of attorney in fact under the applicable chapter;

(O) a municipality that is self-insured or a joint fund, risk management pool, or a self-insurance pool composed of political subdivisions of this state that participate in a fund or pool through interlocal agreements and any nonprofit administrative agency or governing body or any nonprofit entity that acts solely on behalf of a fund, pool, agency, or body or any other funds, pools, agencies, or bodies that are established pursuant to or for the purpose of implementing an interlocal governmental agreement;

(P) a self-insured political subdivision; or

(Q) a plan under which insurance benefits are provided exclusively by a carrier licensed to do business in this state and the administrator of the plan is either:

(i) a full-time employee of the plan's organizing or sponsoring association, trust, or other entity; or

(ii) the trustee or trustees of the organizing or sponsoring trust.

(2) "Administrative or service fees" means all consideration, fees, assessments, payments, reimbursements, dues, and other compensation, excluding sales commissions, received for services as an administrator during a calendar year.

(3) "Board" means the State Board of Insurance.

(4) "Commissioner" means the commissioner of insurance.

(5) "Insurer" or "insurance company" means a person who transacts a life, health, or accident insurance business under the law of this state.

(6) "Plan" means a plan, fund, or program established, adopted, or maintained by a plan sponsor or insurer to the extent that the plan, fund, or program is established, adopted, or is maintained to provide indemnification or expense reimbursement for any type of life, health, or accident benefit.

(7) "Person" means an individual, partnership, corporation, organization, government or governmental subdivision or agency, business trust, estate trust, association, or other legal entity.

(8) "Plan sponsor" means a person, other than an insurer, who establishes, adopts, or maintains a plan that covers residents of this state, including a plan established, adopted, or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, an association, a committee, a joint board of trustees, or any similar group of representatives who establish, adopt, or maintain a plan.

Sec. 2. RULES. The board may establish and promulgate rules, regulations, minimum standards, or limitations that are fair and reasonable as may be appropriate for the augmentation and implementation of this article.

Sec. 3. CERTIFICATE OF AUTHORITY REQUIRED. (a) An individual, corporation, organization, trust, partnership, or other legal entity may not act as or hold itself out as an administrator unless it is covered by and is doing business under a certificate of authority issued under this article.

(b) Each administrator is required to have only one certificate of authority issued under this article.

(c) The certificate of authority issued under this article shall continue in effect until suspended, canceled, or revoked in accordance with Section 7, Article 1.10, of this code.

Sec. 4. APPLICATION PROCEDURE. An application for a certificate of authority to operate as an administrator must be in a form prescribed by the commissioner and must include the following:

(1) copies of all basic organizational documents of the administrator, including the articles of incorporation, bylaws, articles of association, trade name certificate, and other similar documents and copies of all amendments to those documents;

(2) a description of the administrator and its services, facilities, and personnel;

(3) a power of attorney executed by the administrator, if not domiciled in this state, appointing the commissioner, the commissioner's successors in office, or the commissioner's duly appointed designee as the attorney of the administrator in this state, on whom process may be served in any legal action or proceeding based on a cause of action arising in this state against the administrator;

(4) an audited financial statement of the applicant covering the preceding three calendar years or for any lesser period that the applicant and any predecessors of the applicant have been in existence, but if an audited financial statement is not available, the applicant shall attach an unaudited financial statement as of a date not earlier than the 120th day before the date the application is filed, accompanied by an affidavit or certification of the applicant that:

(A) the unaudited financial statement is true and correct, as of its date; and

(B) no material change in financial condition has occurred from the date of the financial statement to the execution date of the affidavit or certification; and

(5) any other information the commissioner may reasonably require.

Sec. 5. APPLICATION APPROVAL AND DENIAL BY COMMISSIONER. (a) The commissioner shall approve an application for a certificate of authority to conduct a business in this state as an administrator if the commissioner is satisfied that the application meets the following criteria:

(1) the granting of the application would not violate a federal or state law;

(2) the competence, trustworthiness, experience, financial condition, or integrity of an administrator applicant or those persons who would operate or control an administrator applicant are such that the granting of a certificate of authority would not be adverse to the public interest;

(3) the applicant has not attempted through fraud or bad faith to obtain the certificate of authority;

(4) the applicant has complied with this article and rules adopted by the board under this article; and

(5) the name under which the applicant will conduct business in this state is not so similar to that of another administrator or insurer that it is likely to mislead the public.

(b) If the commissioner is unable to approve the application for a certificate of authority, he shall provide the applicant with written notice detailing all deficiencies in the application and offer the applicant the opportunity for a hearing to address the reasons and circumstances for possible denial. The opportunity for hearing must be provided before the commissioner finally denies an application. The applicant has the burden, at the hearing, to produce sufficient competent evidence on which the commissioner can make the findings provided by Subsection (a) of this section.

Sec. 6. FIDELITY BOND. (a) Each person whose application for a certificate of authority is approved by the commissioner under this article must obtain and maintain a fidelity bond and must submit to the commissioner proof that a fidelity bond that complies with this section has been obtained before the commissioner issues the certificate of authority.

(b) The amount of the bond may not be less than $10,000. The amount of the bond may not be more than 10 percent of the amount of total funds handled during the previous year or, if no funds were handled during the preceding year, 10 percent of the amount of funds reasonably estimated to be handled during the current calendar year by the administrator; however, in no case may the amount of the bond be more than $500,000.

(c) On written request of an administrator for reduction of the amount of the fidelity bond for a particular year, the commissioner may authorize the reduction of the amount of the bond if the administrator presents evidence that the amount of funds to be handled during that particular year will be less than the amount handled in the preceding year.

(d) For purposes of this section, the amount of total funds handled by a person in his capacity as administrator shall include either the total amount of premiums and contributions received by the administrator or the total amount of benefits paid by the administrator, whichever is greater, during the preceding calendar year in all jurisdictions in which he acts as an administrator.

(e) The fidelity bond shall protect against acts of fraud or dishonesty by the administrator in carrying out his powers and duties as administrator.

(f) An administrator is required to obtain and maintain only one fidelity bond for all insurers and plans for which the administrator acts as administrator in this state unless the administrator and the insurer or plan agree otherwise in writing.

Sec. 7. CRIMINAL PENALTY. (a) An administrator commits an offense if the administrator knowingly violates this article or a rule of the board adopted under this article.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $500 and not to exceed $5,000.

Sec. 8. EXAMINATION OF ADMINISTRATOR. (a) The commissioner may examine each administrator that has a certificate of authority with regard to its business conducted in this state.

(b) The commissioner may designate certain employees to perform the examinations.

(c) An examination shall include:

(1) review of all existing written agreements between the administrator and various insurers and plans; and

(2) review of the financial statements of the administrator.

(d) The commissioner also may have examiners make an on-site evaluation of the administrator's personnel and facilities and any books and records of the administrator relating to the transaction of business and the financial condition of the administrator. Before an examiner enters the property of an administrator, the commissioner shall give notice to the administrator of the intent to have an on-site evaluation by an examiner. The notice must be in the form required by board rule and shall include the date and estimated time that the examiner will enter the property of the administrator. An examiner shall comply with operational rules of the administrator while on the administrator's property.

(e) The commissioner may summon and examine under oath the administrator and the administrator's personnel, if necessary to make a complete evaluation of the activities and operations of an administrator.

(f) The cost of examinations under this section shall be paid from the fee collected under Section 20 of this Act and with revenues from the maintenance tax levied under Section 21 of this Act pursuant to legislative appropriation.

Sec. 9. ANNUAL REPORT. (a) Each administrator operating under a certificate of authority issued under this article shall file with the commissioner an annual report.

(b) The annual report shall cover the preceding calendar year and must be filed with the commissioner not later than March 1 of the year following the year covered by the report on a form prescribed by the board.

Sec. 10. ACTIVITIES OF CERTAIN PARTNERSHIPS AND CORPORATIONS. An administrator licensed in any state that accepts agent's commissions for coverage for risks located in this state and disburses those commissions to licensed agents in this state is not considered an insurance agent for purposes of this state's insurance agent licensing laws. The exemption provided by this section does not authorize an administrator to perform any other acts for which a license as an insurance agent is required by law.

Sec. 11. WRITTEN AGREEMENT. (a) An administrator may provide services only pursuant to a written agreement with an insurer or plan sponsor.

(b) The administrator and the insurer, plan, or plan sponsor shall retain a copy of the written agreement as part of their official records for the term of the agreement, and on written request of the commissioner, the administrator shall make the written agreement available for inspection by the commissioner or his designated representative.

(c) Information obtained by the commissioner or the commissioner's designated representative from the written agreement is confidential and may not be made available to the public. The information may be examined by employees of the board and the commissioner in carrying out functions under this article.

(d) The written agreement shall include the requirements provided by Sections 12 through 19 of this article except for requirements that do not apply to functions performed by the administrator.

(e) If a policy or plan document is issued to a trustee, a copy of the trust agreement and any amendment to that trust agreement becomes part of the written agreement required by this section.

(f) The written agreement required by this section may not contain a provision that unreasonably restricts the right of a plan participant to the availability of individual life, health, or accident policies or annuities through an agent selected by the plan participant.

Sec. 12. PAYMENT TO AN ADMINISTRATOR. (a) If an insurer, plan, or plan sponsor uses the services of an administrator under a written agreement as required by Section 11 of this article, the payment of premiums or contributions to the administrator by or on behalf of an insured or plan participant is considered to have been received by the insurer, plan, or plan sponsor, and payment of return premium, contributions, or claims by the insurer, plan, or plan sponsor to the administrator are not considered payment to the insured, plan participant, or claimant until the payments are received by the insured, plan participant, or claimant.

(b) This section does not limit a right of an insurer, plan, or plan sponsor against the administrator resulting from the administrator's failure to make payments to insureds, plan participants, or claimants.

Sec. 13. NOTICE OF ADMINISTRATOR'S CAPACITY; STATEMENT OF PREMIUM OR CONTRIBUTION. (a) If the services of an administrator are used, the administrator shall give written notice to insureds or plan participants of the identity of the administrator and the relationship among the administrator and the insurer, plan, or plan sponsor and the insured or plan participant. The notice must be approved by the insurer, plan, or plan sponsor before distribution.

(b) If an administrator collects funds, the administrator must identify and state separately in writing the amount of any premium or contribution specified by the

insurer, plan, or plan sponsor for the coverage and must give this written information to any person who pays to the administrator a premium or contribution.

Sec. 14. MAINTENANCE OF INFORMATION. (a) Each administrator shall maintain at its principal administrative office adequate books and records of all transactions in which the administrator engages with insurers, plans, plan sponsors, insureds, and plan participants.

(b) The books and records must be maintained for the term of the written agreement to which they relate and for the five-year period following the end of the written agreement's term.

(c) The administrator shall maintain the books and records in accordance with prudent standards of insurance recordkeeping.

(d) The commissioner and his designated representative must be given access to those books and records for the purpose of examination, audit, and inspection.

(e) Trade secrets, including the identity and addresses of policyholders and certificate holders, are confidential, except the commissioner may use that information in proceedings instituted against the administrator.

(f) An insurer, plan, or plan sponsor is entitled to continuing access to these books and records sufficient to permit the insurer, plan, or plan sponsor to fulfill contractual obligations to insureds and plan participants. The right provided by this subsection is subject to any restrictions included in the written agreement between the administrator and the insurer, plan, or plan sponsor relating to proprietary rights of the parties to the books and records.

(g) An administrator may fulfill the legal requirements of this section on termination of the written agreement by delivering to the successor administrator or, if there is no successor administrator, to the insurer, plan, or plan sponsor the books and records and by giving written notice to the commissioner of the location of the books and records.

Sec. 14A. CONFIDENTIALITY OF PERSONAL INFORMATION. (a) Information that identifies an individual covered by a plan is confidential.

(b) During the time information described in Subsection (a) of this section is in an administrator's custody or control, the administrator shall take all reasonable precautions to prevent disclosure or use of the information for a purpose unrelated to administration of the plan.

(c) The administrator shall disclose information described in Subsection (a) of this section only:

(1) in response to a court order;

(2) for an examination conducted by the commissioner under this article;

(3) for an audit or investigation conducted under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001, et seq.);

(4) to or at the request of the insurer or plan sponsor; or

(5) with the written consent of the identified individual or his or her legal representative.

Sec. 15. APPROVAL OF ADVERTISING. An administrator may use only advertising relating to business underwritten by an insurer, plan, or plan sponsor that is approved by the insurer, plan, or plan sponsor in advance of its use.

Sec. 16. UNDERWRITING PROVISION. If the administrator has the authority to accept or reject risks, the written agreement required by this article shall address underwriting or other standards of the insurer or plan.

Sec. 17. PREMIUM AND CONTRIBUTION COLLECTION. (a) Premiums and contributions collected by an administrator on behalf of or for an insurer, plan, or plan sponsor and return premiums received from an insurer, plan, or plan sponsor are held by the administrator in a fiduciary capacity.

(b) On receipt of premiums, contributions, or return premiums, the administrator shall:

(1) timely remit the funds to the person entitled to them according to terms of the written agreement; or

(2) promptly deposit the funds in a fiduciary bank account established and maintained by the administrator.

(c) If premiums or contributions deposited in a fiduciary bank account were collected on behalf of or for more than one insurer, plan, or plan sponsor, the administrator shall keep records that clearly record separately the deposits and withdrawals from the account on behalf of or for each insurer, plan, or plan sponsor. The administrator shall obtain and maintain copies of these records, and on request of an insurer, plan, or plan sponsor, the administrator shall furnish to the insurer, plan, or plan sponsor copies of the records relating to deposits and withdrawals on behalf of or for that insurer or plan. The requirements of this subsection are in addition to requirements of any other federal or state law and do not authorize the commingling of funds if otherwise prohibited by law.

(d) An administrator may not pay any claims from the fiduciary bank account.

(e) Withdrawals from the fiduciary bank account must be made as provided in the written agreement between the administrator and the insurer, plan, or plan sponsor for any of the following purposes:

(1) remittance to an insurer, plan, or plan sponsor entitled to payment;

(2) deposit in an account controlled and maintained in the name of the insurer, plan, or plan sponsor;

(3) transfer to and deposit in a claims payment account for payment of claims as provided by Section 18 of this article;

(4) payment to a group policyholder for remittance to the insurer entitled to payment;

(5) payment to the administrator of its commission, fees, or charges;

(6) remittance of return premiums to any person entitled to payment; or

(7) payment of premiums for stop-loss or excess of loss insurance.

Sec. 18. ADJUDICATION OF CLAIMS. The administrator shall adjudicate the claims not later than the 60th day after the date on which valid proof of loss is received by the administrator. The administrator shall pay each claim on a draft authorized by the insurer, plan, or plan sponsor in the written agreement.

Sec. 19. COMPENSATION AND CLAIM SETTLEMENT. The compensation to the administrator may be based on a percentage of the premiums or charges collected, the amount of claims paid or processed, or on such other basis as specified in the written agreement.

Sec. 20. FEES. (a) The commissioner shall collect and the persons affected shall pay to the commissioner fees in an amount to be determined by the board not to exceed the following:

(1) filing fee for processing an original application for certificate of authority for an administrator, $1,000;

(2) fee for an examination under Section 8 of this article, $500; and

(3) filing fee for an annual report, $200.

(b) Fees collected under this section shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund to be used by the board as provided by legislative appropriation.

Sec. 21. MAINTENANCE TAX. (a) The board annually shall determine the rate of assessment on an annual or semiannual basis and collect a maintenance tax in an amount not to exceed one percent of the correctly reported administrative or service fees of all administrators that are covered by certificates of authority.

(b) The tax required by this section is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this section.

(c) The board, after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating administrators.

(d) The taxes collected under this section shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the board.

Sec. 22. SANCTIONS UNDER CODE. A person or administrator who violates this article is subject to the sanctions provided by Section 7, Article 1.10, of this code.

Sec. 23. OTHER APPLICABLE PROVISIONS OF THE CODE. An administrator is subject to Articles 1.36, 21.21, and 21.21-2, of this code.

Sec. 24. APPLICATION TO CERTAIN INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS. An insurer or health maintenance organization that is not exempt under Section 1(1)(C) or (D) of this article is subject to all provisions of this article, except Sections 3, 4, 5, 10, and 20(a)(1).

SECTION 4. (a) This Act takes effect September 1, 1989.

(b) Except as provided by Subsections (c) and (d) of this section, an administrator that is operating before the effective date of this Act and that has not previously submitted an application for a certificate of authority must apply for a certificate of authority under Article 21.07-6, Insurance Code, as added by this Act, not later than the 60th day after the effective date of this Act.

(c) An administrator that submitted all or part of the documents and fees required for an application for a certificate of authority under Article 21.07-5, Insurance Code, before the effective date of this Act is not required to resubmit an application for a certificate of authority under Article 21.07-6, Insurance Code, as added by this Act, but may submit any additional documents necessary to make the pending application administratively complete and is not required to submit any further fees in an amount that exceeds the amount required to process an application under Section 20(a), Article 21.07-6, Insurance Code, as added by this Act.

(d) An administrator that was issued a certificate of authority under Article 21.07-5, Insurance Code, that was valid and in effect on the effective date of this Act is not required to apply for a new certificate of authority under this Act. The certificate of authority is in effect as if it were issued under Article 21.07-6, Insurance Code, as added by this Act, and the administrator is subject to the provisions of that article.

(e) An administrator that applies for a license under Subsection (b) of this section or that has a pending application under Subsection (c) of this section may continue to operate, if the administrator otherwise complies with applicable law, until such time as the commissioner of insurance acts on the application for a certificate of authority. If denied a certificate of authority, the administrator may not act as an administrator but may appeal the commissioner's decision to a court of competent jurisdiction after a hearing before the commissioner as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 5. Article 21.07-5, Insurance Code, is repealed.

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 and was adopted viva voce vote.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.S.B. 1712** page 1, line 18 by adding (d) The creation of the Texas Health Insurance Risk Pool is not intended to diminish the availability of traditional health care insurance to consumers currently eligible for these policies.

The amendment was read and was adopted viva voce vote.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.S.B. 1712** page 11, line 18 by striking ; and adding , unless the person demonstrates a good faith reason for the termination; after the word pool.

The amendment was read and was adopted viva voce vote.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 5

Amend **C.S.S.B. 1712** by striking subsection (d) page 15, lines 2-7 as follows:

~~(d) The board shall determine the ratio of costs to benefit under the plan with relation to each benefit mandated under Subsection (a) of this section, and may exclude or modify any benefit that it determines are not providing sufficient benefit for the cost incurred. The board shall make a cost to benefit analysis at least one time each calendar year.~~

The amendment was read and was adopted viva voce vote.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 6

Amend **C.S.S.B. 1712**, SECTION 10, Subsection (e), page 15, line 20-21 by adding nor more than $2,000 per person or $4,000 per family after per family and before covered by the pool

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks 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 engrossment viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

COMMITTEE SUBSTITUTE
SENATE BILL 1712 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1712** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom,

Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Bivins, Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTES

Senators Bivins and Glasgow asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 525 WITH HOUSE AMENDMENTS

Senator Tejeda called **S.B. 525** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1 - H. Cuellar

Amend **S.B. 525** as follows:

On page one, line 23, under Sec. 243.002. DEFINITION, insert between "parlor" and "or" the following:
adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel

Committee Amendment No. 2 - H. Cuellar

Amend **S.B. 525** by striking Sec. 243.004. EXEMPT BUSINESS and substituting in lieu thereof the following:

Sec. 243.004. EXEMPT BUSINESS. The following are exempt from regulation under this chapter:

(1) a bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store under Section 243.002;

~~(2) [a movie theater,~~

[~~(3)~~] a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held; or

(3) [~~(4)~~] a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

Further amend **S.B. 525** by striking Sec. 243.005 and substituting in lieu thereof the following:

Sec. 243.005. BUSINESS LICENSED UNDER ALCOHOLIC BEVERAGE CODE: BUSINESS HAVING COIN OPERATED MACHINES. (a) A business is not exempt from regulation under this chapter because it holds a the sale or service of alcoholic beverages or because it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Vernon's Texas Civil Statutes.

(b) A regulation adopted under this chapter may not discriminate against a business on the basis of whether the business holds a license or permit under the Alcoholic Beverage Code or on the basis of whether it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Vernon's Texas Civil Statutes.

(C) This chapter does not affect the existing preemption by the state of the regulation of alcoholic beverages and the alcoholic beverage industry as provided by Section 1.06, Alcoholic Beverage Code.

The amendments were read.

On motion of Senator Tejeda and by unanimous consent, the Senate concurred in the House amendments to **S.B. 525** viva voce vote.

GUESTS PRESENTED

Senator Parker escorted Monica Henicke, Queen of the Texas Rice Festival, accompanied by the Honorable Oscar Nelson, County Judge from Chambers County, to the President's Rostrum, where the President was presented with a bag of rice from Chambers County.

The Senate welcomed these distinguished guests.

HOUSE BILL 3124 ON SECOND READING

On motion of Senator Armbrister 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. 3124, Relating to the creation, administration, powers, duties, operation, and financing of the Moulton Community Medical Clinic District; authorizing a tax; granting the authority to issue bonds; and granting the power of eminent domain.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Amend **H.B. 3124** by striking all below the enacting clause and substituting the following:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. DEFINITIONS.

In this Act:

(1) "District" means the Moulton Community Medical Clinic District.

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

(3) "Director" means a member of the board.

SECTION 1.02. DISTRICT AUTHORIZATION. The Moulton Community Medical Clinic District may be created and established and, if created, must be maintained, operated, and financed in the manner provided by Article IX, Section 9, of the Texas Constitution and by this Act.

SECTION 1.03. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Moulton Independent School District of Lavaca County, Texas.

ARTICLE 2. TEMPORARY DIRECTORS

SECTION 2.01. TEMPORARY DIRECTORS. On the effective date of this Act, the persons serving as the directors of the Moulton Community Medical Clinic Board, Inc., become temporary directors of the district.

SECTION 2.02. VACANCY IN OFFICE. The directors remaining after a vacancy in the office of temporary director shall fill the vacancy by appointment by majority vote.

ARTICLE 3. CREATION OF DISTRICT

SECTION 3.01. CREATION ELECTION. The district may be created and a tax may be authorized only if the creation and the tax are approved by a majority of the qualified voters of the territory of the proposed district voting at an election called and held for that purpose.

SECTION 3.02. ORDERING ELECTION. (a) A majority of the temporary directors of the district may order a creation election to be held.

(b) On presentation of a petition for a creation election signed by at least five percent of the registered voters of the territory of the proposed district, according to the most recent official lists of registered voters, the temporary directors shall order an election to be held. The election shall be called not later than the 60th day after the date the petition is presented to the district.

SECTION 3.03. ELECTION ORDER. The order calling the election must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open; and

(4) the location of the polling places.

SECTION 3.04. NOTICE. The temporary directors shall give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the proposed district once a week for two consecutive weeks. The first publication must appear at least 35 days before the date set for the election.

SECTION 3.05. ELECTION DATE. (a) The election shall be held not less than 45 days nor more than 60 days after the date on which the election is ordered.

(b) Section 41.001(a), Election Code, does not apply to an election ordered under this article.

SECTION 3.06. BALLOT PROPOSITION. The ballot for an election at which the issuance of bonds is not proposed shall be printed to permit voting for or against the proposition: "The creation of the Moulton Community Medical Clinic District and the levy of annual taxes for hospital purposes at a rate not to exceed 75 cents on each $100 valuation of all taxable property in the district."

SECTION 3.07. CANVASSING RETURNS. (a) The temporary directors of the district shall meet and canvass the returns of the election.

(b) If the temporary directors find that the election results are favorable to the proposition to create the district, they shall issue an order declaring the district created.

(c) If the temporary directors find that the election results are not favorable to the proposition to create the district, another creation election may not be held before the first anniversary of the election at which voters disapproved the proposition.

ARTICLE 4. DISTRICT ADMINISTRATION

SECTION 4.01. BOARD OF DIRECTORS. (a) The district is governed by a board of nine directors.

(b) From the time the creation of the district is approved until the elected directors take office, the temporary directors serve as directors of the district.

SECTION 4.02. INITIAL DIRECTORS' ELECTION. Directors shall be elected at an election to be held on the first Saturday in May following the creation of the district.

SECTION 4.03. METHOD OF ELECTION; STAGGERED TERMS; TERM OF OFFICE; ELECTION DATE. (a) Members of the board of directors shall be elected from the district at large.

(b) The nine candidates receiving the highest number of votes at the initial election of directors are directors for the district. The five directors receiving the highest number of votes at the initial election serve for a term of two years. The remaining directors serve for a term of one year.

(c) After the initial election of directors, an election shall be held on the first Saturday in May each year, and the appropriate number of successor directors shall be elected for two-year terms.

SECTION 4.04. NOTICE OF ELECTION. At least 35 days before the date of an election of directors, notice of the election shall be published one time in a newspaper with general circulation in the district.

SECTION 4.05. APPLICATION. (a) A person who wishes to have his name printed on the ballot as a candidate for director must file with the secretary of the board of directors an application asking that his name be placed on the ballot.

(b) The application must be filed with the secretary not later than the 31st day before the date of the election.

SECTION 4.06. QUALIFICATIONS FOR OFFICE. To be eligible to be a candidate for or to serve as a director, a person must be:

(1) a resident of the district; and

(2) a qualified voter.

SECTION 4.07. BOARD VACANCY. A vacancy in the office of director shall be filled for the unexpired term by appointment by the remaining directors.

SECTION 4.08. OFFICERS. The board shall elect from among its members a president, vice-president, and treasurer. The board shall also appoint a secretary. The secretary need not be a director.

SECTION 4.09. OFFICERS' TERMS; VACANCY. (a) Each officer of the board serves for a term of one year.

(b) The board shall fill a vacancy in a board office for the unexpired term.

SECTION 4.10. COMPENSATION. Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties. Those expenses must be reported in the district's minute book or other district records and must be approved by the board.

SECTION 4.11. VOTING REQUIREMENT. A concurrence of a majority of the members of the board voting is necessary in matters relating to the business of the district.

SECTION 4.12. ADMINISTRATOR, ASSISTANT ADMINISTRATOR, AND ATTORNEY. (a) The board may appoint qualified persons as administrator of the district, assistant administrator, and attorney for the district.

(b) The administrator, assistant administrator, and attorney serve at the will of the board.

(c) The administrator, assistant administrator, and attorney are entitled to compensation as determined by the board.

(d) Before assuming his duties, the administrator shall execute a bond payable to the hospital district in the amount of not less than $5,000 as determined by the board, conditioned on the faithful performance of his duties under this Act. The board may pay for the bond with district funds.

SECTION 4.13. APPOINTMENTS TO STAFF. The board may appoint to the staff any doctors it considers necessary for the efficient operation of the district and may make temporary appointments as considered necessary.

SECTION 4.14. TECHNICIANS, NURSES, AND OTHER DISTRICT EMPLOYEES. (a) The district may employ technicians, nurses, fiscal agents, accountants, architects, additional attorneys, and other necessary employees.

(b) The board may delegate to the administrator the authority to employ persons for the district.

SECTION 4.15. GENERAL DUTIES OF ADMINISTRATOR. The administrator shall supervise the work and activities of the district and shall direct the general affairs of the district, subject to the limitations prescribed by the board.

SECTION 4.16. RETIREMENT BENEFITS. The board may provide retirement benefits for employees of the district by establishing or administering a retirement program or by electing to participate in the Texas County and District Retirement System or in any other statewide retirement system in which the district is eligible to participate.

ARTICLE 5. POWERS AND DUTIES

SECTION 5.01. RESPONSIBILITY OF AND LIMITATION ON GOVERNMENTAL ENTITY. (a) On creation of the district, Lavaca County and the city of Moulton shall convey or transfer to the district:

(1) operating funds and reserves for operating expenses and funds that have been budgeted by Lavaca County and the city of Moulton to provide medical care for residents of the district for the remainder of the fiscal year in which the district is established;

(2) taxes levied by Lavaca County and the city of Moulton for hospital and medical purposes for the year in which the district is created; and

(3) funds established for payment of indebtedness assumed by the district.

(b) On or after creation of the district, Lavaca County and the city of Moulton may not levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care for the residents of the district.

SECTION 5.02. DISTRICT RESPONSIBILITIES. On creation of the district, the district:

(1) assumes full responsibility for operating hospital facilities and for furnishing medical and hospital care for the district's needy inhabitants; and

(2) assumes any outstanding indebtedness incurred by Lavaca County or the city of Moulton in providing hospital care for residents of the territory of the district before the district's creation.

SECTION 5.03. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the clinic or a hospital system and the funds and resources of the district.

SECTION 5.04. DISTRICT RULES. The board may adopt rules governing the operation of the clinic or a hospital and hospital system and the duties, functions, and responsibilities of district staff and employees.

SECTION 5.05. METHODS AND PROCEDURES. (a) The board may prescribe the method of making purchases and expenditures by and for the district.

(b) The board may prescribe accounting and control procedures for the district.

SECTION 5.06. DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) The board shall determine the type, number, and location of buildings required to establish and maintain the clinic or an adequate hospital system and the type of equipment necessary for medical care.

(b) The board may acquire property, facilities, and equipment for the district for the clinic or a hospital system and may mortgage or pledge the property, facilities, or equipment acquired as security for the payment of the purchase price.

(c) The board may lease district facilities on behalf of the district.

(d) The board may sell or otherwise dispose of property, facilities, or equipment on behalf of the district.

SECTION 5.07. CONSTRUCTION CONTRACTS. (a) The board may enter into construction contracts on behalf of the district; however, the board may enter into construction contracts that involve spending more than $5,000 only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code.

(b) Article 5160, Revised Statutes, as it relates to performance and payment bonds, applies to construction contracts let by the district.

SECTION 5.08. DISTRICT OPERATING AND MANAGEMENT CONTRACTS. The board may enter into operating or management contracts relating to district facilities on behalf of the district.

SECTION 5.09. EMINENT DOMAIN. (a) The district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest

in property located in the territory of the district if the property interest is necessary to the exercise of the rights or authority conferred by this Act.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit in the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by the district, the district is not required to pay in advance or give bond or other security for costs in the trial court, to give bond for the issuance of a temporary restraining order or a temporary injunction, or to give bond for costs or supersedeas on an appeal or writ of error.

SECTION 5.10. EXPENSES FOR MOVING FACILITIES OF RAILROADS AND UTILITIES. In exercising the power of eminent domain, if the board requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission and electric distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

SECTION 5.11. INDIGENT CARE. (a) The district shall without charge supply to a patient residing in the district the care and treatment that the patient or a relative of the patient who is legally responsible for the patient's support cannot pay.

(b) Not later than the beginning of each operating year, the district shall adopt an application procedure to determine eligibility for assistance, as provided by Section 10.03, Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes).

(c) The administrator of the district may have an inquiry made into the financial circumstances of any patient residing in the district and admitted to a district facility and into the financial circumstances of a relative of the patient who is legally responsible for the patient's support.

(d) On finding that the patient or a relative of the patient legally responsible for the patient's support can pay for all or any part of the care and treatment provided by the district, the administrator shall report that finding to the board, and the board shall issue an order directing the patient or the relative to pay the district each week a specified amount that the individual is able to pay.

(e) The administrator may collect money owed to the district from the estate of the patient or from that of a relative who was legally responsible for the patient's support in the manner provided by law for collection of expenses in the last illness of a deceased person.

(f) If there is a dispute relating to an individual's ability to pay or if the administrator has any doubt concerning an individual's ability to pay, the board shall call witnesses, hear and resolve the question, and issue a final order. An appeal from a final order of the board must be made to a district court in the county in which the district is located and the substantial evidence rule applies.

SECTION 5.12. REIMBURSEMENT FOR SERVICES. (a) The board shall require reimbursement from a county, city, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, city, or public hospital as provided by the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes).

(b) The board shall require reimbursement from the sheriff of Lavaca County or the police chief of the city of Moulton for the district's care and treatment of a person confined in a jail facility of Lavaca County or the city of Moulton who is not a resident of the district.

(c) The board may contract with the state or federal government for the state or federal government to reimburse the district for treatment of a sick, diseased, or injured person.

SECTION 5.13. SERVICE CONTRACTS. The board may contract with a city, county, special district, or other political subdivision of the state or with a state or federal agency for the district to furnish a mobile emergency medical service or to provide for the investigatory or welfare needs of inhabitants of the district.

SECTION 5.14. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the donor that is consistent with the proper management of the district.

SECTION 5.15. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

ARTICLE 6. DISTRICT FINANCES

SECTION 6.01. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed when revenue bonds of the district are outstanding or more than once in a 24-month period.

SECTION 6.02. ANNUAL AUDIT. Annually, the board shall have an audit made of the financial condition of the district.

SECTION 6.03. DISTRICT AUDIT AND RECORDS. The annual audit and other district records are open to inspection during regular business hours at the principal office of the district.

SECTION 6.04. ANNUAL BUDGET. (a) The administrator of the district shall prepare a proposed annual budget for the district.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated amount of revenues and balances available to cover the proposed budget; and

(7) the estimated tax rate that will be required.

SECTION 6.05. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the taxpayers demand.

(e) The budget is effective only after adoption by the board.

SECTION 6.06. AMENDING BUDGET. After adoption, the annual budget may be amended on the board's approval.

SECTION 6.07. LIMITATION ON EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

SECTION 6.08. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

SECTION 6.09. SPENDING AND INVESTMENT LIMITATIONS. (a) Except as provided by Sections 5.07(a), 7.01, 7.04, and 7.05 of this Act, the district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current and immediately following fiscal year of the district.

(b) The board may invest operating, depreciation, or building reserves only in funds or securities specified by Article 836 or 837, Revised Statutes.

SECTION 6.10. DEPOSITORY. (a) The board shall name at least one bank to serve as depository for district funds.

(b) District funds, other than those invested as provided by Section 6.09(b) of this Act and those transmitted to a bank of payment for bonds or obligations issued or assumed by the district, shall be deposited as received with the depository bank and must remain on deposit. This subsection does not limit the power of the board to place a portion of district funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

ARTICLE 7. BONDS

SECTION 7.01. GENERAL OBLIGATION BONDS. The board may issue and sell bonds authorized by an election in the name and on the faith and credit of the district to:

(1) purchase, construct, acquire, repair, or renovate buildings or improvements; or

(2) equip buildings or improvements for clinic or hospital purposes.

SECTION 7.02. TAXES TO PAY BONDS. (a) At the time the bonds are issued by the district, the board shall levy a tax.

(b) The tax must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature.

(c) In any year, the tax together with any other tax the district levies may not exceed the limit approved by the voters at the election authorizing the levy of taxes.

SECTION 7.03. BOND ELECTION. (a) The district may issue general obligation bonds only if the bonds are authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose.

(b) The board may order a bond election. The order calling the election must state the nature and date of the election, the hours during which the polls will be open, the location of the polling places, the amount of bonds to be authorized, and the maximum maturity of the bonds.

(c) Notice of a bond election shall be given as provided by Article 704, Revised Statutes.

(d) The board shall canvass the returns and declare the results of the election.

SECTION 7.04. REVENUE BONDS. (a) The board may issue revenue bonds to:

(1) purchase, construct, acquire, repair, equip, or renovate buildings or improvements for clinic or hospital purposes; or

(2) acquire sites to be used for clinic or hospital purposes.

(b) The bonds must be payable from and secured by a pledge of all or part of the revenues derived from the operation of the clinic or the district's hospital system.

The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of district property.

(c) The bonds must be issued in the manner provided by Sections 8, 10, 11, 12, and 13, County Hospital Authority Act (Article 4494r, Vernon's Texas Civil Statutes), for issuance of revenue bonds by county hospital authorities.

SECTION 7.05. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund and pay off an outstanding indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided by Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes).

(c) The refunding bonds may be sold and the proceeds applied to the payment of outstanding indebtedness or may be exchanged in whole or in part for not less than a similar principal amount of outstanding indebtedness. If the refunding bonds are to be sold and the proceeds applied to the payment of outstanding indebtedness, the refunding bonds must be issued and payments made in the manner provided by Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes).

SECTION 7.06. INTEREST AND MATURITY. District bonds must mature not more than 50 years after the date of their issuance and must bear interest at a rate not to exceed that provided by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

SECTION 7.07. EXECUTION OF BONDS. The president of the board shall execute the bonds in the name of the district, and the secretary of the board shall countersign the bonds in the manner provided by the Texas Uniform Facsimile Signature of Public Officials Act (Article 717j-1, Vernon's Texas Civil Statutes).

SECTION 7.08. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller of public accounts as the law provides for approval and registration of bonds issued by counties.

(b) On approval by the attorney general and registration by the comptroller of public accounts, the bonds are incontestable for any cause.

SECTION 7.09. BONDS AS INVESTMENTS. District bonds and indebtedness assumed by the district are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

SECTION 7.10. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and of cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value if accompanied by all unmatured coupons.

SECTION 7.11. TAX STATUS OF BONDS. Since the district created under this Act is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of

the bonds are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

ARTICLE 8. TAXES

SECTION 8.01. LEVY OF TAXES. (a) The board may annually levy taxes in an amount not to exceed the limit approved by the voters at the election authorizing the levy of taxes.

(b) The tax rate for all purposes may not exceed 75 cents on each $100 valuation of all taxable property in the district.

(c) The taxes may be used to pay:

(1) the indebtedness issued or assumed by the district; and

(2) the maintenance and operating expenses of the district.

(d) The district may not levy taxes to pay the principal of or interest on revenue bonds issued under this Act.

SECTION 8.02. BOARD AUTHORITY. (a) The board may levy taxes for the entire year in which the district is created.

(b) The board shall levy taxes on all property in the district subject to district taxation.

SECTION 8.03. SETTING OF TAX RATE. In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

SECTION 8.04. TAX ASSESSMENT AND COLLECTION. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

ARTICLE 9. MISCELLANEOUS

SECTION 9.01. LIMITATION ON STATE ASSISTANCE. The state may not become obligated for the support or maintenance of a district created under this Act, nor may the legislature make a direct appropriation for the construction, maintenance, or improvement of a facility of the district.

SECTION 9.02. 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 viva voce vote.

On motion of Senator Armbrister 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 viva voce vote.

HOUSE BILL 3124 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 3124** 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.

SENATE BILL 417 WITH HOUSE AMENDMENTS

Senator Green called **S.B. 417** 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 - Granoff

Amend **S.B. 417** by striking all below the enacting clause and substituting in lieu thereof the following:

ARTICLE I. AGENCY ADMINISTRATION

SECTION 1.01.

Section 11.011, Education Code, is amended to read as follows:

Sec. 11.011. APPLICATION OF SUNSET ACT. The Central Education Agency is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the agency is abolished September 1, 2001 [~~1989~~].

SECTION 1.02. Amend Chapter 11, Education Code, by adding Section 11.021 as follows:

Sec. 11.021. COOPERATION BETWEEN STATE AGENCIES OF EDUCATION. (a) It is the policy of the State of Texas that the entire system of education supported with public funds be coordinated to provide the citizens with efficient, effective, and high quality educational services and activities. The State Board of Education and the Texas Higher Education Coordinating Board, in conjunction with such other agencies as may be appropriate, shall ensure that long-range plans and educational programs established by the boards complement the functioning of the entire system of public education, extending from early childhood education through postgraduate study. In assuring that plans and programs are coordinated, the boards shall utilize the joint advisory committee established under Section 61.077 of this code.

(b) The joint advisory committee shall coordinate plans and programs of the two boards, including curricula, instructional programs, research, and other functions as appropriate. This coordination shall include but is not limited to the following areas:

(1) equal educational opportunity for all Texans;

(2) college recruitment, with special emphasis on the recruitment of minority students;

(3) preparation of high school students for further study at colleges and universities;

(4) reduction of the dropout rate and dropout prevention;

(5) teacher education; and

(6) testing and assessment.

SECTION 1.03. Subchapter A, Chapter 11, Education Code, is amended by adding Section 11.191 to read as follows:

Sec. 11.191. ACADEMIC PROGRAMS FOR CERTAIN CHILDREN BELOW GRADE LEVEL. The Central Education Agency shall:

(1) finance pilot projects for a variety of intensive academic programs for students in the first through third grades who are performing below grade level in mathematics or English language arts;

(2) evaluate existing school district programs for those students; and

(3) provide information to school districts on the programs that are successful.

SECTION 1.04. Section 11.32, Education Code, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) Each Regional Education Service Center, within each six-year [~~five-year~~] period, shall:

(1) perform a self-study of the effectiveness of its services to school districts;

(2) invite a panel of distinguished personnel from other service centers, public school administrators, and other persons deemed appropriate by the service center board to evaluate the practices and services provided by the service center; and

(3) be subject to a management and service audit conducted by the Central Education Agency.

(h) The Central Education Agency shall conduct an annual evaluation of the basic educational services provided by the regional centers. The State Board of Education shall review the results of the evaluations at least every six years to determine the need for the continuance, consolidation, or reorganization of the regional centers.

SECTION 1.05. Chapter 11, Education Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. AGENCY ADMINISTRATION PROVISIONS

Sec. 11.901. DEFINITIONS. In this subchapter:

(1) "Agency" means the Central Education Agency.

(2) "Board" means the State Board of Education.

(3) "Commissioner" means the commissioner of education.

Sec. 11.902. EMPLOYMENT POLICY STATEMENT. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which 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 agency 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 appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 11.903. CAREER LADDER PROGRAM. The commissioner or the commissioner's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

Sec. 11.904. JOB PERFORMANCE EVALUATIONS. The commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for agency employees must be based on the system established under this section.

Sec. 11.905. PROFESSIONAL INFORMATION FOR MEMBERS AND EMPLOYEES. The board shall provide to its members and to agency employees, as often as necessary, information regarding their qualifications for office or

employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 11.906. DIVISION OF RESPONSIBILITY. The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the agency.

Sec. 11.907. PUBLIC INTEREST INFORMATION; COMPLAINTS. (a) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board shall provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated under this title; and

(2) on a sign prominently displayed in the place of business of each individual or entity regulated under this title, including in each public school.

(c) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The board shall keep an information file about each written complaint filed with the board that the board has authority to resolve.

Sec. 11.908. PUBLIC TESTIMONY. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 11.909. PROGRAM ACCESS. The board shall prepare and maintain a written plan for the provision of access to the board's programs to a person who does not speak English or who has a physical, mental, or developmental disability.

Sec. 11.910. INTERNAL AUDIT. (a) The commissioner shall appoint an agency auditor. The appointment is subject to the approval of the board.

(b) The board by rule shall require the auditor to report to the board under circumstances specified in the rule. Except as provided by that rule, the auditor shall report to the commissioner.

(c) The board shall appoint an appropriate committee of the board to meet at least quarterly with the auditor.

(d) The auditor shall coordinate the agency's efforts to evaluate and improve its internal management information. The state auditor shall review the quality and effectiveness of the agency's process for developing internal management information.

Sec. 11.911. REPORT TO GOVERNOR, LEGISLATURE. 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 fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 11.912. MINORITY AND FEMALE-OWNED BUSINESS CONTRACTS. (a) The agency shall establish policies to encourage minority and female-owned small businesses to bid for agency contract and open market purchases and to assist those businesses in that bidding. The agency shall review the policies periodically to correct any deficiencies in the policies.

(b) The agency annually shall determine the number, types, and value of contracts awarded to minority and female-owned small businesses in the year

preceding the determination and the ratio of the number and the value of those contracts to the number and the value of all contracts awarded by the agency in that year.

(c) The agency shall file the policies established under this section with the Texas Department of Commerce and the State Purchasing and General Services Commission. The commission shall conduct an analysis of the agency's policies and the policies' effectiveness and shall report the analysis to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

(d) In this section, "minority or female-owned small business" means a business enterprise:

(1) that is an independently owned and operated business enterprise, formed for the purpose of making a profit, that has fewer than 100 employees or less than $1 million in annual gross receipts; and

(2) at least 51 percent of which is owned or controlled by one or more socially and economically disadvantaged persons who are socially disadvantaged because of their identification as members of certain groups, including women, black Americans, Mexican-Americans and other Americans of Hispanic origin, Asian-Americans, and American Indians.

Sec. 11.913. PERFORMANCE AUDITS. (a) The Legislative Audit Committee shall select a management firm to conduct a performance audit of the Central Education Agency during:

(1) the fiscal biennium ending August 31, 1991;

(2) the fiscal biennium ending August 31, 1995; and

(3) the fiscal biennium ending August 31, 1999.

(b) An advisory committee composed of the chairman of the State Board of Education, the state auditor, and a member of the Legislative Education Board, appointed to the committee by that board, shall review bids submitted by management firms for the audits and recommend a firm to the Legislative Audit Committee for approval. The management firm selected shall submit periodic progress reports to the advisory committee, which the advisory committee shall review.

(c) The state auditor shall propose the audit scope for each performance audit for approval by the Legislative Audit Committee and the Legislative Budget Board. The state auditor shall consult the State Board of Education concerning the proposed audit scope.

(d) The state auditor shall provide contract management for the audit.

(e) The management firm shall make recommendations to the Legislative Audit Committee, the Legislative Education Board, and the State Board of Education, including proposed drafts of legislation necessary to implement the recommendations.

(f) The costs of the audit shall be paid equally by the state auditor and the Central Education Agency from funds available for that purpose.

(g) This section expires September 1, 1999.

SECTION 1.06. Section 13.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) The agency shall report the status of its activities under this article to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each year. The agency shall report that information to the legislature not later than December 31 of each even-numbered year and shall include in the report the schedule adopted under this section for the following year.

SECTION 1.07. Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.09. APPLICATION. The state agencies subject to this article are:

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

(2) the Texas Department of Human Services; [~~and~~]

(3) the Texas Department of Corrections; and

(4) the Central Education Agency.

SECTION 1.08. (a) The first policy statement required to be filed under Section 11.902, Education Code, as added by this Act, must be filed before November 1, 1989.

(b) The Central Education Agency shall file the initial policies established under Section 11.912, Education Code, as added by this Act, with the Texas Department of Commerce and the State Purchasing and General Services Commission not later than September 1, 1990.

(c) In 1989 and 1990 the Central Education Agency is required to identify only one commercial activity for competitive cost review under Section 13.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 1.09. (a) The Central Education Agency shall continue the joint task force on emotional disturbance composed of members of the Central Education Agency and Texas Department of Mental Health and Mental Retardation to conduct a study to evaluate and make recommendations concerning:

(1) the appropriateness and cost-effectiveness of residential placements of students with emotional disturbance;

(2) the creation of appropriate community-based networks of outpatient services for students who are emotionally disturbed who would otherwise be placed in a residential placement;

(3) the creation of a family-centered response and intervention system for students with emotional disabilities and their families; and

(4) early intervention and prevention strategies including early identification of students with emotional disabilities.

(b) The joint task force shall report the results of the study to the legislature not later than January 31, 1991.

ARTICLE II. REGULATION OF PUBLIC SCHOOLS AND TEACHERS

SECTION 2.01. Section 11.207, Education Code, as added by Chapter 848, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 11.207. INSERVICE TRAINING AND PREPARATION. As a part of the teacher inservice training and preparation required under Section 16.052 of this code, for each school year the State Board of Education by rule shall require instruction in subject areas that the board considers appropriate. The subject areas may include but are not limited to:

(1) special education;

(2) recognition of and response to signs of abuse or neglect in students;

(3) recognition of dyslexia and related disorders in students and teaching strategies for those students;

(4) discipline management training; [~~and~~]

(5) teacher appraisal; and

(6) recognition of and response to signs of emotional disturbance and to teaching and intervention strategies for those students and their families.

SECTION 2.02. Section 13.035(a), Education Code, is amended to read as follows:

(a) To provide a continuing additional source of qualified teachers and administrators, the [~~The~~] State Board of Education by rule shall provide for teacher and administrator certification programs as an alternative to [~~the certification of persons who are not graduates of~~] teacher education programs. The rules may not

provide that a person may be certified under this section only if there is a demonstrated shortage of teachers in a school district or subject area.

SECTION 2.03. Section 13.036(a), Education Code, as added by Chapter 836, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The State Board of Education shall issue a teaching certificate of an appropriate class to a person who:

(1) holds a degree from an institution that is accredited by a regional accrediting agency or group that is recognized by the Council on Post-Secondary Accreditation; and

(2) has been issued a certificate by another state that recognizes or issues certificates on a reciprocal basis with Texas and the other state's certificate is valid or is invalid solely because it has expired; and

(3) performs satisfactorily on the examination prescribed by the board under Section 13.032(e) of this code as a condition to certification other than an examination or portion of an examination that is designed to test knowledge of pedagogical methods, history of education, or child psychology.

SECTION 2.04. Section 13.302, Education Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

(a) The State Board of Education shall adopt an appraisal process and criteria on which to appraise the performance of teachers for career ladder level assignment purposes. The criteria must be based on observable, job-related behavior, including teachers' implementation of discipline management procedures, and on student performance. Student achievement test scores may not be used as the only indicator of student performance for purposes of the appraisal process.

(g) The State Board of Education by rule shall require the renewal of an appraiser's certification at regular intervals of not more than three years and shall require certification renewal within that period if substantial changes are made to the appraisal process.

(h) The State Board of Education shall evaluate the effectiveness of the appraisal process. The Central Education Agency shall monitor the implementation of the appraisal process and biennially recommend modifications to the process to the board.

SECTION 2.05. Subsection (d), Section 16.056, Education Code, is amended to read as follows:

(d) The following positions are entitled to the minimum monthly salary set by Subsection (c) of this section for the number of annual contract months specified:

No. Months Paid	Class Title
10	Nurse, R.N. and/or Bachelor's Degree
10	Special Education Related Service Personnel (other than Occupational or Physical Therapist), Bachelor's Degree
10	Teacher, Bachelor's Degree
10	Vocational Teacher,
11	Bachelor's Degree and/or
12	Certified in Field
10	Librarian I, Bachelor's Degree

10	Visiting Teacher I, Psychological Associate, Bachelor's Degree
10	Special Education Related Service Personnel (other than Occupational or Physical Therapist), Master's Degree
10	Teacher, Master's Degree
10	Vocational Teacher,
11	Master's Degree
12	
10	Librarian II, Master's Degree
10	Physician, M.D.
10	Teacher, Bachelor of Laws or Doctor of Jurisprudence Degree
10	Teacher, Doctor's Degree
10	Special Duty Teacher, Master's Degree
10	Occupational Therapist
10	Physical Therapist
10	Educational Diagnostician
10	Visiting Teacher II, Master's Degree
10	Counselor I, Psychologist
10	School Social Worker
10	Supervisor I
10	Part-time Principal—11 or fewer teachers on campus
10	Instructional/Administrative Officer I
10	Assistant Principal—20 or more teachers on campus
10	Instructional/Administrative Officer II
11	Principal—19 or fewer teachers on campus
10	Instructional/Administrative Officer III
11	Principal—20-49 teachers on campus
11	Instructional/Administrative Officer IV
11	Principal—50-99 teachers on campus
12	Principal—100 or more teachers on campus
12	Instructional/Administrative Officer V
12	Instructional/Administrative Officer VI

12	Superintendent—District with 3,000 or less ADA
12	Instructional/Administrative Officer VII
12	Superintendent—District with 3,001-12,500 ADA
12	Instructional/Administrative Officer VIII
12	Superintendent—District with 12,501-50,000 ADA
12	Superintendent—District with 50,000 or more ADA

SECTION 2.06. Subchapter A, Education Code, is amended by adding Section 21.009 to read as follows:

Sec. 21.009. YEAR-ROUND SYSTEM. (a) The State Board of Education may adopt rules under which a school district may operate its schools year-round.

(b) The rules may modify the contract days of employees and the days of operation otherwise required by law.

(c) The operation of schools year-round by a district does not affect the amount of state funds to which the district is entitled under Chapter 16 of this code.

SECTION 2.07. Sections 21.031(b) and (c), Education Code, are amended to read as follows:

(b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which the child or [~~he resides or in which~~] his parent resides at the time he applies for admission; the child and his[;] guardian[;] or other [~~the~~] person having lawful control of him under an order of a court reside [~~resides~~] at the time he applies for admission; or the child has established a separate residence under Subsection (d) of this section. A district may require evidence that a child is eligible to attend the public free schools of the district at the time the district considers an application for admission of the child.

(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such person or his parent resides within the school district; such person and his[;] guardian or other person having lawful control of him under an order of a court reside [~~resides~~] within the school district; or such person has established a separate residence under Subsection (d) of this section.

SECTION 2.08. Section 21.041, Education Code, is amended to read as follows:

Sec. 21.041. ABSENCES. (a) Except as provided by this section, a [~~A~~] student may not be given credit for a class unless the student is in attendance for at least 80 days [~~if the student has more than five days of unexcused absence~~] during a semester.

(b) The board of trustees of each school district shall appoint one or more attendance committees to hear petitions for class credit by students who are in attendance fewer than 80 days during a semester. Each board may determine the number of committees needed in the district and the composition of each committee. The committees may give class credit to a student who is in attendance fewer than 80 days during a semester because of extenuating circumstances. Each local school board shall establish guidelines to determine what constitutes extenuating circumstances, subject to rules adopted by the State Board of

Education, and shall adopt policies establishing alternative ways for students to make up work or regain credit lost because of absences. A certified public school employee may not be required to perform additional instructional duties as a result of this section. The performance of those additional duties may only be voluntary, and any certified public school employee is entitled to compensation for the duties at a reasonable rate of pay.

(c) A member of an attendance committee is not personally liable for any act or omission arising out of duties as a member of an attendance committee.

(d) If a student is denied credit for a class by an attendance committee, the student may appeal the decision to the board. The student may appeal the decision of the board to the commissioner of education only on the grounds that the decision is arbitrary, capricious, or not supported by substantial evidence.

(e) This section does not affect the provisions of Subsection (f), Section 21.035, Education Code, regarding a student's excused absence from school to observe religious holy days [~~In this section, "unexcused absence" means an absence not excused under Section 21.035 of this code~~].

SECTION 2.09. Subchapter C, Chapter 21, Education Code, is amended by adding Section 21.0741 to read as follows:

Sec. 21.0741. OPEN ENROLLMENT: SCHOOL SELECTION BY PARENT.

(a) Before each school year and before the initial enrollment of a pupil, the parent of or person standing in parental relation to the pupil may file a written request with the school district for the assignment of the pupil to a certain school in the district. The school district shall assign the pupil to that school unless:

(1) the selection would cause the school to exceed the available room and teaching capacity of the school;

(2) the selection would cause the school to be out of compliance with a court-ordered desegregation plan in effect for the district; or

(3) the district determines that the selection was made as a result of the offer of a benefit in exchange for the pupil's participation in an interscholastic athletic program of the school.

(b) If no request is made under Subsection (a) of this section, or if the school district properly rejects a selection under Subsection (a)(1), (2), or (3), the school district shall assign the pupil to a school chosen by the district after consideration of the factors listed in Section 21.075 of this code.

(c) The State Board of Education by rule shall establish a uniform open enrollment period during which requests under Subsection (a) of this section must be made. The beginning date of the period may not be earlier than February 1 preceding the beginning of the school year for which the assignment is to be made.

(d) In making the assignments for pupils for whom a request is made during the open enrollment period, the school district shall give priority to requests according to the date the request is made. If the number of requests of a particular school made on the same date would exceed the capacity of the school, the district shall make the assignments randomly, with each pupil having an equal chance at the assignment.

(e) The district is not required to provide transportation for a student who is assigned to a school under this section. If the district provides transportation, it is included as part of the regular transportation system for the purposes of the transportation allotment under Section 16.156 of this code.

SECTION 2.10. Section 21.077, Education Code, is amended to read as follows:

Sec. 21.077. PETITION OF PARENT. (a) The parent or person standing in parental relation to any pupil may by petition in writing either:

(1) request the transfer [~~or assignment~~] of the pupil to a designated school or to a school to be designated by the board; or

(2) file objections to the assignment of the pupil to the school to which he has been assigned.

(b) A school district may reject the request for transfer to a designated school only if:

(1) the selection would cause the school to exceed the available room and teaching capacity of the school;

(2) the selection would cause the school to be out of compliance with a court-ordered desegregation plan in effect in the district; or

(3) the district determines that the selection was made as a result of the offer of a benefit in exchange for the pupil's participation in an interscholastic athletic program of the school.

SECTION 2.11. Section 21.551, Education Code, is amended to read as follows:

Sec. 21.551. ADOPTION AND ADMINISTRATION OF INSTRUMENTS. (a) The Central Education Agency shall adopt appropriate criterion referenced assessment instruments designed to assess [~~minimum basic skills~~] competencies in reading, writing, social studies, science, and mathematics for all pupils at the [~~first,~~] third, fifth, seventh, and ninth grade levels and in mathematics and English language arts for all pupils at the 12th grade level.

(b) The Central Education Agency shall also adopt secondary exit level assessment instruments designed to assess mathematics, social studies, science, and English language arts competencies for pupils at the 12th grade level. The English language arts section must include the assessment of writing competencies. The State Board of Education shall administer the assessment instruments.

(c) The secondary exit level assessment instrument must be administered to all pupils at the 11th grade level. Each pupil who did not perform satisfactorily on all sections when tested at the 11th grade level shall be given opportunities during the 11th and 12th grade levels to retake the sections of the assessment instrument on which the pupil did not perform satisfactorily. The State Board of Education may adopt a schedule for the administration of the secondary exit level assessment instrument [~~, including the opportunity to retake those sections during the final month of the school term in which the pupil is enrolled at the 12th grade level~~].

(d) The assessment instruments shall be designed to include assessment of a student's problem solving ability and complex thinking skills.

(e) The assessment instruments required by Subsections (a) and (b) of this section must include assessments of social studies and science not later than the 1994-1995 school year. The State Board of Education may adopt a schedule for the addition of the assessment of those subjects at the required grade levels in phases. This subsection expires August 31, 1995.

SECTION 2.12. Section 21.552, Education Code, is amended to read as follows:

Sec. 21.552. SATISFACTORY PERFORMANCE. (a) The State Board of Education shall determine the level of performance considered to be satisfactory on the assessment instruments.

(b) Each school district shall offer an intensive program of remedial instruction for students at the fourth grade level who did not perform satisfactorily on one or more parts of the assessment instrument administered at the third grade level. The intensive programs shall be designed to enable the students to be performing at grade level at the conclusion of that regular school term.

(c) The Central Education Agency shall develop and distribute study guides to assist parents in providing remedial assistance during the period that school is recessed for summer to students who do not perform satisfactorily on one or more

parts of the assessment instrument administered at the third, fifth, or seventh grade level. The commissioner of education shall retain a portion of the total amount allotted under Section 16.152(a) of this code that the commissioner considers appropriate to finance the development and distribution of the study guides and shall reduce each district's allotment proportionately.

SECTION 2.13. Section 21.555, Education Code, is amended to read as follows:

Sec. 21.555. EXEMPTION. (a) Any student who has a physical or mental impairment or a learning disability that prevents the student from mastering the competencies which the basic skills assessment instruments are designed to measure may be exempted from the requirements of this subchapter.

(b) The State Board of Education shall adopt rules under which a district may determine if a student is eligible for an exemption under this section. The Central Education Agency shall closely monitor compliance with those rules.

SECTION 2.14. Section 21.556, Education Code, is amended by adding Subsection (c) to read as follows:

(c) In compiling performance data under Subsection (b) of this section, a district or the commissioner may aggregate separately from the performance data of other students the performance data of students enrolled in:

(1) a bilingual education or special language program under Subchapter L of this chapter; or

(2) a special education program under Subchapter N of this chapter.

SECTION 2.15. Section 21.559, Education Code, is amended to read as follows:

Sec. 21.559. COMPARISON OF STATE RESULTS TO NATIONAL RESULTS. The Central Education Agency shall obtain nationally norm referenced results for the subject areas and grade levels for which criterion referenced assessment instruments are adopted under Section 21.551 of this code by:

(1) combining norm referenced assessment items with the criterion referenced assessment instruments; or

(2) adopting one or more norm referenced assessment instruments for use in coordination with the criterion referenced assessment instruments. [~~compare the results of criterion referenced assessment instruments administered under Section 21.551 of this subchapter to nationally norm-referenced assessment instruments to determine the level of achievement of students in this state as compared to students in other regions of the country.~~]

SECTION 2.16. Subchapter O, Education Code, is amended by adding Section 21.560 to read as follows:

Sec. 21.560. BIENNIAL REPORT. The State Board of Education shall biennially report to the legislature an evaluation of the correlation between student grades and student performance on assessment instruments administered under Section 21.551 of this code. The report may be included with other reports made as required by law.

SECTION 2.17. Subchapter T, Chapter 21, Education Code, is amended by adding Section 21.7531 to read as follows:

Sec. 21.7531. PERFORMANCE INDICATORS. (a) The State Board of Education shall adopt a set of indicators of the quality of learning on a campus. The board biennially shall review the indicators for the consideration of appropriate revisions.

(b) The indicators must include:

(1) a comparison of the district's performance to a projection of the district's expected performance; and

(2) the results of the Central Education Agency's most recent compliance review of the district's special education program.

(c) The State Board of Education shall report the status of education in the state as reflected by the indicators to the legislature not later than February 1 of each odd-numbered year.

SECTION 2.18. Section 21.754, Education Code, is amended by amending Subsections (a) and (c) to read as follows:

(a) Not less than once every six [~~three~~] years, the agency shall investigate whether a school district satisfies the accreditation standards. The agency shall investigate more frequently a district that is determined:

(1) to be below any accreditation standard; or

(2) to have a poor performance according to the performance indicators adopted under Section 21.7531 of this code.

(c) In making an accreditation investigation, the investigators shall obtain information from campus administrators, teachers, and parents of students enrolled in the district. The investigation may not be closed until information is obtained from each of those sources. The board shall adopt rules for:

(1) obtaining information from parents and using that information in the investigator's report; and

(2) obtaining information from teachers in a manner that prevents the district from screening the information.

SECTION 2.19. Sections 11.204, 13.031(d), and 13.2031, Education Code, are repealed.

SECTION 2.20. The State Board of Education shall appoint an advisory committee, composed of persons from the fields of education and business, to make recommendations to the board for the initial set of performance indicators adopted under Section 21.7531, Education Code, as added by this Act. The advisory committee shall submit the recommended set of indicators to the Legislative Education Board for review and comment before submitting the indicators to the State Board of Education for consideration for adoption. The State Board of Education shall adopt performance indicators under Section 21.7531, Education Code, as added by this Act, not later than January 1, 1991, and shall report the indicators adopted to the 72nd Legislature with a statement of the reason for the inclusion of each indicator.

SECTION 2.21. Sections 2.09 and 2.10 of this Act apply to assignments and transfers of students beginning with the 1990-1991 school year. Assignments and transfers made before that school year are governed by the law in effect for the year in which the assignment is effective or the transfer made, and that law is continued in effect for that purpose.

ARTICLE III. SPECIAL EDUCATION

SECTION 3.01. Subchapter N, Chapter 21, Education Code, is amended by adding Section 21.5041 to read as follows:

Sec. 21.5041. INDIVIDUALIZED EDUCATION PROGRAM. (a) Before a child is enrolled in a special education program of a district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1401(19) to participate in the development of the child's individualized education program.

(b) The committee shall develop the individualized education program by mutual agreement of the committee members or, if those persons cannot agree, by an alternate method provided by rule of the State Board of Education. Majority vote shall not be used to determine the individualized education program.

(c) If the individualized education program is not developed by mutual agreement, the basis for the disagreement shall be included in the written statement of the program required under 20 U.S.C. Section 1401(19).

SECTION 3.02. Subchapter N, Chapter 21, Education Code, is amended by adding Section 21.5042 to read as follows:

Sec. 21.5042. CONTINUING ADVISORY COMMITTEE. (a) The governor shall appoint a continuing advisory committee under 20 U.S.C. Section 1413(a)(12). The appointments are not subject to confirmation by the senate. Members of the committee are appointed for terms of two years expiring on February 1 of each odd-numbered year.

(b) The committee shall advise the State Board of Education and the commissioner of education. The board shall specify the advisory committee's purpose and duties and shall require the committee to report to the board in a manner specified by the board concerning the committee's activities and accomplishments.

(c) The committee's duties must include those duties required by federal law and advisory duties in relation to the statewide plan under Section 21.501 of this code. The committee shall consult with local special education advisory committees in relation to advising the board about unmet needs in special education.

(d) The board shall adopt rules to implement this section. The rules must allow the committee to comment on rules relating to special education before the rules are finally adopted, except in an emergency. The board shall submit emergency rules to the committee for review at the first committee meeting that occurs after the rules are adopted.

(e) A member of the committee may not receive compensation but is entitled to reimbursement for transportation expenses and the per diem allowance for state employees in accordance with the General Appropriations Act.

SECTION 3.03. Subchapter N, Chapter 21, Education Code, is amended by adding Section 21.508 to read as follows:

Sec. 21.508. INTERMEDIATE CARE FACILITIES. (a) The Central Education Agency and the Texas Department of Human Services by a cooperative effort shall develop and each by rule shall adopt a memorandum of understanding that establishes the respective responsibility of school districts and of intermediate care facilities for mentally retarded persons for the provision of classrooms and educationally related therapy for students who reside in those facilities.

(b) The division of responsibilities under the memorandum of understanding must be consistent with federal law relating to the state medical assistance program.

SECTION 3.04. Subchapter N, Chapter 21, Education Code, is amended by adding Section 21.509 to read as follows:

Sec. 21.509. COMPLIANCE. (a) The Central Education Agency shall monitor school district compliance with federal and state laws relating to special education by inspecting each school district at the district's facilities at least every five years. The agency may determine the appropriate extent of the inspection.

(b) To complete the inspection, the agency must obtain information from parents of students in special education programs in the district. The State Board of Education shall adopt rules that provide a process for obtaining that information.

(c)(1) The State Board of Education shall develop and implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major areas of concern in the Education of the Handicapped Act, Public Law 94-142 (20 U.S.C. Section 1400), federal regulations, state statutes, and State Board of Education rules.

(2) For school districts who remain in noncompliance for more than one year, the first stage of sanctions should begin with annual or more frequent monitoring visits. Subsequent sanctions may range in severity up to the withholding of funds. Where funds are withheld, the agency may utilize such funds to provide, through alternative arrangements, services to students and staff members in the district from which the funds are withheld.

SECTION 3.05. (a) The Central Education Agency shall conduct a study to evaluate:

(1) the effectiveness of special education programs in the state in developing in students the life skills needed after the students leave the public school system;

(2) methods of monitoring the effectiveness of special education programs; and

(3) the appropriateness of essential elements for a required special education curriculum and of basic skills assessment designed for special education programs.

(b) The agency shall report the results of the study to the legislature not later than February 1, 1991.

SECTION 3.06. The Central Education Agency and the Texas Department of Human Services by rule shall adopt the memorandum of understanding required by Section 21.508, Education Code, as added by this Act, not later than September 1, 1990.

ARTICLE IV. PROPRIETARY SCHOOLS

SECTION 4.01. Section 32.12, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The following schools or educational institutions are specifically exempt from the provisions of this chapter and are not within the definition of "proprietary school[:]":

(1) a school or educational institution supported by taxation from either a local or State source;

(2) nonprofit schools owned, controlled, operated, and conducted by bona fide religious, denominational, eleemosynary, or similar public institutions exempt from property taxation under the laws of this State, but such schools may choose to apply for a certificate of approval hereunder, and upon approval and issuance, shall be subject to the provisions of this chapter as determined by the administrator;

(3) a school or training program which offers instruction of purely avocational or recreational subjects as determined by the administrator;

(4) a course or courses of instruction or study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student;

(5) a course or courses of study or instruction sponsored by a recognized trade, business, or professional organization for the instruction of the members of the organization with a closed membership;

(6) private colleges or universities which award a recognized baccalaureate, or higher degree, and which maintain and operate educational programs for which a majority of the credits given are transferable to a college, junior college, or university supported entirely or partly by taxation from either a local or State source;

(7) a school which is otherwise regulated and approved under and pursuant to any other law of the State, except as provided by Subsection (c) of this section;

(8) aviation schools or instructors approved by and under the supervision of the Federal Aviation Administration;

(9) a school which offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations, or medical college admissions tests.

(c) If a State agency that issues a license or other authorization for the practice of an occupation elects not to regulate or approve course hours that exceed the minimum education requirements for the issuance of the license or other authorization, the licensing agency shall enter into a memorandum of understanding with the Central Education Agency for the regulation of those excess

course hours under this chapter. Any course taught under a letter of approval or other written authorization issued by the licensing agency before the effective date of the memorandum is authorized under State law until the course is reviewed by the Central Education Agency. The licensing agency may terminate the memorandum of understanding on notice to the Central Education Agency.

SECTION 4.02. Section 32.21, Education Code, is amended to read as follows:

Sec. 32.21. CENTRAL EDUCATION AGENCY. (a) The Central Education Agency shall exercise jurisdiction and control of the system of schools, and it shall be the duty of the Commissioner of Education to carry out supervision of the provisions of this chapter, and to enforce minimum standards for approval of schools under the operating regulations and policies hereinafter set forth and as may from time to time be adopted pursuant to the provisions of this chapter.

(b) The Central Education Agency may establish minimum entrance requirements that students must meet to enroll in a proprietary school course of instruction.

(c) The Central Education Agency shall prepare a comparison of the cost to a student of courses of instruction or training programs at proprietary schools to the cost to a student of similar courses or programs at schools that are exempt from this chapter under Section 32.12 of this code. The agency shall distribute the cost comparisons to proprietary schools.

(d) The agency may consult a recognized expert in a field of study for assistance in determining minimum program standards under this chapter for that field.

SECTION 4.03. Section 32.22, Education Code, is amended to read as follows:

Sec. 32.22. THE STATE BOARD OF EDUCATION. (a) The State Board of Education shall adopt policies, regulations and rules necessary for carrying out the provisions of this chapter after consultation with the Proprietary School Advisory Commission.

(b) The board may adopt rules establishing minimum and maximum course hour requirements and curriculum requirements for courses of instruction offered by proprietary schools. In developing the rules, the board may consult:

(1) the Dictionary of Occupational Titles, published by the Department of Labor;

(2) standards established under state laws relating to occupational licensing; and

(3) recognized experts in any field of study.

(c) The board may enter into a memorandum of understanding with the Texas Higher Education Coordinating Board relating to the exchange of information on established curriculum standards used in particular fields of study.

SECTION 4.04. Subsection (a), Section 32.23, Education Code, is amended to read as follows:

(a) The Proprietary School Advisory Commission is created. The Commission shall be composed of the attorney general or the attorney general's designee, the director of the Texas Guaranteed Student Loan Corporation or the director's designee, and nine members appointed by the State Board of Education for staggered terms of six (6) years expiring on January 31 of each odd-numbered year. [~~In making the initial appointments, the Board shall designate three (3) members for terms expiring in 1973, three for terms expiring in 1975, and three for terms expiring in 1977.~~] If one of the commission members resigns or is otherwise unable to serve, a new member shall be appointed by the State Board of Education to fill the unexpired terms. Four members of the Commission shall be "owners" or shall be "employees" employed in a managerial or executive capacity by the schools as defined in Section 32.11 of this Code and shall include at least one member from

each of the following school areas: (1) trade and technical schools, (2) business schools and (3) correspondence schools; of these four members, one shall be a person who owns or operates not more than two (2) proprietary schools in Texas; one member [~~three members~~] shall be a public school official [~~officials~~]; and four [~~two~~] members shall be distinguished citizens of Texas who do not have a direct connection to [~~with an interest in providing~~] vocational-technical training [~~in Texas~~]. All members appointed by the State Board of Education shall have been recommended by the Administrator to the State Board of Education. In making his recommendations, the Administrator shall consider any recommendations made to him by parties interested in the composition of the Advisory Commission.

SECTION 4.05. Subchapter C, Chapter 32, Education Code, is amended by adding Section 32.25 to read as follows:

Sec. 32.25. MEMORANDUM OF UNDERSTANDING FOR REGULATION OF PROPRIETARY SCHOOLS. (a) The Central Education Agency shall develop, in consultation with the Texas Guaranteed Student Loan Corporation and each state agency that regulates proprietary schools in this state, a comprehensive strategy to reduce default rates at the regulated proprietary schools and to improve the overall quality of the programs operated by these schools.

(b) The Central Education Agency shall execute a memorandum of understanding outlining the strategy with the corporation and each state agency regulating proprietary schools and shall adopt rules to carry out its duties under this section. The Texas Guaranteed Student Loan Corporation shall adopt the memorandum of understanding as procedures of the corporation and each agency by rule shall adopt the memorandum of understanding.

(c) The memorandum of understanding shall:

(1) require the development and monitoring of indicators that identify schools that have excessive loan default rates, poor program performance, or both;

(2) require the sharing of specific information relating to the indicators between the Central Education Agency and the Texas Guaranteed Student Loan Corporation or other agency; and

(3) require the application of specific sanctions by the Central Education Agency or by the Texas Guaranteed Student Loan Corporation or other agency, as appropriate, to lower the default rates, improve program performance, or both.

(d) If the Central Education Agency enters a memorandum of understanding with the Texas Guaranteed Student Loan Corporation related to the regulation of proprietary schools, the agency may require each proprietary school governed by this chapter to provide information to the agency that is necessary for the purposes of the memorandum of understanding.

SECTION 4.06. Section 32.31(a), Education Code, is amended to read as follows:

(a) A [~~No~~] school may not [~~shall~~] maintain, advertise, solicit for, or conduct any course of instruction in Texas before the later of:

(1) the 30th day after the date the school applies for a certificate of approval under this chapter; or

(2) the date the school receives [~~without first obtaining~~] a certificate of approval from the administrator.

SECTION 4.07. Section 32.32, Education Code, is amended to read as follows:

Sec. 32.32. APPLICATION FOR CERTIFICATE OF APPROVAL. (a) Every proprietary school desiring to operate in the State of Texas or do business in the State shall make written application to the administrator for a certificate of approval. Such application shall be verified, be in such form as may be prescribed by the State Board of Education, and shall furnish the administrator such information as he may require.

(b) The administrator may enter into a reciprocal certification agreement with another state that has certification requirements that are substantially equivalent to those of this state. The administrator may waive any certification requirement, except a fee requirement, for an applicant with a valid certificate from a state with which this state has a reciprocal certification agreement.

SECTION 4.08. Section 32.33, Education Code, is amended to read as follows:

Sec. 32.33. CRITERIA. The administrator may approve the application of such proprietary school when the school is found, upon investigation at the premises of the school, to have met the following criteria:

(a) The courses, curriculum, and instruction are of such quality, content, and length as may reasonably and adequately achieve the stated objective for which the courses, curriculum or instruction are offered.

(b) There is in the school adequate space, equipment, instructional material and instructor personnel to provide training of good quality.

(c) Educational and experience qualifications of directors, administrators and instructors are adequate.

(d) The school maintains a written record of the previous education and training of the applicant student and clearly indicates that appropriate credit has been given by the school for previous education and training, with the new training period shortened where warranted through use of appropriate skills or achievement tests and the student so notified.

(e) A copy of the course outline; schedule of tuition, fees, refund policy, and other charges; regulations pertaining to absence, grading policy, and rules of operation and conduct; regulations pertaining to incomplete grades; the name, mailing address, and telephone number of the Central Education Agency for the purpose of directing complaints to the agency; the current rates of job placement and employment of students issued a certificate of completion; for the course of instruction in which the student is enrolling, the names of employers that have in the preceding five-year period employed in the occupational field of that course students who were issued a certificate of completion in the course and the number of those students employed; and the cost comparison for the appropriate course of instruction or training program prepared under Section 32.21(c) of this code; will be furnished the student prior to enrollment.

(f) Except as provided by Section 32.40 of this code, on completion of training, the student is given a certificate by the school indicating the course and that training was satisfactorily completed.

(g) Adequate records as prescribed by the administrator are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress and conduct are enforced.

(h) The school complies with all local, city, county, municipal, state and federal regulations, such as fire, building and sanitation codes. The administrator may require such evidence of compliance as is deemed necessary.

(i) The school is financially sound and capable of fulfilling its commitments for training.

(j) The school's administrators, directors, owners, and instructors are of good reputation and character.

(k) The school has, maintains and publishes in its catalogue and enrollment contract, the proper policy for the refund of the unused portion of tuition, fees and other charges in the event the student enrolled by the school fails to take the course or withdraws or is discontinued therefrom at any time prior to completion.

(l) The school does not utilize erroneous or misleading advertising, either by actual statement, omission, or intimation as determined by the State Board of Education.

(m) Such additional criteria as may be required by the State Board of Education.

(n) The school does not use a name like or similar to an existing tax supported school in the same area.

(o) The school furnishes to the Central Education Agency the current rates of students who receive a certificate of completion and of job placement and employment of students issued a certificate of completion.

SECTION 4.09. Section 32.34, Education Code, is amended by amending Subsection (d) and adding Subsection (f) to read as follows:

(d) At least thirty (30) days prior to expiration of a certificate of approval, the school [~~schools~~] shall forward to the administrator an application for renewal. The administrator shall reexamine the school at the premises of the school and either renew or cancel the school's certificate of approval. If a school fails to file a complete application for renewal at least thirty (30) days before the expiration date of the certificate of approval, the school, as a condition of renewal, must pay, in addition to the annual renewal fee, a late renewal fee in an amount established by State Board of Education rule of at least $100.

(f) The administrator shall visit a school to reexamine the school for compliance with the criteria provided by Section 32.33 of this code not later than three months after the date a school begins operation or after a change in ownership of a school.

SECTION 4.10. Section 32.36(a), Education Code, is amended to read as follows:

(a) The Administrator may revoke an issued certificate of approval or place reasonable conditions upon the continued approval represented by the certificate. Prior to revocation or imposition of conditions upon a certificate of approval, the Administrator shall notify the holder of the certificate, in writing, of the impending action and set forth the grounds for the action. The Administrator may reexamine a school two or more times during each year in which a notice relating to the school has been issued or conditions have been imposed on the school under this subsection.

SECTION 4.11. Section 32.39, Education Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) If a refund is not made within the period required by this section, the school shall pay interest on the refund for the interval beginning with the first day following the expiration of the refund period and ending with the day immediately preceding the date the refund is made. If the refund is made to a lending institution, the interest shall also be paid to that institution and applied against the student's loan. The commissioner of education annually shall establish the level of interest at a level sufficient to provide a deterrent to the retention of student funds. The Central Education Agency may exempt a school from the payment of the interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the agency on request documentation of the effort to locate the student.

(f) A proprietary school shall record a grade of "incomplete" for a student who withdraws but is not entitled to a refund under Subsection (b)(4)(F) of this section if the student requests the grade at the time the student withdraws and the student withdraws for an appropriate reason unrelated to the student's academic status. A student who receives a grade of incomplete may reenroll in the program during the 12-month period following the date the student withdraws and complete those incompleted subjects without payment of additional tuition.

SECTION 4.12. Subchapter D, Chapter 32, Education Code, is amended by adding Section 32.401 to read as follows:

Sec. 32.401. APPROVED DEGREES. A proprietary school may offer an associate of applied arts or an associate of applied science degree approved by the Texas Higher Education Coordinating Board.

SECTION 4.13. Subchapter G, Chapter 32, Education Code, is amended by adding Section 32.611 to read as follows:

Sec. 32.611. COMPETITIVE BIDDING; ADVERTISING. The State Board of Education may not adopt rules to restrict competitive bidding or advertising by a proprietary school except to prohibit false, misleading, or deceptive competitive bidding or advertising practices. Those rules may not restrict:

(1) the use of an advertising medium;

(2) the size or duration of an advertisement; or

(3) advertisement under a trade name.

SECTION 4.14. Subchapter G, Chapter 32, Education Code, is amended by adding Section 32.63 to read as follows:

Sec. 32.63. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. The civil penalty may not exceed $1,000 a day for each violation.

(b) The attorney general, at the request of the Central Education Agency, may bring a civil action to collect a civil penalty under this section.

(c) Civil penalties recovered in a suit brought under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

SECTION 4.15. Subchapter G, Chapter 32, Education Code, is amended by adding Section 32.64 to read as follows:

Sec. 32.64. SANCTIONS. (a) If the Central Education Agency has reasonable cause to believe that a proprietary school has violated this chapter or a rule adopted under this chapter, the agency may:

(1) order a peer review of the school; or

(2) suspend the admission of students to the school.

(b) A peer review ordered under this section shall be conducted by a peer review team composed of knowledgeable persons selected by the agency. The agency shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states. The team shall provide the agency with an objective assessment of the content of the school's curriculum and its application. The costs of providing a peer review team shall be paid by the school.

SECTION 4.16. Section 32.71, Education Code, is amended by amending Subsection (a) and adding Subsections (d), (e), and (f) to read as follows:

(a) Certificate and registration fees, except those charged pursuant to Subsection (d) of this section, shall be collected by the Administrator and deposited with the State Treasurer. Each fee shall be in an amount set by the Administrator and approved by the State Board of Education in accordance with the following schedule:

(1) the initial fee for a school is not less than $1,700 [~~$1,000~~];

(2) the annual renewal fee for a school is based on the gross amount of annual student tuition and fees and is not less than the following fee [~~as follows~~]:

Gross Amount, Student Tuition and Fees		Fee
	not more than $ 50,000	$ 550 [~~500~~]
more than $ 50,000	but not more than 100,000	650 [~~600~~]
more than 100,000	but not more than 250,000	750 [~~700~~]
more than 250,000	but not more than 500,000	850 [~~800~~]
more than 500,000	but not more than 750,000	950 [~~900~~]
more than 750,000	but not more than 1,000,000	1,050 [~~1,000~~]
more than 1,000,000		1,150 [~~1,100~~];

(3) the initial registration fee for a representative is not less than $60;

(4) the annual renewal fee for a representative is not less than $30;

(5) the fee for a change of a name of a school or owner is not less than $100;

(6) the fee for a change of an address of a school is not less than $180;

(7) the fee for a change in the name or address of a representative or a change in the name or address of a school that causes the reissuance of a representative permit is not less than $10;

(8) the application fee for an additional course is not less than $150, except for seminar and workshop courses, for which the fee is not less than $25; and

(9) the application fee for a director, administrative staff member, or instructor is not less than $15[~~;~~

[~~(10) the application fee for the authority to grant associate of applied arts and associate of applied science degrees is $500; and~~

[~~(11) the application fee for an additional degree course is $250~~].

(d) In connection with the regulation of any school or course through a memorandum of understanding pursuant to Section 32.12(c) of this chapter, the Administrator shall set an application and annual renewal fee, not to exceed $2,000. The fee shall be approved by the State Board of Education to be an amount reasonably calculated to cover the administrative costs associated with assuming the additional regulation.

(e) The Administrator shall visit an out-of-state school to determine compliance with the certification requirements imposed under this chapter if the school is in a state with which this state does not have a reciprocal certification agreement. The Administrator shall collect a fee for the visit in an amount that is approved by the State Board of Education and is reasonably calculated to cover the costs of the compliance visit.

(f) The fee for an investigation at a school to resolve a complaint filed against the school is $400. The fee may be charged only if:

(1) the complaint could not have been resolved by telephone or written correspondence only;

(2) a representative of the Central Education Agency visits the school as a part of the complaint resolution process; and

(3) the school is found to be at fault.

SECTION 4.17. Sections 2, 8, 9, and 14, Chapter 332, Acts of the 60th Legislature, Regular Session, 1967 (Article 4413(29c), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. CERTIFICATE [~~A LICENSE~~] REQUIRED FOR COMMERCIAL DRIVER-TRAINING SCHOOL. No person, firm, association, partnership, or corporation shall operate a commercial driver-training school [~~after January 1, 1968,~~] unless a certificate of approval for the [~~license as a~~] commercial driver-training school has been secured under the Texas Proprietary School Act (Chapter 32, Education Code) [~~from the Texas Department of Public Safety~~], provided that training or classes conducted by colleges, universities, high schools, and junior high schools for students as a part of the normal program for such institutions shall be exempt.

Sec. 8. LICENSE FEES. (a) [~~Each application for an original commercial driver-training school or branch office license shall be accompanied by a $150 investigation fee and upon approval shall pay an annual license fee of $200. The investigation fee shall be payable only once, at the time of the original application. The license of each commercial driver-training school or branch office may be renewed subject to the same requirements as the original license, and upon payment of the annual renewal license fee of $200.~~] Each application for an original supervisory instructor's or instructor's license shall be accompanied by an

investigation and examination fee of $50 and upon approval such applicant shall pay an annual license fee of $25. The investigation and examination fee shall only be payable with the original application. No license fee shall be refunded in the event that the license is suspended or revoked.

(b) The fee for a duplicate license shall be $2. A duplicate license may be issued to replace an original license if the original is lost or destroyed and an affidavit of such fact is made and filed with the Department.

(c) All licenses issued to [~~commercial driver-training schools, branch offices,~~] supervisory instructors[;] and driver-training instructors shall expire automatically on December 31 of the calendar year for which the license was issued, unless sooner suspended or revoked as provided by this Act.

(d) All fees collected under this Act shall be deposited in the State Treasury in the Operator's and Chauffeur's License Fund.

(e) [~~A commercial driver-training school or branch office license must be prominently displayed at the place of business of the commercial driver-training school or branch office.~~] The supervisory driver-training instructor and driver-training instructor license must be carried by the instructor at all times while instructing. Each license shall be signed by the Director of the Department of Public Safety and shall be issued under the seal of the Department.

Sec. 9. REFUSAL, SUSPENSION, REVOCATION GROUNDS. The Department may suspend, revoke, or refuse a license to any [~~commercial driver-training school or branch school,~~] supervisory instructor or driver-training instructor on any one or more of the following grounds:

(a) When the Department is satisfied that the applicant or licensee fails to meet the requirements to receive or hold a license under this Act;

(b) When the applicant or licensee permits fraud or engages in fraudulent practices either with reference to the application to the Department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license or permit, or permits or engages in any other fraudulent practice in any action between the applicant or licensee and the public;

(c) When the applicant or licensee fails to comply with the rules and regulations of the Department of Public Safety regarding the instruction of drivers in this state or fails to comply with any section of this Act.

Sec. 14. LOCATIONS AUTHORIZED FOR INSTRUCTION. No motor vehicle driver-training instruction shall be conducted for hire or tuition [~~unless in a licensed commercial driver-training school or one of its branch offices~~] except as set out in Section 2 and in counties with a population of less than 50,000 where driver-training instruction may be given by a supervisory instructor or instructor not connected with or in a commercial driver-training school. Defensive driving courses approved [~~by the Department~~] in accordance with the provisions of Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), may be taught in locations other than in commercial driver-training schools or branch offices if such location is approved by the Central Education Agency [~~Department~~].

SECTION 4.18. Section 10(a), Chapter 332, Acts of the 60th Legislature, Regular Session, 1967 (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) When there is cause to refuse an application or to suspend or revoke the license of any [~~commercial driver-training school, branch office,~~] supervisory driver-training instructor[;] or driver-training instructor, the Department, not less than 30 days before refusal, suspension, or revocation action is taken, shall notify such person in writing, in person, or by certified mail at the last address supplied to the Department by such person, of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for

the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the Department. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the Department for this administrative hearing, the Department is authorized to suspend or revoke the [~~commercial driver-training school's, branch office's,~~] supervisory driver-training instructor's[~~,~~] or driver-training instructor's license without a hearing. Upon receipt by the Department of such written request of such person within the 20-day period as set out above, an opportunity for an administrative hearing shall be afforded as early as is practical. In no case shall the hearing be held less than 10 days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the Department by the applicant or licensee. Administrative hearing in such cases shall be before a qualified Hearing Officer of the Department.

SECTION 4.19. Section 7(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Department may license a person as a Class C driver who is under the age of eighteen (18) years, provided the person is sixteen (16) years of age or older and the person has completed and passed a driver training course approved by the Central Education Agency [~~Department~~], and has passed the examination required by Section 10 of this Act. The Department shall carry out the duties required of it by the provisions of this Act in any manner that will provide the greatest convenience to the public.

SECTION 4.20. Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), (d), and (e) and adding Subsections (f) and (g) to read as follows:

(a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section 51, committed while operating a motor vehicle, the defendant shall be advised of his right to successfully complete a driving safety course and the court:

(1) in its discretion may defer proceedings and allow the person 90 days to present a uniform certificate of course completion as evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved under the Texas Proprietary School Act (Chapter 32, Education Code) [~~by the Texas Department of Public Safety~~] or other driving safety course approved by the court; or

(2) shall defer proceedings and allow the person 90 days to present a uniform [~~department-approved~~] certificate of course completion as written evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved under the Texas Proprietary School Act (Chapter 32, Education Code) [~~by the Texas Department of Public Safety~~] or another driving safety course approved by the court, if:

(A) on or before the answer date on the citation the person enters a plea in person or in writing of No Contest or Guilty and presents to the court an oral request or a written request, in person or by mail, to take a course;

(B) the person has a valid Texas driver's license or permit;

(C) the person's driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense;

(D) the person files an affidavit with the court stating that the person is not in the process of taking a course under this subdivision and has not completed a course under this subdivision that is not yet reflected on the person's driving record; and

(E) the offense charged is for an offense covered by this section other than speeding 25 miles per hour or more over the posted speed limit at the place where the alleged offense occurred.

(b) When the person complies with the provisions of Subsection (a) of this section and a uniform certificate of course completion [~~approved by the department~~] is accepted by the court, the court shall dismiss the charge, but the court may only dismiss one charge for completion of each course.

When a charge is dismissed under this section, the charge may not be part of the person's driving record or used for any purpose, but the court shall report the fact that a person has successfully completed a driving safety course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record. The court shall note in its report whether the course was taken under the procedure provided by Subdivision (2) of Subsection (a) of this section for the purpose of providing information necessary to determine eligibility to take a subsequent course under that subdivision. An insurer delivering or issuing for delivery a motor vehicle insurance policy in this state may not cancel or increase the premium charged the insured under the policy merely because of an offense dismissed under this section or because the insured completed a driving safety course under this section.

(d) The State Board of Education shall enter into a memorandum of understanding with the State Board of Insurance for the interagency development of a curriculum for driving safety courses. The Central Education Agency [~~department~~] shall administer comprehensive rules [~~and regulations~~] governing driving safety courses adopted by the State Board of Education and the board shall place on file such rules with the secretary of state.

(e) No person shall distribute any written information for the purpose of advertising a provider of a driving safety course within 500 feet of any court having jurisdiction over an offense subject to this section. This subsection does not apply to distribution of such information to a court for the purpose of obtaining approval of the course, or to advise the court of the availability of the course, or to distribution by the court. A violation of this subsection by a provider, or the provider's agent, servant, employee, or a person acting in a representative capacity for the provider, shall result in loss of the provider's status as a provider of a course approved under the Texas Proprietary School Act (Chapter 32, Education Code) [~~or licensed by the Texas Department of Public Safety~~] or other driving safety course approved by the court.

(f) The uniform certificate of course completion shall be printed on copy resistant paper in not fewer than two self-copying parts to provide a control copy of the certificate that shall be retained by the course provider under rules adopted by the State Board of Education. Each certificate may not be more than 8-1/2 inches by 3-1/2 inches in size and shall include an identifying number by which the Central Education Agency, the court, or the department may verify its authenticity with the course provider. The certificate shall be in a form promulgated by the Central Education Agency.

(g) The Central Education Agency shall print and supply the serially numbered uniform certificates to owners, or primary consignees, of courses approved under the Texas Proprietary School Act (Chapter 32, Education Code) or by a court. The Central Education Agency may charge a fee of $1 for each certificate. An owner or consignee may not charge an operator a fee in excess of the fee paid to the agency for a certificate. The agency shall deposit the fees with the state treasurer to be used

only for the expense of supplying the certificates and administering the Texas Proprietary School Act (Chapter 32, Education Code).

SECTION 4.21. Sections 3 and 4, Chapter 332, Acts of the 60th Legislature, Regular Session, 1967 (Article 4413(29c), Vernon's Texas Civil Statutes), are repealed.

SECTION 4.22. A uniform certificate of course completion is required as evidence of successful completion of a driving safety course to dismiss a charge under Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), only for courses completed on or after January 1, 1990.

SECTION 4.23. The provider of a driver safety course approved by the Texas Department of Public Safety may not continue the course after October 1, 1989, unless the provider files on or before that date an application for a certificate of approval under Chapter 32, Education Code. If the provider files an application on or before that date, the provider may continue the course during the period that the application is pending.

SECTION 4.24. Subsection (a), Section 32.23, Education Code, as amended by this Act, does not affect the entitlement of the members serving on the Proprietary School Advisory Commission on the effective date of this Act to continue to serve for the terms to which they were appointed unless otherwise removed. Their successors shall be appointed to achieve as soon as possible the membership scheme prescribed by Subsection (a), Section 32.23, Education Code, as amended by this Act.

SECTION 4.25. The Central Education Agency, the Texas Guaranteed Student Loan Corporation, and each agency regulating proprietary schools shall adopt the memorandum of understanding required under Section 32.25, Education Code, as added by this Act, not later than August 31, 1990.

SECTION 4.26. (a) An interim committee is created to consider and evaluate the system the state uses to approve and regulate courses of study offered by proprietary schools. The committee shall report its findings to the 72nd Legislature, including any drafts of any proposed legislation necessary to implement its recommendations.

(b) The committee shall consider the policies and procedures of the Texas Higher Education Coordinating Board, the Central Education Agency, and other agencies regarding proprietary school programs, including:

(1) on-site evaluation of facilities;
(2) qualifications and continuity of teaching staff;
(3) student admission and recruitment procedures;
(4) placement of proprietary school graduates;
(5) counseling and support services for students;
(6) student loan default rates; and
(7) student dropout rates.

(c) The committee shall consist of 11 members as follows: the chair of the Higher Education Committee of the house of representatives; the chair of the Public Education Committee of the house of representatives; the chair of the Education Committee of the senate; the commissioner of the Texas Higher Education Coordinating Board or his designee; the commissioner of the Central Education Agency or his designee; one senator and two public members appointed by the lieutenant governor; and one representative and two public members appointed by the speaker of the house of representatives. The public members shall be persons who have had experience in hiring graduates of programs offered by proprietary schools and programs offered by the technical vocational components of public community colleges.

(d) The Texas Higher Education Coordinating Board, the Central Education Agency, the Legislative Budget Board, the Sunset Advisory Commission, and the Texas Legislative Council shall provide staff support as required.

ARTICLE V. INTERSCHOLASTIC LEAGUES

SECTION 5.01. Section 21.921, Education Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The University Interscholastic League[~~, which~~] is a part of The University of Texas at Austin and[;] must submit its rules and procedures to the State Board of Education for approval, disapproval, or modification. The funds belonging to the University Interscholastic League shall be deposited with The University of Texas at Austin for the benefit of the League and shall be subject to audits by The University of Texas at Austin, The University of Texas System, and the State Auditor, and copies of annual audits shall be furnished, upon request, to members of the legislature. [~~The board may approve, disapprove, or modify any of the rules.~~]

(d) The University Interscholastic League 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 University Interscholastic League during the preceding fiscal year. The form of the annual report and the reporting time are as provided in the General Appropriations Act.

SECTION 5.02. Subchapter Z, Chapter 21, Education Code, is amended by adding Section 21.9211 to read as follows:

Sec. 21.9211. INTERSCHOLASTIC LEAGUE ADVISORY COUNCIL. (a) The interscholastic league advisory council is created. The council is composed of:

(1) two members of the State Board of Education appointed by the chairman of the board;

(2) a member of the house of representatives appointed by the speaker of the house;

(3) a member of the senate appointed by the lieutenant governor;

(4) two members of the Legislative Council of the University Interscholastic League appointed by the chairman of the council;

(5) two public school board members appointed by the commissioner of education; and

(6) three members of the general public appointed by the commissioner of education.

(b) A member of the advisory council serves at the will of the member's appointing authority.

(c) In appointing members of the general public to the advisory council, the commissioner of education shall give special consideration to students, parents of students, and teachers.

(d) The advisory council shall select a chairman from among its members and shall meet at the call of the chair.

(e) The advisory council shall review the rules of the University Interscholastic League and shall make recommendations relating to the rules to the Legislative Council of the University Interscholastic League and to the State Board of Education. The advisory council shall submit its initial report not later than September 1, 1990.

(f) A member of the advisory council may not receive compensation but is entitled to reimbursement from the University Interscholastic League for transportation expenses and the per diem allowance for state employees in accordance with the General Appropriations Act.

SECTION 5.03. The State Board of Education shall conduct a comprehensive study of the rules, bylaws, and procedures of the University Interscholastic League. The study must include a review of the structure of the league's governing bodies and of minority representation on those governing bodies.

The board shall report the results of the study to the legislature not later than September 1, 1990.

SECTION 5.04. The University Interscholastic League shall report on the minority and female composition of the Legislative Council of the league. The report shall include actual data reflecting the minority and female composition of the Legislative Council for the present year and the previous four years, a description of efforts to encourage minority and female representation on the council, and further actions needed to ensure a balanced representation of these groups on the council. The University Interscholastic League shall submit the report to the governor, the legislature, the interscholastic league advisory council, and the State Board of Education not later than December 1 of each even-numbered year.

ARTICLE VI. MISCELLANEOUS PROVISIONS

SECTION 6.01. Section 11.35, Education Code, is amended to read as follows:

Sec. 11.35. HIGH SCHOOL EQUIVALENCY EXAMINATIONS. The State Board of Education shall provide for the administration of high school equivalency examinations. Any person [~~over the age of 17~~] who does not have a high school diploma and is at least 17 years of age, or is at least 16 years of age if a public agency providing supervision of the person or having custody of the person under a court order recommends that the person take the examination, may take the examination in accordance with the rules and regulations promulgated by the board. The board by rule shall fix and require payment of a fee as a condition to the issuance of a high school equivalency certificate and a copy of the scores of the examinations. The fee must be reasonable and designed to cover the administrative costs of issuing the certificate and a copy of the scores. The board may not require a waiting period between the date a person withdraws from school and the date the person takes the examination unless the period relates to the time between administrations of the examination.

SECTION 6.02. Subchapter B, Chapter 11, Education Code, is amended by adding Section 11.351 to read as follows:

Sec. 11.351. EQUIVALENCY EXAMINATION PILOT PROGRAM. (a) The Central Education Agency shall develop a pilot program to prepare certain students who are at risk of dropping out of school to take a high school equivalency examination.

(b) A school district shall participate in the program if requested to do so by the Central Education Agency. The Central Education Agency shall request at least those districts with dropout rates in the top 25 percent of all districts to participate in the program. The commissioner, on request of a district, may waive the requirement for a district's participation for one year if the district would be unable to effectively participate in the program. Other school districts may participate in the pilot program on the approval of the Central Education Agency. Each district in the program shall offer preparatory classes for the high school equivalency examination to students who are eligible for the program. The district shall inform those students of the locations and times at which the students may take a high school equivalency examination.

(c) A student may participate in the program if:

(1) the student is 16 years of age or older at the beginning of the school year or semester;

(2) the student and the student's parents or guardians agree to the student's participation;

(3) there is not a reasonable expectation that the student will graduate on schedule;

(4) there is a reasonable expectation that on completion of the program the student will be able to pass the high school equivalency examination; and

(5) any other conditions specified by the State Board of Education are satisfied.

(d) The Central Education Agency shall request permission from the General Educational Development Testing Service to administer the service's high school equivalency examination to enrolled high school students who participate in the pilot program.

(e) The Central Education Agency shall report the results of the pilot program and make recommendations for proposed legislation to the 73rd Legislature not later than January 31, 1993. The report and recommendations shall address the issues of:

(1) implementing the program in all school districts;

(2) implementing the program for all students who are not expected to graduate on schedule;

(3) the effect of the program on the dropout rate; and

(4) measures necessary to prevent the program from operating as an alternative to graduation from high school.

(f) This section expires September 1, 1993.

SECTION 6.03. Section 13.031(a), Education Code, is amended to read as fo llows:

(a) The governor [~~State Board of Education~~] shall appoint the Commission on Standards for the Teaching Profession with the advice and consent of the senate [~~from a list of qualified individuals recommended by the commissioner of education~~]. Professional organizations in the teaching profession shall be invited to nominate persons for appointment. [~~The commissioner shall seek advice of the commission in making his recommendation for its membership.~~] The commission shall be composed of 19 members representative of the education profession and shall consist of teachers, school administrators, and representatives of higher education. No more than six members shall be representatives of higher education. Members of the commission are appointed for two-year terms.

SECTION 6.04. Subsections (c) and (e), Section 13.032, Education Code, are amended to read as follows:

(c) In developing standards for programs in teacher education, the board shall provide each approved institution with a statement of the general qualifications required for each area of specialization for which a teaching certificate is authorized. The board may not require an institution to teach a particular doctrine or to conduct instruction on the basis of, or in accordance with, any particular pedagogical method. The board shall adopt as an accreditation standard for teacher education programs a standard for the cumulative performance of a program's students on the certification examination required under Subsection (e) of this section. A program that fails to meet the cumulative performance standard is subject to sanctions under Section 13.033 of this code.

(e) The State Board of Education by rule shall require satisfactory performance on a competency examination of basic skills prescribed by the board as a condition to admission into an approved teacher education program. In addition, the board by rule shall require satisfactory performance after graduation from an in-state or out-of-state teacher education program on a comprehensive examination prescribed by the board as a condition to full certification as a teacher and shall require satisfactory performance on a separate examination prescribed by the board as a condition to certification as a superintendent or other administrator. The board shall prescribe an examination designed to test knowledge appropriate for certification to teach primary grades and an examination designed to test knowledge appropriate for certification to teach secondary grades. The secondary teacher examinations must test knowledge of each examinee in the subject areas listed in Section 21.101 of this code in which the examinee will be certified to teach. The

administrator examinations must test administrative skills and knowledge in subject areas and other matters as the board considers appropriate. The board, in conjunction with school districts, shall provide candidates for teacher or administrator certification with an opportunity for board-developed preparation for the certification examination. The board may limit the number of times a candidate for certification who fails to perform satisfactorily on the certification examination may retake it, but each candidate must be given more than one opportunity to perform satisfactorily. However, a candidate may not teach in a subject area until the candidate has performed satisfactorily on the certification examination in that subject area. The board shall prescribe the method of determining the satisfactory level of performance on a test under this subsection.

SECTION 6.05. Subsection (c), Section 13.302, Education Code, is amended to read as follows:

(c) In developing the appraisal process, the board shall provide for using not fewer than two appraisers for each appraisal. One appraiser must be the teacher's supervisor and one must be a person as approved by the board of trustees. An appraiser who is a classroom teacher may not appraise the performance of another classroom teacher who teaches at the same school campus at which the appraiser teaches, unless it is impractical because of the number of campuses or unless the appraiser is the chairman of a department or grade level whose job description includes classroom observation responsibilities. In a district that uses not more than two appraisers per appraisal, the board shall provide for an appraisal by a third appraiser from another campus if the difference between the appraisals is such that the teacher's performance cannot be accurately evaluated. The board also shall provide for a uniform training program and uniform certification standards for appraisers to be used throughout the state. The board shall include teacher self-appraisal in the process.

SECTION 6.06. Subchapter D, Chapter 16, Education Code, is amended by adding Section 16.160 to read as follows:

Sec. 16.160. RESIDENTIAL FACILITY STUDENT ALLOTMENT. A district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.2 for each student in average daily attendance who has been placed by the Texas Youth Commission apart from his family in a noneducational care or treatment facility served by the district.

SECTION 6.07. Subsection (a), Section 21.032, Education Code, is amended to read as follows:

(a) Unless specifically exempted by Section 21.033 of this code or under other laws or unless a child is at least 17 years of age and has been issued a high school equivalency certificate, every child in the state who is as much as six [~~seven~~] years of age, or who is less than seven years of age and has previously been enrolled in first grade, and who has not completed the academic year in which his 17th [~~16th~~] birthday occurred shall be required to attend the public schools in the district of his residence or in some other district to which he may be transferred as provided or authorized by law a minimum of 170 days of the regular school term of the district in which the child resides or to which he has been transferred.

SECTION 6.08. Subchapter D, Chapter 21, Education Code, is amended by adding Section 21.114 to read as follows:

Sec. 21.114. VOCATIONAL EDUCATION INTEGRATED DELIVERY SYSTEM. (a) The master plan for vocational education under Section 21.113 of this code shall provide for an intergrated delivery system that is designed to:

(1) meet local, regional, and statewide needs for vocational education programs;

(2) provide vocational education services in a systematic, nonduplicative manner;

(3) determine priorities for vocational education program offerings in each service delivery region established under this section; and

(4) maintain a central data base on all institutions, both public and private, that provide vocational education.

(b) The State Board of Education shall provide in the master plan for the establishment of vocational education service delivery regions throughout the state. The regions shall have the same boundaries as the state planning regions delineated by the governor.

(c) The State Board of Education shall establish in the master plan:

(1) priorities for local, regional, and statewide service plans; and

(2) the composition of regional planning committees that shall coordinate service delivery in each region.

SECTION 6.09. Subchapter N, Chapter 21, Education Code, is amended by adding Section 21.510 to read as follows:

Sec. 21.510. TRANSITION PLANNING. (a) The Central Education Agency, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission shall develop, mutually agree to, and by rule adopt a memorandum of understanding that establishes the respective responsibility of each agency for the provision of the services necessary to prepare students enrolled in special education programs for a successful transition to life outside the public school system.

(b) The Central Education Agency, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission may request other appropriate agencies to participate in the development of the memorandum of understanding, and each agency requested shall so participate and adopt the memorandum. The memorandum must be mutually agreed to by all participating agencies.

(c) The memorandum may require an agency or a school district to provide a service only if the agency or school district is providing that service at the time the memorandum is adopted. The memorandum shall require each participating agency to participate in the development of a transition plan required by Subsection (e) of this section on the request of a school district.

(d) The Central Education Agency shall coordinate the development of the memorandum of understanding.

(e) Each school district shall develop and annually review an individual transition plan (ITP) for each student enrolled in a special education program who is at least 16 years of age. The ITP shall be developed in a separate document from the individualized education program (IEP) and shall not be considered a part of the IEP. The school district shall coordinate development of part of the ITP with any participating agency as provided in the memorandum of understanding in order to provide continuity and coordination of services among the various agencies and between the ITP and IEP. The district shall request the participation in the development of the ITP of any participating agency recommended by school personnel or requested by the student or the student's parent. The district shall invite the student or the student's parents or guardians to participate in the development of the ITP. Only those components of the ITP which are the responsibility of the district shall be incorporated into the student's IEP. Only the failure to implement those components of a student's ITP which are included in the IEP and are the responsibility of the school district shall be subject to the due process procedures of the Education of the Handicapped Act (20 U.S.C. Section 1400, et seq.) or to Central Education Agency complaint procedures. The failure of the district to develop and annually review an ITP for a student shall be subject only to the Central Education Agency complaint procedures and not to the due process procedures of the Education of the Handicapped Act. A monitoring visit under

Section 21.509 of this code shall include a review of the transition planning requirements under this section. A school district is not liable for the failure of another agency to implement those components of the ITP that are designated as the responsibility of that agency under the memorandum of understanding.

SECTION 6.10. Chapter 73, Human Resources Code, is amended by adding Section 73.022 to read as follows:

Sec. 73.022. FEDERALLY FUNDED PROGRAMS. (a) The Central Education Agency may not impose requirements on an early childhood intervention program that receives funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 2701 et seq.) that are not requirements under federal law or under this chapter.

(b) The Central Education Agency shall coordinate monitoring required by federal law for early childhood intervention programs with the program monitoring required by this chapter to the extent possible.

SECTION 6.11. The agencies required to develop a memorandum of understanding under Section 21.510, Education Code, as added by this Act, shall adopt the memorandum not later than September 1, 1990. A district is not required to develop transition plans under that section before the memorandum is adopted.

SECTION 6.12. Notwithstanding the provisions of Section 13.032(e), Education Code, as amended by this Act, a person who is teaching on the effective date of this Act under a temporary certificate issued by the State Board of Education in a subject area in which the person failed to perform satisfactorily on the certification examination required under Section 13.032(e), Education Code, may continue to teach in that subject area until the expiration of the temporary certificate.

SECTION 6.13. (a) The terms of the initial members appointed to the Commission on Standards for the Teaching Profession made by the governor under Section 13.031, Education Code, as amended by this Act, begin February 1, 1990.

(b) The members of the Commission on Standards for the Teaching Profession serving on September 1, 1989, continue to serve as provided by prior law until February 1, 1990, and the prior law is continued in effect for that purpose. On February 1, 1990, those members' offices are abolished.

ARTICLE VII. EFFECTIVE DATE; EMERGENCY

SECTION 7.01. This Act takes effect September 1, 1989, except that Sections 4.06 and 4.13 and this article take effect immediately.

SECTION 7.02. 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 according to its terms, and it is so enacted.

Floor Amendment No. 1 - Hammond

Amend **C.S.S.B. 417** as follows: On page 18, in Section 2.09, amend the second sentence of Section 21.0741, Education Code, by striking "The" and substituting "After the district has made school assignments according to district policy, the".

Floor Amendment No. 2 - Hammond

Amend **C.S.S.B. 417** as follows: On page 19, line 26, between "is" and "included" insert "not".

Floor Amendment No. 3 - Hammond

Amend **C.S.S.B. 417** on page 24, between lines 26 and 27, insert a new Section 2.19 to read as follows and renumber subsequent sections appropriately:

SECTION 2.19. Section 16.152, Education Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) For each student who is educationally disadvantaged, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.2, subject to Subsection (e) of this section.

(e) The commissioner of education may:

(1) retain a portion of the total amount allotted under Subsection (a) of this section that the commissioner considers appropriate to finance pilot programs under Section 11.191 of this code and to finance intensive remedial instruction programs and study guides provided under Sections 21.552(b) and (c) of this code; and

(2) reduce each district's allotment proportionately.

Floor Amendment No. 4 - Hammond

Amend **C.S.S.B. 417** as follows:

(1) On page 23, between lines 20 and 21, insert a new section, appropriately numbered, to read as follows:

SECTION ___. Section 21.753, Education Code, is amended to read as follows:

Sec. 21.753. ACCREDITATION STANDARDS. (a) The State Board of Education shall adopt rules for the accreditation of school districts. The rules shall include criteria to evaluate the performance of school districts and to rate each district for accreditation purposes as:

(1) recognized;

(2) accredited;

(3) accredited advised;

(4) warned; or

(5) unaccredited [~~establish standards which a school district must satisfy to be accredited and shall adopt an accreditation process in accordance with this section~~].

(b) The criteria in the accreditation rules [~~accreditation standards~~] must include consideration of:

(1) goals and objectives of the district;

(2) compliance with statutory requirements and requirements imposed by rule of the State Board of Education under statutory authority;

(3) the quality of learning on each of the district's campuses based on indicators such as scores on achievement tests;

(4) the quality of the district's appraisal of teacher performance and of administrator performance;

(5) the effectiveness of district principals as instructional leaders;

(6) the fulfillment of curriculum requirements;

(7) the effectiveness of the district's programs in special education and for special populations;

(8) the correlation between student grades and performance on standardized tests;

(9) the quality of teacher in-service training;

(10) paperwork reduction efforts;

(11) training received by board members;

(12) the effectiveness of the district's efforts to improve attendance; [~~and~~]

(13) the effectiveness of the district's remedial and support programs under Section 21.557 of this code for students at risk of dropping out of school;

(14) the effectiveness of the district's dropout prevention and recovery programs;

(15) the effectiveness of the district's drug abuse prevention programs;

(16) parental and community involvement in the district;

(17) efficient allocation of available resources; and

(18) adequate performance under the indicators adopted under Section 21.7531 of this code.

(2) On page 24, strike Section 2.18 and substitute a new section, appropriately numbered, to read as follows:

SECTION ___. Section 21.754, Education Code, is amended to read as follows:

Sec. 21.754. INVESTIGATIONS. (a) The Central Education Agency shall annually determine whether each school district satisfies the accreditation criteria from reports furnished by the school district or from an on-site evaluation.

(b) The State Board of Education by rule shall establish a schedule for on-site evaluations by the Central Education Agency. The rules must require that:

(1) each district is visited and all accreditation criteria investigated not less than once every six years, except that the board may extend that period for districts rated as recognized for an additional period not to exceed one year;

(2) each district rated as accredited advised is visited and assisted not less than once every two years;

(3) each district rated as warned is visited and assisted not less than once each year; and

(4) each district that has a poor performance under the indicators adopted under Section 21.7531 of this code is investigated more frequently than otherwise required under this section.

(c) Each annual review shall include an analysis of:

(1) student performance;

(2) attendance, promotion, and dropout rates;

(3) program costs;

(4) results of teacher and parent surveys; and

(5) other information required by the board.

(d) In compliance with Section 21.925 of this code, the board shall make optimum use of the agency's public education information management system to minimize the written reporting requirements of school districts.

(e) To determine if a district qualifies for a higher rating or on identification of potential problems, the commissioner may direct the agency to conduct on-site investigations at any time and may raise or lower the accreditation rating as a result of the investigation.

(f) [~~Not less than once every three years, the agency shall investigate whether a school district satisfies the accreditation standards. The agency shall investigate more frequently a district that is determined to be below any accreditation standard.~~

[~~(b)~~] The agency shall direct investigators to be alert to any fundamental deficiencies in a district's educational system, such as failure of the district to satisfy curriculum requirements, and to report deficiencies to agency staff responsible for research and planning.

(g) [~~(c)~~] In making an accreditation investigation, the investigators shall obtain information from campus administrators, teachers, and parents of students enrolled in the district. The investigation may not be closed until information is obtained from each of those sources. The board shall adopt rules for:

(1) obtaining information from parents and using that information in the investigator's report; and

(2) obtaining information from teachers in a manner that prevents the district from screening the information.

[~~(d)~~] ~~The agency shall give written notice to the superintendent and the board of trustees of any impending investigation of the district's accreditation.~~

(3) On page 24, between lines 26 and 27, insert two new sections, appropriately numbered, to read as follows:

SECTION ___. Section 21.757, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) If a district does not satisfy the accreditation criteria [~~standards~~], the commissioner shall take the following actions[~~, in sequence,~~] to the extent the commissioner determines necessary:

(1) confidential notice of the deficiency to any accreditation committee of the board of trustees and to the district superintendent;

(2) public notice of the deficiency to the board of trustees;

(3) appointment of an agency monitor to participate in and report to the agency on the activities of the board of trustees; and

(4) appointment of a master to oversee the operations of the district.

(b) If a district fails to satisfy [~~meet or maintain~~] accreditation criteria [~~standards~~] despite the actions of the commissioner under this section, the State Board of Education shall revoke the district's accreditation and shall [~~may~~] withhold state funds from the district.

SECTION ___. Subchapter B, Chapter 11, Education Code, is amended by adding Section 11.27 to read as follows:

Sec. 11.27. INNOVATIVE EDUCATIONAL PROGRAMS. (a) The State Board of Education shall establish a process and standards by which a limited number of programs developed by school districts rated as exemplary under Section 21.753 of this code may be approved by the board to implement innovative educational practices at a school or schools in the district.

(b) For a program to be approved under this section:

(1) the approval must be supported by the school board, the superintendent, the school's principal, and at least a majority of the teachers of the school; and

(2) the program must provide specific procedures for the evaluation of the program.

(c) A program approved under this section may not result in an increase in the amount of state funds allocated to the district or a decrease in the amount allocated to any other district.

(d) If an innovative educational program proposes a deviation from a requirement or prohibition imposed by state law or rule, final approval of the program by the State Board of Education constitutes a waiver of the requirement or prohibition for the duration of the program. A prohibition on conduct that constitutes a criminal offense may not be waived.

(e) The State Board of Education shall report to the Legislative Education Board the innovative educational programs requested and approved.

(4) On page 25, strike Section 2.20 and substitute a new section, appropriately numbered, to read as follows:

SECTION ___. (a) The State Board of Education shall appoint an advisory committee, composed of persons from the fields of education and business, to:

(1) make recommendations to the board for the initial set of performance indicators adopted under Section 21.7531, Education Code, as added by this Act; and

(2) develop the criteria for evaluating the performance of school districts and rating the districts for accreditation purposes under Section 21.753, Education Code, as amended by this Act.

(b) The advisory committee shall submit the recommended set of indicators and the criteria developed to the Legislative Education Board for review and comment before submitting the indicators and criteria to the State Board of Education for consideration for adoption. The State Board of Education shall adopt performance indicators under Section 21.7531, Education Code, as added by this Act, not later than January 1, 1991, and shall report the indicators adopted to the 72nd Legislature with a statement of the reason for the inclusion of each indicator.

(c) A person appointed to the committee must be knowledgeable in statistical analysis, evaluation methods, curriculum and instruction, educational management, or the education of special populations.

(d) The board shall appoint the committee not later than December 31, 1989.

(e) After the committee develops the performance indicators and criteria and the board adopts rules that include the indicators and criteria, the commissioner of education shall notify the governor of the adoption. If the governor finds that the board has adopted rules as required by this section and by Section 21.753, Education Code, as amended by this Act, the governor shall notify the board that the committee is abolished.

(5) Renumber sections appropriately.

Floor Amendment No. 5 - Hammond

Amend **C.S.S.B. 417** as follows:

On page 32, after line 1, add Section 32.21 (e) to read as follows:

(e) The Texas Education Agency and the Texas Higher Education Coordinating Board shall adopt a memorandum of understanding which develops guidelines for coordinating the regulation of proprietary schools and courses that are subject to Section 61.301 through 61.317, Education Code and Chapter 32, Education Code. The memorandum shall include provisions which:

(1) clearly identify the responsibilities of each agency in regulating proprietary schools;

(2) ensure that the rules adopted by both agencies pursuant to the memorandum of understanding are not duplicative or in conflict; and

(3) establish procedures for ensuring that information affecting the proprietary school regulatory activities of both agencies is shared between the agencies.

Floor Amendment No. 6 - Hammond

Amend **C.S.S.B. 417** as follows:

(1) On page 62, line 1, between the comma and "a", insert "except for a candidate certified in another state or a candidate employed under an emergency permit who is making satisfactory progress toward completion of a deficiency plan,".

(2) On page 62, line 4, between the period and "The", insert "The commissioner of education may waive the requirement for satisfactory performance on the subject area certification examination for not more than one year in a case of extreme personal hardship to the candidate.".

Floor Amendment No. 7 - Berlanga

Amend **C.S.S.B. 417** on page 3, between lines 15 and 16, by adding a new Section 1.04 to read as follows and renumbering subsequent sections appropriately:

SECTION 1.04. Subsection (c), Section 11.26, Education Code, is amended to read as follows:

(c) With the advice and assistance of the state commissioner of education, the State Board of Education shall:

(1) formulate and present to the governor and Legislative Budget Board the proposed budget or budgets for operating the Foundation School Program, the Central Education Agency, and the other programs for which it has responsibility;

(2) adopt operating budgets on the basis of appropriation by the legislature;

(3) establish procedures for budgetary control, expending, auditing, and reporting on expenditures within the budgets adopted;

(4) make to the legislature biennial reports covering all the activities and expenditures of the Central Education Agency;

(5) adopt rules for the accreditation of schools;

(6) execute contracts for the purchase of instructional aids, including textbooks, within the limits of authority granted by the legislature;

(7) execute contracts for the investment of the permanent school fund, within the limits of authority granted by Chapter 15 of this code;

(8) adopt rules consistent with Chapter 13 of this code for certification of teachers, administrators, and other professional personnel customarily employed in public schools;

(9) adopt rules requiring school districts to notify parents of students of a teacher teaching a subject for which the teacher is not certified, unless the teacher is serving an internship under Section 13.035 of this code or the teacher has at least 24 semester credit hours in the subject;

(10) consider the athletic necessities and activities of the public schools of Texas and in advance of each regular session of the legislature specifically report to the governor of Texas the proper and lawful division of time and money to be devoted to athletics, holidays, legal and otherwise, and to educational purposes; and

(11) [~~(10)~~] on or before May 15 of each year, formulate and transmit to the Advisory Council on Technical-Vocational Education a list of evaluation topics that address developing and future concerns of the board in the field of technical-vocational education.

Floor Amendment No. 8 - Grusendorf

Amend **C.S.S.B. 417** as follows:

(1) On page 12, between lines 22 and 23, insert a new Section 2.02 to read as follows:

SECTION 2.02. Subchapter B, Chapter 11, Education Code, is amended by adding Section 11.27 to read as follows:

Sec. 11.27. INNOVATIVE EDUCATIONAL PROGRAMS. (a) The State Board of Education shall establish a process and standards by which a limited number of programs developed by school districts rated as exemplary under Section 21.753 of this code may be approved by the board to implement innovative educational practices at a school or schools in the district.

(b) For a program to be approved under this section:

(1) the approval must be supported by the school board, the superintendent, the school's principal, and at least a majority of the teachers of the school; and

(2) the program must provide specific procedures for the evaluation of the program.

(c) A program approved under this section may not result in an increase in the amount of state funds allocated to the district or a decrease in the amount allocated to any other district.

(d) If an innovative educational program proposes a deviation from a requirement or prohibition imposed by state law or rule, final approval of the program by the State Board of Education constitutes a waiver of the requirement or prohibition for the duration of the program. A prohibition on conduct that constitutes a criminal offense may not be waived.

(e) The State Board of Education shall report to the Legislative Education Board the innovative educational programs requested and approved.

(2) On page 14, between lines 15 and 16, insert two new sections, appropriately numbered, to read as follows:

SECTION ___. Subchapter F, Chapter 13, Education Code, is amended by adding Section 13.3531 to read as follows:

Sec. 13.3531. PRINCIPAL DEVELOPMENT GRANTS AND SCHOLARSHIPS. (a) The Central Education Agency may establish a program to provide:

(1) grants to institutions and organizations that provide exemplary administrative training and education for principals; and

(2) scholarships to principals to attend training programs approved by the agency.

(b) To be approved by the agency for a grant under this section or for the purpose of attendance of principals under a scholarship awarded under this section, a training program must:

(1) be designed as a short-term, intensive program to develop instructional leadership skills and the ability of a principal to implement those skills at the principal's school;

(2) receive funding from the business community; and

(3) systematically evaluate the effectiveness of its training.

(c) The value of a scholarship awarded under this section may not exceed $600 for one year and may be awarded only to a principal in a district with limited resources, as defined by the agency.

(d) Grants and scholarships may be awarded under this section from funds appropriated for that purpose and from grants for the promotion of administrative training for school administrators.

SECTION ___. Subsection (b), Section 13.352, Education Code, is amended to read as follows:

(b) The qualification for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements. Supervised and approved on-the-job experience in addition to required internship shall be accepted in lieu of classroom hours. The qualifications for certification as a principal shall emphasize:

(1) instructional leadership;

(2) administration, supervision, and communication skills;

(3) curriculum and instruction management;

(4) performance evaluation;

(5) organization; and

(6) fiscal management.

(3) On page 23, between lines 20 and 21, insert a new section, appropriately numbered, to read as follows:

SECTION ___. Section 21.753, Education Code, is amended to read as follows:

Sec. 21.753. ACCREDITATION STANDARDS. (a) The State Board of Education shall adopt rules for the accreditation of school districts. The rules shall

include criteria to evaluate the performance of school districts and to rate each district for accreditation purposes as:

(1) exemplary;

(2) recognized;

(3) accredited;

(4) accredited advised;

(5) warned; or

(6) unaccredited [~~establish standards which a school district must satisfy to be accredited and shall adopt an accreditation process in accordance with this section~~].

(b) The board may not rate a number of school districts as exemplary that exceeds 40 percent of the number of districts rated as recognized.

(c) The criteria in the accreditation rules [~~accreditation standards~~] must include consideration of:

(1) goals and objectives of the district;

(2) compliance with statutory requirements and requirements imposed by rule of the State Board of Education under statutory authority;

(3) the quality of learning on each of the district's campuses based on indicators such as scores on achievement tests;

(4) the quality of the district's appraisal of teacher performance and of administrator performance;

(5) the effectiveness of district principals as instructional leaders;

(6) the fulfillment of curriculum requirements;

(7) the effectiveness of the district's programs in special education and for special populations;

(8) the correlation between student grades and performance on standardized tests;

(9) the quality of teacher in-service training;

(10) paperwork reduction efforts;

(11) training received by board members;

(12) the effectiveness of the district's efforts to improve attendance; [~~and~~]

(13) the effectiveness of the district's remedial and support programs under Section 21.557 of this code for students at risk of dropping out of school;

(14) the effectiveness of the district's dropout prevention and recovery programs;

(15) the effectiveness of the district's drug abuse prevention programs;

(16) parental and community involvement in the district;

(17) efficient allocation of available resources; and

(18) adequate performance under the indicators adopted under Section 21.7531 of this code.

(4) On page 24, strike Section 2.18 and substitute a new section, appropriately numbered, to read as follows:

SECTION ___. Section 21.754, Education Code, is amended to read as follows:

Sec. 21.754. INVESTIGATIONS. (a) The Central Education Agency shall annually determine whether each school district satisfies the accreditation criteria from reports furnished by the school district or from an on-site evaluation.

(b) The State Board of Education by rule shall establish a schedule for on-site evaluations by the Central Education Agency. The rules must require that:

(1) each district is visited and all accreditation criteria investigated not less than once every six years, except that the board may extend that period for districts rated:

(A) as exemplary for an additional period not to exceed two years; and

(B) as recognized for an additional period not to exceed one year;

(2) each district rated as accredited advised is visited and assisted not less than once every two years;

(3) each district rated as warned is visited and assisted not less than once each year; and

(4) each district that has a poor performance under the indicators adopted under Section 21.7531 of this code is investigated more frequently than otherwise required under this section.

(c) Each annual review shall include an analysis of:

(1) student performance;

(2) attendance, promotion, and dropout rates;

(3) program costs;

(4) results of teacher and parent surveys; and

(5) other information required by the board.

(d) In compliance with Section 21.925 of this code, the board shall make optimum use of the agency's public education information management system to minimize the written reporting requirements of school districts.

(e) To determine if a district qualifies for a higher rating or on identification of potential problems, the commissioner may direct the agency to conduct on-site investigations at any time and may raise or lower the accreditation rating as a result of the investigation.

(f) [~~Not less than once every three years, the agency shall investigate whether a school district satisfies the accreditation standards. The agency shall investigate more frequently a district that is determined to be below any accreditation standard.~~

[~~(b)~~] The agency shall direct investigators to be alert to any fundamental deficiencies in a district's educational system, such as failure of the district to satisfy curriculum requirements, and to report deficiencies to agency staff responsible for research and planning.

(g) [~~(c)~~] In making an accreditation investigation, the investigators shall obtain information from campus administrators, teachers, and parents of students enrolled in the district. The investigation may not be closed until information is obtained from each of those sources. The board shall adopt rules for:

(1) obtaining information from parents and using that information in the investigator's report; and

(2) obtaining information from teachers in a manner that prevents the district from screening the information.

(h) [~~(d)~~] The agency shall give written notice to the superintendent and the board of trustees of any impending investigation of the district's accreditation.

(5) On page 24, between lines 26 and 27, insert four new sections, appropriately numbered, to read as follows:

SECTION ___. Section 21.757, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) If a district does not satisfy the accreditation criteria [~~standards~~], the commissioner shall take the following actions[~~, in sequence,~~] to the extent the commissioner determines necessary:

(1) confidential notice of the deficiency to any accreditation committee of the board of trustees and to the district superintendent;

(2) public notice of the deficiency to the board of trustees;

(3) appointment of an agency monitor to participate in and report to the agency on the activities of the board of trustees; and

(4) appointment of a master to oversee the operations of the district.

(b) If a district fails to satisfy [~~meet or maintain~~] accreditation criteria [~~standards~~] despite the actions of the commissioner under this section, the State Board of Education shall revoke the district's accreditation and shall [~~may~~] withhold state funds from the district.

(d) A district that does not have a rating above accredited advised for a period of three years is unaccredited at the conclusion of that period unless the district qualifies for a rating above accredited advised at that time.

SECTION ___. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.011 to read as follows:

Sec. 31.011. EARLY INTERVENTION PROGRAM. (a) The Texas Department of Human Services shall establish a pilot program to provide early intervention educational services for families receiving aid under this chapter.

(b) The department may administer the program or may contract with a private, nonprofit organization for the administration of the program.

(c) At the time the department meets with a parent or guardian seeking or receiving aid, the department shall review the report cards, student test results, or day-care center reports of each child in the family. The review may occur only with the prior written consent of the child's parent or guardian. If the department determines on review of the child's records that there is a probability that the child is at risk of dropping out of school, the department shall refer the child and the child's family to the early intervention program.

(d) The program shall provide counseling and training for the child's parent or guardian relating to the importance of the child's education, parenting skills, meeting the child's needs, and interacting with school officials. The program shall encourage the parent or guardian to attend teacher-parent meetings and to participate in school activities.

(e) The department shall coordinate services available for the benefit of the child and the child's family, including services provided by the Central Education Agency, literacy programs, programs funded under the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes), the family members' employers, day-care centers, health organizations, and community organizations.

SECTION ___. The Educational Excellence Program for Texas is created by this Act. The purposes of the program are to recognize and reward gains in the achievement of schools and school districts, to improve the system of accreditation for school districts, to provide awards and incentives for certain students, to provide school principal development grants and scholarships, to authorize waivers for innovative education programs in exemplary school districts, to provide early intervention for students at risk of dropping out, and to encourage school districts to reduce their dropout rates.

SECTION ___. Title 2, Education Code, is amended by adding Chapter 34 to read as follows:

CHAPTER 34. PUBLIC EDUCATION PROGRAMS IN OFFICE OF GOVERNOR

SUBCHAPTER A. TEXAS EDUCATION EXCELLENCE AWARD SYSTEM

Sec. 34.001. CREATION OF SYSTEM. The Texas Education Excellence Award System (TEXAS) is created in the office of the governor to recognize and reward gains in achievement of schools and school districts.

Sec. 34.002. TYPES OF AWARDS. (a) The governor may present a financial award to the schools or districts that the educational excellence committee determines have the most improved performances. For each student in average daily attendance, each of those schools or districts is entitled to an amount set for

the award for which the school or district is selected by the committee, subject to any limitation set by the committee on the total amount that may be awarded to a school or district.

(b) The governor may present proclamations or certificates to additional schools and districts that the committee determines have exemplary performances.

Sec. 34.003. EDUCATIONAL EXCELLENCE COMMITTEE. (a) The educational excellence committee is created to advise the State Board of Education on the criteria for and to select the recipients of scholastic gains awards and student intervention program awards. The committee is composed of 15 members appointed by the governor with the advice and consent of the senate. Members serve staggered six-year terms, with five members' terms expiring February 1 of each odd-numbered year.

(b) The committee must include parents, members of the general public, and persons from the fields of public education, higher education, and business.

(c) Each person appointed to the committee must be interested in public education. The committee shall include persons with knowledge and experience in drug and alcohol abuse prevention and dropout prevention. The representatives of public or higher education appointed to the committee must have knowledge and experience in one or more of the following areas:

(1) curriculum and instruction;

(2) statistical analysis;

(3) school leadership; or

(4) educational management and governance.

Sec. 34.004. SCHOLASTIC GAINS AWARDS. (a) Not later than November 30 of each year, the educational excellence committee shall select schools and districts qualified to receive scholastic gains awards for improvements in performance during the preceding school year and report its selections to the governor and the State Board of Education.

(b) The State Board of Education with the advice and approval of the educational excellence committee shall establish the criteria and standards for the awards. The board shall incorporate criteria for the performance of students in special education programs. The criteria for schools and school districts must be measurable criteria and may include criteria related to:

(1) student achievement;

(2) operational efficiency;

(3) central administrative support;

(4) student and teacher attendance;

(5) graduates who enter college, receive advanced training, or are employed;

(6) principals participating in instructional leadership training; and

(7) other matters selected by the committee that are related to scholastic gains.

(c) The Central Education Agency shall notify each school district of the manner in which the district or a school in the district may qualify for a scholastic gains award.

(d) The selection date under Subsection (a) of this section may be extended from November 30, 1989, to a date that is not later than May 1, 1990. This subsection expires May 2, 1990.

Sec. 34.005. STUDENT INTERVENTION PROGRAM AWARDS. (a) Not later than April 30 of each year, the educational excellence committee shall select schools or districts qualified to receive awards for providing exemplary student intervention programs during the preceding two school years and report its selections to the governor and the State Board of Education.

(b) The programs must be designed to serve students at risk of dropping out of school and may include programs for dropout prevention and recovery, drug and

alcohol prevention, parental and community involvement, or other programs that assist those students.

(c) The State Board of Education with the advice of the educational excellence committee shall establish criteria and standards for the awards that are related to:

(1) the planning, cost, and transferability of a program;

(2) the relevance of a program to social problems in the school;

(3) parental and community participation;

(4) the effect of the program on dropout, promotion, and attendance rates; and

(5) other matters selected by the committee that are related to a program's effectiveness in assisting students at risk of dropping out of school.

(d) The Central Education Agency shall notify each school district of the manner in which the district or a school in the district may qualify for a student intervention program award.

Sec. 34.006. USE OF AWARDS. (a) In determining the use of a monetary award received under this subchapter, a school or district shall give a priority to academic enhancement purposes. The award may not be used for salary supplements or any purpose related to athletics.

(b) The principal of each school that receives a financial award under this subchapter shall appoint a committee to determine the use of the funds awarded. The superintendent of each school district that receives a financial award under this subchapter shall appoint a committee to determine the use of the funds awarded. The board of trustees of the district may determine the composition of the committees, which may include teachers, administrators, other school employees, and parents, but the majority of the committee members must be teachers at the school or in the district, as applicable.

Sec. 34.007. FUNDING. The award system may be funded by donations, grants, or legislative appropriations. The office of the governor may solicit and receive grants and donations for the purpose of making awards under this subchapter. The donations, grants, or legislative appropriations shall be accounted for and distributed by the Central Education Agency. The awards are subject to audit requirements established by the State Board of Education.

Sec. 34.008. ADMINISTRATIVE AND RESEARCH ASSISTANCE. The Central Education Agency shall provide the committee appointed by the governor under this subchapter with staff support and research and technical assistance, including access to information regarding performance that is maintained by the agency.

Sec. 34.009. CONFIDENTIALITY. All information and reports received by the educational excellence committee under this subchapter from school districts subject to confidentiality under the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1967, are confidential and may not be disclosed in any public or private proceeding.

[Sections 34.010-34.030 reserved for expansion]

SUBCHAPTER B. STUDENT AWARDS AND INCENTIVES

Sec. 34.031. MATH AND SCIENCE INCENTIVES. (a) The office of the governor may issue to a student in a public high school who receives credit for a course in advanced physics or calculus, or another advanced science and mathematics course as defined by the educational excellence committee, an award in the form of:

(1) a $75 tuition credit, evidenced by a certificate issued by the governor, which may be applied to tuition and fees at a public institution of higher education in this state; or

(2) a $50 financial award from private funds donated for the purpose of awards under this section.

(b) A student who receives a certificate for tuition credit under this section may submit the certificate to a qualifying institution in which the student enrolls to be applied to the student's tuition and fees. The institution shall reduce the student's tuition and fees by the amount of the tuition credit.

(c) The office of the governor may accept donations for the purpose of awarding tuition credits and financial awards under this section.

Sec. 34.032. SECOND CHANCE AWARDS. (a) The office of the governor may issue to a student dropout, who dropped out of school before January 1, 1989, is under the age of 19 on September 1, 1989, and returns to school and graduates from high school an award in the form of:

(1) a $500 tuition credit, evidenced by a certificate issued by the governor, which may be applied to tuition and fees at a public institution of higher education in this state; or

(2) a financial award, in an amount determined by the office of the governor, from private funds donated for the purpose of awards under this section; or

(3) an opportunity for public or private employment.

(b) The office of the governor shall coordinate employment opportunities offered by public or private employers for students eligible for awards under this section.

(c) A student who receives a certificate for tuition credit under this section may submit the certificate to a qualifying institution in which the student enrolls to be applied to the student's tuition and fees. The institution shall reduce the student's tuition and fees by the amount of the tuition credit.

(d) The office of the governor may accept donations for the purpose of awarding tuition credits and financial awards under this section.

(e) This section expires September 1, 1993.

[Sections 34.033-34.050 reserved for expansion]

SUBCHAPTER C. EDUCATIONAL ECONOMIC POLICY CENTER

Sec. 34.051. CREATION AND OPERATION. (a) The Educational Economic Policy Center is created as a consortium of universities. Each public senior college or university in the state shall participate in the Educational Economic Policy Center at the request of the governor. The center shall represent business, finance, public policy, education, and other appropriate disciplines.

(b) The center shall examine the efficiency of the public school system and the effectiveness of instructional methods and curricular programs. The center shall promote the use of successful methods and programs.

(c) The center may be funded by donations, grants, and legislative appropriations. The office of the governor may receive grants and donations for the purposes of this subchapter.

(d) The center may assist the legislature with education policy studies related to the purposes of the center on approval of the governor, lieutenant governor, and speaker. The center may participate in collaborative studies with foundations or organizations within or outside the state.

Sec. 34.052. EDUCATIONAL ECONOMIC POLICY COMMITTEE. (a) The Educational Economic Policy Committee is created as the primary policy-making body of the Educational Economic Policy Center. The committee shall study the elements of a quality educational system to:

(1) improve the management and productivity of the public education system to meet the demands of the twenty-first century;

(2) provide greater accountability to the taxpayers of the state; and

(3) improve the state's ability to compete educationally and economically with other states and nations.

(b) The committee is composed of nine members. The governor, lieutenant governor, and speaker of the house of representatives shall each appoint two

members, only one of whom may be a board member or employee of a public school district, college, or university. Those appointees shall include persons in the private sector who have an interest in improving public education. In addition, the governor shall appoint three members who serve on the boards of regents representing the universities or systems participating in the center.

(c) Members of the committee serve two-year staggered terms.

(c-1) One-half of the initial members serve two-year terms beginning June 1, 1989. One-half of the initial members serve a one-year term beginning June 1, 1989. The initial members shall draw lots to determine which serve one-year terms. This subsection expires June 1, 1991.

(d) The governor shall appoint one member of the committee as the chairman.

(e) Members shall not receive salaries but shall be reimbursed for expenses incurred in attending meetings of the committee.

(f) State agencies shall cooperate with and assist the center at the committee's request.

(g) The committee shall report to the Legislative Education Board at least once a year. The committee shall also report to the governor, the State Board of Education, the Texas Higher Education Coordinating Board, and the legislature before the convening of each regular session.

(6) On page 25, between lines 1 and 2, insert two new sections, appropriately numbered, to read as follows:

SECTION ___. (a) The Central Education Agency shall conduct a study to determine the amount of funding that would be necessary for the state to pay the expense of summer school for students who are eligible for the national school lunch program of free or reduced-priced lunches to retake courses in which they were enrolled in the preceding regular school term but for which they did not earn credit because of grade averages below 70. The agency shall report its findings to the 72nd Legislature not later than February 1, 1991.

(b) For the school years that are concurrent with the fiscal years in the biennium ending August 31, 1991, the Central Education Agency may establish and administer a tuition assistance program for the students described under Subsection (a) of this section using funds appropriated for that purpose.

SECTION ___. Notwithstanding any provision to the contrary in Chapter 34, Education Code, as added by this Act, schools and school districts shall be selected for scholastic gains awards under Section 34.004 of that chapter in fall 1989 for improvements during the preceding three school years.

(7) On page 25, strike Section 2.20 and substitute a new section, appropriately numbered, to read as follows:

SECTION ___. (a) The State Board of Education shall appoint an advisory committee, composed of persons from the fields of education and business, to:

(1) make recommendations to the board for the initial set of performance indicators adopted under Section 21.7531, Education Code, as added by this Act; and

(2) develop the criteria for evaluating the performance of school districts and rating the districts for accreditation purposes under Section 21.753, Education Code, as amended by this Act.

(b) The advisory committee shall submit the recommended set of indicators and the criteria developed to the Legislative Education Board for review and comment before submitting the indicators and criteria to the State Board of Education for consideration for adoption. The State Board of Education shall adopt performance indicators under Section 21.7531, Education Code, as added by this

Act, not later than January 1, 1991, and shall report the indicators adopted to the 72nd Legislature with a statement of the reason for the inclusion of each indicator.

(c) A person appointed to the committee must be knowledgeable in statistical analysis, evaluation methods, curriculum and instruction, educational management, or the education of special populations.

(d) The board shall appoint the committee not later than December 31, 1989.

(e) After the committee develops the performance indicators and criteria and the board adopts rules that include the indicators and criteria, the commissioner of education shall notify the governor of the adoption. If the governor finds that the board has adopted rules as required by this section and by Section 21.753, Education Code, as amended by this Act, the governor shall notify the board that the committee is abolished.

(8) On page 66, line 29, between "4.13" and "and" insert ", and Chapter 34, Education Code, as added by this Act,".

(9) Renumber sections appropriately.

Floor Amendment No. 9 - Repp

Amend **C.S.S.B. 417** as follows:

On page 4, between lines 7 and 8, insert a new Section 1.05 to read as follows and renumber subsequent sections appropriately.

SECTION 1.05. Section 11.26, Education Code, is amended by adding Subsection (e) to read as follows:

(e) A district is not required to give notice under Subsection (c)(9) of this section if the school district has received an exception under Section 16.056(f) of this code for a temporary classroom assignment permit.

Floor Amendment No. 10 - Heflin

Amend **C.S.S.B. 417** as follows:

(1) On page 6, line 19, strike the comma and insert a period.

(2) On page 6, strike line 20.

Floor Amendment No. 11 - Heflin

Amend **C.S.S.B. 417** as follows:

1). On page 17, insert the following after line 17:

SECTION 2.08. Section 21.035, Education Code, is amended by adding Subsection (h) to read as follows:

(h) The board of trustees of a school district may adopt a policy limiting the number of excused absences allowed under this section.

2). Renumber subsequent sections accordingly.

Floor Amendment No. 12 - Berlanga, Colbert

Amend **C.S.S.B. 417** by inserting the following language in Subchapter A, Chapter 11, Education Code:

Sec. 11.2051. PILOT PROGRAM FOR ELEMENTARY STUDENTS. (a) The Central Education Agency shall establish a pilot program in the 1989-1990 and 1990-1991 school years to identify a wide variety of intervention strategies for use with elementary school students who are at risk of dropping out of school.

(b) The program shall designate teams of school guidance counselors and school social workers to identify and coordinate support services for students

identified under Section 11.205(c) of this code as students at high risk of dropping out of school. The agency may allow for variations in the composition of the team in consideration of the size of the district and other appropriate factors.

(c) To participate in the pilot program, a school district must apply to the agency. The agency shall give a preference to the districts that have a high dropout rate.

(d) Each district selected by the agency to participate in the pilot program shall:

(1) coordinate the use of all funds available for the program;

(2) direct a certified school guidance counselor in a variety of intervention strategies, including:

(A) providing for individual and group counseling to at-risk students for the purpose of resolving problems affecting the students' educational experience;

(B) consulting with parents and teachers regarding the enhancement of the students' educational experience;

(C) developing a program for the improvement of the students' self-esteem, interpersonal skills, decision-making skills, career awareness, and responsible citizenship; and

(D) working with other school staff members to develop a testing and assessment program to identify students' abilities, aptitudes, achievements, and interests to teach the students more effectively;

(3) direct a school social worker, who is certified by the state and has a master's degree in social work, in a variety of intervention strategies, including:

(A) serving as a case manager by coordinating family, school, and community resources the benefit of which an at-risk student receives from the student's educational program; and

(B) providing counseling or casework for an at-risk student and the student's family to enhance the student's educational experience; and

(4) assist the agency in evaluating the program's effectiveness.

(e) The agency shall conduct a study to evaluate the effectiveness of the pilot program in improving attendance, behavior, and academic achievement at the elementary level and shall report the results of the study to the 72nd Legislature not later than February 1, 1991. The report shall include recommendations for cost effective implementation of intervention programs for elementary students throughout the state who are at risk of dropping out of school.

(f) This section expires August 31, 1991.

SECTION 2. Section 16.152, Education Code, is amended by adding Subsection (i) to read as follows:

(i) From the total amount of funds appropriated for allotments under this section, the commissioner of education shall withhold the amount of $500,000 for the 1989-1990 fiscal year and $500,000 for the 1990-1991 fiscal year for the pilot program under Section 11.2051 of this code. The agency may allocate part of that amount for the costs of the study of the effectiveness of the program. After deducting the amount withheld from the total amount appropriated for the allotment under Subsection (a) of this section, the commissioner of education shall reduce each district's allotment under Subsection (a) proportionately and shall allocate funds to each district accordingly. This subsection expires August 31, 1991.

SECTION 3. Recodify.

Floor Amendment No. 13 - Colbert

Amend **C.S.S.B. 417** by adding a new Section _____ as follows:

SECTION _____. Subchapter O, Chapter 21, Education Code, is amended by adding Section 21.5591 to read as follows:

Sec. 21.5591. PILOT PROGRAM. (a) The commissioner of education shall establish a pilot program for the development of effective education programs for the improvement of students' academic performance. The commissioner shall establish the program in 20 elementary schools to operate for the period beginning with the 1990-1991 school year and continuing through the 1993-1994 school year.

(b) An elementary school is eligible to participate in the pilot program if the average performance of students enrolled in the school on the assessment instruments administered under Section 21.551 of this code in the 1989-1990 school year is at or below the 10th percentile of the average performances at all elementary schools in the state.

(c) The commissioner of education shall select schools for the pilot program on a competitive basis. A proposal for an effective education program to improve the academic performance of students may be submitted to the commissioner by the principal and faculty of an elementary school or by the school district in which the school is located. The commissioner shall select schools from all geographic regions of the state. The commissioner may not select more than two schools in the same school district.

(d) If the proposal of a school that is selected for the pilot program proposes a deviation from a requirement or prohibition imposed by state law or rule, the selection of the school by the commissioner constitutes a waiver of the requirement or prohibition for the duration of the program. A prohibition on conduct that constitutes a criminal offense may not be waived.

(e) The legislature may appropriate supplemental funds for this purpose. Each school selected shall receive a per student pro rata share of any funds appropriated.

(f) On or before a date each year that is prescribed by the commissioner and that occurs after the conclusion of the regular school term, each school selected for the pilot program shall report to the commissioner the performance and progress of its students. The commissioner may terminate a school's participation in the program if the commissioner finds that the performance is unsatisfactory in comparison to the performance that would have reasonably been expected if the pilot program had not been implemented at the school.

(g) On or after a date prescribed by the commissioner of education that occurs after the conclusion of the regular term of the 1993-1994 school year, each school selected for the pilot program shall report to the commissioner the performance and progress of its students during the period of the pilot program, the methodologies and innovations used to improve student performance, and the district's evaluation of the effectiveness of those methodologies and innovations. The commissioner shall report the results of the pilot program to the 74th Legislature not later than February 1, 1995.

(h) The Central Education Agency shall provide information to school districts on effective programs developed to improve student performance and shall assist a school district in the implementation of such a program if appropriate.

(i) The State Board of Education may adopt guidelines and standards for the reports required under this section.

(j) This section expires June 1, 1995.

Floor Amendment No. 14 - Glossbrenner

Amend **C.S.S.B. 417** by adding new sections, appropriately numbered, to Article II to read as follows:

SECTION ____. (a) Section 21.136, Education Code, is amended by amending Subsections (b), (e), and (f) and by adding Subsection (g) to read as follows:

(b) Unless a child is enrolled under Subsection (g) of this section, to [~~To~~] be eligible for enrollment in a prekindergarten class a child must be at least four years of age and must be:

(1) unable to speak and comprehend the English language; or

(2) from a family whose income, according to standards set by the State Board of Education, is at or below subsistence level.

(e) The cost of the program is shared by the state and district in the same percentages used to determine the state/local shares under Chapter 16 of this code. The state's share is paid from the foundation school fund [~~and may not exceed $50 million a year. If that amount will not fully fund the program, the commissioner shall proportionately reduce each district's allocations~~].

(f) A district's prekindergarten program shall be designed to develop skills necessary for success in the regular public school curriculum, including language, mathematics, and social skills [~~This section becomes effective with the 1985-1986 school year~~].

(g) If the legislature specifically appropriates money for the purpose, a district to which the money is allocated may offer and operate a prekindergarten class that includes children who are three years of age and who are:

(1) unable to speak and comprehend the English language; or

(2) from a family whose income, according to standards set by the State Board of Education, is at or below subsistence level.

(b) This section of this Act takes effect June 1, 1993, and applies beginning with the 1993-1994 school year.

SECTION ____. (a) The Central Education Agency may develop a pilot prekindergarten program for the 1989-1990 through 1992-1993 school years for three-year-old children who are:

(1) unable to speak and comprehend the English language; or

(2) from a family whose income, according to standards set by the State Board of Education, is at or below subsistence level.

(b) The agency may establish minimum criteria for the program. The minimum program may be financed in a district by state funds appropriated for that purpose. The agency shall encourage districts to use other available funds to supplement the minimum program.

(c) To participate in the pilot program, a school district must apply to the agency. The agency shall give a preference to the districts that apply that have the highest concentrations of students who are eligible for the program.

(d) Each district selected by the agency to participate in the pilot program shall:

(1) coordinate the program with other local preschool programs, including Head Start programs;

(2) encourage parents to participate in the program;

(3) assist the agency in evaluating the program's effectiveness in preparing the children in the program to succeed in the regular public school curriculum; and

(4) coordinate the use of all funds available for the program.

(e) The agency shall conduct a study to evaluate the effectiveness of the pilot program in preparing the children in the program to succeed in the regular public school curriculum. The agency shall report its findings to the 73rd Legislature not later than February 1, 1993.

(f) This section expires September 1, 1993.

SECTION ____. Subchapter D, Chapter 21, Education Code, is amended by adding Section 21.114 to read as follows:

Sec. 21.114. PARENTING PROGRAM. (a) A school district may provide an integrated program of educational and support services for students who are pregnant or who are parents if at least 30 percent of the district's students are of low socioeconomic status, as determined under rules adopted by the State Board of Education.

(b) The program shall include:

(1) individual counseling, peer counseling, and self-help programs;

(2) career counseling and job readiness training;

(3) day care for the students' children on the campus or at a day care facility in close proximity to the campus;

(4) transportation for children of students to and from the campus or day care facility;

(5) transportation for students, as appropriate, to and from the campus or day care facility;

(6) instruction in essential elements designated by the State Board of Education for this program, which must include essential elements related to knowledge and skills in child development, parenting, and home and family living; and

(7) assistance to students in the program in obtaining available services from government agencies or community service organizations, including prenatal and postnatal health and nutrition programs.

(c) The district shall solicit recommendations for obtaining community support for the students and their children from organizations for parents of students in the district and from other community organizations.

(d) The Central Education Agency shall adopt rules under which school districts may operate cooperative programs under this section.

SECTION ____. Section 16.152, Education Code, is amended by adding Subsections (e), (f), (g), and (h) to read as follows:

(e) From the total amount of funds appropriated for allotments under this section, the commissioner of education shall, each fiscal year, withhold the amount of $10,000,000 and distribute that amount for programs under Section 21.114 of this code. The program established under that section is required only in school districts in which the program is financed by funds distributed under this section and any other funds available for the program.

(f) The commissioner of education shall coordinate the funds withheld under Subsection (e) of this section and any other funds available for the program and shall distribute those funds. To receive funds for the program, a school district must apply to the commissioner. The commissioner shall give a preference to the districts that apply that have the highest concentration of students who are pregnant or who are parents.

(g) After deducting the amount withheld under Subsection (e) of this section from the total amount appropriated for the allotment under Subsection (a) of this section, the commissioner of education shall reduce each district's allotment under Subsection (a) proportionately and shall allocate funds to each district accordingly.

(h) Notwithstanding any provision to the contrary in Section 16.151 of this code, a school district is not entitled to an allotment under that section for the self-contained, pregnant instructional arrangement for students on those campuses for which the district receives funds under Subsection (f) of this section.

SECTION ____. The Central Education Agency shall report the education and support services provided under Section 21.114, Education Code, as added by this Act, and the effect of those services to the 72nd Legislature not later than February 1, 1991.

Floor Amendment No. 15 - Laney

Amend **C.S.S.B. 417** by adding a new SECTION _____, to amend Section 21.920, Education Code, by adding a new Subsection (e) to read as follows:

(e) A student who is suspended or expelled pursuant to Section 21.301 or 21.3011 of this code may be declared ineligible by a school district for any honors, awards, offices, or recognitions by the school or by a school organization for a period

of not more than one year from the date of the suspension or expulsion. A student who is convicted of any felony, or of a misdemeanor related to the offenses listed in Subsection 21.3011(b) of this code, regardless of whether the offense occurred on or off school property or while attending a school-sponsored or school-related activity, shall be ineligible for any honors, awards, offices, or recognitions by the school or by a school organization for a period of one year from the date of the conviction.

Floor Amendment No. 16 - Wilson, Kubiak

Amend **C.S.S.B. 417** as follows:

(1) On page 12, line 19, strike "and".

(2) On page 12, line 22, strike the period and substitute "; and".

(3) On page 12, between lines 22 and 23 insert the following:

(7) recognition of signs that a student is using alcohol or other drugs.

(4) On page 12, between lines 22 and 23, insert the following:

SECTION _____. Section 13.032(i), Education Code, is amended to read as follows:

(i) As a condition of obtaining or maintaining board accreditation for its teacher education program, an institution must include as part of its teacher education program training on recognizing and responding to:

(1) signs of abuse or neglect in students; and

(2) signs that a student is using alcohol or other drugs.

SECTION _____. Section 21.101, Education Code, is amended by adding Subsection (h) to read as follows:

(h) The State Board of Education by rule shall require each school district to provide education for students in kindergarten through grade level 12 about the nonuse of alcohol and other drugs. Materials used to provide that education must emphasize abstinence and must clearly, unequivocally, and consistently promote nonuse.

SECTION _____. Subsection (a), Section 21.101, Education Code, is amended to read as follows:

(a) Each school district that offers prekindergarten through grade 12 shall offer a well-balanced curriculum that includes:

(1) English language arts;

(2) other languages, to the extent possible;

(3) mathematics;

(4) science;

(5) health[

;], with emphasis on the benefits of student continent behavior regarding sexual activity, drug use and alcohol abuse;

(6) physical education;

(7) fine arts;

(8) social studies;

(9) economics, with emphasis on the free enterprise system and its benefits;

(10) business education;

(11) vocational education; and

(12) Texas and United States history as individual subjects and in reading courses.

Floor Amendment No. 17 - Edwards

Amend **C.S.S.B. 417** as follows:

(1) On page 20, insert a new Section 2.11 to read as follows:

SECTION 2.11. Subchapter D, Chapter 21, Education Code, is amended by adding Section 21.104 to read as follows:

Sec. 21.104. CRIMINAL LAW INSTRUCTION. Each school district shall offer instruction in the criminal law of this state in grades selected by the district from grade 7 through grade 12.

Floor Amendment No. 18 - Oakley

Amend **C.S.S.B. 417** by adding the following language on page 57, between lines 10 and 11, as a new Section 5.03. and renumbering the following sections appropriately:

The 71st Legislature of the State of Texas hereby urge the Central Education Agency to conduct a study relating to the number of students in Texas schools who are receiving stimulant therapy or other medication for the control of hyperactivity or other forms of behavior and, at a minimum, set forth in the study the number of students per school district who are receiving stimulant therapy or other medication for the control of hyperactivity or other forms of behavior, and the number of students who are receiving the treatment per category of therapy or medication; and, be it further

RESOLVED, That the school districts of the state be urged to cooperate with the agency and its agents in providing information requested by the agency; and, be it further

RESOLVED, That the Texas Department of Health be urged to assist the agency in conducting the study and in making suggestions to the agency regarding the conduct of the study; and, be it further

RESOLVED, That information relevant to this study regarding a student may be obtained only with the consent of the parent or

Floor Amendment No. 19 - Clemons

Amend **C.S.S.B. 417** as follows:

(1) On page 24, between lines 26 and 27, insert the following:

Sec. 2.19. MODEL PUBLIC HEALTH EDUCATION CURRICULUM. (a) All public elementary, junior high, and senior high school classes that teach sex education or discuss sexually transmitted diseases shall emphasize:

(1) that abstinence from sexual intercourse is the only protection that is 100 percent effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually;

(2) that abstinence from sexual intercourse outside of lawful marriage is the expected societal standard for school-age unmarried persons; and

(3) the physical, emotional, and psychological dangers of substance abuse, including the risk of acquired immune deficiency syndrome (AIDS) through the sharing of needles during intravenous drug usage.

(b) Course materials and instruction that relate to sexual education or sexually transmitted diseases shall be age appropriate as defined by local school board of trustees.

(c) The local school board of trustees may make rules regarding segregation by gender during the teaching of certain provisions.

(d) Course materials and instruction that relate to sexual education or sexually transmitted diseases shall include the following elements:

(1) an emphasis on sexual abstinence as the only completely reliable method of avoiding unwanted teenage pregnancy and sexually transmitted diseases;

(2) an emphasis on the importance of self-control, responsibility, and ethical conduct in making decisions pertaining to sexual behavior;

(3) statistics based on the latest medical information that indicate the health hazards and risks of failure associated with the various forms of contraception;

(4) statistics based on the latest medical information that indicate the failure rates of condoms in preventing the spread of acquired immune deficiency syndrome (AIDS) and other sexually transmitted diseases;

(5) information concerning the possible emotional, psychological, and health consequences of adolescent sexual intercourse outside of lawful marriage and unwanted pregnancy;

(6) information concerning the laws relating to the financial responsibilities associated with pregnancy, childbirth, and child rearing;

(7) information concerning the laws prohibiting sexual abuse, the legal and counseling options available to victims of sexual abuse, and the school district's program, if it exists, for aiding victims of sexual abuse;

(8) information on how to cope with and rebuff unwanted physical and verbal sexual advances, as well as the importance of avoiding the sexual exploitation of other persons;

(9) psychologically sound methods of resisting unwanted peer pressure; and

(10) emphasis in a factual manner, and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public, and that homosexual conduct is a criminal offense under Section 21.06 of the Texas Penal Code.

(e) When evaluating the merits of textbooks, course materials, or other published information for use by public school districts in elementary, junior high, and senior high classes that teach sex education or discuss sexually transmitted diseases, the State Textbook Committee shall consider the relative inclusion or omission of the elements of this section.

(2) Renumber sections appropriately.

Floor Amendment No. 20 - Kubiak

Amend **C.S.S.B. 417** on page 56 between lines 1 and 2 by adding a new Section 5.02 of the bill to read as follows and renumbering the existing Section 5.02 and subsequent sections accordingly as follows:

SECTION 5.02. Section 21.921(b), Education Code, is amended to read as follows:

(b) The University Interscholastic League, which is a part of The University of Texas at Austin, must submit its rules and procedures to the State Board of Education for approval. The rules must require that competition schedules be arranged to allow a student who enters two or more events to compete in each event. The board may approve, disapprove, or modify any of the rules.

Floor Amendment No. 21 - Glossbrenner

Amend **C.S.S.B. 417** as follows:

(1) On page 13, line 24, strike "amending Subsection (a) and".

(2) On page 13, strike lines 26 and 27, and on page 14, strike lines 1-6.

Floor Amendment No. 22 - Vowell

Amend **C.S.S.B. 417** by striking Sections 6.03 and 6.13 and renumbering sections appropriately.

Floor Amendment No. 23 - Repp

Amend **C.S.S.B. 417** on page 63, between lines 6 and 7, by inserting a new section, to be numbered appropriately, to read as follows and by renumbering subsequent sections appropriately:

SECTION ___. Subchapter G, Chapter 16, Education Code, is amended by adding Section 16.257 to read as follows:

Sec. 16.257. DETERMINATION OF LOCAL COSTS OF NEW FOUNDATION SCHOOL PROGRAM REQUIREMENTS. (a) The commissioner of education shall calculate for each school district the total cost of implementing new program requirements imposed by law from one school year to the next. For that purpose, the commissioner shall compare the allocations per average daily attendance.

(b) If a district is required to provide revenue from local tax sources for the purpose of implementing a new program requirement that is imposed by law and that requires an increase in funding from one year to the next for which the district's state aid entitlement is not increased to cover these costs, based on the commissioner's calculation, the commissioner shall certify that amount of local tax revenue to the district.

Floor Amendment No. 24 - Culberson

Amend **C.S.S.B. 417** as follows:

(1) On page 66, between lines 5 and 6, insert new Sections 6.11-6.17 to read as follows:

SECTION 6.11. Section 153.104, Tax Code, is amended to read as follows:

Sec. 153.104. EXCEPTIONS. The tax imposed by this subchapter does not apply to gasoline:

(1) brought into this state in the fuel tank of a vehicle with a capacity of less than 60 gallons when the tank is connected to the carburetor or fuel injection system of the power plant providing the propulsion of the vehicle;

(2) delivered by a permitted distributor to a common or contract carrier, oceangoing vessel (including ship, tanker, or boat), or a barge for export from this state if the gasoline is moved forthwith outside the state;

(3) sold by a permitted distributor to another permitted distributor;

(4) sold to the federal government for its exclusive use;

(5) delivered by a permitted distributor into a storage facility of a permitted aviation fuel dealer from which gasoline will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment; [~~or~~]

(6) sold by one aviation fuel dealer to another aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment; or

(7) sold to a public school district in this state for its exclusive use.

SECTION 6.12. Section 153.119(a), Tax Code, is amended to read as follows:

(a) A person who exports, sells to the federal government or a public school district in this state without having added the amount of the tax imposed by this chapter to his selling price, loses by fire or other accident, or uses gasoline for the purpose of operating or propelling a motorboat, tractor used for agricultural purposes, or stationary engine, or for another purpose except in a vehicle operated or intended to be operated on the public highways of this state, and who has paid

the tax imposed on gasoline by this chapter either directly or indirectly is, when the person has complied with the invoice and filing provisions of this section and the rules of the comptroller, entitled to reimbursement of the tax paid by him, less a filing fee and any amount allowed distributors, wholesalers or jobbers, dealers, or others under Section 153.105(c) of this code. A public school district that has paid the tax imposed under this chapter on gasoline used by the district is entitled to reimbursement of the amount of the tax paid in the same manner and subject to the same procedures as other exempted users.

SECTION 6.13. Section 153.203, Tax Code, is amended to read as follows:

Sec. 153.203. EXCEPTIONS. The tax imposed by this subchapter does not apply to:

(1) diesel fuel delivered by a permitted supplier to a common or contract carrier, oceangoing vessel (including ship, tanker, or boat), or barge for export from this state, if the diesel fuel is moved forthwith outside this state;

(2) diesel fuel sold by a permitted supplier to the federal government for its exclusive use;

(3) diesel fuel sold or delivered by a permitted supplier to another permitted supplier or bonded user, to the bulk storage facility of a diesel tax prepaid user, or to a purchaser who provides a signed statement as provided by Section 153.205 of this code, but not including a delivery of tax-free diesel fuel into the fuel supply tanks of a motor vehicle, except for a motor vehicle owned by the federal government;

(4) diesel fuel sold or delivered by a permitted supplier into the storage facility of a permitted aviation fuel dealer, from which diesel fuel will be sold or delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment;

(5) diesel fuel sold or delivered by a permitted supplier into fuel supply tanks of railway engines, motorboats, or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank;

(6) kerosene when delivered by a permitted supplier into a storage facility at a retail business from which all deliveries are exclusively for heating, cooking, lighting, or similar nonhighway use; [or]

(7) diesel fuel sold or delivered by one aviation fuel dealer to another aviation fuel dealer who will deliver the diesel fuel exclusively into the supply tanks of aircraft or aircraft servicing equipment; or

(8) diesel fuel sold by a permitted supplier to a public school district in this state for its exclusive use.

SECTION 6.14. Section 153.222(a), Tax Code, is amended to read as follows:

(a) A dealer who has paid tax on diesel fuel that has been used or sold for use by the dealer for any purpose other than propelling a motor vehicle on the public highways of this state or that has been sold to the United States or a public school district in this state for the [its] exclusive use of the purchaser without adding the amount of the tax to his selling price, and a user who has paid tax on any diesel fuel that has been used by him for a purpose other than propelling a motor vehicle on the public highways or who is a public school district and has paid the tax on diesel fuel purchased for its exclusive use may file a claim for a refund of taxes paid, less the deduction allowed vendors and a filing fee.

SECTION 6.15. Chapter 153, Tax Code, is amended by adding Section 153.3021 to read as follows:

Sec. 153.3021. SCHOOL DISTRICT EXEMPTION. (a) The tax imposed by this subchapter does not apply to the sale of liquefied petroleum gas to a public school district in this state or to the use of liquefied petroleum gas by a public school district in this state.

(b) A motor vehicle that uses liquefied petroleum gas and that is operated by a public school district in this state is not required to have a liquefied gas tax decal or a special use liquefied gas tax decal.

SECTION 6.16. Section 21.181(b), Education Code, is amended to read as follows:

(b) A contract is economically advantageous if the cost of the service contracted for is equal to or less than the total cost to the school district for providing its own complete bus service. The total cost to the school district is the state transportation cost allotment plus the supplementary funds necessarily provided by the local school district to provide complete transportation services. In determining if a contract is economically advantageous, taxes paid by the commercial transportation company or system on gasoline, diesel fuel, or liquefied petroleum gas may not be considered.

SECTION 6.17. Sections 6.11-6.16 of this Act apply only to sales of gasoline, diesel fuel, and liquefied petroleum gas made on or after September 1, 1991; except that if a school district has purchased gasoline, diesel fuel, or liquefied petroleum gas in bulk quantities before that date, paid the amount of the tax imposed by Chapter 153, Tax Code, and used the gasoline, diesel fuel, or liquefied petroleum gas after September 1, 1991, the school district may apply for a refund for the amount of the taxes paid only on the fuel so used after September 1, 1991, subject to the same allowances, deductions, and filing fees applicable to refunds made for sales made after September 1, 1991. A refund of the amount of tax paid on liquefied petroleum gas through the purchase of a liquefied gas tax decal shall be calculated according to the method determined by the comptroller of public accounts that fairly and equitably allocates fuel use during the period of validity of the decal between use before September 1, 1991, and after September 1, 1991.

(2) On page 66, line 30, between "immediately" and the period, insert "and Sections 6.11-6.16 take effect September 1, 1991".

(3) Renumber sections of the bill appropriately.

Floor Amendment No. 25 - Perez

Amend **C.S.S.B. 417** as follows:

(1) Between pages 2 and 3, insert new Sections 1.02 and 1.03 to read as follows:

SECTION 1.02. Chapter 11, Education Code, is amended by adding Section 11.17 to read as follows:

Sec. 11.17. TEENAGE PREGNANCY PROGRAM. (a) To reduce the statewide teenage pregnancy rate, the Central Education Agency shall develop and implement a statewide plan for a program in public schools to educate students in grades 5 through 12 regarding problems relating to teenage pregnancy.

(b) The plan must include provisions relating to:

(1) program goals and objectives;

(2) strategies, activities, and resources for use in implementing the goals and objectives of the program;

(3) evaluation and dissemination of program and resource information;

(4) adequate financing; and

(5) coordination of program objectives with other community resources providing services relating to teenage pregnancy.

(c) The program shall include education on parental responsibility.

SECTION 1.03. Subchapter A, Chapter 11, Education Code, is amended by adding Section 11.2051 to read as follows:

Sec. 11.2051. FAMILY LIFE OR SELF-RESPONSIBILITY EDUCATION DATA. (a) The Central Education Agency shall collect and maintain data relating to family life education and self-responsibility education in public schools in this state.

(2) On page 66, between lines 5 and 6, insert a new Section 6.11 to read as follows:

SECTION 6.11. Section 52.002, Human Resources Code, is amended to read as follows:

Sec. 52.002. SCHOOL AGE PREGNANCY INTERAGENCY COORDINATING COUNCIL [~~ADVISORY COMMITTEE~~].

(a) The interagency coordinating council, to be administered by the department, is created to establish a resource network for teenage pregnancy education by coordinating policies and services and to advise the State Board of Education, the Texas Board of Human Services, and the Texas Board of Health on school age pregnancy issues.

(b) The council shall submit a report of the council's recommendations concerning teenage pregnancy prevention to relevant state agencies and to each regular session of the legislature not later than October 1 of each even-numbered year. The recommendations shall address effective coordination and elimination of duplication of services among education, health, and human services in the prevention of teenage pregnancy.

(c) The council consists of one representative of the attorney general's child support enforcement division, appointed by the attorney general, seven private sector representatives recommended by appropriate private sector agencies, and one representative from each of the following agencies, appointed by the executive director or commissioner of each agency:

(1) the Central Education Agency;

(2) the Texas Department of Human Services;

(3) the Texas Department of Health;

(4) the Texas Department of Community Affairs;

(5) the Texas Employment Commission;

(6) the Texas Health and Human Services Coordinating Council;

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

(8) The Texas Department of Commerce.

(d) The position of presiding officer shall rotate annually among the department, the Central Education Agency, and the Texas Department of Health, and the council shall meet at least quarterly [~~board, on recommendation of the commissioner, may establish a school age pregnancy interagency advisory committee to advise the board and department on school age pregnancy issues. If established, the committee consists of:~~

[~~(1) a representative of the Texas Health and Human Services Coordinating Council, designated by the council; and~~

[~~(2) the administrative head of any state agency that the department identifies as providing services relating to school age pregnancy, or that person's designee.~~

[~~(b) The department shall be represented on the committee and its representative serves as presiding officer of the school age pregnancy interagency advisory committee~~].

(3) Renumber sections appropriately.

Floor Amendment No. 26 - Eckels

Amend **C.S.S.B. 417** as follows:

(1) On page 46, line 2, strike "in the Operator's and Chauffeur's License Fund" and substitute "and used for the costs of administering this Act [~~in the Operator's and Chauffeur's License Fund~~]".

(2) On page 48, between lines 18 and 19, insert a new section 4.19 to read as follows:

SECTION 4.19. Chapter 332, Acts of the 60th Legislature, Regular Session, 1967 (Article 4413(29), Vernon's Texas Civil Statutes), is amended by adding Section 16 to read as follows:

Sec. 16. DUTIES TRANSFERRED TO CENTRAL EDUCATION AGENCY. The duties under this article are transferred from the Department of Public Safety to the Central Education Agency. A reference in this article to the department is a reference to the agency.

Floor Amendment No. 27 - Eckels

Amend **C.S.S.B. 417**, SECTION 4.03, page 32 as follows:

On line 8 & 9, between "establishing" and "course" delete minimum and maximum.

Floor Amendment No. 28 - Eckels

Amend **C.S.S.B. 417**, SECTION 4.06, Page 35, line 25 as follows: between "for" and "an" add: a location outside of the state of and delete " an"

Floor Amendment No. 29 - Eckels

Amend **C.S.S.B. 417** as follows:

(1) On page 42, line 16, between "the" and "annual", insert "first annual renewal fee for a school is $1,400 and each subsequent"

(2) On page 43, strike lines 16-17 and substitute the following:

staff member, or instructor is not less than $15; and

(10) the fee for an on-site inspection of an additional classroom facility authorized by rule of the State Board of Education is not less than $180 [~~the application fee for the authority to grant~~

Floor Amendment on Third Reading - Kuempel

Amend **C.S.S.B. 417** by adding a new section appropriately numbered to read as follows:

SECTION ____. Chapter 26, Tax Code, is amended by adding Section 26.135 to read as follows:

Sec. 26.135. TAX DATES FOR CERTAIN SCHOOL DISTRICTS. (a) A school district that before January 1, 1989, has for at least 10 years followed a practice of adopting its tax rate at a different date than as provided by this chapter and of billing for and collecting its taxes at different dates than as provided by Chapters 31 and 33 may continue to follow that practice.

(b)This section does not affect the dates provided by this title for other purposed, including those relating to the appraisal and taxability of property, the attachment of tax liens and personal liability for taxes, and administrative and judicial review under Chapters 41 and 42.

The amendments were read.

Senator Green 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. 417** 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 Green, Chairman; Haley, Parmer, Barrientos and Whitmire.

HOUSE BILL 1258 ON SECOND READING

On motion of Senator Armbrister 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. 1258, Relating to the continuation of the Committee on State Revenue Estimates.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Amend **H.B. 1258** on page 1, lines 11 and 12, by striking "director of the Legislative Budget Board" and substituting "governor's chief budget officer".

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Armbrister 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 viva voce vote.

HOUSE BILL 1258 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1258** 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 25, 1989

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. 255, Relating to the regulation of insurance companies, providing penalties. (As substituted and amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 3099 ON SECOND READING

On motion of Senator Dickson 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. 3099, Relating to the creation, administration, powers, duties, operation, and financing of the Central Texas Underground Water Conservation District.

The bill was read second time.

Senator Dickson offered the following amendment to the bill:

Amend **H.B. 3099** as follows:

(1) On page 6, line 12, insert the following:

The district does not have the authority to take any of the actions listed in this subsection if such actions are in conflict with the powers, rights, privileges or functions of the Lower Colorado River Authority within the Colorado River watershed.

The amendment was read and was adopted viva voce vote.

On motion of Senator Dickson 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 viva voce vote.

HOUSE BILL 3099 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 3099** 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.

COMMITTEE SUBSTITUTE HOUSE BILL 2706 ON SECOND READING

On motion of Senator McFarland 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. 2706, Relating to the regulation of narcotic treatment programs; revising Chapter 61B, Acts of the 62nd Legislature, as amended (Article 4476-11, Vernon's Texas Civil Statutes); providing for fees; providing for injunctions and civil penalties; providing for administrative penalties; providing for criminal penalties; and declaring an emergency.

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

COMMITTEE SUBSTITUTE HOUSE BILL 2706 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2706** 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 viva voce vote.

HOUSE BILL 1594 ON SECOND READING

On motion of Senator McFarland 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. 1594, Relating to the incorporation of certain managing general agents previously doing business as a sole proprietorship.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1594** by adding the following new Sections after SECTION 1 and before SECTION 2. Renumber all following Sections accordingly.

SECTION 2. Section 2, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), is amended by amending Subdivisions (a) and (b) and adding Subdivision (e) to read as follows:

(a) "Managing General Agent" shall mean any person, firm or corporation who has supervisory responsibility for the local agency and field operations of an insurance company or carrier within this state, or any part thereof, or who is authorized by a company or carrier to accept or process in its behalf insurance policies produced and sold by other agents. The term does not include an agent licensed under Article 1.14-2, 21.11, or 21.14, Insurance Code, unless that agent accepts 50 percent or more of his total annual business or does more than $500,000 or more of total annual business, whichever amount is less, as measured by premium volume from insurance policies produced and sold by other agents. A managing general agent [~~and who~~] may perform any of the following acts for a company or carrier: receive and pass upon daily reports and monthly accounts; receive and be responsible for agency balances; handle the adjustment of losses; or, appoint or direct local recording agents.

The amendment was read and was adopted viva voce vote.

VOTE ON ADOPTION OF FLOOR AMENDMENT NO. 1 RECONSIDERED

On motion of Senator McFarland and by unanimous consent, the vote by which Floor Amendment No. 1 was adopted was reconsidered.

Question - Shall Floor Amendment No. 1 be adopted?

On motion of Senator Montford and by unanimous consent, Floor Amendment No. 1 was withdrawn.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1594** by adding the following new Sections after SECTION 1 and before SECTION 2. Renumber all following Sections accordingly.

SECTION 2. Section 2, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), is amended by amending Subdivisions (a) and (b) and adding Subdivision (e) to read as follows:

(a) "Managing General Agent" shall mean any person, firm or corporation who has supervisory responsibility for the local agency and field operations of an insurance company or carrier within this state, or any part thereof, or who is authorized by a company or carrier to accept or process in its behalf insurance policies produced and sold by other agents. The term does not include an agent licensed under Article 1.14-2, 21.11, or 21.14, Insurance Code, unless that agent accepts 50 percent or more of his total annual business or does more than $500,000 or more of total annual business, whichever amount is less, as measured by premium volume from insurance policies produced and sold by other agents. A managing general agent [~~and who~~] may perform any of the following acts for a company or carrier: receive and pass upon daily reports and monthly accounts; receive and be responsible for agency balances; handle the adjustment of losses; or, appoint or direct local recording agents, state agents, or special agents within this state, or any part thereof.

(b) "Company," [~~or~~] "Carrier," or "Insurer" shall mean any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, county mutual insurance company, Lloyds, or other insurance carrier licensed to transact business in the State of Texas, excepting, however, those which write only life, health and accident insurance and variable life insurance and variable annuity contracts.

(e) "Affiliate" of or person "affiliated" has the meaning assigned by Section 2(a), Article 21.49-1, Insurance Code.

SECTION 3. The Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code) is amended by amending Sections 4, 6A, and 19, and by adding Sections 3A, 3B, 3C, 4B, 4C, 11A, and 19A to read as follows:

Sec. 3A. MINIMUM GUIDELINES FOR CONTRACTS WITH MANAGING GENERAL AGENTS. (a) A company may not accept business from a managing general agent and a managing general agent may not place business with a company unless there is a valid written contract relating to responsibilities of both parties, cancellation or termination, reports, records, auditing, and, if applicable, premium volume limit, appointment or cancellation of agents, claims settlement, underwriting, and reinsurance. The board may promulgate rules providing requirements for contracts with managing general agents.

(b) A contract with a managing general agent and reports and records submitted pursuant to those contracts are subject to review by the commissioner at any time pursuant to Article 1.24, Insurance Code.

Sec. 3B. PROHIBITIONS ON REINSURANCE. In addition to any other conduct or practice prohibited by law, a managing general agent may not knowingly cede, arrange, facilitate, or bind an insurer to reinsurance to a company that is unable to fulfill its obligations under the reinsurance contract.

Sec. 3C. REQUIREMENTS FOR MANAGING GENERAL AGENTS. (a) A managing general agent shall submit an account report to each company with which it has a contract not less frequently than every calendar quarter and must include in that account report, if applicable, a statement of written, earned, and unearned premiums, losses and loss expenses paid and outstanding, losses incurred but not reported, and management fees.

(b) A managing general agent shall maintain separate records of business handled by the managing general agent for each company with which it has a contract, and those records must be available for inspection by each company and by the board's examiners.

(c) A managing general agent shall have and maintain an escrow account and shall, upon receipt, deposit in the escrow account all money collected for all companies with which the managing general agent has contracts required under Section 3A of this Act. The escrow account must be maintained in a bank that is

a member of the Federal Reserve System and whose accounts are insured by the Federal Deposit Insurance Corporation.

(d) A managing general agent may not use, take as an offset, or convert money that is deposited or should have been deposited in the escrow account, except as provided in a contract required by Section 3A of this Act.

(e) Funds held by a managing general agent on behalf of insureds or a company are held in a fiduciary capacity and are subject to audit by the board's examiners at any time. A managing general agent must properly account for all funds held in a fiduciary capacity as required by law, rules of the board, and any contract with a company.

Sec. 4. APPLICATION FOR LICENSE; TO WHOM LICENSE MAY BE ISSUED. (a) Each applicant for license shall be a resident of Texas and file a written sworn application on forms furnished by the Commissioner. The applicant shall include in the application the names and addresses of the applicant's officers, directors, shareholders, or partners, if applicable, and affiliates. A licensee who seeks renewal of a license that has been expired for more than one year shall be required to update license information contained in the original application form.

(b) [~~(a)~~] The Commissioner shall issue a license to an individual applicant upon successful completion of the examination and compliance with the other requirements of this Act.

(c) [~~(b)~~] The Commissioner shall issue a license to a partnership where each of the partners has qualified for an individual [a] license under this Act.

(d) [~~(c)~~] The Commissioner shall issue a license to a corporation if he [~~it~~] finds:

(1) that [~~That~~] the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a managing general agent; and

(2) that [~~That~~] every officer, director, and shareholder of the corporation is individually licensed as a managing general agent under the provisions of this Insurance Code; provided, however, that in the event ownership of the shares of such corporation is acquired through devise or descent by [~~transferred to~~] an unlicensed shareholder, the corporation shall still be entitled to a license if such unlicensed shareholder qualifies as a licensed managing general agent or disposes of the shares to a licensed managing general agent within 90 days after [~~from~~] the date of such stock acquisition [~~transfer~~]. If an unlicensed person acquires shares in such a corporation and does not qualify to be licensed as a managing general agent and the person does not dispose of the shares within the 90-day period to a licensed managing general agent, the shares must be purchased by the corporation for the value of the shares of stock as reflected by the regular books and records of the corporation on the date of the acquisition of the shares by the unlicensed person. If the corporation fails or refuses to purchase the shares, the corporation's license shall be cancelled.

(e) A corporation may redeem the shares of any shareholder or the shares of a deceased shareholder, on terms agreed on by the board of directors and the shareholder or his personal representative or at a price and on terms provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

(f) [~~(d)~~] Nothing contained herein shall be construed to permit any unlicensed shareholder or any employee or agent of any corporation licensed as a managing general agent to perform any act of a managing general agent without obtaining a managing general agent's license.

(g) [~~(e) Since all officers, directors, and shareholders must be licensed as managing general agents in order for a corporation to receive a license as a managing~~

~~general agent, the Commissioner shall not require a corporation to take the examination provided in Section 6 of this Act.~~

[~~(f)~~] If at any time, any person [~~officer, director, or shareholder of any corporation~~] holding a managing general agent's license does not maintain the qualifications necessary to obtain a license [~~qualify as a licensed managing general agent, or if any unlicensed shareholder does not qualify within the 90-day period as herein provided~~], the license of such person [~~corporation~~] to act as a managing general agent shall be cancelled or denied in accordance with the other provisions of this Act. [~~Each corporation licensed as a managing general agent shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.~~

[~~(g) Each corporation licensed as a managing general agent shall immediately notify the Commissioner upon any change in its officers, directors, or shareholders.~~]

(h) Nothing in this section shall prevent any shareholder from selling or otherwise transferring his stock in any corporation to a company, carrier or managing general agent [~~agency~~] licensed to do business in Texas, nor prevent any such company, [~~or~~] carrier, or managing general agent from owning all or any portion of the stock of such corporation.

Sec. 4B. CONTINUING REQUIREMENTS FOR LICENSED CORPORATIONS. (a) Each corporation that is licensed as a managing general agent shall file, under oath, a list of the names and addresses of its officers, directors, shareholders, and affiliates with its application for renewal license.

(b) Each corporation licensed as a managing general agent shall notify the commissioner of any change in its officers, directors, shareholders, or affiliates not later than the 30th day after the date on which the change takes effect.

Sec. 4C. SECURITY FOR LIABILITY. (a) Each person, firm, or corporation licensed as a managing general agent under this Act must have the ability to pay an amount up to $100,000 for which the managing general agent may become legally obligated to pay on account of any claim against the managing general agent by a policyholder and caused by a negligent act, error, or omission of the managing general agent or any person for whose acts the managing general agent is legally liable in the conduct of its business as a managing general agent. This ability to pay shall be proved in one of the following ways:

(1) an errors and omissions policy insuring the managing general agent against errors and omissions in at least the sum of $100,000, with a deductible that is not greater than 10 percent of the face amount of the policy, issued by a company licensed to do business in this state or issued by a surplus lines insurer under Article 1.14-2 of this code, that is not affiliated with or an affiliate of the managing general agent;

(2) a bond executed by the managing general agent as principal and by a surety company authorized to do business in this state, as surety, or surplus lines insurer eligible to do business in this state in the principal sum of $100,000 payable to the board for the use and benefit of policyholders of the managing general agent, conditioned that the managing general agent will pay any final judgment recovered against it by a policyholder; or

(3) a deposit with the state treasurer of cash or securities of the class authorized by Articles 2.08 and 2.10 of this code that have a fair market value of $100,000.

(b) The state treasurer shall accept the deposit under Subsection (a)(3) of this section and hold it exclusively for the protection of any policyholder of the managing general agent who recovers a final nonappealable judgment against the managing general agent. The deposit may be withdrawn only on filing with the board evidence satisfactory to the board that the managing general agent has withdrawn from business and has no unsecured liabilities outstanding, or that the

managing general agent has provided for the protection of its policyholders by furnishing an errors and omissions policy or a bond as provided by Subsection (a)(1) or (2) of this section. Securities that are deposited under Subsection (a)(3) of this section may be exchanged for other qualified securities. A binding commitment to issue a policy or bond or the tender of the securities is sufficient in connection with an application for license.

Sec. 6A. CONTINUING EDUCATION. An individual licensed as a managing general agent under this Act shall comply with the continuing education requirements for agents provided by Section 5b, Article 21.14, Insurance Code, or with the continuing education requirements for individuals licensed under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code). [~~The State Board of Insurance may adopt a procedure for certifying and may certify continuing education programs for agents. Participation in the programs is voluntary.~~]

Sec. 11A. NOTICE TO STATE BOARD OF INSURANCE. (a) A managing general agent licensed under this Act shall notify the board on forms promulgated by the board not later than the 30th day after the date on which any of the following circumstances occurs:

(1) balances due to a company or carrier more than 90 days exceed $1 million or 10 percent of the company's policyholder surplus as reported in the annual statement filed with the board;

(2) balances due more than 60 days from a local recording agent or managing general agent, appointed by or reporting to the managing general agent exceed $500,000;

(3) authority to settle claims for a company is withdrawn;

(4) funds held for a company or carrier for losses are greater than $100,000 more than the amount necessary to pay losses and loss adjustment expenses expected to be paid on behalf of the company or carrier within the next 60-day period; or

(5) the contract required under Section 3A of this Act is cancelled or terminated.

(b) Notwithstanding the time limitation provided by Subsection (a) of this section, the requirement to file under Subsections (a)(1), (2), and (4) of this section may be met with a single annual report if the reporting person or entity routinely operates above the limits provided by those subdivisions and the commissioner verifies that fact under rules adopted by the board.

Sec. 19. VIOLATIONS OF ACT. Any person, firm, or corporation who violates any of the provisions of this Act or any rule, regulation, or order adopted under this Act shall be subject to sanctions under Section 7, Article 1.10, Insurance Code. In determining the amount of any penalty, the State Board of Insurance shall consider:

(1) the nature, circumstances, extent, and gravity of the violation;

(2) any economic benefit gained through the violation;

(3) the amount necessary to deter future violations; and

(4) any other matters that justice may require [~~be guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction, shall be fined not more than $200~~].

Sec. 19A. REIMBURSEMENT OF GUARANTY FUNDS. If a court of competent jurisdiction by a final nonappealable judgment determines that a violation of this Act contributes materially to the insolvency of an insurer under which the managing general agent held an appointment, the managing general agent who violated this Act shall reimburse the appropriate guaranty fund for money that was paid to cover losses of the insolvent insurer in an amount equal to all payments made from that fund in excess of gross earned premiums, and investment income

earned on those premiums, and loss reserves for that business. The reimbursement shall be used for losses, loss adjustments, and administrative expenses on business placed by the managing general agent.

SECTION 4. Section 11, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) Any license issued under this Act shall [~~not~~] lapse, and the [~~nor shall an~~] application for renewal shall be denied, if the [~~for the reason that a~~] licensee is [~~may~~] not [~~then be~~] appointed or under appointment to represent any company or carrier at the time of renewal.

(c) Each appointment to act as a managing general agent must be reported to the commissioner on forms required by him and in the detail required by rules adopted under this Act. The forms shall include a statement by an officer of each company or carrier that the officer or agent has personal knowledge that the applicant has had experience or instruction that would qualify the applicant as a managing general agent. The forms shall include the following:

(1) the name of the company or carrier with its company number;

(2) the name and address of the managing general agent;

(3) a statement of whether the managing general agent has claim settlement authority for the company or carrier and whether that authority exceeds $25,000 on any one claim and whether that authority includes third party liability other than property damage; and

(4) a statement indicating if funds exceeding $100,000 are customarily held by the managing general agent for the purpose of paying losses and loss adjustment expenses for the company or carrier.

(d) For each additional appointment for which the agent applies, the agent shall be required to pay a nonrefundable fee in an amount not to exceed $16 as determined by the State Board of Insurance.

SECTION 5. Article 1.14-2, Insurance Code, is amended by adding Section 15A to read as follows:

Sec. 15A. NOTICE TO STATE BOARD OF INSURANCE. (a) Each surplus lines agent licensed under this article shall notify the State Board of Insurance on forms promulgated by the board not later than the 30th day after the day on which any of the following circumstances occurs:

(1) balances due more than 90 days to a surplus lines insurer or more than 60 days to a surplus lines agent acting on behalf of a surplus lines insurer exceed $1 million or 10 percent of insurer's policyholder surplus calculated on December 31 of the preceding year;

(2) balances due more than 60 days from a local recording agent or managing general agent, appointed by or reporting to the managing general agent exceed $500,000;

(3) authority to settle claims for a surplus lines insurer is withdrawn;

(4) funds held for a surplus lines insurer for losses are greater than $100,000 more than the amount necessary to pay losses and loss adjustment expenses expected to be paid on behalf of the insurer within the next 60-day period; or

(5) the surplus lines agent's contract to act on behalf of a surplus lines insurer is cancelled or terminated.

(b) The requirement to file under Subsections (a)(1), (2), and (4) of this section may be met with a single annual report if the reporting person or entity routinely operates beyond the limits provided by those subsections and the commissioner verifies that fact under procedures adopted by the commissioner.

SECTION 6. Section A, Article 9.19, Insurance Code, is amended to read as follows:

A. No title insurance company operating under the provisions of this Chapter shall issue any policy of title insurance on any real property located within the State of Texas involving a potential liability by virtue of such policy of more than fifty (50%) percent of the capital stock and surplus as stated in the most recent annual statement of the company unless the excess shall in due course be reinsured in some other title insurance company authorized to do business in Texas under this Chapter. Each title insurance company authorized to do business under the provisions of this Chapter may reinsure any or all of its policies and contracts issued on real property situated within the State of Texas, provided: (i) the reinsuring title insurance company shall be licensed to do business in the State of Texas under the provisions of this Chapter; and (ii) the form of the reinsurance contract shall be approved in advance by the Board. If a title insurance policy is to be issued that insures an interest in real property located in this state and the policy is to be reinsured in part by one or more title insurance companies other than the company issuing the policy, the title insurance company issuing the policy shall disclose to the insured at or before the closing on the property transaction the portion of the policy amount that is not covered by reinsurance and the name of each title insurance company that the issuing company anticipates will reinsure a portion of the policy. The issuing title insurance company shall make this disclosure on a form and in the manner prescribed by the Board. This section does not prohibit the purchase of reinsurance for title insurance coverage after the property transaction is closed.

SECTION 7. Article 9.49, Insurance Code, is amended to read as follows:

Art. 9.49. INSURED CLOSING. (a) Title insurance companies operating under the provisions of this chapter are hereby expressly authorized and empowered to issue upon request on real property transactions in this state [~~at no charge whatever~~] insured closing and settlement letters, in the form prescribed by the board, in connection with the closing and settlement of loans made by title insurance agents for any title insurance company operating under the provisions of this chapter. [~~After January 1, 1976, only~~] Only the form prescribed by the board shall be used [~~thereafter~~] in issuing such insured closing and settlement letters. The liability of the title insurance company under any issued policy of title insurance shall not be changed or altered by the failure of the title insurance company to issue such insured closing and settlement letters [~~as authorized by this Article 9.49~~].

(b) When an owner's title policy of title insurance is to be issued in connection with a real property transaction involving real property located in this state, the title insurance company issuing such owner's policy is hereby expressly authorized and empowered, at or prior to closing, to issue, upon written request, to the purchaser of the real property in connection with such closing and settlement an insured closing and settlement letter, provided that the sale price of the real property exceeds the guaranty amount specified in Art. 9.48 of this Insurance Code. Only the form of letter and the manner of issuance prescribed by the Board shall be used in issuing such purchaser's insured closing and settlement letters. The liability of the title insurance company under any issued policy of title insurance shall not be changed or altered by the failure of the title insurance company to issue such authorized purchaser's insured closing and settlement letters.

SECTION 8. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.70 to read as follows:

Art. 21.70. NOTICE TO STATE BOARD OF INSURANCE BY PROPERTY AND CASUALTY COMPANIES. (a) A company licensed to transact business in this state under Chapter 5, 6, 7, 8, 15, 16, 17, 18, or 19 of this code shall notify the State Board of Insurance on forms promulgated by the board not later than the 30th day after the day on which any of the following circumstances occurs:

(1) balances due from an agent for more than 90 days exceed $1 million or 10 percent of the company's policyholder surplus calculated on either December 31 of the preceding year or the most recent quarter if a report is specifically required by the State Board of Insurance;

(2) authority for an agent to settle claims for the company is withdrawn; or

(3) the contract with an agent is cancelled or terminated.

(b) The requirement to file under Section (a)(1) of this article may be met with a single annual report if the reporting company routinely operates above the limit provided by that section and the commissioner verifies that fact under procedures adopted by the commissioner.

SECTION 9. (a) This Act takes effect September 1, 1989.

(b) This Act applies only to an application for a managing general agent's license or renewal of a license that is submitted on and after September 1, 1989. An application for a license or renewal of a license submitted before that date is governed by the law that existed at the time the application was submitted and that law is continued in effect for that purpose.

(c) Amendments to Sections 4 and 6, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), that take effect September 1, 1989, do not apply to a managing general agent licensed under Section 5, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), before September 1, 1989.

(d) Section 3A, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), as added by this Act, applies only to contracts between insurers and managing general agents entered into or renewed on and after September 1, 1989. Contracts entered or renewed before that date are governed by the law that existed at the time the contract was entered or renewed and that law is continued in effect for that purpose.

(e) A managing general agent licensed before September 1, 1989, is not required to have an errors and omissions policy, a bond, or a deposit of cash or securities as required by Subsection (i), Section 4, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), as amended by this Act, until November 1, 1989.

(2) Renumber subsequent sections appropriately.

The amendment was read and was adopted viva voce vote.

On motion of Senator McFarland 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 viva voce vote.

HOUSE BILL 1594 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 7.19 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 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 4 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. 4, Relating to foreign offices of the department of commerce.

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

HOUSE BILL 4 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 4** 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.

COMMITTEE SUBSTITUTE HOUSE BILL 1099 ON SECOND READING

On motion of Senator Harris 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. 1099, Relating to issuance of emergency cease and desist orders by the commissioner of insurance and to the creation of an antifraud action by certain private insurers; authorizing the imposition of a civil penalty.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

Amend **C.S.H.B. 1099** as follows:

(1) Strike Subsection (b), Section 3 of Article 1.10A (Committee Printing page 2, lines 36 through 42).

(2) In Subsection (d), Section 3 of Article 1.10A (Committee Printing page 2, line 54), strike "16th" and substitute "10th".

(3) In Subsection (h), Section 3 of Article 1.10A (Committee Printing page 2, line 69), after the period add:

An appeal to the board does not operate to stay the commissioner's order unless the board directs a stay of the order for good cause.

(4) In Subsection (i), Section 3 of Article 1.10A (Committee Printing page 3, line 2), after the period add:

A petition for appeal filed in the district court does not operate to stay or to vacate an order or decision unless the court, after hearing, issues an order that specifically stays or vacates the order or decision.

(5) In Subsection (k), Section 3 of Article 1.10A (Committee Printing page 3, lines 5 and 6), delete "30 days after the date it is issued" and substitute "31 days after the date it is received".

(6) In Section 3 of Article 1.10A (Committee Printing page 2, line 28 to page 3, line 7), redesignate Subsections (c)-(k) as Subsections (b)-(j), respectively.

(7) In Section 3 of Article 2179D (Committee Printing page 4, between lines 38 and 39), add a new Subsection (b) as follows:

(b) When the insurer files a request for certification with the court, the insurer shall give at least 10 days notice of the request to the board, and to the attorney general, whether or not the board or the state is a party to the action, by serving the board and the state with a copy of the request for certification of the action by the court in the manner provided for service of notice pursuant to Rule 21a of the Texas Rules of Civil Procedure.

(8) In Section 3 of Article 21.79D (Committee Printing page 4, lines 36-47), redesignate Subsections (b) and (c) as Subsections (c) and (d), respectively.

The amendment was read and was adopted viva voce vote.

On motion of Senator Harris 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 viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1099 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1099** 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 3032 ON SECOND READING

On motion of Senator Haley 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. 3032, Relating to the administration of the local government corporate banking franchise tax fund.

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

HOUSE BILL 3032 ON THIRD READING

Senator Haley moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 3032** 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 1941 ON SECOND READING

On motion of Senator Sims 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. 1941, Relating to the collection of certain delinquent unemployment compensation taxes, penalties, and interest.

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

HOUSE BILL 1941 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1941** 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 viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1023 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:

C.S.H.B. 1023, Relating to taxes on the occupancy of a hotel, motel, or similar establishment.

The bill was read second time.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1023** as follows:

1. In SECTION 5, the new Subsections (c) and (f), Section 351.101, Tax Code are revised and new Subsections (i) and (j) are added to read as follows:

(c) The governing body of a municipality by a contract may delegate to a person, including another governmental entity or a private organization, the management or supervision of programs and activities funded with revenue from the tax authorized by this chapter. The governing body in writing shall approve in advance the annual budget of the person to which it delegates those functions and shall require the person to make periodic reports to the governing body at least annually listing the expenditures made by the person of revenue from the tax authorized by this chapter provided by the municipality. The person must maintain revenue provided by the municipality from the tax authorized by this chapter in a separate account established for that purpose and may not comingle that revenue with any other money or maintain it in any other account. The municipality may not delegate to any person the management or supervision of its convention and visitors programs and activities funded with revenue from the tax authorized by the chapter other than by contract as provided by the subsection. The approval by the governing body of the municipality of the annual budget of the person to whom the governing body delegates those functions creates a fiduciary duty in the person with respect to the revenue provided by the municipality to the person under the contract.

(f) Hotel occupancy tax revenue spent for a purpose authorized by this section may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing expenditures authorized under Section 351.101. If a municipal or other public or private entity that conducts an

activity for which hotel occupancy tax revenue may be used under this section conducts other activities for which hotel occupancy tax revenue may not be used, the portion of the total administrative costs of the entity for which hotel occupancy tax revenue may be used may not exceed the portion of those administrative costs actually incurred in conducting the activities for which the hotel occupancy tax revenue may be used.

(i) Nothing in this section shall prohibit any private entity, person, or organization from making subgrants by contract to any other person, entity or private organization for expenditures under Section 351.101(a)(4). A subgrantee shall:

(1) at least annually make periodic reports to the governing body of its expenditures from the tax authorized by this chapter; and

(2) make records of these expenditures available for review to the governing body or other person.

(j) Subsections (d) and (h) of this section do not apply to any private entity, person, or organization that receives tax revenue under Subsection (a) of this section and makes expenditures under Paragraph (4) of Subsection (a) of this section.

2. In SECTION 15, add a new Subsection (d) to Section 352.101, Tax Code, to read as follows:

(d) Subsection 352.101(c) does not apply to any private entity, person, or organization that receives tax revenue under Section 351.101(a) and makes expenditures pursuant to Section 351.101(a)(4).

The amendment was read and was adopted viva voce vote.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 1023** in SECTION 10 by revising Subsection (a), Section 352.1031, Tax Code, to read as follows:

(a) Revenue derived from the tax authorized by this chapter may be used only for the purposes stated in Section 351.101.

The amendment was read and was adopted viva voce vote.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 1023** as follows:

In SECTION 7, amend Subsection (c), Section 351.103, Tax Code, to read as follows:

(c) Not [~~No~~] more than 15 percent of the [~~municipal~~] hotel occupancy tax revenue collected by a municipality or [~~than~~] the amount of tax received by the municipality at the rate of one percent of the cost of a room, whichever is greater, may be used for the purposes [~~purpose~~] provided by Section 351.101(a)(4). Not more than 15 percent of the hotel occupancy tax revenue collected by a municipality may be used for the purposes provided by Section 351.101(a)(5). This subsection does not apply to an eligible municipality that imposes the tax authorized by this chapter at a rate that is less than seven percent of the price paid for a room in a hotel.

The amendment was read and was adopted viva voce vote.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.H.B. 1023** by striking SECTION 3 and SECTION 13 from the bill and renumbering the remaining SECTIONS accordingly.

The amendment was read and was adopted viva voce vote.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 5

Amend **C.S.H.B. 1023** as follows:

1. In SECTION 11, delete the "and" from after Paragraph (3) and add a new paragraph (5) to Subsection (a), Section 352.002, Tax Code to read as follows:

and;

(5) a county that has a population of 15,000 or less in which there is located a horse-racing track licensed as a class 1 or class 2 racetrack under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

2. Add new SECTIONS 15 and 17, and renumber the remaining SECTIONS accordingly as follows:

(b) If the license of a horse-racing track in a county that imposes a tax under Section 352.002(a)(5) is suspended, the track is considered as licensed for the purposes of Section 352.002(a)(5) if the period for which the license is suspended is one year or less or is indefinite. If the period of suspension exceeds one year, the track is not considered to be licensed for purposes of that section.

(c) If the license of a horse-racing track for which a county is authorized to impose a tax under Section 352.002(a)(5) is suspended for longer than one year or is revoked, the county may continue to impose the tax until the end of the next calendar month that follows by at least 20 days the date the license is suspended or revoked.

(d) For purposes of this section, the license of a horse-racing track is suspended or revoked on the date the action to suspend or revoke the license becomes final. An action to suspend or revoke a license is final if the action is not subject to rehearing or reconsideration or to direct administrative or judicial review.

SECTION 17. Subchapter B, Chapter 352, Tax Code, is amended by adding Section 352.1031 to read as follows:

Sec. 352.1031. USE OF REVENUE: COUNTIES WITH LICENSED RACETRACKS. The revenue from a tax imposed under this chapter by a county authorized to impose the tax by Section 352.004(a)(5) may be used only for general promotional and tourist advertising of the county and its vicinity and for conducting a solicitation program to attract conventions and visitors, any of which may be conducted by the county or through contracts with persons or organizations selected by the county.

The amendment was read and was adopted viva voce vote.

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 viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1546 ON SECOND READING

Senator Santiesteban moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1546, Relating to the Texas Water Commission's review and approval of the water pollution control and abatement programs of certain municipalities.

The motion prevailed by the following vote: Yeas 21, Nays 3.

Yeas: Barrientos, Caperton, Carriker, Dickson, Edwards, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Leedom, Montford, Parker, Parmer, Santiesteban, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Ratliff.

Absent: Bivins, Brooks, Green, Lyon, McFarland, Uribe, Washington.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Amend **H.B. 1546** by striking page 2, lines 21-26 and replacing it with the language below:

(c) A water pollution control and abatement program required by Subsections (a) and (b) of this section must be submitted to the commission. The commission may adopt rules providing the minimum criteria for the review of the establishment of those programs.

The amendment was read and was adopted viva voce vote.

On motion of Senator Santiesteban 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 viva voce vote.

HOUSE BILL 1546 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1546** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 21, Nays 4.

Yeas: Barrientos, Caperton, Carriker, Dickson, Edwards, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Leedom, Montford, Parker, Parmer, Santiesteban, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Ratliff, Washington.

Absent: Bivins, Brooks, Green, Lyon, McFarland, Uribe.

The bill was read third time and was passed by the following vote: Yeas 21, Nays 3.

Yeas: Barrientos, Caperton, Carriker, Dickson, Edwards, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Leedom, Montford, Parker, Parmer, Santiesteban, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Ratliff.

Absent: Bivins, Brooks, Green, Lyon, McFarland, Uribe, Washington.

HOUSE BILL 1332 ON SECOND READING

On motion of Senator Santiesteban 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. 1332, Relating to the issuance, amendment, and renewal of waste discharge permits by the Texas Water Commission.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Amend **H.B. 1332** as follows:

On page 1, line 7, strike the word "alternative" and replace it with the word "regional."

On page 1, line 12, strike the remainder of the sentence following the word "influent", and substitute "<u>, the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter.</u>"

The amendment was read and was adopted viva voce vote.

On motion of Senator Santiesteban 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 viva voce vote.

HOUSE BILL 1332 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1332** 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 viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1989

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. 545, Relating to the approval of certain State employee health fitness programs by the Texas Department of Health.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE HOUSE BILL 1302 ON SECOND READING

On motion of Senator Whitmire 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. 1302, Relating to authorizing the use of private collectors to pursue certain state claims against persons residing or moving assets outside the state and providing penalties.

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

COMMITTEE SUBSTITUTE HOUSE BILL 1302 ON THIRD READING

Senator Whitmire moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1302** 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 viva voce vote.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Harris and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Economic Development might consider the following bills upon recess today:

H.B. 721
H.B. 2377
H.B. 1569

NOTICE OF SESSION TO HOLD LOCAL AND UNCONTESTED BILLS CALENDAR

Senator Sims announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 8:00 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Parmer and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Intergovernmental Relations might consider the following bills today:

H.B. 1760
H.B. 1786
H.B. 3173

SENATE RULE 11.11 SUSPENDED

On motion of Senator Glasgow and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Jurisprudence might consider the following bills and resolution at 4:00 p.m. today:

H.B. 635
H.B. 109
S.C.R. 171

SENATE RULE 11.11 SUSPENDED

On motion of Senator Montford and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on State Affairs might consider the following bills at 4:15 p.m. today:

H.B. 2542
H.B. 2140
H.B. 2033
H.B. 182
H.B. 3031
H.B. 2728

SENATE RULE 11.11 SUSPENDED

On motion of Senator Brown and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Criminal Justice might consider **H.J.R. 19** today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Natural Resources might consider **H.B. 1458** today.

HOUSE BILL 574 REREFERRED

On motion of Senator Montford and by unanimous consent, **H.B. 574** was withdrawn from the Committee on Economic Development and rereferred to the Committee on State Affairs.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Montford and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on State Affairs might consider **H.B. 574** at 4:15 p.m. today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Health and Human Services might consider **H.B. 319** at 12:45 p.m. today.

RECESS

On motion of Senator Brooks, the Senate at 12:27 p.m. took recess until 2:00 p.m. today.

AFTER RECESS

The Senate met at 2:00 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 Finance:

H.B. 2024
H.B. 1884
H.B. 590
H.B. 1689 (Amended)
C.S.H.B. 1078

C.S.H.B. 1225
H.B. 1953
C.S.H.B. 2959
H.J.R. 13
C.S.H.B. 2301
H.B. 1266
H.B. 3146
C.S.H.B. 2736

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

H.C.R. 216

By unanimous consent, Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.B. 319

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

H.B. 2379

By unanimous consent, Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.B. 1711
H.B. 1299

By unanimous consent, Senator Johnson, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.B. 186
H.B. 1547

By unanimous consent, Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 188
C.S.H.B. 2356
C.S.H.B. 2494

SENATE RESOLUTION ON FIRST READING

On motion of Senator Truan and by unanimous consent, the following resolution was introduced, read first time and referred to the Committee indicated:

S.R. 750 by Truan, Tejeda, Whitmire, Uribe, Edwards Administration
Directing the Senate Subcommittee on Health Services to undertake an interim study on the problems and solutions relating to substance abuse in the workplace.

CONFERENCE COMMITTEE ON HOUSE BILL 1946

Senator Brown called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1946** 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. 1946** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chairman; Whitmire, Tejeda, Zaffirini and Parker.

SENATE CONCURRENT RESOLUTION 135 ON SECOND READING

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

S.C.R. 135, Directing the State Department of Highways and Public Transportation, in cooperation with the Texas Historical Commission, to identify the present-day disposition of the Old San Antonio Road.

The resolution was read second time and was adopted viva voce vote.

SENATE RULE 7.22(b) SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 7.22(b) was suspended as it relates to the House amendments to **S.B. 959**.

SENATE BILL 959 WITH HOUSE AMENDMENTS

Senator Brooks called **S.B. 959** 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 - Wright

Amend **S.B. 959** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. The Human Immunodeficiency Virus Services Act is enacted to read as follows:

ARTICLE 1

Sec. 1.01. SHORT TITLE. This Act may be cited as the Human Immunodeficiency Virus Services Act.

Sec. 1.02. DEFINITIONS. In this Act:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "Board" means the Texas Board of Health.

(3) "Communicable disease" has the meaning assigned that term by the Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes).

(4) "Department" means the Texas Department of Health.

(5) "HIV" means human immunodeficiency virus.

(6) "Person" means any legal entity.

(7) "Post-test counseling" means counseling following a positive HIV test to increase a person's understanding of HIV infection, explain the potential need for confirmatory testing, explain ways to change behavior conducive to HIV transmission, encourage the person to seek appropriate medical care, encourage the person to notify individuals with whom there has been contact capable of transmitting HIV, and explain state criminal laws relating to the transmission and to conduct that may result in the transmission of HIV infection.

(8) "State agency" means:

(A) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by

the Texas Constitution or a state statute and includes an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; and

(C) the supreme court, the court of criminal appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.

(9) "Testing program" means a medical program to test for AIDS, HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

Sec. 1.03. EDUCATION PROGRAMS AND MATERIALS. (a) The department is the primary resource for HIV education, prevention, risk reduction materials, policies, and information in this state.

(b) The department shall develop model education programs to be available to educate the public about AIDS and HIV infection. As part of the program, the department shall develop a model educational pamphlet about methods of transmission and methods of prevention of HIV infection and about state criminal laws relating to the transmission and to conduct that may result in the transmission of HIV infection.

(c) The department shall include in the programs special components designed to reach minority groups. In designing HIV education programs for ethnic minorities and in assisting local community organizations in developing HIV education programs for minority groups, the department shall ensure that the programs reflect the nature and spread of HIV infection in minorities in this state.

(d) The department shall develop and promote HIV education and prevention programs specifically designed to address the concerns of persons with physical or mental disabilities. In designing those programs, the department shall consult with persons with disabilities or with experts in the appropriate professional disciplines. To the maximum extent possible, state-funded HIV education and prevention programs shall be accessible to persons with physical disabilities.

(e) The department shall determine where HIV education efforts are needed in this state and shall initiate programs in those areas by identifying local resources. The department shall assist communities, especially those in rural areas, in establishing self-sustaining education programs, using public and private resources.

(f) The education programs shall be scientifically accurate and factually correct and shall be designed to:

(1) communicate to the public knowledge about methods of transmission and methods of prevention of HIV infection;

(2) educate the public about transmission risks in social, employment, and educational situations;

(3) educate health care workers and health facilities' employees about methods of transmission and prevention in their particular workplace environments; and

(4) educate the public about state criminal laws relating to the transmission and conduct that may result in the transmission of HIV infection.

(g) The department shall give priority to developing model education programs for persons under 18 years of age.

(h) The department may contract with any person for the design, development, and distribution of education programs provided for under this section except a person who advocates or promotes conduct that is contrary to state criminal laws.

(i) The department shall make the education programs available to local governments and private businesses on request.

(j) All materials prepared or distributed with state funds or state grants for distribution in public schools or for distribution to persons under 18 years of age shall prominently display the following provision:

"Homosexual conduct and intravenous use of illegal drugs are the primary methods of the transmission of AIDS and are criminal offenses under Texas law."

Sec. 1.04. MODEL WORKPLACE GUIDELINES. (a) To ensure consistent public policy, the department, in consultation with appropriate state and local agencies and private entities, shall develop model workplace guidelines concerning persons with HIV infection and related conditions.

(b) The model workplace guidelines shall include provisions stating that:

(1) all employees will receive some education about methods of transmission and methods of prevention of HIV infection and related conditions;

(2) accommodations will be made to keep persons with HIV infection employed and productive for as long as possible;

(3) the confidentiality of employee medical records will be protected; and

(4) HIV-related policies will be consistent with current information from public health authorities, such as the Centers for Disease Control of the United States Public Health Service, and with state and federal law and regulations.

(c) The department shall develop more specific model workplace guidelines for employers in businesses with educational, correctional, health, or social service responsibilities.

(d) The department shall make the model workplace guidelines available on request.

(e) Employers should be encouraged to adopt HIV-related workplace guidelines that incorporate, at a minimum, the guidelines established by the board under this section.

Sec. 1.05. FUNDING INFORMATION. (a) The department shall:

(1) maintain current information on public and private sources of funding for HIV-related prevention, education, treatment, and social support services; and

(2) maintain information on the type, amount, and sources of funding for HIV-related prevention, education, treatment, and social support services being provided throughout the state.

(b) To encourage and maximize the use of federal and private funds, the department shall forward the information as soon as possible after receipt to public and nonprofit agencies that may be eligible for funding, and shall make the information available to public and private entities on request.

(c) The department may seek, accept, and spend funds from state, federal, local, and private entities to carry out this section.

(d) The department may contract with an entity to provide the services required by this section if:

(1) the contract would minimize duplication of effort and result in a savings to the state; and

(2) the contracting entity does not advocate or promote conduct that is contrary to state criminal laws.

(e) The department may audit an entity contracting with the department under Subsection (d) of this section.

Sec. 1.06. TECHNICAL ASSISTANCE TO COMMUNITY ORGANIZATIONS. The department shall provide technical assistance to community-based organizations and local service providers to aid in identifying funding opportunities, developing effective grant proposals, and designing and implementing proven, operable service delivery approaches for community-based health care, prevention, education, and social support services.

Sec. 1.07. RULES. The board may adopt rules necessary to implement this Act.

Sec. 1.08. DEVELOPMENT OF PROGRAMS. The department shall develop the model education programs and the model workplace guidelines required by this article not later than 90 days after the effective date of this Act.

Sec. 1.09. TERM OF CONTRACTS. A contract entered into by the department under this article may not be for a term of more than one year, except that a contract may be renewed.

ARTICLE 2

Sec. 2.01. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS. The department shall establish and administer a state grant program to nonprofit community organizations for:

(1) HIV education, prevention, and risk reduction programs; and

(2) treatment, health, and social service programs for persons with HIV infection.

Sec. 2.02. APPLICATION PROCEDURES AND INFORMATION. (a) The department shall establish application procedures and eligibility guidelines for the state grants. Those procedures must include a public hearing, after reasonable notice, in the county in which the community organization is based before awarding a grant or grants totalling in excess of $10,000 annually. At least 10 days before the public hearing, notice shall be given to each state representative and state senator who represent any part of the county in which any part of the grant will be expended.

(b) An applicant for a state grant under this article shall submit to the department for approval:

(1) a description of the objectives established by the applicant for the conduct of the program;

(2) documentation that the applicant has consulted with appropriate local officials, community groups, and individuals with expertise in HIV education and treatment and knowledge of the needs of the population to be served;

(3) a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if the objectives are met; and

(4) any other information requested by the department.

Sec. 2.03. RULES; PROGRAM STRUCTURE. (a) The board may adopt rules relating to:

(1) the services that may be furnished under the program;

(2) a system of priorities regarding the types of services provided, geographic areas covered, or classes of individuals or communities targeted for services under the program; and

(3) a process for resolving conflicts between the department and a program receiving money under this article.

(b) Board or department actions relating to service, geographic, and other priorities shall be based on the set of priorities and guidelines established under this section.

(c) In structuring the program and adopting rules, the department and the board shall attempt to:

(1) coordinate the use of federal, local, and private funds;

(2) encourage community-based service provision;

(3) address needs that are not met by other sources of funding;

(4) provide funding as extensively as possible across the regions of the state in amounts that reflect regional needs; and

(5) encourage cooperation among local service providers.

(d) In awarding grants under this article, the department shall give priority to nonprofit community organizations with a primary purpose of serving persons under 18 years of age.

(e) In awarding grants for treatment, health, and social services, the department shall endeavor to distribute grants in a manner that prevents unnecessary duplication of services within a community.

(f) In awarding grants for education programs, the department shall endeavor to complement existing education programs in a community, to prevent

unnecessary duplication of services within a community, to provide HIV education programs for populations engaging in behaviors conducive to HIV transmission, to initiate needed HIV education programs where none exist, and to promote early intervention and treatment of persons with HIV infection.

(g) Grants may not be awarded to an entity or community organization that advocates or promotes conduct that is contrary to state criminal law.

Sec. 2.04. INFORMATION PROVIDED BY FUNDED PROGRAM. (a) A program funded with a grant under this article shall provide information and educational materials that are accurate, comprehensive, and consistent with current findings of the United States Public Health Service.

(b) Information and educational materials developed with a grant awarded under this article must contain materials and be presented in a manner that is specifically directed to the group for which the materials are intended.

Sec. 2.05. ADMINISTRATIVE EXPENSES. The department may not use more than five percent of the funds appropriated for the grant program to employ sufficient staff to review and process grant applications, monitor and evaluate the effectiveness of funded programs, and provide technical assistance to grantees.

Sec. 2.06. EVALUATION OF FUNDED PROGRAMS. (a) The department shall develop evaluation criteria to document effectiveness, unit-of-service costs, and number of volunteers used in programs funded with grants under this article.

(b) An organization that receives funding under the program shall:

(1) collect and maintain relevant data as required by the department; and

(2) submit to the department copies of all material the organization has printed or distributed relating to HIV infection.

(c) The department shall provide prompt assistance to grantees in obtaining materials and skills necessary to collect and report the data required under this section.

Sec. 2.07. ADMINISTRATION AND PROGRAM REVIEW. To prevent unnecessary duplication of services, the board and the department shall seek to coordinate the services provided by eligible programs under this Act with existing federal, state, and local programs. The department shall consult with the Texas Department of Human Services to ensure that programs funded under this article complement and do not unnecessarily duplicate services provided through the Texas Department of Human Services.

Sec. 2.08. RECORDS. (a) The department shall require each program receiving a grant under this article to maintain records and information specified by the department.

(b) The department may adopt rules relating to the information a program is required to report to the department and shall adopt procedures and forms for reporting the information to prevent unnecessary and duplicative reporting of data.

(c) The department shall review records, information, and reports prepared by programs funded under this article. Before December 1 of each year, the department shall prepare a report that is available to the public and that summarizes data regarding the type, level, quality, and cost-effectiveness of services provided under this article.

Sec. 2.09. FINANCIAL RECORDS. (a) The department shall review periodically the financial records of a program funded with a grant under this article.

(b) As a condition of accepting a grant under this article, a community organization shall allow the department to periodically review the financial records of that organization.

Sec. 2.10. DUE PROCESS. The department may provide a due process hearing procedure for the resolution of conflicts between the department and a program funded with a state grant under this article.

ARTICLE 3

Sec. 3.01. HIV MEDICATION PROGRAM. (a) The Texas HIV medication program is established in the department.

(b) The program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions.

(c) Funds appropriated in the General Appropriations Act may not be transferred from other line items for this program.

Sec. 3.02. ELIGIBILITY. (a) To be eligible for the program, an individual:

(1) must not be eligible for Medicaid benefits;

(2) must meet financial eligibility criteria set by board rule;

(3) must not qualify for any other state or federal program available for financing the purchase of the prescribed medication; and

(4) must be diagnosed by a licensed physician as having AIDS or an HIV-related condition or illness of at least the minimal severity set by the board.

(b) The department shall give priority to participation in the program to eligible individuals under 18 years of age.

Sec. 3.03. PROCEDURES AND ELIGIBILITY GUIDELINES. The board by rule shall establish:

(1) application and distribution procedures;

(2) eligibility guidelines to ensure the most appropriate distribution of funds available each year; and

(3) appellate procedures to resolve any eligibility or funding conflicts.

Sec. 3.04. FUNDING. (a) The department may accept and use local, state, and federal funds and private donations to fund the program.

(b) State, local, and private funds may be used to qualify for federal matching funds if federal funding becomes available.

(c) A hospital district may participate in the program by sending district funds to the department for the purpose of providing assistance to residents of the district for the purchase of HIV medication. The district may send funds obtained from any source, including taxes levied by the district.

(d) The department shall deposit money received under this section in the state treasury to the credit of the HIV medication fund and to the credit of a special account in that fund that shall be established for each hospital district sending funds under this section.

(e) Funds received from a hospital district under this section may be used only to provide assistance to residents of that district. The funds may be supplemented with other funds available for the purpose of the program.

(f) The department may institute a sliding fee scale to help eligible HIV-infected individuals purchase medications under this program.

Sec. 3.05. ADVISORY COMMITTEE. The board may appoint an advisory committee to assist in the development of procedures and guidelines required by this article.

ARTICLE 4

Sec. 4.01. COUNSELING AND TESTING. (a) A test result indicating the presence of HIV infection may not be revealed to the person tested without giving that person the immediate opportunity for individual, face-to-face post-test counseling.

(b) Subsection (a) of this section does not apply:

(1) if a report of a test result is used for statistical or research purposes only and any information that could identify the person is removed from the report; or

(2) if the test is conducted for the sole purpose of screening blood, blood products, bodily fluids, organs, or tissues to determine suitability for donation.

(c) A person who is injured by an intentional violation of this section may bring a civil action for damages and may recover for each violation from a person who violates this section:

(1) $1,000 or actual damages, whichever is greater; and

(2) reasonable attorney's fees.

(d) A person performing a test to show HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is not liable under Subsection (c) of this section for failing to provide post-test counseling if the person tested does not appear for the counseling.

Sec. 4.02. DEPARTMENT VOLUNTARY TESTING PROGRAMS. (a) The department shall establish voluntary HIV testing programs in each public health region to make counseling and testing available on an anonymous or confidential basis, depending on the desires of the person receiving the services.

(b) The department may contract with public and private entities to perform the testing as necessary according to local circumstances.

(c) The results of a test conducted by a testing program or department program under this section may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment. A person who is injured by an intentional violation of this subsection may bring a civil action for damages and may recover for each violation from a person who violates this subsection:

(1) $1,000 or actual damages, whichever is greater; and

(2) reasonable attorney's fees.

(d) In addition to the remedies provided by Subsection (c) of this section, the person may bring an action to restrain a violation or threatened violation of that subsection.

Sec. 4.03. STATE-FUNDED HEALTH CLINICS. (a) State-funded primary health, women's reproductive health, and sexually transmitted disease clinics shall:

(1) make available to patients and clients information and educational materials concerning the prevention of HIV infection; and

(2) provide voluntary, anonymous, and affordable counseling and testing programs concerning HIV infection, or provide referrals to those programs.

(b) Information provided under Subsection (a)(1) of this section shall be routinely incorporated into patient education and counseling in clinics specializing in sexually transmitted diseases and women's reproductive health.

Sec. 4.04. TRAINING OF COUNSELORS. (a) The department shall develop and offer a training course for persons providing post-test counseling. The training course shall include information relating to the special needs of persons with positive HIV test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(b) The department shall maintain a registry of persons who successfully complete the training course.

(c) The department may charge a fee for the course to persons other than employees of entities receiving state or federal funds for HIV counseling and testing programs through a contract with the department.

(d) The board shall set the fee in an amount that is reasonable and necessary to cover the costs of providing the course.

(e) The department may contract for training of counselors.

Sec. 4.05. MODEL PROTOCOL FOR COUNSELING AND TESTING. (a) The department shall develop a model protocol for counseling and testing related to HIV infection. The protocol shall be available to health care providers on request.

(b) A testing program shall adopt and comply with the model protocol developed by the department under Subsection (a) of this section.

Sec. 4.06. REGISTRATION OF TESTING PROGRAM. (a) A person may not advertise or represent to the public that the person conducts a testing program for AIDS, HIV infection, or related conditions without registering with the department.

(b) A hospital licensed under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or a physician licensed under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) is not required to be registered under this section unless the hospital or physician advertises or represents to the public that the hospital or physician conducts or specializes in testing programs for AIDS, HIV infection, or related conditions.

(c) A person who violates Subsection (a) of this section is liable for a civil penalty of $1,000 for each day of a continuing violation.

Sec. 4.07. PHYSICIAN SUPERVISION OF MEDICAL CARE. A licensed physician shall supervise any medical care or procedure provided under the testing program.

Sec. 4.08. FOR PROFIT TESTING PROGRAM. A testing program that operates for profit, that advertises or represents to the public that it conducts or specializes in testing programs, and that is required to register under Section 4.06 of this article shall:

(1) obtain the informed consent of the person to be tested before conducting the test; and

(2) provide an itemized statement of charges to the person tested or counseled.

Sec. 4.09. DISCIPLINARY ACTION. This article does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a violation of this article by a health care provider.

ARTICLE 5

Sec. 5.01. EDUCATION OF STATE EMPLOYEES. (a) Annually, each state agency shall provide to each state employee an educational pamphlet about methods of transmission and methods of prevention of HIV infection and about state criminal laws relating to the transmission and to conduct that may result in the transmission of HIV infection. The pamphlet shall be provided to a newly hired state employee on the first day of employment.

(b) The educational pamphlet shall be based on the model developed by the department and shall include the workplace guidelines adopted by the state agency.

(c) The department shall prepare and distribute to each state agency a model informational pamphlet that can be reproduced by each state agency to meet the requirements of this section.

Sec. 5.02. EDUCATION OF CLIENTS, PATIENTS, AND RESIDENTS. Each state agency listed in Section 5.03(b) of this article shall routinely make available HIV education for clients, inmates, patients, and residents of treatment, educational, correctional, or residential facilities under the agency's jurisdiction. Education available under this section shall be based on the model education program developed by the department and tailored to the cultural, educational, language, and developmental needs of the clients, inmates, patients, or residents, including the use of Braille or telecommunication devices for the deaf.

Sec. 5.03. WORKPLACE GUIDELINES; STATE AGENCIES AND CONTRACTORS. (a) Each state agency shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection. The workplace guidelines shall at a minimum incorporate the model workplace guidelines developed by the department.

(b) An entity that contracts with or is funded by any of the following state agencies to operate a program involving direct client contact shall adopt and

implement workplace guidelines similar to the guidelines adopted by the agency that funds or contracts with the entity:

(1) the Texas Commission on Alcohol and Drug Abuse;

(2) the Texas Commission for the Blind;

(3) the Texas Commission for the Deaf;

(4) the Texas Adult Probation Commission;

(5) the Texas Juvenile Probation Commission;

(6) the Texas Department of Corrections;

(7) the Texas Youth Commission;

(8) the Board of Pardons and Paroles;

(9) the department;

(10) the Texas Department of Human Services;

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

(12) the Texas Rehabilitation Commission.

Sec. 5.04. CONFIDENTIALITY GUIDELINES; STATE AGENCIES AND STATE CONTRACTORS. (a) Each state agency shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the agency and for clients, inmates, patients, and residents served by the agency. The policies shall be consistent with guidelines published by the Centers for Disease Control of the United States Public Health Service and with state and federal law and regulation.

(b) Each entity that receives funds from a state agency for residential or direct client services or programs shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the entity and for clients, inmates, patients, and residents served by the entity. The policies shall be consistent with guidelines published by the Centers for Disease Control of the United States Public Health Service and with state and federal law and regulation. An entity that does not adopt confidentiality guidelines as required by this subsection is not eligible to receive state funds until the guidelines are developed and implemented.

Sec. 5.05. TESTING AND COUNSELING FOR STATE EMPLOYEES EXPOSED ON THE JOB. (a) On request, a state agency shall pay the costs of testing and counseling an employee of that agency concerning HIV infection if the employee, through blood or other body fluid contact, may have been exposed to HIV infection while performing duties of employment with that agency.

(b) The board by rule shall adopt guidelines defining the conditions that constitute possible exposure to HIV infection under this section.

(c) The costs of a state employee's testing and counseling shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. The director of the workers' compensation division of the attorney general's office shall adopt rules necessary to administer this subsection.

Sec. 5.06. ADOPTION AND IMPLEMENTATION OF WORKPLACE GUIDELINES AND PROVISION OF EDUCATIONAL PAMPHLET. (a) Each state agency shall adopt and implement the workplace guidelines required by Section 5.03 of this article and provide the educational pamphlet to each state employee not later than 180 days after the effective date of this Act.

(b) Each entity that contracts with or is funded by a state agency listed in Section 5.03(b) of this article shall adopt and implement the workplace guidelines required by Section 5.03 of this article not later than 180 days after the effective date of this Act.

Sec. 5.07. HIV EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS OF HEALTH CARE FACILITIES.

(a) This section applies to health care facilities licensed by the department, the Texas Department of Mental Health and Mental Retardation, or the Texas Department of Human Services.

(b) A health care facility covered by this section shall require its employees to complete an educational course about human immunodeficiency virus infection based on the model education program developed by the department.

ARTICLE 6

Sec. 6.01. NURSING CARE. To ensure a continuum of nursing care for persons with AIDS or HIV infection and related conditions who require long-term nursing care but do not require hospitalization except for acute exacerbations of their condition, the Texas Department of Human Services shall develop one or more demonstration projects to research the cost and need for services that are appropriate to provide the special care necessary for those persons and for the specific medical complications resulting from AIDS or HIV infection.

Sec. 6.02. DEMONSTRATION PROJECTS. (a) The Texas Department of Human Services shall establish one or more demonstration projects in nursing facilities to:

(1) assist the Texas Department of Human Services in analyzing the cost of providing care for persons with AIDS or HIV infection and related conditions authorized by this article;

(2) provide test sites in designated nursing facilities to study the costs and requirements of the operation of those facilities and the provision of appropriate nursing care and other related programs and services;

(3) demonstrate the extent of the need for facilities that can provide the long-term nursing care that is required by a person with AIDS or HIV infection and related conditions when those persons are not in need of hospitalization for an acute exacerbated condition;

(4) determine the extent of the individualized nursing care required to adequately meet the specific needs of persons with AIDS or HIV infection and related conditions without imposing the costs of providing those programs and services on all facilities that currently provide nursing care to persons whose needs are different than the needs of persons with AIDS or HIV infection and related conditions; and

(5) provide one or more teaching and demonstration models for caring for persons with AIDS or HIV infection and related conditions.

(b) Participants in the demonstration project shall be reimbursed at a special rate that covers all the cost of the care provided.

SECTION 2. Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes), is amended by adding Sections 17 and 18 to read as follows:

Sec. 17. EDUCATION CONCERNING HIV INFECTION. (a) A treatment facility licensed under this Act shall provide to employees of the facility education about methods of transmission and methods of prevention of human immunodeficiency virus infection based on the model education program developed by the Texas Department of Health, and shall make the education available to clients of the facility.

(b) Employees of the facility who counsel clients shall provide counseling in accordance with the model protocol for counseling related to HIV infection developed by the Texas Department of Health.

Sec. 18. TESTING AND COUNSELING CONCERNING HIV INFECTION. A treatment facility licensed under this Act shall make available voluntary, anonymous, and affordable counseling and testing services concerning human immunodeficiency virus infection.

SECTION 3. Title 1, Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended by adding Section 1.16 to read as follows:

Sec. 1.16. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG USERS. (a) The commission may fund community outreach programs that have direct contact with intravenous drug users.

(b) An outreach program funded by the commission shall:

(1) provide education on HIV infection based on the model education program developed by the Texas Department of Health;

(2) encourage behavior changes to reduce the possibility of HIV transmission;

(3) promote other HIV risk reduction activities not involving illegal acts; and

(4) encourage behavior consistent with state criminal laws.

(c) In this section, "HIV" means human immunodeficiency virus.

SECTION 4. Article 6203c-12, Revised Statutes, as added by Chapter 543, Acts of the
70th Legislature, Regular Session, 1987, is amended to read as follows:

Art. 6203c-12. AIDS AND HIV EDUCATION; TESTING

Sec. 1. In this article:

(1) "AIDS," "HIV," and "test result" have the meanings assigned by Section 9.01, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes).

(2) "High risk behavior" means any activity determined by the United States Public Health Service to transmit AIDS or HIV infection.

Sec. 2. (a) The Texas Department of Corrections shall adopt and implement the model workplace guidelines developed by the Texas Department of Health concerning HIV infection.

(b) The department shall provide to each employee an educational pamphlet about methods of transmission and methods of prevention of HIV infection and about state criminal laws relating to the transmission and to conduct that may result in the transmission of HIV infection and shall make the pamphlet available to inmates. The educational pamphlet shall be based on the model education program developed by the Texas Department of Health.

Sec. 3. (a) If the Texas Department of Corrections determines that an inmate has engaged in high-risk behavior while confined by the department, the department may begin a testing program to identify HIV infection that is consistent with guidelines established by the Centers for Disease Control of the United States Public Health Service.

(b) The department shall place a test result obtained by the department under this section in the inmate's medical file. The Texas Board of Corrections shall adopt a rule consistent with the Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes) providing which employees of the department may be allowed access to the medical file. The department shall maintain the confidentiality of the test result of an inmate after the inmate's discharge or release on parole or mandatory supervision and may not release the information except in compliance with specific written instructions from the inmate. A blanket release of medical information signed by the inmate is not sufficient to authorize a release under this subsection.

Sec. 4. The Texas Board of Corrections shall adopt rules on the housing, physical contact, dining, recreation, and exercise hours and facilities of inmates with AIDS or HIV infection that are:

(1) consistent with guidelines of the Centers for Disease Control of the United States Public Health Service and recommendations of the health services division of the Texas Department of Corrections; and

(2) consistent with the proper operation of the department.

Sec. 5. The Texas Department of Corrections shall report to the legislature not later than January 15 of each odd-numbered year concerning the implementation of this article and the participation of inmates and employees of the department in education programs established under this article. [~~TESTING FOR COMMUNICABLE DISEASES. The Texas Department of Corrections is authorized to test inmates of correctional facilities for human immunodeficiency virus. If the department determines that an inmate has a positive test result, the inmate may be segregated from other inmates.~~]

SECTION 5. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.27 to read as follows:

Art. 2.27. POLICIES REGARDING AIDS OR HIV INFECTIONS. (a) In this article:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "HIV" means human immunodeficiency virus.

(b) Each local law enforcement agency, municipal and county correctional facility, and district probation department should develop a policy consistent with policies developed by the Texas Department of Health for handling persons with AIDS or HIV infection who are in their custody or under their supervision.

(c) A policy adopted under this section applies to persons who contract or subcontract with the agency, facility, or probation department.

(d) A policy adopted under this section should provide for education of employees, inmates, and probationers based on the model education program developed by the Texas Department of Health concerning HIV infection.

SECTION 6. Subsection (a), Article 21.31, Code of Criminal Procedure, is amended to read as follows:

(a) If a criminal charge has been filed against a person and a magistrate has determined there is probable cause in the case, and if, during the commission of the offense or in the course of the arrest for the offense, the person caused a transfer of his blood or other body fluid known to transmit HIV infection through the skin or membrane of another, the [~~A~~] person [~~indicted for an offense under Section 22.011 or 22.021, Penal Code,~~] shall, at the direction of the court, undergo a medical procedure or test designed to show or help show whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the person to undergo the procedure or test on its own motion or on the request of any person to whom the blood or other body fluid may have been transferred [~~the victim of the alleged offense~~]. If the person refuses to submit voluntarily to the procedure or test, the court may require the person to submit to the procedure or test. The person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall be required to make the notification of the test result to any person to whom the blood or other body fluid may have been transferred [~~the victim of the alleged offense~~]. The state may not use the fact that a medical procedure or test was performed on a person under this subsection or use the results of the procedure or test in any criminal proceeding arising out of the alleged offense.

SECTION 7. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.20 to read as follows:

Art. 42.20. AIDS TESTING FOR DEFENDANTS CONVICTED OF SEXUAL OFFENSES. (a) Except as provided by Subsection (d) of this section, a court shall direct a person convicted of an offense listed in Subsection (b) of this article to undergo a medical procedure or test designed to show or help show

whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall notify the victim of the offense of the test result.

(b) This section applies to a person convicted of an offense under the following sections of the Penal Code:

(1) Section 21.06 (Homosexual Conduct);

(2) Section 22.011 (Sexual Assault);

(3) Section 22.021 (Aggravated Sexual Assault); or

(4) Section 43.02 (Prostitution).

(c) The provisions of Subsections (b) and (c) of Article 21.31 of this code apply to the manner in which a test is conducted under this article and to the disclosure of the results of a test required by this article.

(d) A person may not be required to undergo a medical procedure or test under this article if the person previously underwent a medical procedure or test under Article 21.31 of this code after indictment for the offense for which the person is subsequently convicted.

(e) In this article, "AIDS" and "HIV" have the meanings assigned those terms by Section 9.01, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes).

SECTION 8. The Code of Criminal Procedure is amended by adding Chapter 46A to read as follows:

CHAPTER 46A. AIDS AND HIV TESTING IN COUNTY AND MUNICIPAL JAILS

Art. 46A.01. TESTING; SEGREGATION; DISCLOSURE. (a) In this article "AIDS" and "HIV" have the meanings assigned those terms by Section 9.01, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes).

(b) A county or municipality may test an inmate confined in the county or municipal jail or in a contract facility authorized by Article 5115d, Revised Statutes, or Article 5115e, Revised Statutes, to determine the proper medical treatment of the inmate or the proper social management of the inmate or other inmates in the jail or facility.

(c) If the county or municipality determines that an inmate has a positive test result for AIDS or HIV, the county or municipality may segregate the inmate from other inmates in the jail or facility. The county or municipality shall notify each employee of the jail or correctional facility with a need to know for personal protection or to provide medical and social services to the inmate. The county or municipality shall also notify any law enforcement official with a need to know that an inmate has tested positive for AIDS or HIV.

(d) This article does not provide a duty to test for AIDS or HIV, and a cause of action does not arise under this section from a failure to test for AIDS or HIV.

SECTION 9. Chapter 22, Penal Code, is amended by adding Section 22.012 to read as follows:

Sec. 22.012. INTENTIONALLY EXPOSING ANOTHER TO AIDS OR HIV. (a) A person commits an offense if the person, knowing that he has or is a carrier of AIDS or HIV, intentionally transfers his own blood or other body fluid known to transmit HIV infection into the bloodstream of another through the other person's skin or other membrane, except during in utero transmission of blood or other body fluid, and:

(1) the other person did not consent to the transfer of blood or other body fluid; or

(2) the other person consented to the transfer, but at the time of giving consent had not been informed by the actor that the actor had or was a carrier of AIDS or HIV.

(b) An offense under this section is a felony of the third degree.

(c) In this section, "AIDS" and "HIV" have the meanings assigned by Section 9.01, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes).

SECTION 10. (a) Section 11.207, Education Code, as added by Chapter 848, Acts of the 70th Legislature, Regular Session, 1987, is redesignated as Section 11.208, Education Code, and amended to read as follows:

Sec. 11.208 [~~11.207~~]. INSERVICE TRAINING AND PREPARATION. (a) As a part of the teacher inservice training and preparation required under Section 16.052 of this code, for each school year the State Board of Education by rule shall require instruction in subject areas that the board considers appropriate. The subject areas may include but are not limited to:

(1) special education;

(2) recognition of and response to signs of abuse or neglect in students;

(3) recognition of dyslexia and related disorders in students and teaching strategies for those students;

(4) discipline management training; and

(5) teacher appraisal.

(b) The State Board of Education by rule shall require inservice training for all school employees and volunteers regarding HIV infection. The board shall require more intensive HIV inservice training for teachers, counselors, and other persons employed in programs related to comprehensive health education, substance abuse prevention, or prevention of sexually transmissible diseases, HIV, and AIDS than for other school employees. The training for all employees and volunteers shall include information related to:

(1) methods of transmission and methods of prevention of HIV infection;

(2) relevant federal, state, and local laws and school district regulations, including those related to the release of medical information, to the confidentiality of test results, and to discrimination against persons infected with HIV;

(3) state criminal laws relating to the transmission and to conduct that may result in the transmission of HIV infection; and

(4) community resources providing HIV education and services.

(c) The Central Education Agency in consultation with the Texas Department of Health shall prepare and disseminate an information guide to all school administrators, teachers, and other personnel that is updated periodically and includes current, accurate facts on:

(1) relevant state and federal laws, rules, and regulations;

(2) methods of transmission and methods of prevention of HIV infection; and

(3) state criminal laws relating to the transmission and to conduct that may result in the transmission of HIV infection.

(d) In this section:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "HIV" means human immunodeficiency virus.

(b) The Central Education Agency shall conduct a survey of all school districts in the state to assess the extent and educational content of instruction relating to human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) as defined by the Centers for Disease Control of the United States Public

Health Service, and of the level of training of the instructors. The agency shall report the results of the survey to the 72nd Legislature not later than February 1, 1991.

(c) School districts shall implement the inservice training required by Section 11.208(b), Education Code, as added by Subsection (a) of this section, not later than the first semester of the 1990-91 regular school term.

SECTION 11. Subchapter Z, Chapter 21, Education Code, is amended by adding Section 21.928 to read as follows:

Sec. 21.928. ACCESS TO MEDICAL RECORDS. (a) A school administrator or teacher is entitled to access to a student's medical records maintained by the school district only if the administrator or teacher has completed the inservice training required under Section 11.208(b) of this code.

(b) A school administrator or teacher who views medical records under this section shall maintain the confidentiality of those medical records.

(c) A school administrator or teacher who intentionally violates Subsection (b) of this section commits an offense. An offense under this subsection is a Class A misdemeanor.

(d) This section does not authorize a school administrator or teacher to require a student to be tested to determine the student's medical condition or status.

SECTION 12. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.917 to read as follows:

Sec. 51.917. HIV AND AIDS POLICY; INFORMATION DISSEMINATION. (a) In this section:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "HIV" means human immunodeficiency virus.

(3) "Institution of higher education" has the meaning assigned by Section 61.003 of this code.

(b) Each institution of higher education shall make available the institution's policy on HIV infection and AIDS to students, faculty, and staff members by including the policy in the student handbook and personnel handbook if practicable or by any other method.

(c) Each institution of higher education shall make available to students, on request, the educational pamphlet on HIV infection developed by the Texas Department of Health and shall include in the student handbook a statement that the pamphlet is available from the institution.

(d) The student health center of each institution of higher education shall provide clear, accurate information on how to prevent the transmission of HIV infection, including:

(1) the value of abstinence and long-term mutual monogamy;

(2) information on the use of condoms, including their rate of failure;

(3) offering of or referring students, faculty, or staff members to anonymous HIV counseling and testing services; and

(4) state criminal laws relating to the transmission and to conduct that may result in the transmission of HIV infection.

(e) The curricula of medical, dental, nursing, allied health, counseling, and social work degree programs of institutions of higher education shall:

(1) include information about:

(A) methods of transmission and methods of prevention of HIV infection; and

(B) federal and state laws, rules, and regulations concerning HIV infection and AIDS; and

(2) give special attention to the physical, emotional, and psychological stress associated with the care of patients with terminal illnesses.

SECTION 13. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.078 to read as follows:

Sec. 61.078. RESEARCH. (a) The board shall:

(1) encourage institutions of higher education and the faculty of those institutions to individually or through collaborative effort conduct human immunodeficiency virus (HIV) related research; and

(2) recognize achievements in basic and applied HIV-related research.

(b) The board shall encourage and fund applied and basic HIV-related research through its ongoing research programs, including the Advanced Technology and Advanced Research Programs.

SECTION 14. Article 3, Communicable Disease Prevention and Control Act (Article 4419b-1,
Vernon's Texas Civil Statutes), is amended by adding Section 3.09 to read as follows:

Sec. 3.09. REPORTS AND ANALYSES CONCERNING AIDS AND HIV INFECTION. (a) The department shall ensure timely and accurate reporting under this Act of information relating to acquired immune deficiency syndrome and human immunodeficiency virus infection.

(b) The department shall routinely analyze and determine trends in incidence and prevalence of AIDS and HIV infection by region, age, gender, race, ethnicity, transmission category, and other factors as appropriate.

(c) The department shall annually project the number of AIDS cases expected in this state based on the reports.

(d) The department shall make available epidemiologic projections and other analyses, including comparisons of Texas and national trends, to state and local agencies for use in planning, developing, and evaluating AIDS and HIV-related programs and services.

SECTION 15. Article 3, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended by adding Section 3.10 to read as follows:

Sec. 3.10. PARTNER NOTIFICATION PROGRAMS; HIV INFECTION. (a) The department shall establish programs for partner notification and referral services.

(b) The partner notification services offered by health care providers participating in a program shall be made available and easily accessible to all persons with clinically validated HIV seropositive status.

(c) If a person with HIV infection voluntarily discloses the name of a partner, that information is confidential. Partner names may be used only for field investigation and notification.

(d) An employee of a partner notification program shall make the notification. The employee shall inform the person who is named as a partner of:

(1) the methods of transmission and methods of prevention of HIV infection;

(2) the telephone numbers and addresses of HIV antibody testing sites; and

(3) the existence of local HIV support groups, mental health services, and medical facilities.

(e) The employee may not disclose:

(1) the name of or other identifying information concerning the identity of the person who gave the partner's name; or

(2) the date or period of the partner's exposure.

(f) If the person with HIV infection also makes the notification, the person should provide the information listed in Subsection (d) of this section.

(g) A partner notification program shall provide counseling, testing, or referral services to a person with HIV infection regardless of whether the person discloses the names of any partners.

(h) A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control of the United States Public Health Service for professionals participating in the program.

SECTION 16. Article 3, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended by adding Section 3.11 to read as follows:

Sec. 3.11. TESTING BY HOSPITALS. A hospital shall perform a medical procedure or test on a person if a court orders the hospital to perform the procedure or test on a person whom the court orders to undergo the test or procedure under Article 21.31, Code of Criminal Procedure.

SECTION 17. Article 3, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended by adding Section 3.12 to read as follows:

Sec. 3.12. MANDATORY TESTING OF INDIVIDUAL EXPOSING CERTAIN EMPLOYEES TO HIV INFECTION. (a) The following persons may request the department or a local health authority to order pre-test counseling, HIV testing, and post-test counseling for an individual who may have exposed the person to the individual's bodily fluids:

(1) a law enforcement officer;

(2) a fire fighter;

(3) a health care provider;

(4) a health care facility staff person;

(5) an emergency medical service employee or paramedic; or

(6) a correctional officer.

(b) A request under this section may be made only if the person listed in Subsection (a) of this section has experienced a substantial exposure, as defined by board rule, to an individual's bodily fluid in the course of the person's employment.

(c) The individual who is subject to the order shall be given written notice of the order promptly, personally, and confidentially. The order shall state the grounds and provisions of the order, including the factual basis for its issuance.

(d) If the individual who is subject to the order refuses to comply, the prosecuting attorney who represents the state in district court, on request of the department or local health authority, shall petition the district court for a hearing on the order.

(e) In reviewing the order, the court shall determine whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of HIV as defined by board rule. On conclusion of the hearing, the court shall issue the appropriate order.

(f) The department or local health authority shall inform the person who requested the order of the results of the test and, if necessary, the location of HIV test sites.

(g) This section does not affect the duty to notify under Section 3.08 of this Act. A person who is notified of a positive test result under that section may not request an order under this section.

(h) In this section:

(1) "Bodily fluids" means blood, bodily fluids containing visible blood, semen, vaginal secretions, cerebro-spinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, and amniotic fluid.

(2) "HIV" means human immunodeficiency virus.

SECTION 18. Section 4.01(c), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) As used in this section, the term "control measures" includes, but is not limited to:

(1) immunization;
(2) detention;
(3) restriction;
(4) disinfection;
(5) decontamination;
(6) isolation;
(7) quarantine;
(8) disinfestation;
(9) chemoprophylaxis; [~~and~~]
(10) preventive therapy;
(11) prevention; and
(12) education.

SECTION 19. Section 8.42, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8.42. CARE AND TREATMENT. The head of an in-patient health care facility shall provide adequate medical care and treatment for each patient in accordance with [~~the highest standards~~] accepted standards of [~~in~~] medical practice. The head of an in-patient health care facility shall be responsible for the detention of the patient and for providing suitable security to prevent the patient from transmitting the disease.

SECTION 20. (a) Section 9.02(a), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person or entity may not require another person to undergo any medical procedure or test designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless required under Subsection (c) or (g) of this section or under Article 21.31, 42.20, or 46A.01, Code of Criminal Procedure, or unless the medical procedure or test is necessary:

(1) as a bona fide occupational qualification and there exists no less discriminatory means of satisfying the occupational qualification;

(2) to screen blood, blood products, bodily fluids, organs, or tissues for the purpose of determining suitability for donation;

(3) in relation to a particular person under this Act;

(4) to test residents and clients of residential facilities of the Texas Department of Mental Health and Mental Retardation, but only if:

(A) the test result would change the medical or social management of the person tested or others who associated with that person; and

(B) the test is conducted in accordance with guidelines that have been adopted by the residential facility or the Texas Department of Mental Health and Mental Retardation, and approved by the department; [~~or~~]

(5) to manage accidental exposure to blood or other bodily fluids but only if the test is conducted in accordance with written infectious disease control protocols adopted by the health care agency or facility and is conducted in accordance with Subsection (d) of this section; or

(6) under Section 3.12 of this Act.

(b) Section 9.02(b), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is repealed.

SECTION 21. Section 9.03(b), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A test result may be released only to:

(1) the department under this Act;

(2) a local health authority if reporting is required under this Act;

(3) the Centers for Disease Control of the United States Public Health Service if reporting is required by federal law or regulation;

(4) the physician or other person authorized by law who ordered the test;

(5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare;

(6) the person tested or a person legally authorized to consent to the test on the person's behalf;

(7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; [~~and the physician who ordered the test makes the notification. This subdivision does not provide a duty to notify the spouse, and a cause of action does not arise under this subdivision for the failure to make that notification; and~~]

(8) if the person is tested as required or authorized by Article 21.31, 42.20, or 46A.01, Code of Criminal Procedure, a person authorized to receive test results under those articles [~~the victim of an alleged offense listed in that article committed by the person tested~~]. The court shall notify persons receiving test results [~~the victim of the alleged offense~~] of the requirements of this Act under this section; and

(9) a person exposed to HIV infection as provided by Section 3.12 of this Act.

SECTION 22. Article 9, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended by adding Section 9.07 to read as follows:

Sec. 9.07. INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY. (a) Except as otherwise provided by law, a person or entity may not perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person to be tested. Consent need not be written if there is documentation in the medical record that the test has been explained and the consent has been obtained.

(b) A positive test result may not be revealed to the person tested without giving that person the immediate opportunity for individual, face-to-face counseling about:

(1) the meaning of the test results;

(2) the possible need for additional testing;

(3) measures to prevent the transmission of the human immunodeficiency virus infection;

(4) the availability of appropriate health care services, including mental health care, and appropriate social and support services in the geographic area of the person's residence;

(5) the benefits of partner notification;

(6) the availability of partner notification programs; and

(7) state criminal laws relating to the transmission and to conduct that may result in the transmission of HIV infection.

SECTION 23. Article 9, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended by adding Section 9.08 to read as follows:

Sec. 9.08. GENERAL CONSENT FOR TESTS FOR HIV INFECTION. A person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign or be presented with a specific consent form relating to medical tests or procedures to determine HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS that will be performed on the person during the time in which the general consent form is in effect. Except as otherwise provided by this Act, the result of a test or procedure to determine HIV infection, antibodies to HIV, or infection with any probable causative agent of AIDS performed under the authorization of a general consent form in accordance with this section shall be used only for diagnostic or other purposes directly related to medical treatment.

SECTION 24. Section 2(a), Chronically Ill and Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended by amending Subdivision (1) and adding Subdivision (17) to read as follows:

(1) "Chronically ill and disabled 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 craniofacial anomaly, neurofibromatosis, and spina bifida;

(ii) cancer; [or]

(iii) a disease or condition specified by a rule adopted by the board under Section 8 of this Act; or

(iv) AIDS or HIV infection; or

(B) has cystic fibrosis, regardless of the person's age.

(17) "AIDS" and "HIV" have the meanings assigned by Section 9.01, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes).

SECTION 25. Section 3(a), Chronically Ill and Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A program is created in the department to provide services to chronically ill and disabled children who are eligible for the services. The program shall provide:

(1) early identification of chronically ill and disabled children;

(2) diagnosis and evaluation of chronically ill and disabled children;

(3) rehabilitation services to chronically ill and disabled children;

(4) development and improvement of standards and services for chronically ill and disabled children; and

(5) case management services, including:

(A) coordination of medical services, marshalling of available assistance, serving as liaison between the child and the child's family and caregivers, institutional services, insurance services, and other services needed to improve the well-being of the child and the child's family; and

(B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.

SECTION 26. Section 3, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. UNLAWFUL AND PROHIBITED ACTS. The following acts and the causing thereof within the State of Texas are hereby declared unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, as defined in this Act, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this Act and of rules adopted under authority of this Act; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 12, 18, or 19 of this Act;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Section 25; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the Federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within the State of Texas of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 5 of this Act, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State of Texas from whom he received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 5 of this Act, which guaranty or undertaking is false;

(j) the removal or disposal of a detained or embargoed article in violation of Section 6 of this Act;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this Act or the regulations promulgated under the provisions of the Federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to his own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts

when relevant in any judicial proceeding under this Act, of any information acquired under authority of this Act concerning any method or process which as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 18 of this Act or Section 505, 515, or 520(g) of the Federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Section 25 of this Act or Section 704 of the Federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the Federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this Act;

(q)(1) placing or causing to be placed on any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the Federal Act, the failure to provide any information required by Section 510(j) or (k) of the Federal Act, or the failure to provide a notice required by Section 510(j)(2) of the Federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the Federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the Federal Act;

(2) with respect to any device, the submission of any report that is required by or under this Act that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the Federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the Federal Act;

(w) the sale, delivery, holding, or offering for sale of any self-testing kits designed to tell persons their status concerning human immunodeficiency virus, acquired immune deficiency syndrome, or related disorders or conditions.

SECTION 27. (a) Section 5, Texas Unemployment Compensation Act (Article 5221b-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. DISQUALIFICATION FOR BENEFITS. An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount, unless the individual left work to move with a spouse from the area in which the individual worked. In that case, the disqualification shall be for not less than six (6) nor more than twenty-five (25) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case. Provided no claimant shall be disqualified because of his or her leaving due to medically verified illness, injury, disability, or pregnancy and is still available for work. Military personnel who do not reenlist may not be considered to have left work voluntarily without good cause connected with work.

(b) If the Commission finds he has been discharged for misconduct connected with his last work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is (i) due to the claimant's stoppage of work because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (ii) because of a labor dispute at another place, either within or without this State, which is owned or operated by

the same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; provided, however, that failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept and perform his available and customary work at the factory, establishment, or other premises (including a vessel) where he is or was last employed shall be considered as participation and interest in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the employee's failure to meet the requirements of this paragraph (2) of this subsection (d) his disqualification shall cease if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member, if any, is not acting in concert or in sympathy with a labor organization involved in the labor dispute at the premises at which the labor dispute occurred, and he has made an unconditional offer to return to work at the premises at which he is or was last employed.

(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any State or under a similar law of the United States;

(3) Old Age Benefits under Title II of the Social Security Act as amended, or similar payments under any Act of Congress, or a State Legislature; provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration. If any such benefits, payable under this subsection, after being reduced by the amount of such remuneration, are not an even multiple of One Dollar ($1), they shall be adjusted to the next higher multiple of One Dollar ($1).

(f) For a benefit period occurring from the date of the sale of a business until the date that an individual is employed and is eligible for benefits based on the wage credits received through the new employment, if:

(1) the business is a corporation and the individual is:

(A) an officer of the corporation;

(B) a majority or controlling shareholder in the corporation; and

(C) involved in the sale of the corporation;

(2) the business is a limited or general partnership and the individual is a limited or general partner who is involved in the sale of the partnership; or

(3) the business is a sole proprietorship and the individual is the proprietor who sells the business.

(g) For the duration of any period of unemployment with respect to which the Commission finds that such individual has left his most recent work for the purpose of attending an established educational institution; provided, that this subsection shall not apply during a period in which an individual is in training with the approval of the Commission.

(h) For weeks of unemployment beginning after March 31, 1980, for any benefit period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the individual and which is reasonably attributable to that benefit period; provided that if the remuneration is less than the benefits which would otherwise be due under this Act, the individual shall be entitled to receive for that benefit period, if otherwise eligible, benefits reduced by the amount of the remuneration. If those benefits payable under this subsection, after being reduced by the amount of the remuneration, are not an even multiple of One Dollar ($1), they shall be adjusted to the next higher multiple of One Dollar ($1).

The Legislature declares that the preceding paragraph is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act as provided in Public Law 94-566 requires this provision in State law as of January 1, 1978, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act; and it further declares that if Section 3304(a)(15) is amended to provide modifications of these requirements, the modified requirements, to the extent that they are required for full tax credit, shall be considered applicable under the provisions of this Section rather than the provisions stated in the preceding paragraph.

(i) This Section does not disqualify a claimant whose work-related reason for separation from employment was urgent, compelling, and of a necessitous nature so as to make separation involuntary.

(j) If the Commission finds that he has left his last work voluntarily rather than provide services included within the course and scope of his employment to an individual infected with a communicable disease. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times the claimant's weekly benefit amount. A claimant is not disqualified under this subsection unless the individual or organization for whom the claimant last worked made available to the claimant the facilities, equipment, training, and supplies necessary to permit the claimant to take reasonable precautions to preclude the infection of the claimant with the communicable disease.

(k) If the Commission finds that he has been discharged from his last work based on a refusal by him to provide services included within the course and scope of his employment to an individual infected with a communicable disease. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times the claimant's weekly benefit amount. A claimant is not disqualified under this subsection unless the individual or organization for whom the claimant last worked made available to the claimant the facilities, equipment, training, and supplies necessary to preclude the infection of the claimant with the communicable disease.

(b) Section 7(c)(2)(A), Texas Unemployment Compensation Act (Article 5521b-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(A) With respect to any benefit year, the amount of benefit payments paid to a claimant shall be charged to the account of the claimant's base period employer or employers. When a benefit payment is made to a claimant

who has two or more employers in his base period the chargeback to each employer shall be allocated in direct proportion to the percentage of the claimant's total benefit wage credits paid by such employer. This process may be designated as charging benefits to an employer's account, and benefits thus charged may be designated as chargebacks.

The chargebacks of each employer for a given calendar quarter shall be the benefits paid to all of his employees or former employees during such quarter; provided, that the chargebacks of an employer shall not include benefit payments which are based on wage credits of an employee or former employee, if the Commission finds that the employee's last separation from such employer's employment, prior to the benefit year in conjunction with which such base period was established, was (i) a separation required by a Federal or a Texas statute or a Texas municipal ordinance; or (ii) a separation for which a disqualification under Subsection (a), (b), (j), or (k) of Section 5 [~~subsections 5(a) or 5(b)~~] of this Act would have been imposed if such employer's employment of the employee or former employee had been the employee's last work; or (iii) a separation with respect to which a disqualification was imposed under Subsection (a), (b), (j), or (k) of Section 5 [~~subsection 5(a) or 5(b)~~] of this Act; or (iv) a separation caused by a medically verifiable illness; and provided further that for the purpose of this paragraph the term "last separation" shall, with respect to an employee whose initial determination disqualified him for benefits under subsection 5(d) of this Act, mean his next later separation from such employer's employment.

(c) Subsection (a) of this section applies only to a claim for unemployment compensation benefits that is filed with the Texas Employment Commission on or after September 1, 1989.

SECTION 28. TRANSITION. (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 29. EFFECTIVE DATE. This Act takes effect September 1, 1989.

SECTION 30. 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.

Floor Amendment No. 1 - McKinney, Wright, Clemons, McDonald

Amend **C.S.S.B. 959** as follows:

(1) On page 2, line 4, between "care," and "encourage", insert "and".

(2) On page 2, strike lines 6-8 and substitute "capable of transmitting HIV.".

(3) On page 3, line 2, strike "criminal".

(4) On page 4, line 8, strike "criminal".

(5) On page 4, line 16, add the following after the period:

This subsection does not restrict an education program from providing accurate information about different ways to reduce the risk of exposure to or the transmission of HIV infection through conduct that is contrary to state law.

(6) On page 4, strike lines 19-25 and substitute the following:

(j) All materials in the education programs intended for persons 18 years of age or older shall emphasize that sexual intercourse involving anal intercourse, and intravenous drug use involving the sharing of needles, are the primary methods of transmission of HIV infection. Homosexual conduct as defined by Section 21.06

of the Penal Code and Prostitution as defined by 43.02 of the Penal Code are criminal offenses under Texas law.

(7) On page 6, line 15, strike "section" and substitute "Act".

(8) On page 6, between lines 19 and 20, insert the following:

(e) Subsection (d)(2) of this section does not restrict an education program from providing accurate information about different ways to reduce the risk of exposure to or the transmission of HIV infection through conduct that is contrary to state law.

(9) On page 7, strike the colon on line 14, strike lines 15-18, and substitute "treatment, health, and social service programs for persons with HIV infection.".

(10) On page 7, line 24, strike "$10,000" and substitute "$20,000".

(11) On page 8, line 7, strike "HIV education and".

(12) On page 9, strike lines 11-13.

(13) On page 9, line 14, strike "(e)" and substitute "(d)".

(14) On page 9, strike lines 18-25.

(15) On page 9, line 26, strike "(g)" and substitute "(e)".

(16) On page 10, line 1, add the following after the period: This subsection does not prohibit the award of a grant to an entity or community organization that provides accurate information about different ways to reduce the risk of exposure to or transmission of HIV infection through conduct that is contrary to state law.

(17) On page 10, strike lines 2-10.

(18) On page 10, line 11, strike "2.05" and substitute "2.04".

(19) On page 10, line 16, strike "2.06" and substitute "2.05".

(20) On page 11, line 3, strike "2.07" and substitute "2.06".

(21) On page 11, line 11, strike "2.08" and substitute "2.07".

(22) On page 11, line 24, strike "2.09" and substitute "2.08".

(23) On page 12, line 3, strike "2.10" and substitute "2.09".

(24) On page 18, line 16, strike "criminal".

(25) On page 25, line 14, strike "criminal".

(26) On page 32, line 24, strike "criminal".

(27) On page 33, line 11, strike "criminal".

(28) On page 35, line 23, strike "criminal".

(29) On page 39, line 7, add the following after the period:
"The procedure or test is a cost of court."

(30) On page 45, strike lines 13-15.

(31) On page 4, add section (k) to Section 1.03

(k) All materials in the education programs intended for persons under 18 years of age shall emphasize sexual abstinence before marriage and fidelity in marriage as the expected standard in terms of public health, and the most effective ways to prevent HIV infection, sexually transmitted diseases, and unwanted pregnancies, and shall state that homosexual conduct is not an accepted lifestyle and is a criminal offense under Section 21.06 of the Texas Penal Code.

Floor Amendment No. 2 - Clemons

Amend **C.S.S.B. 959** as follows:

(1) On page 4, between lines 25 and 26, insert the following:

Sec. 1.04. MODEL PUBLIC HEALTH EDUCATION CURRICULUM. (a) All public elementary, junior high, and senior high school classes that teach sex education or discuss sexually transmitted diseases shall emphasize:

(1) that abstinence from sexual intercourse is the only protection that is 100 percent effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually;

(2) that abstinence from sexual intercourse outside of lawful marriage is the expected societal standard for school-age unmarried persons; and

(3) the physical, emotional, and psychological dangers of substance abuse, including the risk of acquired immune deficiency syndrome (AIDS) through the sharing of needles during intravenous drug usage.

(b) Course materials and instruction that relate to sexual education or sexually transmitted diseases shall be age appropriate as defined by local school board of trustees.

(c) The local school board of trustees may make rules regarding segregation by gender during the teaching of certain provisions.

(d) Course materials and instruction that relate to sexual education or sexually transmitted diseases shall include the following elements:

(1) an emphasis on sexual abstinence as the only completely reliable method of avoiding unwanted teenage pregnancy and sexually transmitted diseases;

(2) an emphasis on the importance of self-control, responsibility, and ethical conduct in making decisions pertaining to sexual behavior;

(3) statistics based on the latest medical information that indicate the health hazards and risks of failure associated with the various forms of contraception;

(4) statistics based on the latest medical information that indicate the failure rates of condoms in preventing the spread of acquired immune deficiency syndrome (AIDS) and other sexually transmitted diseases;

(5) information concerning the possible emotional psychological, and health consequences of adolescent sexual intercourse outside of lawful marriage and unwanted pregnancy;

(6) information concerning the laws relating to the financial responsibilities associated with pregnancy, childbirth, and child rearing;

(7) information concerning the laws prohibiting sexual abuse, the legal and counseling options available to victims of sexual abuse, and the school district's program, if it exists, for aiding victims of sexual abuse;

(8) information on how to cope with and rebuff unwanted physical and verbal sexual advances, as well as the importance of avoiding the sexual exploitation of other persons;

(9) psychologically sound methods of resisting unwanted peer pressure; and

(10) emphasis in a factual manner, and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public, and that homosexual conduct is a criminal offense under Section 21.06 of the Texas Penal Code.

(e) When evaluating the merits of textbooks, course materials, or other published information for use by public school districts in elementary, junior high, and senior high classes that teach sex education or discuss sexually transmitted diseases, the State Textbook Committee shall consider the relative inclusion or omission of the elements of this section.

(2) On page 4, line 26, strike "1.04" and substitute "1.05".

(3) On page 5, line 25, strike "1.05" and substitute "1.06".

(4) On page 6, line 22, strike "1.06" and substitute "1.07".

(5) On page 7, line 2, strike "1.07" and substitute "1.08".

(6) On page 7, line 4, strike "1.08" and substitute "1.09".

(7) On page 7, line 8, strike "1.09" and substitute "1.10".

Floor Amendment No. 3 - Willy

Amend **C.S.S.B. 959** as follows:

(1) On page 34, strike lines 15-17.

(2) On page 34, line 18, strike "(d)" and substitute "(c)".

Floor Amendment No. 4 - J. Harris

Amend **C.S.S.B. 959**, page 2, line 22, by adding:

(10) Contact Tracing means identifying all persons who may have been exposed to an infected person and notifying them that they have been exposed, should be tested, and should seek treatment.

Floor Amendment No. 5 - J. Harris

Amend **C.S.S.B. 959**, page 15, line 8, by striking "Anonymous or" and "depending on the desires of the person receiving the services."

On line 8, put a period after basis.

After "basis.", add "The department shall complete contact tracing after a confirmed positive test."

Floor Amendment No. 6 - J. Harris

Amend **C.S.S.B. 959**, page 18, line 11 by adding Sec. 4.11 to read as follows:

"Sec. 4.11. REPORTS. A testing program shall report test results for HIV infection in the manner provided by the Communicable Disease Prevention and Control Act (Article 4419-1, Vernon's Texas Civil Statutes)."

Floor Amendment No. 7 - Repp

C.S.S.B. 959 is amended by adding:

Page 31, between line 18 and 19, insert the new Section as follows and renumber subsequent sections as appropriate:

SECTION 9. Chapter 37, Penal Code is amended by adding Section 37.13 to read as follows:

Sec. 37.13. FALSIFYING BLOOD DONOR INFORMATION REGARDING AIDS OR HIV INFECTION.

(a) A person commits an offense if, knowing that he has, has been exposed to, or is a carrier of AIDS or HIV, intentionally provides information the person knows is false regarding AIDS or HIV on or in response to an application, questionnaire, or other document the person is required to answer or complete as a condition of donating or selling blood, plasma, or other blood products to a blood bank, plasa center, blood or plasma collection center or agency, or other authorized entity.

(b) An offense under this section is a felony of the third degree.

(c) In this section:

(1) "AIDS" and "HIV" have the meanings assigned by Section 9.01, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes.).

(2) "blood bank" has the meaning assigned by Section 1, Chapter 1093, Acts of the 70th Legislature, Regular Session, 1987 (Article 4419b-1.5, Vernon's Texas Civil Statutes.)

Floor Amendment No. 8 - Repp

C.S.S.B. 959 is amended by adding:

Page 40, between line 26 and 27, insert the new Section as follows and renumber subsequent sections as appropriate:

SECTION 18. Article 3, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended by adding Section 3.13 to read as follows:

SECTION 3.13. DESIGNATED DONORS. (a) Each health care facility, hospital, or blood bank shall allow a recipient of blood to designate a donor of the recipient's choice if:

(1) the recipient or a person on the recipient's behalf has solicited the donor;

(2) the designated donor consents to the donation;

(3) the designated donor's blood may be obtained in sufficient time to meet the recipient's health care needs;

(4) the designated donor does not have a communicable disease as that term is defined by the Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), and is not unsuitable because of any other health reasons determined by the health care facility, hospital, or blood bank; and

(5) the blood of the donor is acceptable for the recipient's medical needs.

(b) Blood donated by a designated donor under this section that is not used on the date of its intended use may be used for any other medically appropriate purpose.

(c) A health care facility, hospital, or blood bank is not required to disclose the reason it refuses a request under this section, and may not disclose that reason if prohibited by law unless disclosure is authorized by the designated donor.

(d) A health care facility, hospital, or blood bank does not have a duty to inform a recipient of blood of the recipient's right to designate a blood donor under this section.

(e) Each health care facility, hospital, or blood bank shall allow a person to donate the person's own blood for the person's exclusive use if the person's blood may be obtained in sufficient time to meet the person's health care needs.

(f) Blood donated under this section that is not used on the date of its intended use may be used for any other medically appropriate purpose.

(g) A health care facility, hospital, or blood bank does not have a duty to inform a person of the person's right to donate the person's own blood under this section.

(h) Blood donated under this section may not be used until it is properly tested as required by law to determine the presence of a communicable disease, including the human immunodeficiency virus.

(i) A health care facility, hospital, or blood bank may charge a reasonable fee for administrative and storage costs of donations under this section.

(j) Section 77.003, Civil Practice and Remedies Code, applies to a donation under this section.

(k) This section does not limit other procedures established by a health care facility, hospital or blood bank to enable donations from designated donors or from the recipient of the blood.

Floor Amendment No. 9 - McDonald

Amend **C.S.S.B. 959** as follows:

(1) On page 43, line 4, strike "or".

(2) On page 43, line 5, strike the period and substitute "; or

(7) to test residents and clients of residential facilities of the Texas Youth Commission, but only if:

(A) the test result would change the medical or social management of the person tested or others who associate with that person; and

(B) the test is conducted in accordance with guidelines adopted by the commission.".

Floor Amendment No. 10 - Oakley

Amend **C.S.S.B. 959** by adding a new SECTION _____ to read as follows and by renumbering the subsequent sections accordingly:

SECTION 32. (a) Section 1.07, Family Code, is amended by adding Subsection (e) to read as follows:

(e) At the time the clerk issues a marriage license, the clerk shall distribute to each applicant printed materials about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV). The clerk shall note on the license that the distribution was made. The materials shall be prepared and provided to the clerk by the Texas Department of Health and shall be designed to inform the applicants about:

(1) the incidence and mode of transmission of AIDS and HIV;

(2) the local availability of medical procedures, including voluntary testing, designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; and

(3) available and appropriate counseling services regarding AIDS and HIV infection.

(b) The Texas Department of Health shall prepare and distribute to county clerks the informational materials described by this Act as soon as possible after the effective date of this Act, but not later than January 1, 1990. A county clerk is not required to make the notations on marriage licenses described by Subsection (e), Section 1.07, Family Code, as added by this Act, before January 1, 1990.

SECTION 33. (a) Section 1.94, Family Code, is amended by adding Subsection (e) to read as follows:

(e) At the time the parties execute the declaration, the clerk shall distribute to each party printed materials about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV). The clerk shall note on the declaration that the distribution was made. The materials shall be prepared and provided to the clerk by the Texas Department of Health and shall be designed to inform the parties about:

(1) the incidence and mode of transmission of AIDS and HIV;

(2) the local availability of medical procedures, including voluntary testing, designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; and

(3) available and appropriate counseling services regarding AIDS and HIV infection.

(b) The Texas Department of Health shall prepare and distribute to county clerks the informational materials described by this Act as soon as possible after the effective date of this Act, but not later than January 1, 1990. A county clerk is not required to make the notations on declarations of informal marriage described by Subsection (e), Section 1.94, Family Code, as added by this Act, before January 1, 1990.

Floor Amendment No. 11 - McKinney

Amend **C.S.S.B. 959** by adding a new Article 7 as follows on page 23 between lines 14 and 15:

ARTICLE 7

Sec. 7.01. DEFINITIONS. In this Article:

(1) "Medical care" means care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; and

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

(2) "Nursing care" means services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

(3) "Person" means an individual, organization, establishment, or association of any kind.

(4) "Resident" means an individual accepted for care in a special care facility.

(5) "Services" means the provision of medical or nursing care, assistance, or treatment by facility personnel, volunteers, or other qualified individuals, agencies, or staff of any organization or entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

(6) "Special care facility" means an institution or establishment that provides a continuum of nursing or medical care or services, primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

Sec. 7.02. DUTIES OF BOARD. (a) The board shall adopt rules necessary to implement this Article. The rules shall establish minimum standards for special care facilities relating to:

(1) the issuance, renewal, denial, suspension, and revocation of the license required by this Article;

(2) the qualifications, duties, and supervision of professional and nonprofessional personnel and volunteers;

(3) residents' rights;

(4) medical and nursing care and services provided by a license holder;

(5) the organizational structure, lines of authority, delegation of responsibility, and operation of a special care facility;

(6) records of care and services kept by the license holder, including the disposal or destruction of those records;

(7) safety, fire prevention, and sanitary provisions;

(8) transfer of residents in a medically appropriate manner from or to a special care facility;

(9) construction plan approval and inspection; and

(10) any aspects of a special care facility as necessary to protect the public or residents of the facility.

(b) Subsection (a) of this section does not authorize the board to establish the qualifications of licensed health care providers or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other state law.

Sec. 7.03. LICENSE REQUIRED; EXEMPTION. (a) A person may not establish or operate a special care facility unless the person holds a current license issued under this Article.

(b) This Article does not apply to:

(1) a person required to be licensed under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes);

(2) an institution required to be licensed under Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes);

(3) a home health agency required to be licensed under Chapter 642, Acts of the 66th Legislature, Regular Session, 1979 (Article 4447u, Vernon's Texas Civil Statutes);

(4) a facility required to be licensed under the Texas Abortion Facility Reporting and Licensing Act (Article 4512.8, Vernon's Texas Civil Statutes);

(5) an ambulatory surgical center required to be licensed under the Texas Ambulatory Surgical Center Licensing Act (Article 4437f-2, Vernon's Texas Civil Statutes);

(6) a birthing center required to be licensed under the Texas Birthing Center Licensing Act (Article 4437f-3, Vernon's Texas Civil Statutes); or

(7) a person providing medical or nursing care or services under a license or permit issued under other state law.

Sec. 7.04. APPLICATION; LOCAL REGULATION; CONSTRUCTION. (a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with board rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The department may require that an application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation.

(d) If there are no local regulations in effect or enforced in the area in which a special care facility is located, the facility's construction shall conform to the minimum standards established by the board.

(e) Construction of a facility is subject to construction plan approval by the department.

Sec. 7.05. LICENSE ISSUANCE; RENEWAL. (a) The department shall issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this Act and the rules adopted by the board.

(b) A license shall be renewed at the times and in accordance with the rules established by the board.

Sec. 7.06. FEES; DISPOSITION OF FUNDS. (a) The board shall establish a license application fee in the amount of $25 for each facility bed or $200, whichever is greater, but the fees may not exceed $1,000.

(b) The board may establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this Article. The fees may include construction plan review and inspection fees.

(c) All fees collected under this Article are nonrefundable.

(d) All fees received by the department shall be deposited to the credit of the General Revenue Fund and may be appropriated only to the department to administer this Article.

Sec. 7.07. NONTRANSFERABILITY; POSTING. (a) A license issued under this Article is not transferable or assignable.

(b) A special care facility shall post in plain sight the license issued under this Article.

Sec. 7.08. INSPECTION; INVESTIGATION. (a) The department may inspect a special care facility and its records at reasonable times as necessary to ensure compliance with this Article.

(b) The department shall investigate each complaint received regarding a special care facility.

Sec. 7.09. LICENSE DENIAL, SUSPENSION, OR REVOCATION. (a) The department may deny, revoke, or suspend a license issued under this Article for a violation of this Article or the rules adopted under this Article.

(b) Except as provided by Subsection (c) of this section, the procedures by which the department denies, revokes, or suspends a license and by which those actions are appealed are governed by the department's rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The department may issue an emergency order to suspend any license issued under this Article if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day and not later than the 30th day after the date on which the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 7.10. INJUNCTION; CIVIL PENALTY. (a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this Article or any rule adopted by the board under this Article. A suit for injunctive relief must be brought in Travis County.

(b) Upon application for injunctive relief and a finding that a license holder or other person has violated this Article or board rules, the district court shall grant the injunctive relief that the facts may warrant.

(c) In addition to a suit brought for injunctive relief under this section or any other remedy provided by law, a license holder or person who violates this Article or any rule adopted by the board under this Article is liable for a civil penalty, to be imposed by a district court, of not more than $1,000 for each day of violation. All penalties collected under this subsection shall be deposited to the credit of the General Revenue Fund.

Sec. 7.11. CRIMINAL PENALTY. (a) A person who knowingly establishes or operates a special care facility without a license issued under this Article commits an offense.

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

(c) Each day of a continuing violation constitutes a separate offense.

Floor Amendment No. 1 on Third Reading - Clemons

Amend **C.S.S.B. 959** as follows:

(1) On page 25, line 19, between "(a)" and "If", insert the following:

"The Texas Department of Corrections may test inmates of correctional facilities for HIV infection. If the department determines that an inmate has a positive test result, the inmate may be segregated from other inmates.

(b)".

(2) On page 25, line 25, strike "(b)" and substitute "(c)".

(3) On page 25, line 26, strike "section" and substitute "article".

(4) On page 25, strike line 27, and on page 26, strike lines 1-9, and substitute the following:

"Texas Board of Corrections shall adopt a rule providing which employees of the department may be allowed access to the medical file.".

Floor Amendment No. 2 on Third Reading - Clemons

Amend **C.S.S.B. 959**, Section 3.04 as follows:

On page 13, line 16, insert the following after the word "district":
", local health department, public or nonprofit hospitals and clinics, or nonprofit community organizations,"

On page 13, line 26, insert the following after the word "district":
", local health department, public or nonprofit hospitals and clinics, or nonprofit community organizations,"

The amendments were read.

Senator Brooks 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. 959** 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 Brooks, Chairman; Johnson, McFarland, Uribe and Washington.

CONFERENCE COMMITTEE ON HOUSE BILL 1822

Senator Green 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. 1822** 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. 1822** 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 Green, Chairman; Krier, Edwards, Parmer and Whitmire.

SENATE BILL 688 WITH HOUSE AMENDMENT

Senator Green called **S.B. 688** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment - Polumbo

Amend **S.B. 688** by striking all below the enacting clause and substitute the following:

SECTION 1. Section 142.0017(b), Local Government Code, as amended by **S.B No. 220**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) A fire fighter or fire fighter emergency medical personnel may not be required or permitted to work more than an average of 46.7 hours a week during a calendar year. If the fire fighter or fire fighter emergency medical services employee

is required to work more than an average of 46.7 [~~48~~] hours a week during a calendar year, the person is entitled to be compensated for the overtime as provided by Subsection (e).

SECTION 2. Chapter 143, Local Government Code, is amended by adding a new section 143.1017 to read as follows:

Sec. 143.1017. PROCEDURES AFTER FELONY INDICTMENT OR OTHER CRIME OF MORAL TURPITUDE. (a) If a fire fighter or police officer is indicted for a felony or officially charged with the commission of any other crime involving moral turpitude, the department head may temporarily suspend the person with or without pay for a period not to exceed 30 days after the date the fire fighter or police officer gives notice of final disposition of the specified felony indictment or any other crime involving moral turpitude.

(b) The department head shall notify the suspended fire fighter or police officer in writing that the person is being temporarily suspended for a specific period with or without pay and that the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

(c) If the action directly related to the felony indictment or misdemeanor complaint occurred or was discovered on or after the 180th day before the date of the indictment or complaint, the department head may, within 60 days after the date of final disposition of the indictment or complaint, bring a charge against the fire fighter or police officer for a violation of civil service rules.

(d) A fire fighter or police officer indicted for a felony or officially charged with the commission of any other crime involving moral turpitude who has also been charged by the department head with civil service violations directly related to the indictment or complaint may delay the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint.

(e) If the department head temporarily suspends a fire fighter or police officer under this section and the fire fighter or police officer is not found guilty of the indictment or complaint in a court of competent jurisdiction, the fire fighter or police officer may appeal to the commission or to a hearing examiner for recovery of back pay. The commission or hearing examiner may award all or part of the back pay or reject the appeal.

(f) Acquittal or dismissal of an indictment or a complaint does not mean that a fire fighter or police officer has not violated civil service rules and does not negate the charges that may have been or may be brought against the fire fighter or police officer by the department head.

(g) Final conviction of a felony shall be the basis for dismissal without notice or further proceedings under this Act, and conviction of any other crime involving moral turpitude may be cause for disciplinary action or indefinite suspension.

(h) The department head may order an indefinite suspension based on an act classified as a felony or any other crime involving moral turpitude after the 180-day period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the department head intends to order an indefinite suspension after the 180-day period, the department head must file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date the act complained of occurred.

SECTION 3. Section 143.1015(a), Local Government Code, as amended by **S.B. 220**, 71st Legislature, is amended to read as follows:

(a) An appeal by a fire fighter or police officer to the commission from an action for which an appeal or review is provided by this chapter is sufficient if the fire fighter or police officer files it with the commission within 15 days after the date the action occurred. In an appeal provided by this chapter the Commission shall render a decision in writing within (60) days after it received the notice of appeal, unless the

provisions of Section 143.1017(d) have been invoked by the fire fighter or police officer. If the commission does not render a decision in writing within 60 days after the date it receives notice of the appeal the commission shall sustain the fire fighter's or police officer's appeal.

SECTION 4. Chapter 143, Local Government Code, is amended by adding Section 143.1016 to read as follows:

Sec. 143.1016. HEARING EXAMINERS. (a) In addition to the other notice requirements prescribed by this chapter, the letter of disciplinary action issued to a fire fighter or police officer must state that in an appeal of an indefinite suspension, a suspension, a promotional passover, or a recommended demotion, the appealing fire fighter or police officer may elect to appeal to an independent third party hearing examiner instead of to the commission. The letter must also state that if the fire fighter or police officer elects to appeal to a hearing examiner, the person waives all rights to appeal to a district court except as provided by Subsection (j).

(b) To exercise the choice of appealing to a hearing examiner, the appealing fire fighter or police officer must submit to the director a written request as part of the original notice of appeal required under this chapter stating the person's decision to appeal to an independent third party hearing examiner.

(c) The hearing examiner's decision is final and binding on all parties. If the fire fighter or police officer decides to appeal to an independent third party hearing examiner, the person automatically waives all rights to appeal to a district court except as provided by Subsection (j).

(d) If the appealing fire fighter or police officer chooses to appeal to a hearing examiner, the fire fighter or police officer and the department head, or their designees, shall first attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed, and no motion to consolidate is filed under Subsection (k) of this section the director shall on the next work day following notice that the parties have failed to agree on a selection of a hearing examiner request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. The fire fighter or police officer and the department head, or their designees, may agree on one of the seven neutral arbitrators on the list. If they do not agree within twenty five days after the date the appeal was filed, each party or the party's designee shall on the twenty fifth day after the appeal was filed alternate striking a name from the list and the name remaining is the hearing examiner. In the event that the 25th day falls on a Saturday, Sunday or a legal holiday then the parties shall strike the list the next work day. The parties or their designees shall agree on a date for the hearing that is within the time period prescribed by Subsection (e). In the event that the director does not request the list of seven qualified neutral arbitrators within the time prescribed by this Subsection or the department head or his designee fails to strike the list within the time prescribed by this Subsection the fire fighter or police officer or their designees shall select the arbitrator from the list provided. In the event that the fire fighter or police officer or their designee fails to strike the list within the time prescribed by this Subsection the department head or his designee shall select the arbitrator from the list provided.

(e) The appeal hearing must begin within 60 days after the date the appeal is filed and shall begin as soon as the hearing examiner can be scheduled. If the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, the fire fighter or police officer may, within two days after learning of that fact, call for the selection of a new hearing examiner using the procedure prescribed by Subsection (d). If the appeal hearing is not begun within 60 days after the date the appeal is filed, the indefinite suspension, suspension, promotional passover, or recommended demotion is upheld and the appeal is withdrawn if the fire fighter or

police officer is not ready to proceed, and the appeal is sustained if the department head is not ready to proceed. In computing the 60 day period, a period of delay not to exceed 30 calendar days because of a continuance granted at the request of the department head or his representative or the fire fighter or police officer or his representative upon good cause being shown, or because of the unavoidable unavailability of the hearing examiner on the date of the hearing, or because of the pendency of a motion to consolidate with another hearing as provided in Subsection (k) of this section is excluded. In no event may a hearing examiner grant a continuance beyond 30 days in an indefinite suspension. A hearing examiner may grant a continuance beyond the 30 day period upon good cause being shown in a disciplinary suspension unless the fire fighter or police officer has another disciplinary action pending.

(f) In each hearing conducted under this section, the hearing examiner has the same duties and powers as the commission, including the right to issue subpoenas.

(g) In a hearing conducted under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render a decision on the appeal within 10 days after the date the hearing closed.

(h) In an appeal that does not involve an expedited hearing procedure, the hearing examiner shall make a reasonable effort to render a decision on the appeal within 30 days after the date the hearing ends or the briefs are filed. The hearing examiner's inability to meet the time requirements imposed by this section does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's final decision.

(i) The hearing examiner's fees and expenses are shared equally by the appealing fire fighter or police officer and by the department. The costs of a witness are paid by the party who calls the witness.

(j) A district court may hear an appeal of a hearing examiner's award 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. If the basis for the appeal of the hearing examiner's award is based on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction the petition must be filed in district court within 10 days of the hearing examiner's decision. An appeal must be brought in the district court having jurisdiction in the municipality in which the fire or police department is located. In the event the municipality is located in more than one county then the suit must be brought in the county having the majority of the population of the municipality.

(k) In an appeal of an indefinite suspension, a suspension, a promotional passover, or a recommended demotion, each appealing fire fighter or police officer or their representative shall be entitled to the selection of a hearing examiner pursuant to Subsection (d) of this section to hear their case. The fire fighter, police officer, department head or their representative may within 10 days of the date they received notice of the appeal file a motion with a copy to the opposing side to consolidate the case with that of one or more other fire fighters or police officers where the charges arise out of the same incident. The motion to consolidate may be agreed to in writing filed with the director. If a motion to consolidate the cases is filed and not agreed to, a hearing examiner shall be chosen pursuant to the provisions of Subsection (d) of this section to hear the motion. The decision of the hearing examiner shall be final and binding as to the issue of consolidation. The hearing examiner chosen to hear the motion to consolidate shall not hear the case and the provisions of Subsection (d) of this section shall be used to choose the hearing examiner with the day the decision is rendered being the equivalent of the date the appeal was filed.

SECTION 5. Section 143.113(b), Local Government Code, is amended to read as follows:

(b) The municipality's governing body may authorize assignment pay for emergency ambulance attendants, field training officers, and hazardous materials response team personnel. The municipality's governing body may authorize assignment pay for fire fighters or police officers who perform specialized functions in their respective departments, including, but not limited to, career patrol officers. The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire department. The head of the fire department or police department is not eligible for the assignment pay authorized by this subsection.

SECTION 6. Section 143.117, Local Government Code, as amended by **S.B No. 220**, Acts of the 71st Legislature, Regular Session, 1989, is amended by adding a new Subsection (f) to read as follows:

(f) The provisions of Section 143.119, Subsection (d) and (e) of this Chapter apply to this section.

SECTION 7. Section 143.118, Local Government Code, is amended to read as follows:

(d) The provisions of Section 143.120, Subsections (b) and (e) of this Chapter apply to this Section.

SECTION 8. Section 143.123(k), Local Government Code, as amended by **S.B No. 220**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(k) [~~A person who knowingly or intentionally violates this section is subject to a civil penalty of not less than $100 or more than $200 for the first violation. If it is shown on the trial of a person that the person has previously been found to have violated this section, the person is subject to a civil penalty of not less than $200 nor more than $1,000.~~] If the department head or any investigator violates any of the provisions of this section while conducting an investigation the municipality shall reverse any punitive action taken pursuant to the investigation including a reprimand and any information obtained during the investigation shall be specifically excluded from introduction into evidence in any proceeding against the fire fighter or police officer.

SECTION 9. Section 143.127(a), Local Government Code, as amended by **S.B No. 220**, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) A fire fighter or police officer may file a grievance as provided by this subchapter. The fire fighter or police officer may file a grievance that relates to the same aspects of the person's employment over which the civil service commission for the employees of the municipality who are not subject to this chapter would have lawful jurisdiction, including, but not limited to, a written or oral reprimand, transfers, job performance reviews, job assignments. The fire fighter or police officer may not file [~~, except~~] a grievance relating to:

(1) a disciplinary suspension, indefinite suspension, promotional passover, or demotion [~~action~~] or other action or decision for which a hearing, review, or appeal is otherwise provided by this chapter; or

(2) an allegation of discrimination based, in whole or in part, on race, color, religion, sex, or national origin.

SECTION 10. Section 143.134, Local Government Code, as amended by **S.B. 220** 71st Legislative Session, is amended by adding a new Subsection (g) to read as follows:

(g) A fire fighter or police officer who files a grievance pursuant to Sections 143.127 through and including Section 143.134 is entitled to 48 hours notice of any meeting or hearing scheduled under Sections 143.128(b), 143.129(b), 143.130(b), or 143.131(b). In the event that the fire fighter or police officer is not given 48 hours

advance notice the fire fighter's or police officer's grievance shall be automatically sustained and no further action may be had on the grievance.

SECTION 11. Section 143.134(b), Local Government Code, as amended by **S.B. 220** 71st Legislative Session, is amended to read as follows:

(b) The commission shall review the grievance examiner's findings and recommendation and consider the transcript of the step III hearing at the commission's next regularly scheduled meeting or as soon as practicable [~~but within 60 calendar days after the date the step IV grievance is filed~~]. The transcript shall be filed within 30 days of the step IV grievance being filed. The commission may for good cause shown grant a reasonable delay not to exceed 30 days to file the transcript. In no event may the commission render a decision later than 30 days after the transcript is filed. If the commission does not render a decision within 30 days after the date the transcript is filed the commission shall sustain the fire fighter's or police officer's grievance.

SECTION 12. Section 143.111, Local Government Code, is amended to read as follows:

(a) The department head may designate a person from the next lower classification to temporarily fill a position in a higher classification. The designated person is entitled to the base salary of the higher position plus the person's own longevity pay during the time the person performs the duties. Any person who is required to act in a position of higher classification in an emergency situation shall be paid the base salary of the higher position plus the person's own longevity pay for the entire shift without respect to whether an emergency occurs on any particular shift of duty.

SECTION 13. In an appeal under Sections 143.1015 or 143.1016, Local Government Code, that is pending on the effective date of this Act the 60 day period required by Sections 143.1015(a) or 143.1016(e), as amended by this Act, is computed by beginning with the effective date of this Act.

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Green moved to concur in the House amendment to **S.B. 688.**

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

SENATE BILL 1715 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 1715** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1 - Yost

Amend **S.B. 1715**, by striking Sections 3.1 and 3.2 and substituting the following:

SECTION 3.1. (a) The district's powers shall be exercised by a board of five directors. One director shall be elected from each commissioner precinct in Lubbock County and one director shall be elected from the district at large.

(b) To serve as director from a commissioner precinct, a director must be a resident of that precinct, and to serve as director at large, the director must be a resident of Lubbock County.

(c) On the first Saturday in May, 1990, an election shall be held in the district to elect five directors. Directors elected from commissioner precincts 1 and 3 shall each serve two-year terms and directors elected from commissioner precincts 2 and 4 and the district at large shall serve four-year terms.

(d) Until the initial board of directors is elected and has qualified under Subsection (c) of this section, the persons serving as directors of the district on the effective date of this Act shall continue to serve as directors of the district.

(e) Subsequent to the election held under Subsection (c) of this section an election shall be held on the first Saturday in May of even-numbered years to elect directors to the appropriate positions on the board.

(f) A person who desires to have his name printed on the ballot as a candidate for director shall file with the secretary of the board an application to have his name printed on the ballot. The person shall indicate in the application the precinct from which he seeks election or, if a candidate for the at large position, an indication that he is a candidate at large. The application must be filed with the secretary not later than the 31st day before the date of the election.

(g) Except as provided by this section, the election provisions of Chapter 51, Water Code, and the Election Code apply to the directors' elections to the extent that those provisions can be made applicable.

SECTION 3.2. (a) Except as provided by Section 3.1(c) of this Act, directors are elected for four-year staggered terms.

(b) The director at large shall serve as chairman of the board and shall preside at official meetings of the board. A person may be elected to serve only one term as director at large.

Committee Amendment No. 2 - Yost

Amend **S.B. 1715** as follows:

(1) Strike section 1.3 of the bill on pages 2 through 5.
(2) On page 11, line 23, strike "25" and substitute "five".
(3) On page 12, line 20, strike "50" and substitute "five".
(4) Strike Section 5.6 of the bill on pages 13 and 14.

The amendments were read.

Senator Montford 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. 1715** 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 Montford, Chairman; Sims, Caperton, Santiesteban and Parker.

SENATE BILL 1777 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 1777** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment - Yost

Amend **S.B. 1777** as follows:

(1) On page 1, line 7, strike "Yoakum County" and substitute "Sandy Land".

(2) On page 1, lines 15-16, strike "Yoakum County" and substitute "Sandy Land".

The amendment was read.

Senator Montford moved to concur in the House amendment to **S.B. 1777**.

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

SENATE BILL 1117 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 1117** 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 - T. Smith

Amend **S.B. 1117** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 17, Water Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. AGRICULTURAL WATER CONSERVATION BOND PROGRAM

Sec. 17.871. DEFINITIONS. In this subchapter:

(1) "Bonds" means Texas agricultural water conservation bonds authorized by Article III, Section 50-d of the Constitution and issued as bonds, notes or other evidences of indebtedness in accordance with this subchapter.

(2) "Borrower district" means a district or authority created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution, that receives or is eligible to receive a conservation loan from the board for improvement to district facilities.

(3) "Conservation loan" means a loan from the board to a borrower district or from a lender district to an individual borrower.

(4) "Fund" means the agricultural water conservation fund.

(5) "Individual borrower" means a person who receives or is eligible to receive a conservation loan from a lender district.

(6) "Lender district" means a soil and water conservation district under Chapter 201, Agriculture Code, an underground water conservation district created under Article XVI, Section 59, of the Texas Constitution, or a district or authority created under Article III, Section 52(b)(1), or Article XVI, Section 59, of the Texas Constitution authorized to supply water for irrigation purposes, that is eligible to receive or that receives a loan from the board for the purpose of making conservation loans to individual borrowers.

(7) "Loan" means a loan from the board to a lender district under this subchapter.

Sec. 17.872. ISSUANCE OF BONDS. The board, by resolution, may provide for the issuance of negotiable bonds, to be known as Texas agricultural water conservation bonds, in an aggregate principal amount not to exceed $200 million pursuant to Article III, Section 50-d of the Texas Constitution.

Sec. 17.873. CONDITIONS FOR ISSUANCE OF BONDS. (a) Bonds may be issued as various series and issues and shall be on a parity.

(b) Bonds may mature serially or otherwise not later than 50 years after the date on which they are issued.

(c) The bonds may bear no interest or interest at a rate or rates determined in accordance with law.

(d) Rates of interest on bonds may be fixed, variable, floating, adjustable, or otherwise, determined by the board or determined pursuant to any contractual arrangements approved by the board.

Sec. 17.874. PERIODIC DETERMINATION OF INTEREST. A bond resolution or order may provide for payment of: interest at any time or the periodic determination of interest rates or interest rate periods.

Sec. 17.875. PERSONS DESIGNATED TO ACT AS AGENTS OF BOARD. (a) A bond resolution or order may delegate authority to one or more officers, employees, or agents designated by the board to act on behalf of the board during the time bonds are outstanding to:

(1) fix dates, prices, interest rates, and interest payment periods; and

(2) perform other procedures specified in the resolution.

(b) The person designated by the board may adjust the interest on bonds as necessary to permit the bonds to be sold or resold at par in conjunction with secondary market transactions.

Sec. 17.876. SECURITY QUALIFICATIONS. The Board may take any action necessary to qualify the bonds for offer and sale under the securities laws and regulations of the United States, this state, and other states.

Sec. 17.877. INVESTMENT SECURITIES. The bonds and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest, or may be made redeemable before maturity at the option of the board, or may contain a mandatory redemption provision.

Sec. 17.878. FORM OF BONDS. (a) The bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details as provided by the board in the resolution or order authorizing their issuance.

(b) The bonds shall be signed and executed as provided by the board's resolution or order authorizing the issuance of the bonds.

Sec. 17.879. FUNDS. (a) The bond proceeds shall be deposited in the state treasury to the credit of the fund.

(b) In the resolution or order authorizing issuance of bonds, the board may make additional covenants with respect to the bonds and may provide for the flow of funds and the establishment, maintenance, and investment of funds.

(c) By rule or in the resolution or order authorizing issuance of bonds, the board may establish an interest and sinking account and other accounts in the fund.

(d) The Board may invest and reinvest money in the fund and any account therein in any obligations or securities as provided by bond resolutions and orders of the board.

Sec. 17.880. SALE OF SECURITIES. (a) Loans, bonds of borrower districts or lender districts and other obligations owned by the state and deposited in the fund or in the interest and sinking fund are considered to be securities under this subchapter.

(b) The board may sell securities owned in the interest and sinking fund or in any account in the fund at the governing market price.

Sec. 17.881. SALE OF OBLIGATIONS TO TEXAS WATER RESOURCES FINANCE AUTHORITY. (a) Pursuant to Section 17.871 of this code and notwithstanding any other provision of this chapter, the board may sell to the Texas Water Resources Finance Authority any loans or bonds of borrower districts or lender districts purchased with money in the fund and may apply the proceeds of the sale in the manner provided by Section 17.871 of this code.

(b) The board shall sell the loans or bonds of borrower districts or lender districts at the price and under the terms that it determines to be reasonable.

Sec. 17.882. RESOLUTIONS, ORDERS, ETC. (a) The orders or resolutions of the board that provide for issuing bonds may include other provisions and covenants that the board determines necessary.

(b) The board may adopt and have executed any other proceedings, agreements or trust agreements or instruments necessary and convenient in the issuance of bonds.

Sec. 17.883. BOND REVIEW BOARD. Bonds may not be issued under this subchapter unless the issuance of the bonds has been reviewed and approved by the bond review board.

Sec. 17.884. APPROVAL OF ATTORNEY GENERAL. The proceedings relating to the bonds issued under this subchapter are subject to review and approval by the attorney general in the same manner and with the same effects as provided by Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

Sec. 17.885. BONDS INCONTESTABLE. After approval of the proceedings relating to bonds issued under this subchapter by the attorney general, registration of the proceedings by the comptroller, and delivery to the purchasers, the bonds are incontestable and constitute general obligations of the state.

Sec. 17.886. PAYMENT BY TREASURER, TRANSFERS BY COMPTROLLER. (a) The state treasurer shall pay the principal of the bonds as they mature and the interest on the bonds as it becomes due.

(b) If the money and securities in the interest and sinking fund are insufficient to pay the interest that is due and the principal maturing on the bonds during the fiscal year, the state treasurer shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal of and interest on the bonds during the fiscal year.

(c) The comptroller shall make the transfers required by the board's bond resolution or order and this subchapter.

Sec. 17.887. REFUNDING BONDS. (a) The board may provide by resolution for the issuance of refunding bonds to refund outstanding bonds issued under this chapter and accrued interest on those bonds.

(b) The board may sell the refunding bonds and use the proceeds to retire the outstanding bonds issued under this chapter, exchange the refunding bonds for the outstanding bonds, or refund the bonds in the manner provided by any other applicable statute, including Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes).

Sec. 17.888. MUTILATED, LOST, OR DESTROYED BONDS. The board may provide for the replacement of mutilated, lost, or destroyed bonds.

Sec. 17.889. ELIGIBLE SECURITY. The bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their face value.

Sec. 17.890. LEGAL INVESTMENTS. The bonds are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Sec. 17.891. TAX EXEMPT BONDS. Since the board is performing an essential governmental function in the exercise of the powers conferred on it by this

chapter, the bonds issued under this subchapter, and the interest and income from the bonds, including any profit made on the sale of bonds and all fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of the bonds are free from taxation and assessments of every kind by this state and any city, county, district, authority, or other political subdivision of this state.

Sec. 17.892. ENFORCEMENT BY MANDAMUS. Payment of the bonds and performance of official duties prescribed by Article III, Section 50-d of the Texas Constitution, and this subchapter may be enforced in a court of competent jurisdiction by mandamus or other appropriate proceedings.

Sec. 17.893. SUBCHAPTER CUMULATIVE OF OTHER LAWS. (a) This subchapter is cumulative of other laws on the subject, and the board may use provisions of other applicable laws in the issuance of its bonds and other obligations, but this subchapter is wholly sufficient authority for the issuance of bonds and the performance of all other acts and procedures authorized by this subchapter.

(b) In addition to other authority granted by this subchapter, the board may exercise the powers granted to the governing body of an issuer with regard to issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

Sec. 17.894. USE OF FUND. The board may use money in the fund to make conservation loans directly to borrower districts, to make loans to lender districts, and to pay the cost of bond issuance.

Sec. 17.895. CONSERVATION LOANS. (a) The board or lender districts may make conservation loans for capital equipment or materials, labor, preparation costs, and installation costs.

(1) to improve water efficiency of water delivery and application on existing irrigations systems; or

(2) for preparing irrigated land to be converted to dryland conditions.

(3) for preparing dryland for more efficient use of natural precipitation.

(b) Conservation loans for the purposes listed in Subsection (a) of this section may be made by lender districts to individual borrowers for use on private property or by the board to borrower districts for use on district facilities.

Sec. 17.896. INTEREST RATES AND FEES. (a) The board shall establish the rate of interest it charges for loans to lender districts or for conservation loans to borrower districts.

(b) A lender district may charge individual borrowers an interest rate not to exceed the interest rate the lender district is charged by the board, plus one percent for administrative expenses.

(c) A lender district may charge individual borrowers a one-time application fee in an amount determined by the board to cover costs of processing loan applications.

Sec. 17.897. APPLICATION. A lender district that desires to obtain loans or borrower district that desires to obtain conservation loans under this subchapter shall file with the executive administrator an application in the manner and in the form provided by board rules.

Sec. 17.898. CONSIDERATIONS IN PASSING ON AN APPLICATION. (a) In passing on an application from a lender district, the board shall consider the lender district's ability to manage a loan program, ability to repay any loan defaults, and overall conservation program.

(b) In passing on an application from a borrower district, the board shall consider the ability of the borrower district to repay the conservation loan and whether the conservation loan will further water conservation.

Sec. 17.899. APPROVAL OF APPLICATIONS. (a) The board may approve an application if, after considering the factors in Section 17.898 and other relevant factors, the board finds that:

(1) the public interest would be served in granting the application;

(2) a lender district has the ability to make conservation loans, manage a conservation loan program, and repay the loan to the board;

(3) a borrower district has the ability to prepay the conservation loan; and

(4) granting the application will further water conservation in the state.

(b) The board by rule may delegate to the executive administrator the authority to approve an application based on the considerations in Section 17.898 of this code, and on the findings in Subsection (a) of this section.

Sec. 17.900. METHODS OF MAKING LOANS, AND OF ENFORCING OBLIGATIONS. (a) The board may make financial assistance available to lender or borrower districts in any manner that it considers economically feasible, including purchase of bonds or securities of the lender or borrower district, or by entering into a contract with the lender or borrower district. The board shall not purchase bonds or securities that have not been approved by the attorney general and registered by the comptroller.

(b) In the event of default in payment of the principal of or interest on bonds or securities purchased by the board or any other default as defined in the proceedings or indentures authorizing the issuance of the bonds, or the default of any of the terms of a contract, the attorney general shall institute legal proceedings by mandamus or other legal remedies to compel the lender or borrower district or its officers, agents and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court in Travis County.

(c) This section is cumulative of any other rights or remedies to which the board may be entitled.

Sec. 17.901. DEFAULT AND FORECLOSURE BY LENDER DISTRICTS. (a) In the event of a default in payment of a conservation loan made by a lender district or the failure of an individual borrower to perform any of the terms or conditions of the conservation loan agreement, the lender district shall pursue all remedies available under law, including, without limitation, foreclosure under the conservation loan agreement and liquidation of any collateral provided under the conservation loan agreement. The lender district shall sell the collateral on terms and subject to procedures that it follows in liquidating other collateral.

(b) Foreclosure under a conservation loan agreement shall be accomplished in the manner provided by law for foreclosure of similar loan agreements made by private lending institutions and by the conservation loan agreement.

(c) The state guarantees to each lender district that in the event an individual borrower defaults on a conservation loan made by the lender district with money from this program, the state will assume 50 percent of the amount that remains due and payable under the default after all collateral for the conservation loan is liquidated.

(d) The state is entitled to recover its pro rata share of any money recovered on a defaulted conservation loan on which the state has assumed liability under Subsection (d) of this section.

Sec. 17.902. AUTHORITY OF DISTRICTS. A lender or borrower district may borrow and lend money for the purposes of this subchapter and may adopt necessary rules to carry out this subchapter.

Sec. 17.903. RULES AND CONTRACTS. (a) The board shall adopt rules necessary to carry out this subchapter.

(b) The board shall have the power to enter into any contracts to carry out the provisions of this subchapter.

SECTION 2. This Act takes effect on September 1, 1989.

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.

Floor Amendment No. 1 - T. Smith

Amend **C.S.S.B. 1117** as follows:

(1) At the end of Sec. 17.883 add:

"Prior to issuance of bonds, the board shall estimate demand for agricultural water conservation loans based on a survey of districts eligible to participate in the program. A summary of this information shall be furnished to the bond review board."

(2) At the end of Sec. 17.903(a) add:

"The board shall by rule identify methods to be used by lender districts to ensure the financial integrity of a loan to an individual borrower, including an irrevocable letter of credit or a lien on property in excess of value of improvements.

Floor Amendment No. 2 - T. Smith

Amend **C.S.S.B. 1117** as follows:

(1) Add the following as Section 2 and renumber the remaining sections:

SECTION 2. Amend Texas Water Code by adding Section 15.544 as follows:

"Sec. 15.544. TRANSFERS. Repayments of principal and interest on loans made under this subchapter shall be transferred to the interest and sinking fund in the Agricultural Water Conservation Fund established under Senate Bill 1117, 71st Legislature, Regular Session, 1989."

(2) On page 4, substitute the following for line 20:

"sinking fund and may establish accounts in the fund."

The amendments were read.

Senator Montford moved to concur in the House amendments to **S.B. 1117**.

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

SENATE BILL 1727 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 1727** 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 - Yost

Amend **S.B. 1727** as follows:

(1) On page 1, line 7, strike "Dawson County" and substitute "Mesa".

(2) On page 1, lines 15-16, strike "Dawson County" and substitute "Mesa".

The amendment was read.

Senator Montford moved to concur in the House amendment to **S.B. 1727**.

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

COMMITTEE SUBSTITUTE HOUSE BILL 2945 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:

C.S.H.B. 2945, Relating to the taxation of certain activities and transactions involving natural gas.

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

COMMITTEE SUBSTITUTE HOUSE BILL 2945 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2945** 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 viva voce vote.

HOUSE BILL 2277 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. 2277, Relating to sales tax on certain food products.

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

HOUSE BILL 2277 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2277** 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 viva voce vote.

HOUSE JOINT RESOLUTION 33 ON SECOND READING

On motion of Senator Barrientos 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.J.R. 33, Proposing a constitutional amendment to authorize the state to provide scholarships, grants, loans, and other financial assistance to local fire departments and other public fire-fighting organizations.

The resolution was read second time and was passed to third reading viva voce vote.

HOUSE JOINT RESOLUTION 33 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.J.R. 33** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 708 ON SECOND READING

On motion of Senator Barrientos 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. 708, Relating to the creation, administration, and operation of the fire department emergency program under the jurisdiction of the Fire Department Emergency Board.

The bill was read second time.

Senator Whitmire offered the following amendment to the bill:

Amend **H.B. 708** as follows:

(1) On page 1, line 66, strike "Five" and replace with "Six".

(2) On page 2, line 3, strike "Three" and replace with "Two".

(3) On page 2, line 7, after "Firefighters." and "The governor shall appoint 2 fire service members from a list of eligible persons submitted by the Texas Fire Chiefs Association."

(4) On page 2, line 1, strike "Two" and replace with "One" and strike from members the "s" to make it singular and the "s" from representatives to make it singular.

(5) On page 3, line 15, strike "unable" and replace with "under a hardship."

(6) On page 3, line 41, strike "unable" and replace with "under a hardship."

(7) On page 4, line 35, after "contract", add "any secured property",

(8) On page 4, line 38, after "loan" change "period" to "comma" and add, "and any secured property."

The amendment was read and was adopted viva voce vote.

On motion of Senator Barrientos 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 viva voce vote.

HOUSE BILL 708 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 708** 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 viva voce vote.

HOUSE BILL 1022 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. 1022, Relating to state regulation of outdoor signs.

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

HOUSE BILL 1022 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1022** 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 viva voce vote.

HOUSE BILL 862 ON SECOND READING

On motion of Senator Armbrister 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. 862, Relating to adoption of the Uniform Vendor and Purchaser Risk Act.

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

HOUSE BILL 862 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 862** 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 viva voce vote.

HOUSE BILL 507 ON SECOND READING

On motion of Senator Armbrister 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. 507, Relating to the creation of the offense of interfering with the duties of public servants.

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

HOUSE BILL 507 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 507** 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 viva voce vote.

HOUSE BILL 1967 ON SECOND READING

On motion of Senator Brooks 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. 1967, Relating to the regulation of medical physicists; providing penalties.

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

HOUSE BILL 1967 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1967** 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 viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2117 ON SECOND READING

On motion of Senator Brooks 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. 2117, Relating to the licensing and regulation of home health care agencies and to permits to administer medication to patients of home health agencies; providing penalties.

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

COMMITTEE SUBSTITUTE HOUSE BILL 2117 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2117** 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 viva voce vote.

CONFERENCE COMMITTEE REPORT SENATE BILL 413

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 25, 1989

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. 413** 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.

HARRIS	A. SMITH
BIVINS	GIBSON
HALEY	ROBNETT
PARMER	LUCIO
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the form and effect of a loan agreement.

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

SECTION 1. Chapter 26, Business & Commerce Code, is amended by adding Section 26.02 to read as follows:

Sec. 26.02. LOAN AGREEMENT MUST BE IN WRITING. (a) In this section:

(1) "Financial institution" means a state or federally chartered bank, savings bank, savings and loan association, or credit union, a holding company, subsidiary, or affiliate of such an institution, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.).

(2) "Loan agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or another thing of value or to otherwise extend credit or make a financial accommodation. The term does not include a promise, promissory note, agreement, undertaking, document, or commitment relating to:

(A) a credit card or charge card; or

(B) an open-end account, as that term is defined by Article 1.01, Title 79, Revised Statutes (Article 5069-1.01, Vernon's Texas Civil Statutes), intended or used primarily for personal, family, or household use.

(b) A loan agreement in which the amount involved in the loan agreement exceeds $50,000 in value is not enforceable unless the agreement is in writing and signed by the party to be bound or by that party's authorized representative.

(c) The rights and obligations of the parties to an agreement subject to Subsection (b) of this section shall be determined solely from the written loan agreement, and any prior oral agreements between the parties are superseded by and merged into the loan agreement.

(d) An agreement subject to Subsection (b) of this section may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the agreement.

(e) In a loan agreement subject to Subsection (b) of this section, the financial institution shall give notice to the debtor or obligor of the provisions of Subsections (b) and (c) of this section. The notice must be in a separate document signed by the debtor or obligor or incorporated into one or more of the documents constituting

the loan agreement. The notice must be in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The notice must state substantially the following:

> "This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.
>
> "There are no unwritten oral agreements between the parties.

"Debtor or Obligor Financial Institution"

(f) If the notice required by Subsection (e) of this section is not given on or before execution of the loan agreement or is not conspicuous, this section does not apply to the loan agreement, but the validity and enforceability of the loan agreement and the rights and obligations of the parties are not impaired or affected.

(g) All financial institutions shall conspicuously post notices that inform borrowers of the provisions of this section. The notices shall be located in such a manner and in places in the institutions so as to fully inform borrowers of the provisions of this section. The Finance Commission of Texas shall prescribe the language of the notice.

SECTION 2. Section 26.02, Business & Commerce Code, as added by this Act, does not apply to the renewal or extension of a loan agreement executed before the effective date of this Act.

SECTION 3. This Act takes effect September 1, 1989, and applies only to a loan agreement executed on or after that date.

SECTION 4. 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 Conference Committee Report was again read and was filed with the Secretary of the Senate.

(Senator Henderson in Chair)

HOUSE BILL 1868 ON SECOND READING

On motion of Senator Green 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. 1868, Relating to the payment of a fee for certain child support cases in the child support department of Harris County.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Amend **H.B. 1868** by renumbering Section 3 to be Section 4 and by inserting a new Section 3 to read as follows:

SECTION 3. Subsection (a), Section 17B, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927 (Rule 50c, Article 4477, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The State Bureau of Vital Statistics shall adopt a form for the reporting of divorces and annulments of marriage, which form shall provide for the following items of information:

(1) the full names of the parties, their usual residences, their ages, their places of birth, their color or race, their social security numbers, [~~and~~] the number of children, and date and place of marriage; [~~.~~]

(2) the date of the granting of the divorce or annulment of marriage, the name of the judge signing the order, the style and docket number of the case, [~~and~~] the court in which the divorce or annulment of marriage was granted, the amount of periodic child support, if any, ordered by the court and the frequency with which the child support payment is ordered paid, the identity of the party ordered to pay child support, whether the party ordered to pay child support is self-employed, whether income withholding was ordered by the court for any party ordered to pay child support who was not self-employed, the identity of each party given custody of a child or children in the order, and the full name, mailing address, telephone number, and state bar number of the attorney completing the form.

[~~(3) The State Bureau of Vital Statistics, the Office of the Attorney General, and the clerks of courts having jurisdiction of cases arising under Title I and II of the Family Code shall recommend a form for the expanded reporting of information relating to divorces and annulments of marriages to the 71st Legislature, and shall consider for inclusion in the form the amount of periodic child support ordered, if any, the frequency with which the obligation is made, and other information needed by the state for the effective enforcement of child support orders. Any recommendations shall include a statement of fiscal impact on state and local governments.~~]

The amendment was read and was adopted viva voce vote.

On motion of Senator Green 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 viva voce vote.

HOUSE BILL 1868 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1868** 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 1879 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. 1879, Relating to the payment by the state of expenses involved in the prosecution of certain offenses committed in the Texas Department of Corrections.

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

HOUSE BILL 1879 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1879** 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.

(President in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 843 ADOPTED

Senator Uribe called from the President's table the Conference Committee Report on **S.B. 843**. (The Conference Committee Report having been filed with the Senate and read on Wednesday, May 24, 1989.)

On motion of Senator Uribe, the Conference Committee Report was adopted viva voce vote.

HOUSE BILL 2165 ON SECOND READING

On motion of Senator Sims 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. 2165, Relating to adjusting the decal fee for a vehicular liquefied gas permit.

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

HOUSE BILL 2165 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2165** 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 viva voce vote.

HOUSE BILL 243 ON SECOND READING

On motion of Senator Brown 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. 243, Relating to the disposition by certain municipalities of fines collected for certain traffic law violations.

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

HOUSE BILL 243 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 243** 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 viva voce vote.

SENATE BILL 1480 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1480** 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 - Yost

Amend **S.B. 1480**, on page 3, by striking lines 2 through 4 and substituting the following:

(E) six state employees subject to the state classification plan, each of whom has at least one child in a child care facility and each of whom resides in a different geographic area of the state.

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1480** viva voce vote.

HOUSE BILL 983 ON SECOND READING

On motion of Senator Parker 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. 983, Relating to assessment instruments administered in public schools.

The bill was read second time.

Senator Krier offered the following amendment to the bill:

Amend **H.B. 983**, page 1, line 66, by inserting the following new section (f) to read as follows:

(f) An assessment instrument under this section is defined as group administered, norm-referenced achievement tests that are used for districtwide assessment.

The amendment was read and was adopted viva voce vote.

On motion of Senator Parker 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 viva voce vote.

HOUSE BILL 983 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 983** 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 viva voce vote.

HOUSE BILL 3109 ON SECOND READING

On motion of Senator Armbrister 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. 3109, Relating to the location of a new county jail facility.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Amend **H.B. 3109** as follows:

1) On page 1, line 34, add section 2:

Section 2. Section 351.106, Local Government Code, as added by Senate Bill 220, Acts of the 71st Legislature, Regular Session, 1989, is repealed.

2) Add a new section 3 as follows:

Section 3. Section 82.064, Government Code, is amended to read as follows:

Sec. 82.064. OFFICERS NOT TO APPEAR. (a) A judge or clerk of the supreme court, the court of criminal appeals, a court of appeals, or a district court, [~~a sheriff or deputy sheriff.~~] or a constable may not appear and plead as an attorney at law in any court of record in this state.

3) Renumber the subsequent section appropriately.

The amendment was read and was adopted viva voce vote.

On motion of Senator Armbrister 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 viva voce vote.

HOUSE BILL 3109 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 3109** 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 2215 ON SECOND READING

On motion of Senator Dickson 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. 2215, Relating to certain revenue collected as a city sales and use tax in a newly annexed area.

The bill was read second time.

Senator Dickson offered the following committee amendment to the bill:

Amend **H.B. 2215** as follows:

(1) Add the following as new sections 2, 3 and 4 of the bill between lines 19 and 20 on page 1:

SECTION 2. Tax Code Section 151.107 is amended by adding subsection (c) to read as follows:

(c) Nonresident persons shall collect the tax imposed by this chapter with respect to the sale of tangible personal property to the extent authorized by federal law. Such taxes shall be remitted quarterly to the comptroller pursuant to rules adopted by the comptroller in conformance with federal law. This subsection does

not apply to nonresident persons whose activities would subject them to a duty to pay, collect, or remit a sales or use tax under this chapter or Title 3 of this code in the absence of federal legislation.

SECTION 3. The Tax Code is amended by adding new Section 151.059 to Chapter 151 to read as follows:

Sec. 151.059. Fee Imposed In Lieu Of Local Sales and Use Taxes

(a) A nonresident of this state who is required pursuant to federal law to collect sales or use tax under this chapter may elect to pay a fee to the comptroller in lieu of all local sales and use taxes authorized or governed by Title 3 of this code.

(b) A person eligible under federal law may elect to pay the fee imposed by this section by written notification to the comptroller. Such notification must be made within ninety days of the date of the first sale on which tax is required to be collected or within such other period as the comptroller may by rule require. The comptroller may require that a notification under this section be made on a form prescribed by the comptroller and contain any information relevant to the collection of taxes under this chapter. A person who does not elect to pay the fee imposed by this section shall collect and remit all applicable state and local sales and use tax imposed under the laws of this state in the same manner as a resident of this state.

(c) Unless another rate is required by federal law, the fee imposed under this section shall be the weighted average rate of local sales and use tax collected in this state during the preceding state fiscal year applied to the total amount subject to sales and use tax imposed by this chapter. The rate shall be determined by the comptroller as soon as practicable following the end of each state fiscal year and shall be effective beginning on January 1st following the end of that state fiscal year. The weighted average rate of local sales and use tax shall be computed by:

(1) dividing the aggregate amount of all local sales and use taxes paid in the state by the aggregate amount of all sales and uses to which:

(i) the state sales and use tax applies, and

(ii) local jurisdictions have the power to impose a local sales or use tax; and

(2) rounding that result to the nearest .0025.

(d) A fee imposed under this section is subject to the provisions of Subtitle B of Title 2 of this code in the same manner as a tax imposed under this chapter.

(e) The fee imposed by this chapter shall be remitted quarterly in a manner prescribed by the comptroller, subject to the limitations of applicable federal law, and shall be apportioned and distributed as required by Section 403.107 of the Government Code.

(f) Nothing in this section shall be construed to apply to nonresident persons whose activities would subject them to a duty to pay, collect, or remit a sales or use tax under this chapter or Title 3 of this code in the absence of federal legislation.

SECTION 4. Chapter 403 of the Government Code is amended by adding Section 403.107 to read as follows:

Sec. 403.107. Local Sales and Use Tax Fees

(a) The comptroller of public accounts shall deposit fees imposed under Section 151.059 of the Tax Code in the state treasury and shall keep records of the amount of money collected for each reporting period. Such fees shall be held in trust in the suspense account of each eligible taxing unit. The comptroller shall distribute money in the suspense accounts under this section to each eligible taxing unit in the amount and manner provided by federal law or this section.

(b) A local taxing unit is eligible to receive funds under this section if it has adopted a sales and use tax under Chapter 321, Chapter 322, or Chapter 323 of the Tax Code or has adopted a local sales and use tax governed in part by any provision of those chapters.

(c) The comptroller shall transmit to each eligible taxing unit's treasurer, or to the officer performing the functions of that office, on a quarterly basis, the taxing

unit's share of the fees remitted to the comptroller, together with the pro rata share of any penalty or interest on delinquent fees that may be collected. Before transmitting the funds, the comptroller shall deduct two per cent of the amount allocated to each taxing unit as a charge by the state for its services under this section and deposit that amount into the state treasury to the credit of the comptroller's operating fund. Interest earned on all deposits made in the state treasury under this section shall be credit to the general revenue fund.

(d) The comptroller shall retain in the suspense account for a taxing unit a portion of the taxing unit's share of the fees collected, not to exceed five per cent of the amount remitted to the taxing unit. From the amounts retained in a taxing unit's suspense account, the comptroller may make refunds for overpayments to the account and to redeem dishonored checks and drafts deposited to the credit of the account.

(e) Unless another method is required by federal law, the comptroller shall compute for each calendar quarter the percentage of total sales and use tax allocations made pursuant to Title 3 of the Tax Code, including any local sales and use taxes governed by any provision of Title 3 of the Tax Code, to each eligible taxing unit and shall apply that percentage to the total fees collected under Section 151.059 of the Tax Code and allocated to eligible taxing units in that quarter.

(f) The comptroller may combine an eligible taxing unit's share of the fees remitted or collected under Tax Code Section 151.059, a suspense account under this section, or an allocation made under this section with other trust or suspense accounts held for that taxing unit or other allocations made to that taxing unit under Title 3 of the Tax Code."

(2) Strike section 2 of the bill and substitute the following as the last section of the bill, numbering accordingly:

SECTION _____. 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. Provided, however, that Sections 2, 3 and 4 of this Act take effect on the first day of the first month following the effective date of federal legislation authorizing the imposition of a duty to collect and remit sales tax on nonresidents of this state who would not otherwise be required to do so. The provisions of this Act are severable. Should federal legislation authorize the collection of state sales tax but not a local sales tax, the provisions governing local sales tax shall not apply but those governing the imposition of state sales tax shall.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Dickson 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 viva voce vote.

HOUSE BILL 2215 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2215** 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 925 ON SECOND READING

On motion of Senator Dickson 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. 925, Relating to a disqualification for unemployment compensation benefits based on the receipt of certain lump-sum retirement benefits or severance benefits.

The bill was read second time.

Senator Dickson offered the following committee amendment to the bill:

Amend **H.B. 925** at SECTION 1, Section 5(j) of the Texas Unemployment Compensation Act, by adding at the end of said Subsection (j):

"nor does it apply to any other type of lump-sum payment other than a payment made on account of retirement."

The committee amendment was read and was adopted viva voce vote.

Senator Parker offered the following amendment to the bill:

H.B. 925 is amended by striking subsection (j), section 1 (committee printing p. 3, line 55 - p. 4, line 5) and substituting the following:

(j) If the individual qualifies to receive full retirement benefits by lump-sum payment.

The amendment was read and was adopted viva voce vote.

On motion of Senator Dickson 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 viva voce vote.

HOUSE BILL 925 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 925** 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 viva voce vote.

HOUSE BILL 1392 ON SECOND READING

On motion of Senator Parmer 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. 1392, Relating to regional administration by certain health-related state agencies.

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

HOUSE BILL 1392 ON THIRD READING

Senator Parmer moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1392** 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 viva voce vote.

HOUSE BILL 1960 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. 1960, Relating to certain proceeds subject to a security interest.

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

HOUSE BILL 1960 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1960** 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.

CONFERENCE COMMITTEE REPORT
SENATE BILL 489

Senator Santiesteban submitted the following Conference Committee Report:

Austin, Texas
May 24, 1989

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. 489** 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.

SANTIESTEBAN	GUERRERO
LYON	HARRISON
CARRIKER	BERLANGA
URIBE	GIBSON
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation, powers, and duties of the Department of Agriculture; providing penalties; making an appropriation.

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

SECTION 1. Section 11.003, Agriculture Code, is amended to read as follows:

Sec. 11.003. SUNSET PROVISION. The Department of Agriculture is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the department is abolished September 1, 2001 [~~1989~~].

SECTION 2. Section 11.005, Agriculture Code, is amended to read as follows:

Sec. 11.005. QUALIFICATIONS. (a) To be eligible for election as commissioner or appointment to fill a vacancy in the office of commissioner, a person must:

(1) have been engaged, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, in the business of agriculture;

(2) have worked, for the five-year period preceding the calendar year in which the person is elected or appointed to the person's initial term, for a state or federal agency in a position directly related to agriculture; or

(3) have owned or operated, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, farm, ranch, or timber land that qualifies for agricultural use appraisal under Subchapter C, Chapter 23, Tax Code, and be participating, in the calendar year in which the person is elected or appointed to the person's initial term, in a farm program administered by the federal Agricultural Stabilization and Conservation Service.

(b) For purposes of this section, a person is engaged in the business of agriculture if the person is engaged, for the purpose of wholesale or retail sale, in:

(1) the production of crops for human or animal consumption, or planting seed;

(2) floriculture, viticulture, horticulture, or aquaculture;

(3) the raising or keeping of livestock; or

(4) the processing of any of the products listed in Subdivisions (1) through (3) of this subsection. [~~The commissioner must be an experienced and practical farmer and have knowledge of agriculture, manufacturing, and general industry.~~]

SECTION 3. Section 12.013, Agriculture Code, is amended to read as follows:

Sec. 12.013. EMPLOYEES. (a) The department may employ personnel as the duties of the department require. The commissioner shall provide to the department's employees, as often as necessary, information regarding their qualifications for employment and their responsibilities under applicable laws relating to standards of conduct for state employees.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

(c) The commissioner or the commissioner's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal

employment opportunity under which 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 department work force that meets federal and 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 those areas of significant underutilization.

(e) A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(f) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 4. Chapter 12, Agriculture Code, is amended by adding Section 12.0135 to read as follows:

Sec. 12.0135. CONFLICT PROVISIONS. (a) A person may not act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(b) An officer, employee, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 5. Subsection (a), Section 12.014, Agriculture Code, is amended to read as follows:

(a) The department 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 department during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act [~~On or before November 1 of each year, the department shall submit to the governor a full report on the work and expenditures of the department during the preceding fiscal year. The governor shall transmit the report to the legislature~~].

SECTION 6. Chapter 12, Agriculture Code, is amended by adding Section 12.0145 to read as follows:

Sec. 12.0145. SUBMISSION OF PROPOSED FEE SCHEDULE. The department shall include, as part of each request for legislative appropriations submitted to the Legislative Budget Board, a proposed fee schedule that would recover all direct costs of administering each regulatory program of the department except a regulatory program exempted by the department because increased cost recovery would be contrary to the program's purpose.

SECTION 7. Subsection (c), Section 12.017, Agriculture Code, is amended to read as follows:

(c) A person commits an offense if the person violates a rule adopted by the department under this section. An offense under this section is a Class C misdemeanor [~~punishable by a fine of not less than $25 nor more than $200~~].

SECTION 8. Chapter 12, Agriculture Code, is amended by adding Section 12.0175 to read as follows:

Sec. 12.0175. GROWN IN TEXAS; NATURAL, LEAN, OR ORGANIC CERTIFICATION. (a) If the department establishes a program to promote products grown in the state or products made from ingredients grown in the state, the department may charge a membership fee not to exceed $50, as provided by department rule, for each producer that participates in the program. The fee shall be designed to recover the costs of promotion.

(b) If the department establishes an organic certification program, the department may charge a fee not to exceed $150, as provided by department rule, for each participant certified by the department. The fee shall be designed to recover the costs of inspection for purposes of certification.

SECTION 9. Section 12.018, Agriculture Code, is amended to read as follows:

Sec. 12.018. [~~AFLATOXIN~~] TESTING. (a) On request of any person, the department may test an agricultural product for aflatoxins.

[~~(b)~~] The department may set and charge a fee of not less than $20 nor more than $40 for each test [~~testing under this section~~].

(b) On request of any person, the department may perform laboratory analyses on agricultural products, including testing for pesticide residue, protein content, and milk butterfat content.

(c) The department shall charge a fee of not less than $5 nor more than $150 for each laboratory analysis performed under Subsection (b) of this section. The department shall set by rule the fee for each type of laboratory analysis. Each fee shall be designed to recover at least half of the costs of performing the analysis.

SECTION 10. Section 12.020, Agriculture Code, is amended to read as follows:

Sec. 12.020. ADMINISTRATIVE PENALTIES [~~DEFERRED LICENSE SUSPENSION~~]. (a) If a person violates a provision of this code described by Subsection (c) of this section or a rule or order adopted by the department under a provision of this code described by Subsection (c) of this section, the department may assess an administrative penalty against the person as provided by this section [~~In this section, licensee means a person that holds a license under this code or operates under or seeks certification from the department~~].

(b) The penalty for each violation may be in an amount not to exceed the maximum provided by Subsection (c) of this section. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments [~~If the department is authorized to suspend a license under this code, the commissioner or his agent may defer suspension if suspension is based on a violation of this code or a rule of the department and may impose a civil penalty in lieu of suspension. In determining the amount of the penalty, the department shall consider the economic impact that suspension would have on the licensee. Except for licenses issued under Chapters 75 and 76, the amount of a civil penalty~~

~~imposed under this section may not be less than $50 per day for each day that the license would be suspended. For licenses issued under Chapters 75 and 76, the amount of a civil penalty imposed under this section may not be less than $25 per day nor more than $50 per day for each day that the license would be suspended. If the licensee fails to pay the civil penalty before the 11th day after the day he is notified of the civil penalty, the licensee loses the opportunity to pay the civil penalty in lieu of suspension and the department shall proceed with the suspension~~].

(c) The provisions of this code subject to this section and the applicable penalty amounts are as follows:

Provision	Maximum Penalty
Chapters 13, 14, 61, 101, 102, 103, and 132	$ 500
Subchapter B, Chapter 71	$2,000
Subchapters A and C, Chapter 71, Chapters 72, 73, and 74	$5,000

[~~If the department finds good cause, the department need not suspend a license for a violation of this code or a rule of the department. A finding of good cause includes a finding that:~~

[~~(1) the violation could not reasonably have been foreseen by the licensee;~~

[~~(2) the violation could not have been prevented by the exercise of due diligence by the licensee; or~~

[~~(3) the licensee was entrapped~~].

(d) 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 economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative 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 determined by consideration of the factors set forth in Subsection (d) of this section.

(f) Not later than the 14th day after the date on which the report is issued, the department shall give written notice of the report to the person charged. 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.

(g) Not later than the 20th day after the date on which notice is received, the person charged may accept the determination of the department made under Subsection (e) of this section, including the recommended penalty, or make a written request for a hearing on the determination.

(h) If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering the payment of the recommended penalty.

(i) If the person charged requests a hearing or fails to timely respond to the notice, the department shall set a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the department. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, the commissioner by order may find a violation has occurred and may assess a 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).

(j) The department shall give notice of the commissioner's order to the person charged. The notice shall include:

(1) the findings of fact and conclusions of law separately stated;

(2) the amount of the penalty ordered, if any;

(3) a statement of the right of the person charged to judicial review of the commissioner's order, if any; and

(4) other information required by law.

(k) Within the 30-day period immediately following the day on which the order becomes 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 contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty:

(A) forward the amount to the department for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the department a supersedeas bond in a form approved by the department for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(l) If a person charged is financially unable to either forward the amount of the penalty for placement in an escrow account or post a supersedeas bond for the amount of the penalty, the person may satisfy the requirements of Subsection (k)(2) of this section by filing with the department an affidavit sworn by the person charged, stating that the person is financially unable to either forward the amount of the penalty or post a bond.

(m) Failure to forward the money to or to post the bond or file the affidavit with the department within the time provided by Subsection (k) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to pay the penalty in full as provided under Subsection (k)(1) of this section or forward the money, post the bond, or file the affidavit as provided by Subsection (k) or (l) of this section, the department may forward the matter to the attorney general for enforcement.

(n) Judicial review of the order or decision of the department 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).

(o) If the penalty is reduced or not assessed by the court, the department 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 department 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 department under Subsection (k) of this section and ending on the date the penalty is remitted.

(p) A penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

SECTION 11. Chapter 12, Agriculture Code, is amended by adding Section 12.022 to read as follows:

Sec. 12.022. AUTHORITY TO ACCEPT GIFTS. The department is authorized to accept gifts, grants, and donations and 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 gifts, grants, and donations received and disbursed, used, or maintained by the department during the preceding fiscal year. This report shall be included in the annual report required by Section 12.014 of this chapter.

SECTION 12. Section 12.023, Agriculture Code, is amended to read as follows:

Sec. 12.023. EXPIRATION OF REGISTRATION OR LICENSES [~~FAILURE TO PAY FEES~~]. The department by rule may adopt a system under which the registration or licenses required by Section 14.004, 61.013, 71.043, 71.057, 75.004, 76.071, 76.105, or 132.021 of this code expire on various dates during the year. For the year in which the registration or license expiration date is changed, fees payable on renewal of the registration or license shall be prorated on a monthly basis so that each registrant or licensee shall pay only that portion of the fee that is allocable to the number of months during which the registration or license is valid. On renewal of the registration or license on the new expiration date, the total renewal fee is payable. [~~If the department is authorized by this code to require a person to pay an additional fee for the person's failure to pay in a timely manner any required license or certificate fee, the department may, after a hearing conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes):~~

[~~(1) suspend or cancel the person's license or certificate; or~~

[~~(2) refuse to renew the person's license or certificate until all fees that are due are paid.~~]

SECTION 13. Chapter 12, Agriculture Code, is amended by adding Section 12.024 to read as follows:

Sec. 12.024. LATE RENEWAL OF LICENSE OR REGISTRATION. (a) This section is applicable only to a renewal fee under Section 14.005, 71.043, 71.057, 75.004, 76.044, 76.073, 76.113, or 132.025 of this code.

(b) A late fee is assessed according to the following schedule:

Days Late	Late Fee Amount
at least 1 but less than 31	20% of the renewal fee
at least 31 but less than 91	50% of the renewal fee
at least 91 but less than 365	100% of the renewal fee

(c) A person who fails to pay the renewal fee and the applicable late fee within one year after the due date of the renewal fee is not eligible to renew a license. The ineligible person may reapply for an initial license or registration.

SECTION 14. Chapter 12, Agriculture Code, is amended by adding Section 12.025 to read as follows:

Sec. 12.025. PROGRAM ACCESSIBILITY PLAN. The department shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the department's programs.

SECTION 15. Chapter 12, Agriculture Code, is amended by adding Section 12.026 to read as follows:

Sec. 12.026. PUBLIC INTEREST INFORMATION; COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the department's procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The department by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the department;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the department; or

(3) in a bill for service provided by an individual or entity regulated by the department.

(c) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve.

(d) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 16. Chapter 12, Agriculture Code, is amended by adding Section 12.027 to read as follows:

Sec. 12.027. COMPETITIVE COST REVIEW PROGRAM. The department is subject to the requirements of Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 17. Chapter 12, Agriculture Code, is amended by adding Section 12.028 to read as follows:

Sec. 12.028. COMPETITIVE BIDDING OR ADVERTISING. (a) The department may not adopt rules restricting competitive bidding or advertising by a person regulated by the department except to prohibit false, misleading, or deceptive practices by the person.

(b) The department may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the department a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 18. Chapter 12, Agriculture Code, is amended by adding Section 12.029 to read as follows:

Sec. 12.029. MINORITY AND FEMALE-OWNED BUSINESS CONTRACTS. (a) The department shall establish by rule policies to encourage minority and female-owned small businesses to bid for contract and open market purchases of the department and to assist those businesses in that bidding. The department shall review the policies periodically to correct any deficiencies in the policies.

(b) The department annually shall determine the number, types, and value of contracts awarded to minority and female-owned small businesses in the year preceding the determination and the ratio of the number and the value of those contracts to the number and the value of all contracts awarded by the department in that year.

(c) The department shall file the policies established under this section with the State Purchasing and General Services Commission and the Texas Department of Commerce. The commission shall conduct an analysis of the department's policies and the policies' effectiveness and shall report the analysis to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

(d) In this section, "minority and female-owned small business" means a business enterprise:

(1) that is independently owned and operated, that was formed for the purpose of making a profit, and that has fewer than 100 employees and less than $1 million in annual gross receipts; and

(2) that is controlled by one or more socially and economically disadvantaged persons who own at least 51 percent of the business enterprise and are socially disadvantaged because of their identification as members of certain groups, including women, black Americans, Mexican Americans and other Americans of Hispanic origin, Asian Americans, and American Indians.

SECTION 19. Chapter 13, Agriculture Code, is amended by adding Section 13.007 to read as follows:

Sec. 13.007. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed $500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 20. Section 13.041, Agriculture Code, is amended to read as follows:

Sec. 13.041. PENALTIES; DEFENSE. (a) An offense under Section 13.021, 13.027, 13.029, or each of Sections 13.030 through 13.039 of this code is a Class C misdemeanor [~~punishable by a fine of not less than $10 nor more than $200~~].

(b) [~~An offense under Section 13.029 of this code is a misdemeanor punishable by a fine of not less than $25 nor more than $100.~~

[~~(c) An offense under Section 13.021 or each of Sections 13.030-13.038 of this code is a misdemeanor punishable by a fine of not less than $20 nor more than $100, unless the accused has been previously convicted of the offense, in which case it is punishable by a fine of not less than $50 nor more than $200.~~

[~~(d)~~] It is a defense to prosecution under Sections 13.030-13.038 of this code that a discrepancy between the actual weight or volume at the time of sale to a consumer and the weight marked on the container or a discrepancy between the fill of a container and the capacity of the container is due to unavoidable leakage,

shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

SECTION 21. Section 13.101, Agriculture Code, is amended to read as follows:

Sec. 13.101. REQUIRED INSPECTION. (a) At least once every three years [~~each year~~], or more often as required by the department, a weight or measure shall be inspected and tested for correctness by a sealer if it:

(1) is kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the weight or measure, including the size, quantity, extent, or area, of any item; or

(2) is purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award.

(b) The department shall, to the extent necessary to ensure compliance with the official standards, require additional inspection and testing of weights and measures.

(c) [~~(b)~~] A person who uses or keeps for use, or has or offers for sale, a weight or measure is responsible for having the weight or measure inspected and tested as required by this section [~~by a sealer~~].

(d) [~~(c)~~] Unless the department requires an additional inspection [~~more often than annually~~], a weight or measure that is inspected and found correct by a sealer may be kept for use, used, kept or offered for sale, or sold [~~for one year~~] without further testing.

SECTION 22. Subsection (b), Section 13.102, Agriculture Code, is amended to read as follows:

(b) A weight or measure that has been tested, sealed, and certified correct by the National Institute of Standards and Technology [~~Bureau of Standards~~] may be kept or offered for sale or sold without being sealed under this subchapter.

SECTION 23. Section 13.112, Agriculture Code, is amended to read as follows:

Sec. 13.112. TESTS FOR STATE INSTITUTIONS. As [~~At least once each year, or more often as~~] requested by the State Purchasing and General Services Commission or the governing body of a state institution, the department shall test each weight or measure used by a state institution for any purpose, including a weight or measure used in checking the receipt and distribution of supplies. The department shall report results of the test to the chairman of the governing body of the institution.

SECTION 24. Subsections (a) and (b), Section 13.113, Agriculture Code, are amended to read as follows:

(a) The standards of weights and measures received from the United States and certified by the National Institute of Standards and Technology [~~Bureau of Standards~~] are the state's standards by which all state and local standards of weights and measures are tried, authenticated, proved, and sealed.

(b) The department shall maintain the official standards in a safe and suitable place in the offices of the department. The standards may not be moved except for repairs or certification. The department shall maintain the standards in good order and shall submit them to the National Institute of Standards and Technology [~~Bureau of Standards~~] for certification at least once each 10 years.

SECTION 25. Subsection (a), Section 13.114, Agriculture Code, is amended to read as follows:

(a) The department shall establish tolerances and specifications for commercial weighing and measuring apparatus used in this state. The tolerances and specifications shall be similar to those recommended by the National Institute of Standards and Technology [~~Bureau of Standards~~].

SECTION 26. Section 13.122, Agriculture Code, is amended to read as follows:

Sec. 13.122. PENALTIES. [~~(a)~~] An offense under Section 13.103, 13.106, 13.114, or each of Sections 13.116 through 13.121 of this code is a Class C misdemeanor [~~punishable by a fine of not less than $25 nor more than $100.~~

[~~(b) An offense under Section 13.116, 13.120, or 13.121 of this code is a misdemeanor punishable by a fine of not less than $20 nor more than $100, unless the accused has been previously convicted of the offense, in which case it is punishable by a fine of not less than $50 nor more than $200.~~

[~~(c) An offense under Section 13.106, 13.114, 13.117, 13.118, or 13.119 is a misdemeanor punishable by a fine of not less than $10 nor more than $200~~].

SECTION 27. Section 13.207, Agriculture Code, is amended to read as follows:

Sec. 13.207. LICENSING OF TESTERS. (a) Without holding a license issued under this section, a person may not operate a testing apparatus to determine the percentage of butterfat in milk or cream for the purpose of purchasing the milk or cream.

(b) A person is entitled to a license as a tester if the person is reliable, competent, and qualified to operate the apparatus in order to make an accurate test.

(c) Before issuing a license, the department may make necessary investigations of the qualifications of an applicant. The department may refuse to license an applicant that the department finds is not qualified under Subsection (b) of this section.

(d) The department shall collect a fee of $10 for each license issued.

(e) A license issued under this section is valid for one year.

(f) [~~The department may revoke the license of a person who the department finds has failed to comply with a provision of this subchapter or a rule adopted under this subchapter. The department may suspend for six months the license of a tester who is finally convicted of a second offense under Section 13.212 of this code.~~

[~~(g)~~] A licensee or a licensee's employer for valid reason may appoint a substitute tester for a period of 15 days. The reason for the appointment must be reported to the department. With approval of the department, the appointment may be extended for an additional period not to exceed 10 days.

(g) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this subchapter or a rule adopted by the department under this subchapter.

(h) If a license suspension is probated, the department may require the person to:

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

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

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

(i) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 28. Section 13.211, Agriculture Code, is amended to read as follows:

Sec. 13.211. DUTIES OF DISTRICT OR COUNTY ATTORNEY. The county or district attorney of a county in which a violation of this subchapter occurs shall investigate and prosecute the violation. [~~If necessary, the county or district attorney may sue to enjoin further violations of this subchapter.~~]

SECTION 29. Subsection (d), Section 13.212, Agriculture Code, is amended to read as follows:

(d) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed $1,000~~].

SECTION 30. Section 13.255, Agriculture Code, is amended to read as follows:

Sec. 13.255. CERTIFICATE. (a) A public weigher, whether elected or appointed, or deputy public weigher may not officially weigh a commodity unless the weigher has obtained from the department a certificate of authority.

(b) A state public weigher must submit a nonrefundable fee of $200 with the application for a certificate of authority. A county public weigher or a deputy public weigher must submit a nonrefundable fee of $50 with the application for a certificate of authority. [~~The department shall collect a fee of $50 before issuing a certificate of authority to a county public weigher or to a deputy public weigher and shall collect a fee of $200 before issuing a certificate of authority to a state public weigher.~~

[~~(c) The department may suspend or revoke the certificate of authority of an appointed public weigher or of a deputy of an appointed county public weigher for cause after a hearing as a contested case under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). A public weigher or deputy public weigher whose certificate is suspended or revoked may not issue an official certificate of weight or measure.~~]

SECTION 31. Chapter 13, Agriculture Code, is amended by adding Section 13.2555 to read as follows:

Sec. 13.2555. REVOCATION, MODIFICATION, OR SUSPENSION OF CERTIFICATE. (a) The department shall revoke, modify, or suspend the certificate of authority of an appointed public weigher or a deputy of an appointed county public weigher, assess an administrative penalty, place on probation the person whose certificate has been suspended, or reprimand an appointed public weigher or a deputy of an appointed county public weigher for a violation of this subchapter or a rule adopted by the department under this subchapter.

(b) If a certificate suspension is probated, the department may require the person to:

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

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

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

(c) If the department proposes to revoke, modify, or suspend a person's certificate, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 32. Subsection (b), Section 14.005, Agriculture Code, is amended to read as follows:

(b) An applicant must file a separate application for each license, renewal, or amendment and shall accompany each application for a license or renewal with a nonrefundable annual license fee of $30 [~~license fee~~]. The department shall prescribe the information to be contained in the application. A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

SECTION 33. Section 14.015, Agriculture Code, is amended to read as follows:

Sec. 14.015. DENIAL, REVOCATION, MODIFICATION, OR SUSPENSION[~~, REVOCATION, OR DENIAL~~] OF LICENSE. (a) The

department may deny an application for a license if the applicant fails to comply [~~suspend, revoke, or deny a license if, after an opportunity for a hearing, the department determines that the warehouseman has violated or failed to comply~~] with a requirement of this subchapter or a rule adopted by the department under this subchapter.

(b) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this subchapter or a rule adopted by the department under this subchapter.

(c) If the department considers it necessary, the department may suspend a license without hearing for a period not to exceed 30 days.

(d) If a license suspension is probated, the department may require the person to:

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

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

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

(e) Except as provided by Subsection (c) of this section, if the department proposes to deny, revoke, modify, or suspend a person's application or license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 34. Subsection (b), Section 16.010, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine of not less than $10 nor more than $500~~].

SECTION 35. Subsection (a), Section 41.059, Agriculture Code, is amended to read as follows:

(a) The board shall file with the commissioner a proposed budget and may expend funds only after the commissioner has approved the budget. If after thorough review the commissioner disapproves the proposed budget, the commissioner shall return the proposed budget to the submitting board not later than the 45th day after the date on which the proposed budget is submitted with a statement of reasons for disapproval.

SECTION 36. Subsection (b), Section 41.103, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $50 nor more than $200;~~

[~~(2) confinement in the county jail for not less than 10 days nor more than 6 months; or~~

[~~(3) both fine and confinement under this subsection~~].

SECTION 37. Subsection (b), Section 53.024, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $25 nor more than $1,000;~~

[~~(2) confinement in jail for not less than one year; or~~

[~~(3) both fine and confinement under this subsection~~].

SECTION 38. Chapter 61, Agriculture Code, is amended by adding Section 61.0135 to read as follows:

Sec. 61.0135. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department shall revoke, modify, or suspend a license, assess an

administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

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

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

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

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 39. Subsection (c), Section 61.018, Agriculture Code, is amended to read as follows:

(c) An offense under this section is a Class C misdemeanor [~~punishable by a fine not exceeding $50, unless the accused has been previously convicted of a similar offense, in which case the fine may not exceed $200~~].

SECTION 40. Section 62.005, Agriculture Code, is amended by adding Subsection (d) to read as follows:

(d) An application for licensing as a Foundation, Registered, or Certified producer of seed or plants must be accompanied by a nonrefundable license fee not to exceed $100, as provided by department rule.

SECTION 41. Chapter 62, Agriculture Code, is amended by adding Section 62.0065 to read as follows:

Sec. 62.0065. NOTICE AND ANALYSIS OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which a licensing or registration examination is administered under this chapter, 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 date on which the board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service 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 a licensing or registration examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

SECTION 42. Section 62.010, Agriculture Code, is amended to read as follows:

Sec. 62.010. REVOCATION, MODIFICATION, OR SUSPENSION OF REGISTRATION OR[;] LICENSE[~~, OR CERTIFICATION~~]. (a) The department shall revoke, modify, or suspend the registration or license of [~~If an inspector reports to the department that~~] a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants, place on probation a person whose registration or license has been suspended, or reprimand a registrant or licensee if the person makes [~~has made~~] exaggerated claims for products, fails [~~or has failed~~] to observe any rule governing the maintenance and production of a certified class of seed or plants that he or she is registered or licensed to produce or maintain, or violates another requirement of this chapter or a rule adopted by the board or the department under this chapter [~~the department may give written notice~~

~~to the breeder or producer of the time and place of a revocation hearing to be held by the department not later than the 10th day following the day on which notice is issued~~].

(b) If a suspension of a license or registration is probated, the department may require the person to:

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

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

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

(c) If [~~at the hearing;~~] the department revokes a [~~finds that the registered plant breeder or licensed producer has made exaggerated claims or has violated any rule for the production and maintenance of the certified class of seed or plants involved; the department may revoke the~~] registration or license, the department shall [~~and~~] order the cancellation and withdrawal of all appropriate certification labels previously issued for the seed or plants.

(d) If the department proposes to revoke, modify, or suspend a person's registration or license, the person is entitled to a hearing before a hearings officer designated by the department. The board shall prescribe procedures by which all decisions of the department to revoke, modify, or suspend a registration or license issued under this chapter are appealable to the board [~~(c) A registered plant breeder or licensed producer whose registration or license has been revoked and whose certification labels have been canceled and withdrawn may appeal the action to the board by filing a notice of appeal with the department within 30 days of the revocation. The department shall report the notice of appeal to the board, which shall give written notice of the time and place for an appeal hearing to the appellant. The hearing on appeal may not be less than 10 nor more than 30 days after the day on which notice of appeal is filed with the department. If the department's action is reversed at the appeal hearing, the board shall direct the department to reinstate the registration or license and reissue certification labels for seed or plants for which labels were previously canceled and withdrawn~~].

SECTION 43. Section 62.011, Agriculture Code, is amended to read as follows:

Sec. 62.011. PENALTIES. (a) A person commits an offense if the person:

(1) sells or offers for sale in this state seed or plants with labeling or packaging accompanying the seed or plants using the terms "from officially inspected fields," "state inspected," "approved seed," "approved plants," "approved sods," "approved trees," "inspected fields," "foundation seed," "certified plants," or terms having the same meaning, unless the seed or plants have been certified as Foundation, Registered, or Certified seed or plants;

(2) represents himself or herself to be a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants unless he or she has been registered or licensed under this chapter;

(3) sells or offers for sale in this state Foundation, Registered, or Certified seed or plants that are not in compliance with this chapter or with the rules adopted under this chapter;

(4) sells or offers for sale seed or plants represented to be certified in explicit oral or written statements or by misleading oral or written statements if the seed or plants have not been certified or have not been certified as being of the class of which they are represented;

(5) violates Section 62.007(c) of this code; or

(6) violates Section 62.009(c), (d), or (e) of this code.

(b) An offense under Subsection (a)(1), (a)(2), (a)(5), or (a)(6) of this section is a Class C misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $10 nor more than $100;~~

[~~(2) confinement in county jail for not more than 30 days; or~~

[~~(3) both fine and confinement under this subsection~~].

(c) An offense under Subsection (a)(3) or (a)(4) of this section is a Class B misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $200 nor more than $500;~~

[~~(2) confinement in county jail for not more than 60 days; or~~

[~~(3) both fine and confinement under this subsection.~~

[~~(d) An offense under Subsection (a)(5) of this section is a misdemeanor punishable by a fine of not more than $1,000~~].

SECTION 44. Section 71.012, Agriculture Code, is amended to read as follows:

Sec. 71.012. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than $250 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment [~~private or common carrier, including a railway, steamship, motorboat, bus, or truck, that transports or delivers any fruit, plant, shrub, or other carrier of an insect pest or plant disease in violation of an order or rule of the department under this subchapter is liable to the state for a penalty in the amount of $500~~].

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty [~~The attorney general shall institute suit for the recovery of a penalty under this section~~].

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit [~~Venue for a suit under this section is in Travis County~~].

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 45. Subsection (b), Section 71.013, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed $100~~].

SECTION 46. Section 71.041, Agriculture Code, is amended to read as follows:

Sec. 71.041. DEFINITIONS. In this subchapter:

(1) "Florist" means a person who maintains, grows, raises, or buys and offers for sale or lease for profit florist items.

(2) "Florist item" means a cut flower, potted plant, blooming plant, inside foliage plant, bedding plant, corsage flower, cut foliage, floral decoration, or live decorative material.

(3) "Nursery product" includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown for, kept for, or is capable of, propagation and distribution for sale or lease.

(4) "Nursery grower" means a person who grows more than 50 percent of the nursery products that the person either sells or leases, regardless of the variety sold, leased, or grown.

SECTION 47. Section 71.042, Agriculture Code, is amended to read as follows:

Sec. 71.042. DUTY OF DEPARTMENT; RULES. The department shall enforce this subchapter and may adopt rules as necessary for the immunity and protection of plants from diseases and insect pests, including rules that:

(1) regulate the traffic, growing, shipping, [~~and~~] selling, and leasing of nursery products;

(2) provide for the inspection and control of florist items; and

(3) relate to city, private, or public parks, or shade trees, shrubbery, and ornamentals along city streets or property or on city residences.

SECTION 48. Section 71.043, Agriculture Code, is amended to read as follows:

Sec. 71.043. ANNUAL REGISTRATION [~~CHIEF INSPECTOR~~]. (a) A florist or nursery owner must register with the department under this section each nursery, greenhouse, orchard, garden, or other place growing for sale or lease, offering for sale or lease, or otherwise distributing a florist item or nursery product.

(b) A florist or nursery owner may apply for registration or renewal of registration by submitting an application prescribed by the department and a nonrefundable annual fee. The fee shall be based on the size and type of a location, as defined by department rule, where a florist or nursery owner grows for sale or lease or offers for sale or lease a florist item or nursery product.

(c) Registrations under this section expire one year after issuance. A person who fails to submit a renewal fee on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

(d) Upon receipt of the correct annual registration fee, the department shall issue a registration certificate for each location a florist or nursery owner has registered.

(e) A person may not offer for sale or lease a nursery product or florist item without a registration certificate issued under this section. [~~The commissioner shall appoint one person as chief inspector to inspect or supervise the inspection of nursery products, florist items, and premises in accordance with this subchapter.~~]

SECTION 49. Section 71.044, Agriculture Code, is amended to read as follows:

Sec. 71.044. [~~ANNUAL~~] INSPECTION. (a) At least once every three years [~~each year~~] the department shall inspect each nursery, greenhouse, orchard, garden, florist, or other place growing for sale or lease or offering for sale or lease a nursery product, florist item, or other item of plant life in order to determine if the product, item, or premises are infected with a disease or insect pest injurious to human, animal, or plant life.

(b) The department shall perform additional inspections to the extent necessary to ensure compliance with this subchapter and quarantine agreements with the federal government and other state governments.

(c) A department inspector may examine invoices or other documents relating to the shipping and receiving of nursery/floral products for the purpose of determining the origin, transit, and chain of custody of nursery/floral items found to be:

(1) infested with pests or infected with plant disease; or

(2) shipped in violation of state or federal quarantine laws, regulations, or agreements.

SECTION 50. Section 71.055, Agriculture Code, is amended to read as follows:

Sec. 71.055. REVOCATION OF CERTIFICATE. The department may revoke a certificate [~~of inspection~~] issued under this subchapter if it finds that the person to whom the certificate was issued:

(1) made a false representation; or

(2) violated or refused to comply with this subchapter or a rule or instruction of the department under this subchapter.

SECTION 51. Subsection (a), Section 71.050, Agriculture Code, is amended to read as follows:

(a) Each nursery product or florist item offered for sale or lease, consigned for shipment, or shipped by freight, express, or other means of transportation shall be accompanied by a copy of the certificate of inspection issued by the department.

SECTION 52. Subsection (c), Section 71.052, Agriculture Code, is amended to read as follows:

(c) The department may adopt suitable rules governing the sale or lease and shipment of camellias and other products as necessary for the control of camellia flower blight.

SECTION 53. Section 71.053, Agriculture Code, is amended to read as follows:

Sec. 71.053. INSPECTION OF SHIPMENTS. (a) The department shall inspect shipments of nursery products or florist items in this state to determine if the shipments are accompanied by the tags and certificates required by this subchapter and are free of pests or plant diseases.

(b) If the department finds that a shipment of a nursery product or florist item is diseased or pest-infested, the department shall take action necessary to abate the nuisance and protect the public health and welfare as provided in Section 71.046 of this subchapter.

(c) [~~(b)~~] If the department finds that a shipment of a nursery product or florist item is not accompanied by a required tag or certificate, the department shall treat the shipment as infected and may destroy or dispose of the shipment as provided in Section 71.046 of this subchapter. [~~Money received from any sale of the shipment shall be deposited as other money collected by the department.~~]

SECTION 54. Section 71.056, Agriculture Code, is amended to read as follows:

Sec. 71.056. INSPECTION FEE [~~FEES~~]. (a) The department shall fix by rule and collect a [~~inspection fees in accordance with this section.~~

[~~(b) The fee for each inspection of an installation, an area, or premises, growing, selling, displaying, or handling nursery products shall be not less than $15 nor more than $75.~~

[~~(c) The fee for each inspection of an installation, an area, or premises, where florist items are bought and sold or offered for sale shall be not less than $15 nor more than $75.~~

[~~(d) The department shall fix the~~] fee for inspection of nursery products or florist items for the issuance of an importation certificate.

(b) [~~(e)~~] The department shall account for fees collected under this section in the manner and method prescribed by the state auditor.

SECTION 55. Section 71.057, Agriculture Code, is amended to read as follows:

Sec. 71.057. NURSERY DEALERS AND AGENTS; ANNUAL REGISTRATION. (a) A person who buys and sells or leases or offers for sale or lease a nursery product and who has facilities that maintain or preserve the nursery product and prevent that product from becoming dry, infested, or diseased is a nursery dealer [~~and shall register a permanent address with the department. Each~~

~~copy of a certificate of inspection issued to a nursery dealer shall show the address registered with the department~~].

(b) A person is a nursery agent if the person sells or leases, offers for sale or lease, or takes mail orders for the sale or lease of a nursery product and:

(1) is entirely under the control of a nursery grower or nursery dealer with whom the nursery product offered for sale or lease originates; or

(2) operates on a cooperative basis for handling a nursery product with a nursery grower or nursery dealer.

(c) A nursery agent shall possess proper credentials from the nursery grower or nursery dealer the agent represents or cooperates with. A nursery agent who fails to possess proper credentials is subject to this subchapter as a nursery dealer.

(d) A nursery dealer or nursery agent must register with the department under this section before offering for sale or lease or otherwise distributing a nursery product.

(e) A nursery dealer or nursery agent may apply for registration or renewal of registration by submitting an application prescribed by the department and a nonrefundable annual fee. The fee shall be based on the size and type of a location, as defined by department rule, where a nursery dealer or nursery agent offers a nursery product for sale or lease.

(f) Registrations under this section expire one year after issuance. A person who fails to submit a renewal fee on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

(g) Upon receipt of the correct annual registration fee, the department shall issue a registration certificate for each location a florist or nursery owner has registered.

SECTION 56. Section 71.058, Agriculture Code, is amended to read as follows:

Sec. 71.058. PENALTIES. (a) A person commits an offense if the person wilfully or negligently:

(1) violates a provision of this subchapter [~~other than Section 71.052 of this code~~]; or

(2) fails or refuses to comply with a notice, order, or rule of the department under this subchapter.

(b) [~~A person commits an offense if the person imports a camellia plant or flower in violation of Section 71.052 of this code.~~

[~~(c)~~] An offense under Subsection (a) of this section is a Class C misdemeanor [~~punishable by a fine of not less than $25 nor more than $200~~].

(c) Each day that a person maintains premises in a condition not in compliance with this subchapter after receiving notice by registered or certified mail under Section 71.046 of this code is a separate offense.

(d) [~~An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not more than $100.~~

[~~(e)~~] A person commits a separate offense for each camellia plant or flower imported.

SECTION 57. Chapter 71, Agriculture Code, is amended by adding Section 71.059 to read as follows:

Sec. 71.059. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than $50 nor more than $1,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 58. Chapter 71, Agriculture Code, is amended by adding Section 71.060 to read as follows:

Sec. 71.060. STOP-SALE ORDER. (a) If the department has reason to believe that a florist item or nursery product is in violation of this subchapter or a rule adopted under this subchapter, the department may issue and enforce a written order to stop the sale of the florist item or nursery product. The department shall present the order to the owner or the person in control of the florist item or nursery product. The person who receives the order may not sell the florist item or nursery product until discharged by a court under Subsection (b) of this section or until the department determines that the florist item or nursery product is in compliance with this subchapter and the rules adopted under this subchapter.

(b) The owner or the person in control of any florist item or nursery product prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the florist item or nursery product is found for a judgment as to the justification of the order and for the discharge of the florist item or nursery product from the order in accordance with the findings of the court.

(c) This section does not limit the right of the department to proceed as authorized by another section of this subchapter.

SECTION 59. Subsection (b), Section 71.116, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine of not less than $25 nor more than $100~~].

SECTION 60. Chapter 71, Agriculture Code, is amended by adding Section 71.117 to read as follows:

Sec. 71.117. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than $250 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On

request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 61. Subsection (g), Section 72.042, Agriculture Code, is amended to read as follows:

(g) If the court finds the premises to be a public nuisance, the department may enter the premises and place them in compliance with the order. The owner shall pay to the department an amount not to exceed twice the minimum wage established under state law [~~25 cents~~] a person, as allowed by the court, for each hour actually expended placing the premises in compliance with the order. In addition, the owner shall pay to the department the sum of $250 [~~$25~~], not as a penalty but as reasonable compensation for the time involved in the execution of the order.

SECTION 62. Chapter 72, Agriculture Code, is amended by adding Section 72.046 to read as follows:

Sec. 72.046. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty of not less than $250 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 63. Section 72.061, Agriculture Code, is amended to read as follows:

Sec. 72.061. GENERAL PENALTY. (a) A person who violates any provision of this chapter for which a separate penalty is not provided commits an offense.

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed $200~~].

SECTION 64. Subsection (b), Section 72.062, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed $200~~].

SECTION 65. Subsection (b), Section 72.063, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed $200~~].

SECTION 66. Subsection (b), Section 72.064, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine not to exceed $200~~].

SECTION 67. Section 73.002, Agriculture Code, is amended to read as follows:

Sec. 73.002. POLICY. The state recognizes that the citrus industry is a valuable asset and that [~~the~~] citrus fruit and trees are [~~crop is~~] highly susceptible to the ravages of insects, pests, and plant diseases. The state shall use all constitutional measures to protect this industry from destruction by pests and diseases.

SECTION 68. Section 73.005, Agriculture Code, is amended to read as follows:

Sec. 73.005. MOVEMENT OF INFECTED NURSERY PRODUCTS AND OTHER HOSTS INTO CITRUS ZONE. A person may not ship into the citrus zone a nursery product, seed, citrus fruit, or other host infected with a pest or disease listed in Section 73.004(b) of this code.

SECTION 69. Subsections (b) and (c), Section 73.009, Agriculture Code, are amended to read as follows:

(b) An offense under Section 73.005 of this code is a Class A misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $100 nor more than $1,000;~~

[~~(2) confinement in county jail for not less than 10 days nor more than one year; or~~

[~~(3) both fine and confinement under this subsection~~].

(c) An offense under Section 73.006 of this code is a Class C misdemeanor [~~punishable by a fine of not less than $50 nor more than $200~~].

SECTION 70. Chapter 73, Agriculture Code, is amended by adding Section 73.010 to read as follows:

Sec. 73.010. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty of not less than $250 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 71. Subsection (i), Section 74.004, Agriculture Code, is amended to read as follows:

(i) Reimbursement under Subsection (e) of this section does not prevent the department from seeking criminal or civil sanctions under this subchapter.

SECTION 72. Subsection (b), Section 74.007, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $50 nor more than $500;~~

[~~(2) confinement in jail for not less than 10 nor more than 30 days;~~ or

[~~(3) both fine and confinement under this subsection~~].

SECTION 73. Chapter 74, Agriculture Code, is amended by adding Section 74.008 to read as follows:

Sec. 74.008. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than $250 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 74. Subsection (b), Section 74.061, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $50 nor more than $500;~~

[~~(2) confinement in jail for not less than 10 nor more than 30 days;~~ or

[~~(3) both fine and confinement under this subsection~~].

SECTION 75. Chapter 74, Agriculture Code, is amended by adding Section 74.062 to read as follows:

Sec. 74.062. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than $250 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney

of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 76. Section 75.004, Agriculture Code, is amended by adding Subsection (f) to read as follows:

(f) A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

SECTION 77. Chapter 75, Agriculture Code, is amended by adding Section 75.0055 to read as follows:

Sec. 75.0055. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department shall revoke, modify, or suspend a license, assess an administrative penalty, suspend an administrative penalty for good cause, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of Section 75.005 of this code or a rule adopted by the department under that section.

(b) If a license suspension is probated, the department may require the person to:

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

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

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

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 78. Section 75.024, Agriculture Code, is amended by amending Subsections (b) and (c) and by adding Subsection (d) to read as follows:

(b) An offense under this section is a Class A misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $100 nor more than $2,000;~~

[~~(2) confinement in jail for not more than 30 days; or~~

[~~(3) both fine and confinement under this subsection~~].

(c) Section 76.1555 of this code, which provides for the assessment of administrative penalties, applies to a person who violates this chapter or a rule or order adopted by the department under this chapter.

(d) A [~~The~~] penalty provided by this section does not affect the civil liability of a person convicted under this section.

SECTION 79. Section 76.007, Agriculture Code, is amended to read as follows:

Sec. 76.007. INTERAGENCY COOPERATION [~~COOPERATIVE AGREEMENTS; GRANTS IN AID~~]. (a) The department shall be the lead agency for pesticide regulation in Texas. In cooperation with the U.S. Environmental Protection Agency or any federal agency responsible for implementation of federal pesticide law, the department shall:

(1) register pesticides for use in Texas;

(2) adopt lists of state-limited-use pesticides;

(3) provide for training, certification, and licensure of all classes of pesticide applicators;

(4) enforce pesticide laws and regulations governing the safe handling, use, storage, distribution, and disposal of pesticide products; and

(5) adopt rules to carry out the provisions of this chapter.

(b) The Texas Water Commission shall have principal authority to regulate and control water pollution.

(c) The department shall seek advice from the Texas Water Commission, the Parks and Wildlife Department, the Texas Department of Health, and the Texas Agricultural Extension Service in reviewing applications for special local need or emergency pesticide registrations. The department shall act expeditiously to review any application for special local need or emergency pesticide registrations.

(d) The department shall give written notice to the Texas Water Commission whenever it has probable cause to believe that serious contamination of water has occurred as a result of use, misuse, manufacture, storage, or disposal of pesticides so that the Texas Water Commission may proceed with an investigation of possible violation of the Water Code.

(1) If the Texas Water Commission determines that a violation of the Water Code has occurred, the commission shall seek the remedies provided by the Water Code.

(2) If the department determines that a violation of the Agriculture Code has occurred regarding the use, manufacture, storage, or disposal of pesticides, the department shall seek the remedies provided by this code.

(3) The foregoing remedies shall not be mutually exclusive.

(e) The Texas Water Commission shall give written notice to the department whenever it has probable cause to believe that serious contamination of water has occurred as a result of the use, misuse, storage, disposal, or manufacture of pesticides so that the department may proceed with an investigation to determine if a violation of the Agriculture Code has occurred.

(1) If the department determines that a violation of the Agriculture Code has occurred, the department shall seek the remedies provided by this code.

(2) If the Texas Water Commission determines that a violation of the Water Code has occurred, the Texas Water Commission shall seek the remedies provided by the Water Code.

(3) The foregoing remedies shall not be mutually exclusive.

(f) The department shall consult with the Texas Department of Health before denying or canceling a pesticide registration because of a suspected public health threat. The department shall also coordinate enforcement efforts with the department of health when a serious public health threat is suspected.

(g) A regulatory agency may receive grants-in-aid from any federal agency and may enter into cooperative agreements with a federal agency, an agency of this state, a subdivision of this state, or an agency of another state for the purpose of obtaining assistance in the implementation of this chapter.

SECTION 80. Section 76.003, Agriculture Code, is amended to read as follows:

Sec. 76.003. STATE-LIMITED-USE PESTICIDES. (a) After notice and public hearing, the department may adopt lists of state-limited-use pesticides for the entire state or for a designated area within the state.

(b) A pesticide may be included on a list of state-limited-use pesticides if the department determines that, when used as directed or in accordance with widespread and commonly recognized practice, the pesticide requires additional restrictions to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide. However, the department shall not place a pesticide on the state-limited-use list solely on the basis of actual damage or risk of damage to water quality without first obtaining approval from the Texas Water Commission based on the impact of the pesticide's use on water quality.

(c) The department shall formally request an opinion regarding impact on water quality from the Texas Water Commission during department consideration of any amendments to the current list of state-limited-use pesticides.

(d) At the direction of the Texas Water Commission in conjunction with its responsibilities pursuant to Chapter 26, Water Code, the department shall add any pesticide to the state-limited-use list, and the department shall issue regulations regarding the time, place, and conditions of such pesticide's use.

(e) The department may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or used only:

(1) with permission of the department;

(2) under direct supervision of the department in certain areas under certain conditions; or

(3) in specified quantities and concentrations.

(f) [~~(d)~~] The department may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records.

SECTION 81. Section 76.004, Agriculture Code, is amended to read as follows:

Sec. 76.004. DEPARTMENT RULES. (a) After notice, the department shall conduct at least five regional hearings throughout the state before the adoption of any rule for carrying out the provisions of this chapter. Thereafter, [~~and hearing,~~] the department may adopt rules for carrying out the provisions of this chapter, including rules providing for:

(1) the collection, examination, and reporting of records, devices, and samples of pesticides;

(2) the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers; [~~and~~]

(3) labeling requirements for pesticides and devices required to be registered under this chapter; and

(4) compliance with federal pesticide rules and regulations.

(b) Any rules adopted by the department for the purpose of protection or enhancement of water quality shall not be inconsistent with rules developed for the protection or enhancement of water quality by the Texas Water Commission pursuant to recommendations of the Groundwater Protection Committee.

SECTION 82. Subchapter A, Chapter 76, Agriculture Code, is amended by adding Section 76.009 to read as follows:

Sec. 76.009. AGRICULTURE RESOURCES PROTECTION AUTHORITY. (a) The Agriculture Resources Protection Authority is an agency of state government. The authority is composed of the following nine members:

(1) the director of the Texas Agricultural Experiment Station;

(2) the dean of the College of Agricultural Sciences of Texas Tech University;

(3) the dean of The University of Texas School of Public Health at Houston;

(4) the director of the environmental epidemiology program of the Texas Department of Health;

(5) the chief of the groundwater conservation section of the Texas Water Commission;

(6) the director of the Institute for International Agribusiness Studies of Prairie View A&M University;

(7) one person appointed by the governor to represent the interests of consumers;

(8) a producer of agricultural products appointed by the governor; and

(9) the commissioner of agriculture.

(b) A person appointed by the governor, with the advice and consent of the senate, under Subdivision (7) or (8) of Subsection (a) of this section serves a two-year term ending on February 1 of each odd-numbered year. A vacancy in one of those positions shall be filled by appointment by the governor for the unexpired term.

(c) The commissioner of agriculture is the presiding officer of the authority.

(d) The authority shall meet quarterly and at the call of the presiding officer or a majority of the members. To take an action, the authority must approve the action by a concurring vote of a majority of the total membership of the authority.

(e) A member may not receive compensation for service as a member of the authority. A member is entitled to reimbursement for actual and necessary expenses incurred in the performance of the functions of the authority, subject to any limitations on reimbursement provided by the General Appropriations Act.

(f) The delegation of functions under this section is designed to avoid overlapping responsibilities, to provide a means for all involved agencies to participate in the regulation of pesticides, and to clarify various areas of responsibility.

(g) The authority is the coordinating body for the policies and programs of management, regulation, and control of pesticides conducted by the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Water Commission, and the Texas Structural Pest Control Board. Notwithstanding any other provision of this code or of any other law, the authority may:

(1) adopt any rule relating to pesticides, including a rule that amends or repeals an existing rule, except that the authority may not:

(A) adopt, amend, or repeal a rule under Chapter 125 of this code;

(B) repeal a rule that was adopted by an agency for which the authority is the coordinating body and that was in effect on May 1, 1989; or

(C) amend a rule in effect on May 1, 1989, that would make the rule less protective of the public health, safety, or welfare;

(2) review and approve or disapprove any rule relating to pesticides that is proposed by an agency for which the authority is the coordinating body, except a rule under Chapter 125 of this code;

(3) cooperate with and advise the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Water Commission, the Texas Structural Pest Control Board, and any other state agency that may be concerned with the regulation of pesticides and notify those agencies of any rule the authority intends to adopt;

(4) collect, analyze, and disseminate information necessary for the effective operation of all existing or contemplated programs regulating pesticides;

(5) provide professional advice to private agencies and citizens of this state on matters relating to pesticides in cooperation with other state agencies, with professional groups, and with either state or private educational institutions;

(6) accept gifts, devises, and bequests and, with the approval of the governor, comply with the terms and conditions of any grant to accomplish any of the purposes of the authority;

(7) inform and advise the governor on matters involving pesticides and prepare and recommend to the governor and to the legislature any legislation the authority considers proper for the management and control of pesticides;

(8) make annual reports to the governor and the appropriate legislative oversight committees;

(9) exempt any federal or state agency from any regulatory provision if the authority determines that emergency conditions exist that require the exemption; and

(10) notwithstanding any conflicting or inconsistent provision in this code, hear and determine all appeals from orders entered, by an agency for which

the authority is the coordinating body, under this chapter or Chapter 75 or 125 of this code.

(h) An agency for which the authority is the coordinating body may not adopt a rule disapproved by the authority under Subsection (g)(2) of this section.

(i) To ensure due process, the commissioner, because of the commissioner's statutory power over departmental orders, may not participate in the discussions or the determinations to be reached on appeals to the authority under Subsection (g)(10) of this section.

(j) The commissioner shall:

(1) as necessary, employ personnel as the duties of the authority may require and to the extent of legislative appropriations to the authority;

(2) keep an accurate and complete record of all authority meetings and hearings of the authority and maintain legal custody of all books, papers, documents, and other records of the authority;

(3) administer this chapter and Chapters 75 and 125 of this code and the rules adopted by the authority; and

(4) assign, reassign, or delegate the administrative and enforcement functions assigned to the commissioner by this subsection or by rules or policies established under this subsection to one or more of the divisions or other units within the department or to one or more employees of the department.

SECTION 83. Section 76.044, Agriculture Code, is amended to read as follows:

Sec. 76.044. FEES. (a) A nonrefundable [~~As a condition to registration or renewal of registration, an applicant shall pay to the department a~~] fee of $60 for each pesticide to be registered must be submitted with an application for registration or renewal of registration.

(b) A [~~If a~~] person who fails to apply for renewal of registration on or before the expiration date of the registration must [~~March 1 of any year, the person, as a condition to renewal, shall~~] pay, in addition to the renewal fee, the [a] late [~~registration~~] fee provided by Section 12.024 of this code [~~of $5~~] for each brand to be renewed[~~, in addition to the renewal fee~~].

SECTION 84. Subsection (b), Section 76.073, Agriculture Code, is amended to read as follows:

(b) A [~~If a~~] person who fails to apply for renewal of a pesticide dealer license on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code [~~March 1 of any year, the person, as a condition to renewal, shall pay a late license fee of $5 in addition to the renewal fee~~].

SECTION 85. Section 76.076, Agriculture Code, is amended to read as follows:

Sec. 76.076. DENIAL, [~~OR~~] REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department may refuse to issue a pesticide dealer license if the applicant fails to comply with this subchapter. [~~If the department has reason to believe that an applicant has failed to comply with the requirements of this subchapter, or that a licensee has failed to comply with this subchapter or with a rule adopted under this subchapter, the department may conduct a hearing on denial or revocation of the person's license.~~]

(b) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee if the licensee fails to comply with this subchapter or a rule adopted by the department under this subchapter. [~~The department shall issue written notice of a hearing under this section to the applicant or licensee. The notice must contain a statement of the time and place of the hearing. The hearing shall be held after the 10th day following the day on which the notice is issued.~~]

(c) If a license suspension is probated, the department may require the person to:

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

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

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation [~~After opportunity at the hearing for presentation of evidence by the applicant or licensee, the department may refuse to issue a pesticide dealer license or may revoke a license, as applicable, if the department finds that the applicant or licensee has failed to comply with the applicable requirements of this subchapter or a rule adopted under this subchapter~~].

(d) If the department proposes to deny a person's application for a pesticide dealer license or to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 86. Subsections (a) and (b), Section 76.101, Agriculture Code, are amended to read as follows:

(a) The department is the lead agency in the regulation of pesticide use and application and is responsible for coordinating activities of state agencies, except as provided by Section 76.007(b) of this code and by Chapter 26 of the Water Code. The department shall submit a state plan for the licensing [~~certification~~] of pesticide applicators to the administrator of the Environmental Protection Agency.

(b) The department shall coordinate, plan, and approve training programs and shall use the public and private resources of this state, including state universities, colleges, junior colleges, community colleges, the Texas Agricultural Extension Service, and the Texas experiment station. The department and the Texas Agricultural Extension Service shall adopt a memorandum of understanding to jointly coordinate, plan, and approve the training programs for private applicators.

SECTION 87. Section 76.102, Agriculture Code, is amended to read as follows:

Sec. 76.102. AGENCIES RESPONSIBLE FOR LICENSING [~~CERTIFYING~~] PESTICIDE APPLICATORS. (a) The department shall license [~~certify~~] pesticide applicators involved in the following license use categories:

(1) agricultural pest control, including animal pest control;

(2) forest pest control;

(3) ornamental and turf pest control, except as provided by the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes);

(4) seed treatments;

(5) right-of-way pest control;

(6) regulatory pest control;

(7) aquatic pest control; and

(8) demonstration pest control.

(b) The Texas Department of Health shall license [~~certify~~] pesticide applicators involved in the license use category of health-related pest control.

SECTION 88. Subsections (a), (b), and (c), Section 76.103, Agriculture Code, are amended to read as follows:

(a) The licensing of [~~certified~~] commercial applicators, [~~and~~] noncommercial applicators, and private applicators is contingent on the availability of federal funds to pay part of the costs of administering and enforcing the program.

(b) If federal funds and other funds made available for this program are not sufficient to pay all costs of administering and enforcing the program, the department shall certify that fact and discontinue the licensing of [~~certified~~] commercial applicators, [~~and~~] noncommercial applicators, and private applicators. The department shall publish notice of the discontinuance of the program in the Texas Register.

(c) If sufficient funds become available after discontinuance, the department shall certify the availability of sufficient funds to pay all costs of administration and enforcement of the program and shall resume the licensing of [~~certified~~] commercial applicators, [~~and~~] noncommercial applicators, and private applicators. The department shall publish notice of resumption of the program in the Texas Register.

SECTION 89. Section 76.105, Agriculture Code, is amended to read as follows:

Sec. 76.105. LICENSE REQUIRED. (a) A [~~Except as otherwise provided by this section, a~~] person may not use [~~or supervise the use of~~] a restricted-use or state-limited-use pesticide unless the person is:

(1) licensed as a [~~certified~~] commercial applicator, [~~or~~] noncommercial applicator, or private applicator[;] and

[~~(2)~~] authorized by the license to use the restricted-use or state-limited-use pesticide in the license use categories covering the proposed pesticide use;[;]

(2) [~~(b) Subsection (a) of this section does not apply to~~] an individual acting under the direct supervision of a licensed [~~certified~~] applicator; or[;]

(3) a certified private applicator as defined in Section 76.112(j) of this code.

(b) An [~~(c) For purposes of this section, an~~] individual is under the direct supervision of a licensed noncommercial or a licensed private [~~certified~~] applicator if the individual is acting under the instructions and control of a licensed noncommercial or a licensed private [~~certified~~] applicator who is responsible for the actions of the individual and who is available if and when needed. The licensed noncommercial or licensed private [~~certified~~] applicator is not required to be physically present at the time and place of the pesticide application.

(c) An individual is under the direct supervision of a licensed commercial applicator if the individual is acting under the instructions and control of a licensed commercial applicator who is responsible for the actions of the individual and who is continuously physically present at the time and place of the pesticide application.

(d) A licensed applicator is responsible for assuring that the person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticides being used by the individual. A licensed applicator satisfies the requirements of this subsection if the person working under the licensee's direct supervision attends a program conducted by the department that is designed to make the person knowledgeable of the label requirements and rules and regulations governing the use of pesticides.

(e) A person who is authorized under this chapter to use restricted-use or state-limited-use pesticides shall comply with all applicable federal and state rules, regulations, and court orders regarding the use of restricted-use or state-limited-use pesticides.

(f) The other provisions of this section notwithstanding, the department may adopt rules or establish programs that the U.S. Environmental Protection Agency or another federal agency requires as a condition for receiving:

(1) approval to authorize use of certain restricted-use or state-limited-use pesticides;

(2) federal funding for licensing or certification of pesticide applicators;

(3) federal funding for pesticide law enforcement efforts; or

(4) other federal funding related to pesticide risk reduction.

(g) The other provisions of this chapter notwithstanding, if the U.S. Environmental Protection Agency or another federal agency imposes on the state standards for certification of commercial, noncommercial, or private pesticide applicators, the department may adopt by rule the federal standards for each classification of applicators for which the federal standards are imposed.

SECTION 90. Section 76.106, Agriculture Code, is amended to read as follows:

Sec. 76.106. CLASSIFICATION OF [~~COMMERCIAL AND NONCOMMERCIAL~~] LICENSES. (a) The head of each regulatory agency may classify commercial applicator and noncommercial applicator licenses under subcategories of license use categories according to the subject, method, or place of pesticide application.

(b) A regulatory agency head shall establish separate testing requirements for licensing in each license use category for which the agency is responsible and may establish separate testing requirements for licensing in subcategories within a license use category.

(c) Each regulatory agency may charge a nonrefundable testing fee of not more than $20 for testing in each license use category.

SECTION 91. Section 76.107, Agriculture Code, is amended to read as follows:

Sec. 76.107. LICENSING [~~CERTIFICATION~~] BY MORE THAN ONE AGENCY. (a) A person who wants to be licensed [~~certified~~] as a pesticide applicator under license use categories regulated by more than one regulatory agency may do so by paying a single license fee to the agency regulating the person's primary business and meeting licensing [~~certification~~] requirements for each category for which the person desires licensing [~~certification~~].

(b) A person licensed [~~certified~~] under this section must pay testing fees required by each regulatory agency.

SECTION 92. Subsections (a), (b), (d), (e), and (f), Section 76.108, Agriculture Code, are amended to read as follows:

(a) A person who operates a business or is an employee of a business that applies state-limited-use or restricted-use pesticides to the land of another person for hire or compensation and who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a commercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.

(b) A person shall apply for an original or renewal commercial applicator license on forms prescribed by the regulatory agency. The application shall include information as required by rule of the head of the agency and must be accompanied by a nonrefundable [~~an~~] annual license fee of no more than $150, as fixed by the head of the agency.

(d) The head of a regulatory agency may not issue a commercial applicator license if it has been determined that:

(1) the applicant has been convicted of a felony involving moral turpitude in the last five years;

(2) the applicant has had a license issued under this subchapter revoked within the last two years;

(3) the applicant, or the applicant's representative if the applicant is a business, has been unable to satisfactorily fulfill licensing [~~certification~~] requirements; or

(4) the applicant for any other reason cannot be expected to be able to fulfill the provisions of this subchapter applicable to the license use category for which application is made.

(e) An individual to whom a commercial applicator license is issued is [~~a certified applicator~~] authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.

(f) If a license is issued in the name of a business, the business must have a licensed [~~certified~~] applicator employed at all times. Failure to have a licensed [~~certified~~] applicator employed is a ground for revocation of a business commercial applicator license.

SECTION 93. Subsections (b), (d), and (e), Section 76.109, Agriculture Code, are amended to read as follows:

(b) A person shall apply for an original or renewal noncommercial applicator license on forms prescribed by the regulatory agency. A nongovernmental applicant shall include with the application a nonrefundable [~~an~~] annual license fee of not more than $100, as fixed by the head of the regulatory agency. A regulatory agency may not charge a governmental entity applicant a license fee.

(d) An individual to whom a noncommercial applicator license is issued is [~~a certified applicator~~] authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.

(e) If a license is issued in the name of a governmental entity, the entity must have a licensed [~~certified~~] applicator employed at all times. Failure to have a licensed [~~certified~~] applicator employed is a ground for revocation of a governmental entity noncommercial applicator license.

SECTION 94. Section 76.110, Agriculture Code, is amended to read as follows:

Sec. 76.110. COMMERCIAL AND NONCOMMERCIAL [~~CERTIFIED~~] APPLICATOR EXAMINATION; RECIPROCAL AGREEMENTS. (a) Each person applying for a license as a commercial [~~certified~~] applicator or a noncommercial applicator must pass an examination demonstrating that the person:

(1) is properly qualified to perform functions associated with pesticide application to a degree directly related to the nature of the activity and the associated responsibility; and

(2) has knowledge of the use and effects of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the person is to be licensed.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this section, the appropriate regulatory agency shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the appropriate regulatory agency shall notify examinees of the results of the examination not later than the 14th day after the date on which the appropriate regulatory agency receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the appropriate regulatory agency shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by the person who fails a licensing examination administered under this section, the appropriate regulatory agency shall furnish the person with an analysis of the person's performance on the examination.

(d) The head of a regulatory agency may waive part or all of any license examination requirements on a reciprocal basis with any other state or federal agency that has substantially the same examination standards.

SECTION 95. Section 76.111, Agriculture Code, is amended to read as follows:

Sec. 76.111. COMMERCIAL APPLICATOR PROOF OF FINANCIAL RESPONSIBILITY. (a) Except as otherwise provided by this section, each applicant for a commercial applicator license shall file with the regulatory agency issuing the license:

(1) a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety; or

(2) a liability insurance policy, or certification of a policy, protecting persons who may suffer damages as a result of the operations of the applicant.

(b) If an applicant cannot reasonably obtain insurance coverage or a bond as specified by Subsection (f) of this section, the regulatory agency shall accept a certificate of deposit or a letter of credit that meets the requirements of Subsection (c)(1) and rules adopted under Subsection (e) of this section.

(c) If the State Board of Insurance determines after giving notice to the regulatory agency that the liability insurance policy required by Subsection (a)(2) of this section is not generally and reasonably available to commercial pesticide applicators, then in lieu of the requirements of Subsection (a) of this section, an applicant for a commercial applicator license may:

(1) tender from a state or federal financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation a certificate of deposit or letter of credit in the amount prescribed by Subsection (f) of this section, made payable to the regulatory agency and issued for the purpose of protecting persons who may suffer damages as a result of the operations of the applicant;

(2) file property damage and personal injury insurance or certification of such insurance that is generally and reasonably available as determined by the State Board of Insurance; or

(3) comply with other proof of financial responsibility requirements adopted by rule of the regulatory agency under this subchapter.

(d) The proof of financial responsibility required by this section is not required to apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.

(e) The proof of financial responsibility required by this section must be approved by the regulatory agency and conditioned on compliance with the requirements of this chapter and rules adopted under this chapter.

(f) Except as otherwise provided by this section, the amount of the proof of financial responsibility may not be less than [~~$5,000 nor more than~~] $100,000 for property damage and may not be less than $100,000 [~~$5,000~~] for bodily injury. The head of a regulatory agency by rule may require different amounts of coverage for different classifications of operations under this chapter. At all times during the license period, the coverage must be maintained at not less than the amount set by the agency head or the State Board of Insurance, as applicable.

(g) At least 10 days before a reduction requested by a licensee or a cancellation of a bond or liability insurance policy, the party taking the action shall notify the head of the appropriate regulatory agency. If the party does not give that notice, the liability of the surety or insurer is limited to the bond or liability insurance policy.

(h) The head of a regulatory agency may accept a bond or liability insurance policy in the proper sum which has a deductible clause in an amount of not more than $1,000 for the total amount of the bond or liability insurance policy required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, an agency head may not accept a bond or policy with a deductible clause unless the applicant furnishes the agency with a surety bond that satisfies the amount of the deductible clause as to all claims that may arise as a result of the applicant's operation.

(i) [~~(h)~~] The department shall exempt a commercial applicator from the requirements of showing proof of financial responsibility under this section if the applicator agrees:

(1) to a license for use of ground application equipment only; and

(2) to a license that limits the application to only those herbicides determined by the department not to create a substantial risk of drift because of volatility.

(j) [~~(i)~~] Should the surety furnished under this section become insufficient or otherwise unsatisfactory, a licensee shall, on notice of the insufficiency or other defect, immediately file a new bond, liability insurance policy, or any other proof of financial responsibility as authorized by rule of the regulatory agency. A licensee may not operate as a commercial applicator during an uncovered period. Failure to file a bond, liability insurance policy, or other proof of authorized financial responsibility or failure to maintain the surety in the required amount is a ground for suspension or revocation of a commercial applicator license.

(k) [~~(j)~~] The regulatory agency by rule may prescribe acceptable proof of financial responsibility and appropriate procedures to carry out the purposes of this section. The regulatory agency may adopt rules governing the conditions and handling of certificates of deposit and letters of credit, but may not disburse funds or release a certificate or letter except by consent of the commercial applicator or pursuant to court order.

SECTION 96. Section 76.112, Agriculture Code, is amended to read as follows:

Sec. 76.112. PRIVATE APPLICATOR. (a) A person is a private applicator if the person uses or supervises the use of a restricted-use or state-limited-use pesticide for the purpose of producing an agricultural commodity:

(1) on property owned or rented by the person or the person's employer or under the person's general control; or

(2) on the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(b) A private applicator is [~~not~~] required to be either licensed or certified to use restricted-use or state-limited-use pesticides.

(c) [~~The department may establish a voluntary program to certify private applicators who wish to apply restricted-use pesticides in compliance with federal law.~~

[~~(d)~~] An employee qualifies as a private applicator under Subdivision (1) of Subsection (a) of this section only if he is employed to perform other duties related to agricultural production and provide labor for the pesticide application but does not provide the necessary equipment or pesticide.

(d) A private applicator who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a private applicator license.

(e) A person shall apply for an original or renewal private applicator license on forms prescribed by the regulatory agency. The application shall include information as required by agency rule and must be accompanied by a nonrefundable fee of $50.

(f) The head of a regulatory agency may not issue an original private applicator license before the applicant has attended a training course conducted by the Texas Agricultural Extension Service. The training course shall cover the use, effects, and risks of restricted-use and state-limited-use pesticides.

(g) The head of a regulatory agency may not issue a private applicator license if the applicant has had a license issued under this subchapter revoked within the last two years.

(h) An individual to whom a private applicator license is issued is authorized to use and supervise the use of restricted-use and state-limited-use pesticides in all

license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section.

(i) As a condition to issuance of a private applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

(j) For purposes of this chapter, a certified private applicator is a private applicator who has been previously certified under the department's voluntary certification program and who holds a private applicator certificate dated prior to January 10, 1989. A certified private applicator is authorized to use restricted-use and state-limited-use pesticides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section.

SECTION 97. Section 76.113, Agriculture Code, is amended to read as follows:

Sec. 76.113. EXPIRATION AND RENEWAL OF LICENSES. (a) Each commercial applicator or noncommercial applicator license expires on the last day of February of the year following the year in which it was issued.

(b) Each private applicator license expires on the last day of February of the fifth year following the year in which it was issued.

(c) Except as provided by Subsection (d) [~~(c)~~] of this section, a person having a valid [~~current commercial or noncommercial applicator~~] license issued under this subchapter may renew the license for another term [~~year~~] without retesting by paying to the regulatory agency the [~~annual~~] license fee required by this subchapter. A person who fails to apply for renewal of a license on or before the expiration date must pay, in addition to the annual license fee, the late fee provided by Section 12.024 of this code.

(d) [~~(c)~~] A licensee must undertake training, submit to retesting, or both, before renewal of a license if the head of the agency determines that additional knowledge is required [~~in the license use categories or subcategories in which the licensee applies~~] for renewal.

SECTION 98. Subsections (a) and (b), Section 76.114, Agriculture Code, are amended to read as follows:

(a) A regulatory agency shall require each commercial applicator and noncommercial applicator licensee to maintain records of the licensee's use of pesticides. The regulatory agency by rule shall prescribe the information to be included in the records.

(b) A regulatory agency may require a commercial applicator and noncommercial applicator licensee to keep records of the licensee's application of a specific restricted-use or state-limited-use pesticide and may require those records to be kept separate from other business records.

SECTION 99. Section 76.116, Agriculture Code, is amended to read as follows:

Sec. 76.116. SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSE. (a) The head of a regulatory agency that licensed or certified an [~~a certified~~] applicator may suspend, modify, or revoke any provision in the license or certificate, assess an administrative penalty, place on probation a person whose license or certificate has been suspended, or reprimand a licensee or certificate holder [~~of the certified applicator~~] if the head of the agency finds that the licensee or certificate holder has:

(1) made a pesticide recommendation or application inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state or the Environmental Protection Agency;

(2) operated in a faulty, careless, or negligent manner;

(3) refused, or after notice, failed to comply with an applicable provision of this chapter, a rule adopted under this chapter, or a lawful order of the head of a regulatory agency by which the licensee is licensed;

(4) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required by this chapter;

(5) failed to maintain a bond or policy of insurance as required by this chapter;

(6) made false or fraudulent records, invoices, or reports;

(7) used fraud or misrepresentation in making an application for a license or renewal of a license; or

(8) aided or abetted a certified, licensed, or an unlicensed person to evade the provisions of this chapter, conspired with a certified, licensed, or an unlicensed person to evade the provisions of this chapter, or allowed the licensee's license or the certificate holder's certificate to be used by another person.

(b) A regulatory agency may temporarily suspend a license or certificate under this section for not more than 10 days after giving the licensee or certificate holder written notice of noncompliance.

(c) If a license or certificate suspension is probated, the regulatory agency may require the person to:

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

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

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

(d) Except for a temporary suspension under Subsection (b) of this section, if the regulatory agency proposes to suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing before a hearings officer designated by the agency. The agency shall prescribe procedures by which all decisions to suspend, modify, or revoke are appealable to the governing officer or board of the agency. [~~In order to suspend a license for more than 10 days or to modify or revoke a license, the regulatory agency shall conduct a hearing on the action. The hearing must be held before the 11th day following the day on which the agency issues written notice to the licensee of the time, place, and nature of the hearing.~~]

SECTION 100. Subsection (a), Section 76.131, Agriculture Code, is amended to read as follows:

(a) The department may adopt rules governing the storage and disposal of pesticides and pesticide containers for the purpose of:

(1) preventing injury from storage or disposal to man, vegetation, crops, or animals; and

(2) preventing any waterway pollution that is harmful to man or wildlife provided, however, that such rules be consistent with Texas Water Commission rules adopted under Chapter 26 of the Water Code.

SECTION 101. Chapter 76, Agriculture Code, is amended by adding Section 76.1555 to read as follows:

Sec. 76.1555. ADMINISTRATIVE PENALTY. (a) If a person violates a provision of Chapter 75 or 76 of this code administered by the department or a rule or order adopted by the department under either of those chapters, the department may assess an administrative penalty against the person as provided by this section.

(b) The penalty may be in an amount not to exceed $2,000 for each violation, provided that the penalty shall not exceed $4,000 for all violations related to a single incident. The department shall establish a schedule stating the types of violations possible under Chapters 75 and 76 of this code and the maximum fine applicable

to each type of violation. The department is not required to comply with Section 5, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), when establishing or revising the schedule. The department shall publish the initial schedule and any subsequent revision in the Texas Register before the schedule or revision is implemented.

(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 economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a violation report stating the facts on which the conclusion that a violation occurred is based and may recommend that an administrative 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 determined by consideration of the factors set forth in Subsection (c) of this section.

(e) Not later than the 14th day after the date on which the report is issued, the department shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty, if any is 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 accept the determination of the department made under Subsection (d) of this section, including the recommended penalty, or make a written request for a hearing on the determination.

(g) If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering the payment of the recommended penalty.

(h) If the person charged requests a hearing or fails to timely respond to the notice, the department shall set a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the department. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, the commissioner by order may find a violation has occurred and may assess a 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 department shall give notice of the commissioner's order to the person charged. The notice shall include:

(1) the findings of fact and conclusions of law separately stated;

(2) the amount of the penalty ordered, if any;

(3) a statement of the right of the person charged to judicial review of the commissioner's order, if any; and

(4) other information required by law.

(j) Within the 30-day period immediately following the day on which the order becomes 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 files a petition for judicial review contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty, post a supersedeas bond in a form approved by the department for the amount of the penalty or $1,000, whichever is less, the bond to be effective until all judicial review of the order or decision is final.

(k) A bond under Subsection (j)(2) of this section must be posted with the district clerk. The bond must be filed at the same time the petition for judicial review is filed.

(l) If a person charged is financially unable to post a supersedeas bond, the person may satisfy the requirements of Subsection (j)(2) of this section by filing with the district clerk an affidavit sworn by the person charged stating that the person is financially unable to post a bond.

(m) Failure to post the bond or file the affidavit 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 pay the penalty in full as provided under Subsection (j)(1) of this section or post the bond or file the affidavit as provided by Subsection (j) or (l) of this section, the department may forward the matter to the attorney general for enforcement.

(n) Judicial review of the order or decision of the department 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).

(o) On final judgment of the court and payment of any penalties and costs assessed by the court, the department shall execute a release of any supersedeas bond posted under this section.

(p) A penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

(q) If the department elects to assess an administrative penalty, no action for a civil penalty may be based on the same violation or violations.

SECTION 102. Section 76.156, Agriculture Code, is amended to read as follows:

Sec. 76.156. CIVIL PENALTY. (a) A person who violates a provision of this chapter administered by a regulatory agency other than the department or a rule adopted by a regulatory agency other than the department under this chapter is liable for a civil penalty of not less than $50 nor more than $1,000 for each day on which the violation occurs.

(b) A person who violates a provision of this chapter administered by the department or a rule adopted by the department under this chapter is liable for a civil penalty of not less than $50 nor more than $10,000 for each violation, provided that the penalty shall not exceed $25,000 for all violations related to a single incident.

(c) No civil penalty may be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was or was not successful in collecting the administrative penalty.

(d) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a civil penalty provided by this section.

(e) [~~(c)~~] The appropriate regulatory agency may request an appropriate prosecuting attorney or the attorney general to bring suit under this section.

(f) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

SECTION 103. Section 76.182, Agriculture Code, is amended to read as follows:

Sec. 76.182. APPEAL OF PERMIT OR LICENSE DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION. (a) A person whose application for an experimental use permit, pesticide dealer license, commercial applicator license, [~~or~~] noncommercial applicator license, or private applicator license has been denied or whose experimental use permit, pesticide dealer license, commercial applicator license, [~~or~~] noncommercial applicator license, private applicator license, or private applicator certificate has been suspended for more than 10 days, revoked, or modified may appeal the action in the manner provided for appeal of contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) Appeal under this section is governed by the substantial evidence rule.

SECTION 104. Subsection (b), Section 76.201, Agriculture Code, is amended to read as follows:

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

(1) detaches, alters, defaces, or destroys, wholly or in part, any label or labeling provided for by this chapter or a rule adopted under this chapter;

(2) adds any substance to or takes any substance from a pesticide in a manner that may defeat the purpose of this chapter or a rule adopted under this chapter;

(3) uses or causes to be used a pesticide contrary to its labeling or to a rule of the department limiting the use of the pesticide;

(4) handles, transports, stores, displays, or distributes a pesticide in a manner that violates a provision of this chapter or a rule adopted by the department under this chapter; or

(5) disposes of, discards, or stores a pesticide or pesticide container in a manner that the person knows or should know is likely to[:

[~~(A)~~] cause injury to man, vegetation, crops, livestock, wildlife, or pollinating insects[~~; or~~

[~~(B) pollute a water supply or waterway~~].

SECTION 105. Subsection (e), Section 76.201, Agriculture Code, is amended to read as follows:

(e) A person commits an offense if the person knowingly or intentionally uses, causes to be used, handles, stores, or disposes of a pesticide in a manner that causes injury to man, vegetation, crops, livestock, wildlife, or pollinating insects [~~bodily injury to a human being or pollution of a water supply. For purposes of this subsection, "pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of water in the state that renders the water harmful, detrimental, or injurious to humans or to public health, safety, or welfare~~].

SECTION 106. Subsection (c), Section 78.045, Agriculture Code, is amended to read as follows:

(c) A person commits an offense if the person fails to obey a rule prescribed under Subsection (a) of this section. An offense under this subsection is a Class C misdemeanor [~~punishable by a fine of not less than $25 nor more than $250~~].

SECTION 107. Subsection (b), Section 91.008, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine of not more than $100~~].

SECTION 108. Section 92.042, Agriculture Code, is amended to read as follows:

Sec. 92.042. PENALTY. An offense under Section 92.041 of this subchapter is a Class C misdemeanor [~~punishable by a fine of not more than $200~~].

SECTION 109. Section 93.062, Agriculture Code, is amended to read as follows:

Sec. 93.062. PENALTY. An offense under Section 93.061 of this code is a Class B misdemeanor [~~punishable by:~~

[~~(1) a fine of not more than $500;~~

[~~(2) confinement in county jail for not more than 90 days; or~~

[~~(3) both fine and confinement under this section~~].

SECTION 110. Section 94.052, Agriculture Code, is amended to read as follows:

Sec. 94.052. PENALTY. An offense under Section 94.051 of this code is a Class B misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $25 nor more than $500;~~

[~~(2) confinement for not more than six months; or~~

[~~(3) both fine and confinement under this section~~].

SECTION 111. Section 95.042, Agriculture Code, is amended to read as follows:

Sec. 95.042. PENALTY. An offense under Section 95.041 of this code is a Class B misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $25 nor more than $500;~~

[~~(2) confinement for not more than six months; or~~

[~~(3) both fine and confinement under this section~~].

SECTION 112. Section 101.012, Agriculture Code, is amended to read as follows:

Sec. 101.012. REVOCATION, MODIFICATION, OR SUSPENSION [~~CANCELLATION~~] OF LICENSE OR IDENTIFICATION CARD. (a) The department shall revoke, modify, or suspend a license or identification card, assess an administrative penalty, place on probation a person whose license or identification card has been suspended, or reprimand a licensee or the transporting or buying agent of a licensee for a violation of this chapter or a rule adopted by the department under this chapter [~~On complaint of any person aggrieved, injured, or damaged as a result of a violation of this chapter by a licensee or the transporting agent or buying agent of a licensee, the department shall conduct a hearing on the cancellation of the licensee's license or the agent's identification card. The complaint must be filed within 12 months after the date of the act that aggrieved, injured, or damaged the complaining party~~].

(b) If a suspension of a license or identification card is probated, the department may require the person to:

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

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

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation [~~If, following the hearing, the department finds that the evidence warrants cancellation of the license or identification card, the department shall issue an order canceling the license or card~~].

(c) If the department proposes to revoke, modify, or suspend a person's license or identification card, the person is entitled to a hearing before a hearings officer

designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [~~The department shall conduct the hearing under this section, and the person whose license or identification card is canceled may appeal the decision of the department, in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The department may recess the hearing from day to day as justice requires~~].

SECTION 113. Chapter 101, Agriculture Code, is amended by adding Section 101.0185 to read as follows:

Sec. 101.0185. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed $500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief.

SECTION 114. Section 101.019, Agriculture Code, is amended to read as follows:

Sec. 101.019. VENUE OF CIVIL OR CRIMINAL ACTION. The venue of a civil action or criminal prosecution instituted under this chapter is in the county in which the violation occurred, is occurring, or is threatened or in which the vegetables were received by the licensee, packer, or warehouseman.

SECTION 115. Section 102.012, Agriculture Code, is amended to read as follows:

Sec. 102.012. REVOCATION, MODIFICATION, OR SUSPENSION [~~CANCELLATION~~] OF LICENSE OR IDENTIFICATION CARD. (a) The department shall revoke, modify, or suspend a license or identification card, assess an administrative penalty, place on probation a person whose license or identification card has been suspended, or reprimand a licensee or the transporting or buying agent of a licensee for a violation of this subchapter or a rule adopted by the department under this subchapter [~~On complaint of any person aggrieved, injured, or damaged as a result of a violation of this subchapter by a licensee or the transporting agent or buying agent of a licensee, the department shall conduct a hearing on the cancellation of the licensee's license or the agent's identification card. The complaint must be filed within 12 months after the date of the act that aggrieved, injured, or damaged the complaining party~~].

(b) If a suspension of a license or identification card is probated, the department may require the person to:

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

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

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation[~~, following the hearing, the department finds that the evidence warrants cancellation of the license or identification card, the department shall issue an order canceling the license or card~~].

(c) If the department proposes to revoke, modify, or suspend a person's license or identification card, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [~~The department shall conduct the hearing under this section, and the person whose license or identification card is canceled may appeal the decision of the department, in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The department may recess the hearing from day to day as justice requires~~].

SECTION 116. Chapter 102, Agriculture Code, is amended by adding Section 102.0195 to read as follows:

Sec. 102.0195. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty not to exceed $500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief.

SECTION 117. Section 102.020, Agriculture Code, is amended to read as follows:

Sec. 102.020. VENUE OF CIVIL OR CRIMINAL ACTION. The venue of a civil action or criminal prosecution instituted under this subchapter is in the county in which the violation occurred, is occurring, or is threatened or in which the citrus fruit was received by the licensee, packer, or warehouseman.

SECTION 118. Subsection (b), Section 102.104, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $100 nor more than $500;~~

[~~(2) confinement in jail for not less than 30 days nor more than 6 months; or~~

[~~(3) both fine and confinement under this subsection~~].

SECTION 119. Chapter 102, Agriculture Code, is amended by adding Section 102.1045 to read as follows:

Sec. 102.1045. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a

civil penalty not to exceed $500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 120. Subsection (b), Section 102.171, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $50 nor more than $500;~~

[~~(2) confinement for not less than 10 days nor more than 6 months;~~ or

[~~(3) both fine and confinement under this subsection~~].

SECTION 121. Chapter 103, Agriculture Code, is amended by adding Section 103.0055 to read as follows:

Sec. 103.0055. BANKRUPTCY OF MERCHANT OR RETAILER. For purposes of this chapter, the amount due an aggrieved party by a commission merchant or retailer is not affected by a final judgment of a bankruptcy court that releases the commission merchant or retailer from the legal duty to satisfy the claim.

SECTION 122. Section 103.009, Agriculture Code, is amended by adding Subsection (d) to read as follows:

(d) This section does not apply to a commission merchant or retailer who is released by a final judgment of a bankruptcy court from the legal duty to satisfy the claim paid by the department.

SECTION 123. Chapter 103, Agriculture Code, is amended by adding Section 103.015 to read as follows:

Sec. 103.015. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed $500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request

of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 124. Subsection (c), Section 111.007, Agriculture Code, is amended to read as follows:

(c) An offense under [~~Subsection (a) of~~] this section is a Class C misdemeanor [~~punishable by a fine of not less than $25 nor more than $200. An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not more than $25~~].

SECTION 125. Subsection (b), Section 112.009, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine of not less than $25 nor more than $200~~].

SECTION 126. Subsection (b), Section 121.010, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a Class C misdemeanor [~~punishable by a fine of not less than $50 nor more than $100~~].

SECTION 127. Subsection (b), Section 132.025, Agriculture Code, is amended to read as follows:

(b) An applicant for the renewal of a license must [~~shall~~] pay the license fee during the last month of the [~~August preceding the next~~] license year. A person who fails to apply for a renewal license on or before the expiration date must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

SECTION 128. Chapter 132, Agriculture Code, is amended by adding Section 132.0715 to read as follows:

Sec. 132.0715. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed $500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty in a legal action on behalf of the state.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

SECTION 129. Section 132.072, Agriculture Code, is amended to read as follows:

Sec. 132.072. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

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

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

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

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing before a hearings officer designated by the department. The decision of the department is appealable in the same manner as provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). [~~If a person is convicted of an offense under this chapter, the department may suspend that person's license for a period not to exceed 90 days.~~]

SECTION 130. Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.09. APPLICATION. The state agencies subject to this article are:

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

(2) the Texas Department of Human Services; [~~and~~]

(3) the Texas Department of Corrections; and

(4) the Department of Agriculture.

SECTION 131. The following subsections of the Agriculture Code are repealed:

(1) Section 71.045;

(2) Subsection (d), Section 75.005;

(3) Subsection (d), Section 101.018;

(4) Subsection (e), Section 101.018;

(5) Subsection (d), Section 102.019; and

(6) Subsection (e), Section 102.019.

SECTION 132. The first policy statement required to be filed under Subsection (e), Section 12.013, Agriculture Code, as amended by this Act, must be filed before November 1, 1989.

SECTION 133. The Department of Agriculture shall file the initial policies established under Section 12.029, Agriculture Code, as added by this Act, with the State Purchasing and General Services Commission and the Texas Department of Commerce not later than September 1, 1990.

SECTION 134. Notwithstanding the requirements of Section 12.0145, Agriculture Code, as added by this Act, the Department of Agriculture, for the fiscal bienniums ending August 31, 1993, and August 31, 1995, shall submit proposed fee schedules that would recover 50 percent of all direct costs of administering each nonexempt program.

SECTION 135. Notwithstanding Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by this Act, and Section 12.027, Agriculture Code, as added by this Act, the competitive cost review provisions, until September 1, 1991, are applicable only to the warehousing and mail handling functions of the Department of Agriculture.

SECTION 136. Notwithstanding Section 76.112, Agriculture Code, as amended by this Act, the Department of Agriculture may suspend for the initial license term the initial training requirement of all private applicator license applicants who have a current private applicator certificate obtained under the department's voluntary program. Those applicants shall attend an initial training program before receiving a renewal license.

SECTION 137. Notwithstanding Section 76.113, Agriculture Code, as amended by this Act, the Department of Agriculture may adopt a system that will stagger the private applicator license renewals over a five-year period. If such a

system is adopted, the license fee shall be prorated so that each licensee shall pay only that portion of the license fee that is allocable to the number of years during which the license is valid.

SECTION 138. Notwithstanding Section 76.105, Agriculture Code, as amended by this Act, a private applicator is not required to be licensed to use or supervise the use of a restricted-use or state-limited-use pesticide before January 1, 1990, unless this provision conflicts with a federal law, rule, or court order.

SECTION 139. (a) This Act applies only to an offense or other violation committed on or after the effective date of this Act. For purposes of this section, an offense or other violation is committed before the effective date of this Act if any element of the offense or violation occurs before that date.

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

SECTION 140. Section 103.0055, Agriculture Code, as added by this Act, applies only to claims filed with the Department of Agriculture on or after the effective date of this Act.

SECTION 141. The change in the law made by Section 2 of this Act applies only to elections held or appointments made on or after the effective date of this Act.

SECTION 142. The sum of $100,000 is appropriated, for each year of the fiscal biennium ending August 31, 1991, from the General Revenue Fund to the Agriculture Resources Protection Authority for the purpose of performing authority powers and duties under Section 76.009, Agriculture Code, as added by this Act.

SECTION 143. This Act takes effect September 1, 1989.

SECTION 144. 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 Conference Committee Report was again read and filed with the Secretary of the Senate.

SENATE RULE 7.22(b) SUSPENDED

On motion of Senator Montford and by unanimous consent, Senate Rule 7.22(b) was suspended as it relates to House amendments to **S.B. 255**.

SENATE BILL 255 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 255** 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 - Gavin

Amend **S.B. 255** by striking all below the enacting clause and substituting in lieu thereof the following:

ARTICLE 1. FINANCIAL REQUIREMENTS

SECTION 1.01. Section 16, Article 1.10, Insurance Code, is amended to read as follows:

16. Admit Mutual Companies. The Board shall admit into this State mutual insurance companies engaged in cyclone, tornado, hail and storm insurance which are organized under the laws of other states and which have Two Million ($2,000,000.00) [~~Two Hundred Thousand ($200,000.00)~~] Dollars assets in excess of liabilities.

SECTION 1.02. Section 1, Article 3.02, Insurance Code, is amended to read as follows:

Sec. 1. Any three or more citizens of this State may associate themselves for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company. No such company shall transact more than one of the foregoing classes of business except in separate and distinct departments. In order to form such a company, the corporators shall sign and acknowledge its articles of incorporation and file the same in the office of the State Board of Insurance. Such articles shall specify:

1. The name and place of residence of each of the incorporators;

2. The name of the proposed company, which shall contain the words "Insurance Company" as a part thereof, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;

3. The location of its home office;

4. The kind or kinds of insurance business it proposes to transact;

5. The amount of its capital stock and its surplus, that in no case may be less than Seven Hundred Thousand ($700,000.00) [~~Two Hundred Thousand ($200,000.00)~~] Dollars capital and Seven Hundred Thousand ($700,000.00) [~~Four Hundred Thousand ($400,000.00)~~] Dollars surplus; all of which capital stock must be fully subscribed and fully paid up and in the hands of the corporators before said articles of incorporation are filed. Such minimum capital and surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this State or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter, and shall not include any real estate; provided, however, that fifty (50%) per cent of the minimum capital may be invested in first mortgage real estate loans. After the granting of charter the surplus may be invested as otherwise provided in this Code. Notwithstanding any other provisions of this Code, such minimum capital shall at all times be maintained in cash or in the classes of investments described in this article;

6. The period of time it is to exist, which may be perpetual [~~shall not exceed five hundred years~~];

7. The number of shares of such capital stock;

8. Such other provisions not inconsistent with the law as the corporators may deem proper to insert therein.

SECTION 1.03. Subsection (a), Section 2, Article 3.02, Insurance Code, is amended to read as follows:

(a) If an insurance company [~~is~~] subject to this chapter and [~~is~~] doing business in this State as an authorized insurer [~~on the effective date hereof and on that date~~] has less than Seven Hundred Thousand ($700,000.00) [~~Two Hundred Thousand ($200,000.00)~~] Dollars capital and Seven Hundred Thousand ($700,000.00) Dollars surplus, it may continue to transact the kind or kinds of insurance business for which it holds [~~held~~] a Texas certificate of authority. However, the [~~on that date, provided that the~~] insurance company must increase [~~increases~~] its capital to [~~so that it has~~] at least Seven Hundred Thousand ($700,000.00) [~~Two Hundred Thousand ($200,000.00)~~] Dollars [~~capital, either at the time of or~~] immediately after any change of control of the insurance company or any holding company controlling the insurance company[;] if after August 31, 1989, when considered cumulatively, there has been a change of control of at least 50 percent of the voting securities of the insurance company or other means of control if the insurance company or holding company is not controlled by voting securities [~~at any time after such change of control, the controlling person or persons in the aggregate own,~~

~~hold, or control in the aggregate at least fifty (50%) percent of the voting securities of the insurance company~~]. The insurance company is not required to increase its surplus. For the purposes of this section, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, may not be considered a change of control of an insurance company or change of control of a holding company, if ownership is transferred solely to one or more natural persons, each of whom would be an heir of the decedent if the decedent had died intestate.

SECTION 1.04. Chapter 1, Insurance Code, is amended by adding Article 1.25A to read as follows:

Art. 1.25A. EXAMINATION AND REPORT ON CAPITAL AND SURPLUS. (a) If the State Board of Insurance determines that any capital or surplus requirements established by this code for any insurance companies are inadequate, the board shall include in its report to the governor and the legislature specific recommendations relating to the amounts at which those capital or surplus requirements should be set and the findings and evidence on which those recommendations are based.

(b) The State Board of Insurance shall submit its report to the governor and the legislature not later than December 31 of each even-numbered year.

SECTION 1.05. Article 11.10, Insurance Code, is amended to read as follows:

Art. 11.10. MUTUAL ASSESSMENT COMPANIES MAY CONVERT

Sec. 1. Except as provided by Section 3 of this article, mutual [~~Mutual~~] assessment companies and associations organized and operating under the laws of this State on May 17, 1943 which desire to convert to a mutual legal reserve company, and qualify under Chapter 11 of the Insurance Code, shall be required at the time of conversion to be possessed of free surplus of not less than One Million Four Hundred Thousand ($1,400,000.00) [~~Two Hundred Thousand ($200,000.00)~~] Dollars. In order to convert, such company shall comply with the provisions of Articles 11.01 and 11.02 of the Insurance Code as amended, and upon such conversion shall be subject to all of the provisions of Chapter 11 of this Code.

Sec. 2. Nothing in this article or in the provisions of this chapter or Chapter 3 of this Code shall ever be construed to mean that any of the associations or similar concerns, by whatsoever name or class designated, whether specifically named herein or not, shall be required by the State Board of Insurance [~~Commissioners~~] to convert to mutual legal reserve companies as herein authorized unless they voluntarily decide to do so; and if such associations have not heretofore voluntarily decided to come under this chapter, and if such associations do not hereafter so voluntarily decide to come under this chapter, then this chapter shall not in any way apply to any such associations.

Sec. 3. (a) The requirement under Section 1 of this article that a mutual assessment company or association have a surplus of at least One Million Four Hundred Thousand ($1,400,000.00) Dollars does not apply to a mutual assessment company or association that converts to a Chapter 11 company if:

(1) the mutual assessment company or association shall be possessed of free and unencumbered surplus of at least Two Hundred Thousand ($200,000.00) Dollars; and

(2) the conversion takes effect before September 1, 1999.

(b) A mutual assessment company or association that is converted on or after September 1, 1989, and that has less than One Million Four Hundred Thousand ($1,400,000.00) Dollars surplus may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority. However, a mutual assessment company or association that is converted on or after September 1, 1989, must increase its surplus to at least One Million Four Hundred Thousand ($1,400,000.00) Dollars immediately after any change of control of the converted mutual assessment company or association or any holding company

controlling the converted mutual assessment company or association if, after August 31, 1989:

(1) there is a change of control of at least 50 percent of the voting securities of the converted company or association; or

(2) if the converted mutual assessment company or association or holding company is not controlled by voting securities, there is a change of at least 50 percent of the ownership of the converted mutual assessment company or association or holding company.

(c) For the purpose of Subsection (b) of this section, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, may not be considered a change of control of a converted mutual assessment company or association or change of control of a holding company, if ownership is transferred solely to one or more natural persons, each of whom would be an heir of the decedent if the decedent had died intestate.

SECTION 1.06. Article 14.63, Insurance Code, is amended to read as follows:

Art. 14.63. CONVERSION OF LOCAL MUTUAL AID ASSOCIATION OR STATEWIDE MUTUAL ASSESSMENT COMPANY INTO STOCK LEGAL RESERVE LIFE INSURANCE COMPANY

Sec. 1. Any local mutual aid association or statewide mutual assessment company or association doing business in this State on January 1, 1955, may convert into a stock legal reserve life insurance company, provided such company or association so converted has at least One Hundred Thousand ($100,000.00) Dollars in its claim or mortuary fund at the time of such conversion and complies with the following provisions:

a. Except as provided by Section 2 of this article, there [~~There~~] shall be contributed in cash of the United States the additional sum of not less than Seven Hundred Thousand ($700,000.00) [~~Fifty Thousand ($50,000.00)~~] Dollars in capital and not less than Seven Hundred Thousand ($700,000.00) [~~Twenty-five Thousand ($25,000.00)~~] Dollars in surplus.

b. All policies of insurance in force shall be exchanged for a legal reserve policy in accordance with the provisions of Section 2 of Article 14.61 of this Code.

c. Such conversion shall only be made upon a vote of the membership duly called for such purposes. Pursuant to such authorization, the board of directors and officers of such company or association shall amend its existing charter or articles of association, as the case may be, so as to comply with the requirements contained in Article 3.02 of this Code, as amended, except as to the capital and surplus requirements thereof.

d. After the exchange of such mutual assessment policies for legal reserve policies in accordance with the provisions of Section 2 of Article 14.61, the proper legal reserve required by Chapter 3 of this Code, as amended, shall be established and maintained for such policies so as to leave the capital of the company at all times unimpaired and not less than Seven Hundred Thousand ($700,000.00) [~~Fifty Thousand ($50,000.00)~~] Dollars.

e. After compliance with the provisions hereof, and approval of the same by the State Board of Insurance [~~Attorney General of the State of Texas and the Board of Insurance Commissioners~~], such company or association shall be and become a legal reserve stock life insurance company, except that such company so converted shall not: (1) operate in any territory not previously authorized under the old charter or articles of association, as the case may be; nor (2) insure any life for more than Five Thousand ($5,000.00) Dollars in event of death; nor (3) declare or pay any cash dividends; unless and until the capital and surplus of such converted company or association shall be increased to the minimum capital and surplus

required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code.

Sec. 2. (a) The requirement under Section 1 of this article that a converted local mutual aid association or statewide mutual assessment company or association have capital of at least Seven Hundred Thousand ($700,000.00) Dollars and surplus of at least Seven Hundred Thousand ($700,000.00) Dollars does not apply to a local mutual aid association or statewide mutual assessment company or association that converts to a Chapter 3 company, if:

(1) a converted local mutual aid association or statewide mutual assessment company or association shall be possessed with at least One Hundred Thousand ($100,000.00) Dollars in capital and at least One Hundred Thousand ($100,000.00) Dollars in free and unencumbered surplus; and

(2) the conversion takes effect before September 1, 1999.

(b) A local mutual aid association or statewide mutual assessment company or association that is converted on or after September 1, 1989, and that has, after conversion, less than Seven Hundred Thousand ($700,000.00) Dollars capital and Seven Hundred Thousand ($700,000.00) Dollars surplus may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority. However, a local mutual aid association or statewide mutual assessment company or association that is converted on or after September 1, 1989, must increase its capital to at least Seven Hundred Thousand ($700,000.00) Dollars and its surplus to at least Seven Hundred Thousand ($700,000.00) Dollars immediately after any change of control of the converted local mutual aid association or statewide mutual assessment company or association or any holding company controlling the converted local mutual aid association or statewide mutual assessment company or association if, after August 31, 1989:

(1) there is a change of control of at least 50 percent of the voting securities of the converted company or association; or

(2) if the converted company or association or holding company is not controlled by voting securities, there is a change of at least 50 percent of the ownership of the local mutual aid association or statewide mutual assessment company or association or holding company.

(c) For the purposes of Subsection (b) of this section, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, is not considered a change of control of a converted local mutual aid association or statewide mutual assessment company or association or change of control of a holding company, if ownership is transferred solely to one or more natural persons, each of whom would be an heir of the decedent if the decedent had died intestate.

Sec. 3. Any such company or association so converted shall within ten (10) years from the date of its conversion increase its capital and surplus to the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of the Insurance Code, or its certificate of authority to do business shall be revoked by the Board of Insurance Commissioners.

Sec. 4 [~~3~~]. From and after the date of such conversion such legal reserve stock life insurance company shall be governed by the provisions of Chapter 3 of the Insurance Code, as amended, except as otherwise herein provided.

SECTION 1.07. Article 22.20, Insurance Code, is amended to read as follows:

Art. 22.20. CONVERSION TO CHAPTER THREE (3) COMPANY

Sec. 1. Except as provided by Section 2 of this article, at [~~At~~] such time that a stipulated premium company shall be possessed with at least Seven Hundred Thousand Dollars ($700,000.00) [~~One Hundred Thousand Dollars ($100,000.00)~~] in capital and at least Seven Hundred Thousand Dollars ($700,000.00) [~~One~~

~~Hundred Thousand Dollars ($100,000.00)~~] in free and unencumbered surplus and additionally shall have on hand sufficient reserves so as to reserve all of its policies under the provisions of Chapter 3 of this Code, the stockholders of the stipulated premium company may convert the stipulated premium company into a legal reserve company under the provisions of Chapter 3 of this Code. Within thirty (30) days following such conversion, the converted company shall furnish to each and every policyholder a certificate of assumption whereby the policy liability is assumed by the converted company and which said assumption certificate shall contain all of the provisions required by Chapter 3 of this Code. In consummating said conversion, each and every of the requirements of Chapter 3 of this Code shall be complied with and the State Board of Insurance shall approve such conversion only after determining that said converted company has complied with said Chapter 3 of this Code.

Sec. 2. (a) The requirement under Section 1 of this article that a stipulated premium company have capital of at least Seven Hundred Thousand Dollars ($700,000.00) and surplus of at least Seven Hundred Thousand Dollars ($700,000.00) does not apply to a stipulated premium company that converts to a Chapter 3 company, if:

(1) the stipulated premium company was organized before September 1, 1989;

(2) the stipulated premium company shall be possessed with at least One Hundred Thousand Dollars ($100,000.00) in capital and at least One Hundred Thousand Dollars ($100,000.00) in free and unencumbered surplus; and

(3) the conversion takes effect before September 1, 1999.

(b) A stipulated premium company that is converted on or after September 1, 1989, and that has less than Seven Hundred Thousand Dollars ($700,000.00) capital and Seven Hundred Thousand Dollars ($700,000.00) surplus may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority. However, a stipulated premium company that is converted after September 1, 1989, must increase its capital to at least Seven Hundred Thousand Dollars ($700,000.00) and its surplus to at least Seven Hundred Thousand Dollars ($700,000.00) immediately after any change of control of the converted stipulated premium company or any holding company controlling the converted stipulated premium company if, after August 31, 1989:

(1) there has been a change of control of at least 50 percent of the voting securities of the converted stipulated premium company; or

(2) if the converted stipulated premium company or holding company is not controlled by voting securities, there is a change of at least 50 percent of the ownership of the stipulated premium company or holding company.

(c) For the purposes of Subsection (b) of this section, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, may not be considered a change of control of a converted stipulated premium company or change of control of a holding company, if ownership is transferred solely to one or more natural persons, each of whom would be an heir of the decedent if the decedent had died intestate.

ARTICLE 2. AUDITS AND EXAMINATIONS

SECTION 2.01. Chapter 1, Insurance Code, is amended by adding Article 1.15A to read as follows:

Art. 1.15A. INDEPENDENT AUDIT OF FINANCIAL STATEMENT

Sec. 1. PURPOSE. The purpose of this article is to require an annual examination by an independent certified public accountant of the financial statements reporting the financial condition and the results of operations of each insurer.

Sec. 2. APPLICATION. This article applies to each insurer except an insurer exempt under Section 4, 5, 6, or 7 of this article.

Sec. 3. DEFINITIONS. In this article:

(1) "Accountant" means an independent certified public accountant or accounting firm that is in good standing with the American Institute of CPAs and that holds a valid, current license to practice accounting in each state in which the accountant or accounting firm acts as an accountant.

(2) "Affiliate" has the meaning assigned by Section 2(a), Article 21.49-1, Insurance Code.

(3) "Audited financial report" means an audited financial report filed annually by an insurer that includes those items listed in Section 10 of this article and any other items specifically required by the insurance laws of this state.

(4) "Board" means the State Board of Insurance.

(5) "Commissioner" means the commissioner of insurance.

(6) "Insurer" means an insurer authorized to do business under the law of this state, and includes life, health, and accident insurance companies, fire and marine companies, general casualty companies, title insurance companies, fraternal benefit societies, mutual life insurance companies, local mutual aid associations, statewide mutual assessment companies, mutual insurance companies other than life, farm mutual insurance companies, county mutual insurance companies, Lloyd's plans, reciprocal and interinsurance exchanges, group hospital service corporations, health maintenance organizations, stipulated premium insurance companies, and nonprofit legal services corporations.

(7) "Subsidiary" has the meaning assigned by Section 2, Article 21.49-1, of this code.

Sec. 4. AUTOMATIC EXEMPTION. (a) An insurer otherwise subject to this article that has less than $2 million in net direct premiums written annually in this state during a calendar year or that has less than a total of 1,000 policyholders and certificate holders at the end of a calendar year, in lieu of the annual examination required by this article for that calendar year, may submit an affidavit under oath of an officer of the insurer that specifies the amount of direct premiums written in this state and the total number of policyholders and certificate holders.

(b) The affidavit required by Subsection (a) of this section must be filed with the commissioner on or before June 30 of the calendar year in which the audited financial report required by this article would be filed.

(c) An insurer who intends to file for an exemption under this section must submit a letter of intent to the commissioner not later than December 31 of the calendar year for which the exemption is to be claimed.

Sec. 5. EXEMPTION FOR INSURERS UNDER SUPERVISION OR CONSERVATORSHIP. Unless ordered by the commissioner or required under this code, an insurer that is under supervision or conservatorship pursuant to Article 21.28-A of this code is exempt under this article.

Sec. 6. EXEMPTION FOR INSURERS FILING AUDITS IN ANOTHER STATE. (a) An insurer that files an audited financial report in another state, pursuant to that state's requirement for audited financial reports, may be exempt from filing a report under this article if the commissioner:

(1) finds that the other state's requirements are substantially similar to the requirements in this article; and

(2) authorizes the exemption.

(b) A copy of the audited financial report and the evaluation of accounting procedures and systems of internal control report of an insurer exempt under Subsection (a) of this section that is filed with the other state must be filed with the commissioner in accordance with the filing dates provided by Sections 9 and 16 of this article.

(c) A copy of a notification of adverse financial conditions report filed with the other state by a person exempt under this section must be filed with the commissioner within the time provided by Section 15 of this article.

Sec. 7. FINANCIAL HARDSHIP EXEMPTION. (a) An insurer otherwise subject to this article and not eligible for an exemption under Section 4, 5, or 6 of this article may submit to the commissioner an application for an undue financial hardship exemption.

(b) Undue financial hardship is presumed to exist, and the commissioner shall grant to the insurer an exemption from the requirements of this article, if the projected reasonable costs of the audit would exceed the lesser of:

(1) one percent of the insurer's capital and surplus reflected in the insurer's annual statement filed with the board for the calendar year for which exemption is sought; or

(2) three percent of the insurer's net direct premiums written in this state during the calendar year for which exemption is sought as reflected in the insurer's annual statement filed with the board.

The expense fund of each mutual assessment company or association regulated by Chapter 14, Insurance Code, shall for purposes of this subsection be deemed and considered to be the capital and surplus of that company or association.

(c) The application for a financial hardship exemption must include an affidavit sworn to by a responsible officer of the insurer that specifies:

(1) the projected cost of the independent audit;

(2) the insurer's capital and surplus or the amount of the insurer's direct premiums written in this state for the calendar year as reflected by the annual statement filed with the board;

(3) the name of the accountant who prepared the projected cost of the audit; and

(4) any other information required under rules adopted by the board pursuant to this article.

(d) The accountant providing the projected cost estimate under Subsection (c)(1) of this article must be registered with the commissioner as required by Section 11 of this article. The commissioner may not accept a projected cost under Subsection (c)(1) of this section from an insurer that is prepared by an accountant that is not registered pursuant to Section 11 of this article.

(e) The application for an exemption must be submitted to the commissioner on or before April 30 of the calendar year in which the audited financial report is required by this article to be filed.

(f) If an insurer does not qualify for an exemption for undue financial hardship under Subsection (b) of this section, the insurer may submit an application for a financial hardship exemption together with an affidavit sworn to by a responsible officer of the insurer that specifies the reasons that compliance with this article will create an undue financial hardship. The application and affidavit must be submitted to the commissioner in the form required by the commissioner on or before April 30 of the calendar year in which the audited financial report is required by this article to be filed. The commissioner may grant a financial hardship exemption for reasons other than those listed in Subsection (b) of this section if the commissioner finds that the reasons stated in the application and affidavit constitute a financial hardship.

(g) If an insurer is exempted from the audit requirements under this section, the commissioner may require the insurer to file financial statements which have been reviewed by an independent certified public accountant.

Sec. 8. BOARD'S AUTHORITY. This article does not prohibit, preclude, or limit the board from ordering, conducting, or performing an examination of any insurer under this code or the board's rules.

Sec. 9. FILING AND EXTENSIONS FOR FILING OF ANNUAL AUDITED FINANCIAL REPORTS. (a) Each insurer shall have an annual audit by an accountant and shall file an audited financial report for the preceding calendar year with the commissioner on or before June 30 of each year.

(b) Extension of the filing date for the audited financial report may be granted by the commissioner for 30-day periods on a showing by the insurer and its accountant of reasons for requesting the extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing before the 10th day preceding the date the report is due to be filed and must include sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

Sec. 10. CONTENTS OF AUDITED FINANCIAL REPORT. (a) The audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of the insurer's operations, changes in financial position, and changes in capital and surplus for that year in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulator in the state of domicile.

(b) The audited financial report must include the following:

(1) the report of an accountant;

(2) a balance sheet that reports admitted assets, liabilities, capital, and surplus;

(3) a statement of gain or loss from operations;

(4) a statement of changes in financial position;

(5) a statement of changes in capital and surplus;

(6) any notes to financial statements; and

(7) supplementary data and information including any additional data or information required by the commissioner.

(c) The notes to the financial statements required by Subsection (b)(6) of this section must include:

(1) a reconciliation of differences, if any, between the audited statutory financial statements and the annual statements filed pursuant to this code with a written description of the nature of these differences; and

(2) a narrative explanation of all significant intercompany transactions and balances.

(d) The financial statements included in the audited financial report must be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with the commissioner. Except in the first year in which an insurer is required to file an audited financial report, the financial statements also must be comparative, presenting the amounts as of December 31 of the reported year and the amounts as of December 31 of the preceding year.

Sec. 11. DESIGNATION OF ACCOUNTANT. (a) Each insurer must register with the commissioner the name and address of the accountant retained to prepare an audited financial report required by this article. The registration must be made in writing not later than December 31 of the calendar year to be covered by the audited financial report.

(b) The commissioner may not accept an audited financial report from an insurer that is prepared by an accountant that is not registered under this section.

(c) The commissioner may not accept registration under this section for a person who does not comply with the requirements of this article.

Sec. 12. QUALIFICATIONS OF ACCOUNTANT. (a) The commissioner may call and hold a hearing to determine if an accountant is independent and, considering the evidence presented, may rule that the accountant is not independent for purposes of expressing an opinion on the financial statements in the audited financial report filed under this article.

(b) If the commissioner rules that an accountant is not independent, the commissioner shall issue an order directing the insurer to replace the accountant with another accountant whose relationship with the insurer is independent for the purposes of expressing an opinion on the financial statements in the audited financial report filed under this article.

Sec. 13. CONSOLIDATED OR COMBINED AUDITS. (a) Before an insurer may file an audited financial report covering combined or consolidated audited financial statements for the insurer and any of its subsidiaries or affiliates, the insurer must submit to the commissioner a written application for approval to file an audited financial report covering those combined or consolidated audited financial statements. The application for approval must be filed on or before December 31 of the calendar year for which the combined or consolidated audited financial statements are to be filed.

(b) An insurer that receives approval from the commissioner under Subsection (a) of this section must file a columnar consolidating or combining worksheet for consolidated or combined financial statements that must include the following:

(1) amounts shown on the consolidated or combined audited financial statements;

(2) amounts for each insurer stated separately;

(3) noninsurance operations shown on a combined or individual basis;

(4) explanations of consolidating and eliminating entries; and

(5) reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the insurers' annual statements.

(c) An insurer who does not receive approval from the commissioner to file an audited financial report covering combined or consolidated audited financial statements for the insurer and any of its subsidiaries or affiliates must file pursuant to all the requirements of this article a separate audited financial report for the insurer and each subsidiary or affiliate.

(d) Notwithstanding any provision of this section, the commissioner may require an insurer to file a separate audited financial report for the insurer and each subsidiary or affiliate.

Sec. 14. SCOPE OF ACCOUNTANT'S EXAMINATION AND REPORT. (a) The financial reports furnished under Section 9 of this article must be examined by an accountant.

(b) The examination of an insurer's financial reports shall be conducted in accordance with generally accepted auditing standards and other procedures as the accountant considers necessary illustrated in the Examiner's Handbook promulgated by the National Association of Insurance Commissioners.

(c) The commissioner by rule may adopt additional procedures to be observed by the accountant in the examination of the financial reports of insurers.

Sec. 15. NOTIFICATION OF ADVERSE FINANCIAL CONDITION. (a) An insurer required to furnish an audited financial report shall require the accountant to immediately notify in writing an executive officer and all directors of the insurer of a final determination by that accountant that:

(1) the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination; or

(2) the insurer does not meet the minimum capital and surplus requirements provided by this code for that insurer as of that date.

(b) The insurer shall furnish to the commissioner a copy of the accountant's written notice not later than the fifth day after the executive officer receives the notice from the accountant.

(c) If the accountant, subsequent to the date of the audited financial report filed under this article, becomes aware of facts that might have affected the report, the accountant must take action as prescribed in Volume 1, Section AU 561, Professional Standards of the American Institute of Certified Public Accountants.

Sec. 16. EVALUATION OF ACCOUNTING PROCEDURES AND SYSTEM OF INTERNAL CONTROL. (a) In addition to the audited financial report, each insurer shall furnish to the commissioner a report of evaluation performed by the accountant, in connection with his examination, of the accounting procedures of the insurer and its system of internal control.

(b) A report of the evaluation by the accountant of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, must be filed annually by the insurer with the commissioner not later than the 60th day after the date the audited financial report is filed.

(c) The evaluation report shall follow generally the Form for Reports on Internal Control Based on Audits described in Volume 1, Section AU 640, Professional Standards of the American Institute of Certified Public Accountants.

Sec. 17. DEFINITION, AVAILABILITY, AND MAINTENANCE OF ACCOUNTANT WORK PAPERS. (a) Work papers are the records kept by the accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of an insurer, and may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, or commentaries prepared or obtained by the accountant in the course of the accountant's examination of the financial statements of an insurer that support the accountant's opinion.

(b) Each insurer required to file an audited financial report shall require the accountant to make available for review by the board's examiners the work papers prepared in the conduct of the examination. The insurer shall require that the accountant retain the audit work papers for a period of not less than five years after the period reported.

(c) In the conduct of the periodic review by the board's examiners, photocopies of pertinent audit work papers may be made and retained by the board. Reviews by the board's examiners are considered investigations, and all work papers obtained during the course of those investigations may be made confidential by the commissioner, unless admitted as evidence in a hearing before a governmental agency or in a court of competent jurisdiction.

(d) The commissioner may issue a protective order relating to the confidentiality of work papers and copies of work papers covered by this section and restrict or limit the distribution of those work papers or copies except as provided by this section.

Sec. 18. REPORTS PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. With the commissioner's approval, an insurer may comply with this article by filing the requisite reports that have been prepared in accordance with generally accepted accounting principles, provided that the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed with the board by the insurer and comparable totals on the audited financial statements, with a written description of the nature of these differences.

SECTION 2.02. Article 16.24(b), Insurance Code, is amended to read as follows:

(b) Regardless of the preceding portion of this Article, Articles 1.01, 1.02, 1.04, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.29, 2.08, 2.10, 3.12, 3.13, 3.14, 6.16, 21.21, 21.25, 21.28,

21.28A, 21.28B, 21.39-A, and Sections 10(a), (b) and (c) of Article 3.01 and Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 17 of Article 1.10 of the Insurance Code as they now exist or shall hereafter be amended shall apply to and govern farm mutual insurance companies except where such Articles or portions thereof are in conflict with the provisions of Chapter 16 of the Insurance Code.

SECTION 2.03. Articles 17.22, 18.23, and 19.12, Insurance Code, are amended to read as follows:

Art. 17.22. EXEMPTION FROM INSURANCE LAWS. County mutual insurance companies shall be exempt from the operation of all insurance laws of this state, except such laws as are made applicable by their specific terms or as in this Chapter specifically provided. In addition to such other Articles as may be made to apply by other Articles of this Code, county mutual insurance companies shall be subject to all the provisions of Article 1.04(e), and of Subdivision 7 of Article 1.10 and of Article 1.15A and of Article 1.24 and of Article 2.04 and of Article 2.05 and of Article 2.08 and of Article 2.10 and of Article 5.12 and of Article 5.37 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 5.49 and of Article 21.21 and of Article 21.28B and of Article 21.49 of this Code, and the provisions of Article 7064 of the Revised Civil Statutes of Texas, 1925.

Art. 18.23. EXEMPTION FROM INSURANCE LAWS WITH LIMITATIONS. Underwriters at a Lloyds' shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless it is specifically so provided in such other law that same shall be applicable. In addition to such Articles as may be made to apply by other Articles of this Chapter, underwriters at a Lloyds' shall not be exempt from and shall be subject to all of the provisions of Article 1.15A and of Article 2.20 and of Article 5.35 and of Article 5.36 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 5.49 of this Code.

Art. 19.12. EXEMPTION FROM INSURANCE LAWS WITH LIMITATIONS. Reciprocal or inter-insurance exchanges shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless reciprocal or inter-insurance exchanges are specifically mentioned in such other laws. In addition to such Articles as may be made to apply by other Articles of this Code, reciprocal or inter-insurance exchanges shall not be exempt from and shall be subject to all of the provisions of Section 5 of Article 1.10 and of Article 1.15 and of Article 1.15A and of Article 1.16 and of Article 5.35 and of Article 5.36 and of Article 5.37 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 6.12 and of Article 8.07 of this Code.

SECTION 2.04. Section 1, Article 22.18, Insurance Code, is amended to read as follows:

Sec. 1. The following Articles of this Code, to wit: Article 1.14, Article 1.15, Article 1.15A, Article 1.16, Article 1.19, Article 1.24, Article 3.13, Article 3.39, Article 3.40, Article 3.61, Article 3.62, Article 3.63, Article 3.67, Article 21.21, Article 21.25, Article 21.26, Article 21.28, Article 21.32, Article 21.39, Article 21.45, and Article 21.47, shall apply to and govern stipulated premium companies and each company shall comply with the provisions thereof.

SECTION 2.05. Article 23.26(b), Insurance Code, is amended to read as follows:

(b) The following provisions of the Insurance Code as they now exist or shall hereafter be amended shall, where not in conflict with this chapter, apply to corporations complying with the provisions of this chapter to the same extent as they apply to insurers and to those doing the business of insurance: Articles 1.01, 1.02, 1.04, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.29, 3.12, 3.13, 3.14, 21.21, 21.21-2, 21.25,

21.28, 21.28A, and 21.47 and Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of the Insurance Code, as amended.

SECTION 2.06. Article 1.04(g), Insurance Code, is amended to read as follows:

(g) In making examinations of any insurance organization as provided by law, the Board may use its own salaried examiners or may use the services of persons or firms qualified to perform such examinations or assist in the performance of such examinations [~~employ any holder of a permit to practice public accountancy in Texas who is engaged as an independent public accountant in the public practice as that term is known and understood in the accounting profession~~]. Such examination shall cover the period of time which the Board shall request. In the event the Board does not specify a longer period of time, such examination shall be from the time of the last examination theretofore made by the Board to December 31st of the year preceding the examination then being made [~~and such public accountants shall so certify the period being examined by him~~]. All fees paid to those persons or firms whose services are used shall be paid at the usual and customary rates charged for the performance of those services, subject to the right of the Board to disapprove for payment any fees that are excessive in relation to the services actually performed [~~Any such public accountant shall be paid for such examination at the usual and customary rates charged by public accountants for similar services~~]. Such payment shall be made by the insurance organization being examined and all such examination fees so paid shall be allowed as a credit on the amount of premium or other taxes to be paid by any such insurance organization for the taxable year during which examination fees are paid just as examination fees are credited when the Board uses its own salaried examiners.

SECTION 2.07. Article 1.18, Insurance Code, is amended to read as follows:

Art. 1.18. OATH AND BOND OF EXAMINERS AND ASSISTANTS; ACTION ON BOND FOR FALSE REPORTS. Each examiner and assistant examiner, before entering upon the duties of his appointment shall take and file in the office of the Secretary of State an oath to support the Constitution of this State, to faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept as presents or emoluments any pay, directly or indirectly, for the discharge of his duty, other than the remuneration fixed and accorded to him by law; and that he will not reveal the condition of, nor any information secured in the course of any examination of any corporation, firm or person examined by him, to anyone except the Members of the State Board of Insurance [~~Commissioners~~], or their authorized representative, or when required as witness in an administrative hearing before the Board or the Commissioner or in Court.

Every such examiner shall enter into a bond payable to the State in the sum of Ten Thousand Dollars ($10,000) and every assistant examiner shall enter into a bond in the sum of Five Thousand Dollars ($5,000), to be approved by the State Board of Insurance [~~Commissioners~~] and deposited in the office of the State Comptroller, conditioned that he will faithfully perform his duties as such examiner.

In case any such examiner or assistant examiner shall knowingly make any false report or give any information in violation of law relative to any such examination of any corporation, firm or person so examined, any such corporation, firm or person shall have a right of action on such bond for his injuries in a suit brought in the name of the State at the relation of the injured party.

ARTICLE 3. ORDERS AND DECISIONS

SECTION 3.01. Chapter 1, Insurance Code, is amended by adding Articles 1.10A and 1.10B to read as follows:

Art. 1.10A. CEASE AND DESIST ORDERS

Sec. 1. DEFINITIONS. In this article:

(1) "Authorized person" means a company regulated by the State Board of Insurance, including any domestic and foreign, stock and mutual life,

health, and accident insurance companies; domestic and foreign, stock and mutual, fire and casualty insurance companies; Mexican casualty companies; domestic and foreign Lloyd's plan insurers; domestic and foreign reciprocal or interinsurance exchanges; domestic and foreign fraternal benefit societies; domestic and foreign title insurance companies; attorney's title insurance companies; stipulated premium insurance companies; nonprofit legal service corporations; statewide mutual assessment companies; local mutual aid associations; local mutual burial associations; exempt associations under Article 14.17 of this code; nonprofit hospital, medical, or dental service corporations including companies subject to Chapter 20 of this code; county mutual insurance companies; and farm mutual insurance companies. The term also includes all agents of those companies and all individuals, corporations, associations, partnerships, and other natural or artificial persons that are engaged in the business of insurance, that hold a permit, certificate, registration, license, or other authority under this code, or that are regulated by the board.

(2) "Unauthorized person" means an individual, corporation, association, partnership, or other natural or artificial person that directly or indirectly does any of the acts of an insurance business provided by Article 1.14-1 of this code, except as provided by and in accordance with specific authorization of law.

(3) "Board" means the State Board of Insurance.

(4) "Commissioner" means the commissioner of insurance.

(5) "Emergency" means a sudden, urgent occurrence requiring immediate action.

(6) "Imminent" means likely to occur at any moment.

(7) "Significant" means having or likely to have influence or effect.

(8) "Irreparable" means incapable of being repaired or rectified.

Sec. 2. AUTHORITY TO ISSUE ORDER. The commissioner may issue an emergency cease and desist order, ex parte, if:

(1) the commissioner believes:

(A) an authorized person engaging in the business of insurance is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Article 21.21 or Article 21.21-2 of this code or in violation of a rule or regulation promulgated under Article 21.21 or Article 21.21-2 of this code;

(B) an unauthorized person is engaging in the business of insurance in violation of Article 1.14-1 of this code or in violation of a rule or regulation promulgated under Article 1.14-1 of this code; or

(C) an unauthorized person engaged in the business of insurance acting in violation of Article 1.14-1 of this code is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Article 21.21 or Article 21.21-2 of this code or in violation of any rule or regulation promulgated under Article 21.21 or Article 21.21-2 of this code; and

(2) it appears to the commissioner that the alleged conduct is fraudulent or creates an immediate danger to the public safety or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

Sec. 3. EMERGENCY CEASE AND DESIST ORDERS; NOTICE AND OPPORTUNITY FOR HEARING. (a) On issuance of an emergency cease and desist order under Section 2 of this article, the commissioner shall serve on the person affected by the order, by registered or certified mail, return receipt requested, to the person's last known address, an order that contains a statement of the charges and requires the person immediately to cease and desist from the acts, methods, or practices stated.

(b) If a person affected by an emergency cease and desist order seeks to contest that order, the person may request a hearing before the commissioner. The person affected must request the hearing not later than the 30th day after the date on which the person receives the order. A request to contest an order must be in writing and directed to the commissioner and must state the grounds for the request to set aside or modify the order.

(c) On receiving the request for a hearing, the commissioner shall serve notice of the time and place of the hearing at which the person requesting the hearing shall have the opportunity to show cause why the order should not be affirmed. The hearing is to be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date.

(d) Pending the hearing, an emergency cease and desist order continues in full force and effect unless the order is stayed by the commissioner.

(e) The hearing on the order shall be conducted according to the procedures for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(f) At the hearing, the commissioner shall affirm, modify, or set aside, in whole or in part, the emergency cease and desist order.

(g) Persons affected by the affirmation or modification of the order issued following the hearing are entitled to have the order reviewed by the board by submitting an application to the board as provided by Article 1.04(d) of this code. An appeal to the board does not operate to stay the commissioner's order unless the board directs a stay of the order for good cause.

(h) Persons affected by the board's order may appeal that order by filing suit in a district court in Travis County not later than the 20th day after the date of the board's order. A petition for appeal filed in the district does not operate to stay or to vacate an order or decision unless the court, after hearing, issues an order that specifically stays or vacates the order or decision.

(i) The board may recover reasonable attorney's fees if judicial action is necessary for enforcement of the order.

(j) A cease and desist order is final 31 days after the date it is received if the person affected by the order does not request a hearing as provided by Subsection (b) of this section.

Sec. 4. PENALTIES; JUDICIAL REVIEW; ATTORNEY'S FEES. (a) If the commissioner reasonably believes that a person has violated a cease and desist order issued under this article, the commissioner may:

(1) initiate administrative penalty proceedings under this section;

(2) refer the matter to the attorney general for enforcement;

(3) initiate proceedings to revoke the certificate of authority of the person affected by a ruling or action issued under this article; or

(4) pursue any other action the commissioner deems appropriate under applicable law.

(b) If the commissioner pursues action under Subsection (a)(1) of this section, the commissioner shall serve on the person, by registered or certified mail, return receipt requested, to the person's last known address, notice of the time and place of a hearing to be held not earlier than the 21st day after the date the notice is received. The notice must contain a statement of the facts or conduct alleged to be in violation of the cease and desist order.

(c) In determining whether a cease and desist order has been violated, the commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order. The hearing shall be conducted according to the procedures for contested cases under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) After a hearing, if the commissioner determines that a cease and desist order has been violated, the commissioner may:

(1) impose a civil penalty of at least $1,000 but not more than $5,000 for each act of violation;

(2) direct the person against whom the order was issued to make complete restitution, in the form and amount and within the period determined by the commissioner, to all Texas residents, Texas insureds, and entities operating in Texas damaged by the violation or failure to comply; or

(3) both impose the penalty and direct restitution.

(e) A person affected by the commissioner's ruling or action under this section is entitled to have that ruling or action reviewed by the State Board of Insurance by submitting an application to the board as provided by Article 1.04(d) of this code.

(f) A person affected by the board's order may appeal that order by filing suit in a district court in Travis County not later than the 20th day after the date of the board's order. The board may recover reasonable attorney's fees if judicial action is necessary for enforcement of the board's order.

Sec. 5. FAILURE TO PAY PENALTIES. If a person fails to pay a penalty assessed under Section 4 of this article, the commissioner may:

(1) refer the matter to the attorney general for enforcement; or

(2) cancel or revoke any permit, license, certificate of authority, certificate of registration, or other authorization issued under this code as provided by Section (7)(a), Article 1.10, of this code.

Sec. 6. RULES AND REGULATIONS. The State Board of Insurance may promulgate reasonable rules and regulations to carry out this article, including rules and regulations that will provide to the extent possible uniformity of procedures between this state and other states, the United States, or the National Association of Insurance Commissioners.

Sec. 7. COMMISSIONER'S DISCRETION. The commissioner may proceed solely under this article or under this article in conjunction with other applicable law.

Art. 1.10B. MAILING PROCEDURES FOR CERTAIN ORDERS AND DECISIONS. (a) Notwithstanding the requirements of Section 16(b), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the State Board of Insurance shall mail to each party and the party's attorney of record in a contested case before the board or the commissioner of insurance, a copy of the board's or commissioner's written decision or order in that case by certified mail, return receipt requested.

(b) Notwithstanding the requirements of Section 16(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), a motion for rehearing in a contested case must be filed not later than the 15th day after the date of receipt of the decision or order under Section (a) of this article. For purposes of this section, the date of receipt of the decision or order is the date it is delivered as reflected on the return receipt or the fifth day after the date of the postmark stamped on the certified correspondence under Section (a) of this article, whichever date is later.

ARTICLE 4. IMMUNITY AND CONFIDENTIALITY

SECTION 4.01. Article 1.40, Insurance Code, is amended to read as follows:

Art. 1.40. IMMUNITY FROM LIABILITY. (a) A member of the State Board of Insurance, the commissioner of insurance, or another officer or employee of the State Board of Insurance shall not be personally liable for any act performed in good faith within the scope of his or her authority or for damages occasioned by his or her official acts or omissions except for an act or omission that is corrupt or malicious. The attorney general shall defend any actions brought against a board member, employee, officer by reason of his or her official act or omission, whether

or not at the time of the institution of the action the defendant has terminated service with the board.

(b) A person, or an employee or agent of that person, acting without actual malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of furnishing to the State Board of Insurance under the requirements of law or at the direction of the board reports or other information relating to any known or suspected fraudulent insurance or reinsurance transaction. In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, task forces, delegates, and employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of annual statement convention blanks are not subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required by Article 1.11 of this code.

(c) [~~(b)~~] Each member of the State Board of Insurance, the commissioner of insurance, or an employee, an agent, or a designee of the State Board of Insurance, acting without actual malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of an investigation of any allegedly fraudulent insurance or reinsurance transaction or the publication or dissemination of any official report related to any official investigation of insurance or reinsurance fraud. These persons are not subject to civil liability in relation to the collecting, reviewing, analyzing, and dissemination of information developed by the National Association of Insurance Commissioners from the filing of annual statement convention blanks with the National Association of Insurance Commissioners and communicated to the board or commissioner including any investigation or publication or dissemination of any report or other information in relation thereto.

SECTION 4.02. Section 3A, Article 21.28-A, Insurance Code, is amended to read as follows:

Sec. 3A. CONFIDENTIALITY OF CERTAIN PROCEEDINGS AND RECORDS. (a) Notwithstanding any other provision of law, hearings, orders, notices, correspondence, reports, records, and other information in the possession of the State Board of Insurance relating to the supervision or conservatorship of any insurance company are confidential unless the commissioner determines and issues written findings that confidentiality is not necessary to accomplish the purposes of this article. The commissioner shall make this determination of confidentiality on the date an order of supervision is entered or the date a conservator is appointed, whichever date first occurs.

(b) This section does not prohibit access to hearings, orders, notices, correspondence, reports, records, and other information by the State Board of Insurance [~~except as provided by this section.~~

[~~(b) The personnel of the State Board of Insurance have access to such proceedings or information as permitted by the Commissioner of Insurance or the State Board of Insurance~~].

(c) The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) relating to discovery apply to the parties of record in these proceedings.

(d) The Commissioner of Insurance or the State Board of Insurance may open the proceedings or disclose the information to a department, agency, or instrumentality of this or another state or the United States if the Commissioner of Insurance or the State Board of Insurance determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state or the United States.

(e) [~~The Commissioner of Insurance or the State Board of Insurance may open the hearings or make public the orders, notices, correspondence, reports, records,~~

~~or other information if the Commissioner of Insurance or the State Board of Insurance deems it in the best interest of the public or in the best interest of the insurer in supervision or conservatorship or the holders of its policies or certificates of insurance.~~

[~~(f)~~] An officer or employee of the State Board of Insurance is not liable for release of information without a showing that release of information was accomplished with actual malice.

This section does not apply to information (1) if the insureds of the insurance company are not protected by Article 9.48, 21.28-C, or 21.28-D of this code or by statutes substantially similar to those Articles, or (2) on the appointment of a receiver for the insurance company by a court of competent jurisdiction.

ARTICLE 5. SUPERVISION AND CONSERVATORSHIP

SECTION 5.01. Article 21.28-A, Insurance Code, is amended by amending Sections 3 and 9 and adding Section 17 to read as follows:

Sec. 3. NOTICE TO COMPLY WITH WRITTEN REQUIREMENTS OF COMMISSIONER; NONCOMPLIANCE; TAKING CHARGE AS CONSERVATOR. If upon examination or at any other time it appears to or is the opinion of the Commissioner of Insurance that any insurance company is insolvent, or its condition is such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if such company appears to have exceeded its powers (as defined herein) or has failed to comply with the law, or if such insurance company gives its consent (as defined herein), then the Commissioner of Insurance shall upon his determination (a) notify the insurance company of his determination, and (b) furnish to the insurance company a written list of the Commissioner's requirements to abate his determination, and (c) if the Commissioner makes a further determination to supervise he shall notify the insurance company that it is under the supervision of the Commissioner of Insurance and that the Commissioner is applying and effecting the provisions of this Article. Such insurance company shall comply with the lawful requirements of the Commissioner of Insurance. If [~~and if~~] placed under supervision, the insurance company shall [~~under supervision~~] have ninety (90) days, or another period designated by the Commissioner [~~sixty (60) days, or another period of time designated by the Commissioner,~~] from the date of the Commissioner's notice of supervision [~~within which~~] to comply with the requirements of the Commissioner. The Commissioner may extend the supervision for an additional period not to exceed thirty (30) days on written determination by the Commissioner that there is a substantial likelihood of rehabilitation. No hearing is required before the Commissioner makes the determination[~~, subject however to the provisions of this Article~~]. During the period [~~pendency~~] of [~~the~~] supervision, the insurance company shall continue to pay claims according to terms of the insurance policy, and the Commissioner may schedule a hearing relating to the insurance company in supervision with not less than ten (10) days' written notice to all parties of record on his own motion or that of any party of record. However, notice may be waived by the parties of record. If after hearing it is determined that the insurance company has failed to comply with the lawful requirements of the Commissioner, it has not been rehabilitated, it is insolvent, or it is otherwise in such a condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the company appears to have exceeded its powers as defined in this Article, the Commissioner of Insurance [~~in his discretion may continue the period of supervision or, if it is determined that supervision is inadequate to accomplish the rehabilitation of the company~~], acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, shall take charge as conservator of the insurance company and all of the property and effects thereof. If after hearing it is determined that the insurance

company has been rehabilitated or its condition has otherwise been remedied such that the continuance of its business is no longer hazardous to the public or to holders of its policies or certificates of insurance, the Commissioner may release that insurance company from supervision. Section 15, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), does not apply to hearings held by the Commissioner or his representative under this Article.

Sec. 9. DURATION OF CONSERVATORSHIP. The [~~As respects a conservatorship, the~~] conservator shall complete his duties and responsibilities [~~serve for such time as is necessary to accomplish the purposes of the conservatorship~~] as required [~~intended~~] by this Act within ninety (90) days, or the period designated by the Commissioner, after the date on which he is appointed conservator. The Commissioner may extend the conservatorship for additional successive periods on written determination by the Commissioner that there is a substantial likelihood of rehabilitation. No hearing is required before the Commissioner makes the determination. During the period of conservatorship, the insurance company shall continue to pay claims according to the terms of the insurance policy. If rehabilitated, the rehabilitated insurance company shall be returned to management or new management under such reasonable conditions as will best tend to prevent the defeat of the purposes for which it was placed in conservatorship.

Sec. 17. FEES FROM REHABILITATED ENTITIES. (a) The State Board of Insurance may collect fees from any entity that is regulated by the board as provided by Article 1.10(h) of this code and that is successfully rehabilitated by the board. The fees shall be in amounts sufficient to cover but not exceed the costs of rehabilitation of that entity. The board shall use the fees for the sole purpose of the rehabilitation of the entity from which they are collected. Fees collected under this subsection shall be deposited in and expended through the State Board of Insurance Operating Fund.

(b) The commissioner may determine the terms of the collection or repayment of the fees from any successfully rehabilitated entity.

ARTICLE 6. RECEIVERSHIP AND LIQUIDATION

SECTION 6.01. Section (6), Article 5.06-1, Insurance Code, is amended to read as follows:

(6) In the event of payment to any person under any coverage required by this Section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury, sickness or disease, or death for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer; provided, however, whenever an insurer shall make payment under a policy of insurance issued pursuant to this Act, which payment is occasioned by the insolvency of an insurer, the insured of said insolvent insurer shall be given credit in any judgment obtained against him, with respect to his legal liability for such damages, to the extent of such payment, but, subject to Section 12, Article 21.28-C, of this code, such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had if the insured of the insolvent insurer had made the payment.

SECTION 6.02. Sections 5(2)A and B, Article 9.48, Insurance Code, are amended to read as follows:

A. "Covered claim" is an unpaid claim:

(i) of an insured which arises out of and is within the coverage and not in excess of the applicable limits of a title insurance

policy to which this article applies, issued or assumed (whereby an assumption certificate is issued) by an insurer licensed to do business in this state and covered by this article, if such insurer becomes an "impaired insurer" after the effective date of this article and the insured real property (or lien thereon) is located within this state;

(ii) against trust funds or an escrow account of an impaired insurer which arises due to a shortage of those funds or in that account;

(iii) for which an impaired insurer is liable in connection with the fidelity of any agent of that insurer as authorized by Article 9.49 of this code; or

(iv) against trust funds or an escrow account of an impaired agent which arises due to a shortage of those funds or in that account and which shall be paid only from funds derived from guaranty fees and not from assessments.

Individual "covered claims" under Subparagraphs (i) and[~~, (ii),~~] (iii)[~~, and (iv)~~] of this paragraph shall be limited to $250,000 per claimant and shall not include any amount in excess of $250,000 per claimant. The amount of a "covered claim" under Subparagraph (ii) or (iv) of this paragraph is the amount of the unpaid claim up to and not to exceed, the lesser of:

(i) the amount of funds delivered to the impaired insurer or agent as trust funds or an escrow account for each claimant in a transaction from which the claim arises; or

(ii) $250,000 per claimant.

B. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, [~~punitive damages,~~] enhanced damages arising under Article 21.21 of this code or under the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code), and bond premiums, incurred prior to the determination that an insurer or agent is "impaired" under this article. "Covered claim" shall also not include any shortage of trust funds, [~~or~~] shortage in an escrow account resulting from the insolvency of a financial institution, or punitive, exemplary, extra-contractual, or bad faith damages awarded by a court judgment against an insured or insurer. A "covered claim" does not include a claim under Section 5(2)A(ii) or (iv) if the claimant has a lien against the real estate that was the subject of the transaction from which the claim arises unless that lien is held to be invalid as a matter of law. No claimant who has caused or substantially contributed to his loss by his action or failure to act shall have a covered claim under Section 5(2)A.

SECTION 6.03. Sections 7 and 17, Article 9.48, Insurance Code, are amended to read as follows:

Sec. 7. ADMINISTRATION. Whenever the commissioner determines that an insurer or agent has become impaired, the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A or Article 9.29 of the Insurance Code shall promptly estimate the amount of additional funds needed to supplement the assets of the impaired insurer or agent immediately available to the receiver or the conservator for the purpose of making payment of all covered claims and administrative expenses. The receiver or conservator shall advise the board of those estimates and the board shall make available from the appropriate account maintained by the association funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims and administrative expenses of the

impaired insurer or agent. The board shall make additional funds available as the actual need for those funds arises for each impaired insurer or agent.

If the board has determined that additional funds are needed in the administrative or title account it shall advise the commissioner who shall make such assessments as may be needed to produce the necessary funds. The commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer. No assessment shall be made to produce funds for the guaranty fee account but such funds shall be derived solely from guaranty fees as provided by Section 6 of this article.

The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer [~~during the next preceding year~~] bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas. The commissioner shall determine the total net direct written premiums of an individual insurer and for all insurers in the state from the insurers' annual statements for the year preceding the assessment. Assessments during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next successive calendar years.

Insurers designated as impaired insurers by the commissioner shall be exempt from assessment from and after the date of such designation and until the commissioner determines that such insurer is no longer an impaired insurer.

The commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the association within 30 days after the commissioner gives notice of the assessment, and assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments or from guaranty fees under the provisions of this article shall not become assets of the impaired insurer or agent but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims or administrative expenses, which loan shall be repayable to the extent available from the funds of such impaired insurer or agent, as herein provided.

Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14(a)(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account, the commissioner shall assess insurers to attain the needed funds in the same manner provided by this section.

No insurer shall be deemed or considered to have or incur any liability, real or contingent, under the provisions of this Article 9.48 of this Chapter 9 until any such assessment shall have been actually made in writing by the commissioner under the provisions of this Article 9.48.

Sec. 17. IMMUNITY. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer of the association

[~~insurer subject to this article~~] or its agents or employees, the association or its agents [~~representatives~~] or employees, members of the association's board of directors, or the commissioner or his representatives [~~or employees, or the State Board of Insurance or its representatives or employees~~] for any action taken or not taken by them in the performance of their powers and duties under this article.

SECTION 6.04. Article 21.11-2, Insurance Code, is amended to read as follows:

Art. 21.11-2. [~~UNEARNED PREMIUMS UNDER~~] AGENCY CONTRACTS WITH INSOLVENT INSURERS

Sec. 1. Every agency contract entered into on and after the effective date of this Act by an insurance company writing fire and casualty insurance in Texas shall contain, or shall be construed to contain, the following provision:

Notwithstanding any other provision of this contract, the obligation of the agent to remit written premiums to the company shall be changed upon the commencement of delinquency proceedings as defined in Article 21.28, Insurance Code of Texas of 1951, as amended. Subsequent to the commencement of delinquency proceedings, the obligation of the agent to remit premiums shall be confined to premiums earned prior to the date of cancellation of policies stated in the order of a court of competent jurisdiction under Article 21.28 of this code canceling the policies [~~commencement of such proceedings~~]. The agent shall not owe or remit to the company or to the Liquidator-Receiver any premiums that are unearned as of the date of the cancellation stated in the order canceling the policies.

Sec. 2. On or after the effective date of the cancellation of policies stated in the court's order canceling policies, the agent shall promptly account to the receiver for all premiums to be returned to the insured, or the replacement coverage to be obtained, and the earned premiums to be paid to the receiver. Any of those unearned premiums in the hands of the agent on the effective date of the policy cancellations shall be returned promptly by the agent to the insured who paid them or, with the approval of the insured, shall be used to purchase new coverage for the insured with a different insurer. Any of the earned premiums in the hands of the agent shall be remitted promptly to the receiver.

Sec. 3. This article does not prejudice any cause of action by the receiver against any agent for the recovery of unearned premiums that were not returned to policyholders and earned premiums that were not promptly remitted to the receiver.

Sec. 4. This article may not be construed to render the agent an agent of the receiver for earned or unearned premiums [~~commencement of such delinquency proceedings, and any such unearned premiums in the possession of the agent on such date shall be returned promptly by the agent to the insured who paid them or, with the approval of the insured, be used to purchase new coverage for the insured with a different insurer~~].

SECTION 6.05. Sections 2(b), (e), and (g), Article 21.28, Insurance Code, are amended to read as follows:

(b) Title in Receiver. The property and assets of such insurer shall be in the custody of the court as of the date of the commencement of such delinquency proceedings. The said receiver and his successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action of such insurer, wherever located, as of the date of entry of the order directing possession to be taken. Such title of the receiver shall relate back to the date of the commencement of the delinquency proceedings unless the court shall otherwise provide. A contractual lien or statutory landlord's lien under Chapter 54, Property Code, that arises after the date of the commencement of the delinquency proceedings is secondary and inferior to the rights of the receiver and his successors in office. The filing or recording of such an order in any record office of the State

shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded by such insurer.

(e) Conducting of Business. Upon taking possession of the assets of a delinquent insurer the receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer, or to take such steps as may be necessary to conserve the assets and protect the rights of policyholders and claimants for the purpose of liquidating, rehabilitating, reinsuring, reorganizing or conserving the affairs of the insurer. Notwithstanding the foregoing requirements or the terms of any insurance contract issued by a delinquent insurer, the receiver is not required to defend any action against an insured of a delinquent insurer.

(g) Disposal of Property; Settling Claims. The receiver may, subject to the approval of the court, (1) sell or otherwise dispose of the real and personal property, or any part thereof, of an insurer against whom a proceeding has been brought under this Article, and (2) sell or compound all doubtful or uncollectible debts, or claims owed by or owing to such insurer, including claims based upon an assessment levied against a member of a mutual insurer, reciprocal exchange, or an underwriter at Lloyds. Whenever the amount of any such debt or claim owed by or owing to such insurer or the value of any item of property of the insurer does not exceed One Thousand Dollars ($1,000), exclusive of interest, the receiver may compromise or compound such debt or claim or sell such property upon such terms as he may deem for the best interests of said insurer without obtaining the approval of the court. The receiver may, subject to the approval of the court, sell or agree to sell, or offer to sell, any assets of such an insurer to such of its creditors who may desire to participate in the purchase thereof, to be paid for, in all or in part, out of dividends payable to such creditors, and, upon the application of the receiver, the court may designate representatives to act for such creditors in the purchase, holding and/or management of such assets, and the receiver may, subject to the approval of the court, advance the expenses of such representatives against the security of the claims of such creditors. The receiver may, subject to the approval of the court and State Board of Insurance, as required by this code, sell or otherwise dispose of the charter or license of the insurer separate and apart from its outstanding liabilities.

SECTION 6.06. Sections 3(a), (b), and (c), Article 21.28, Insurance Code, are amended to read as follows:

(a) Time for Filing. Where a liquidation, rehabilitation, or conservation order has been entered in a proceeding against an insurer under this Article, all persons who may have claims against such insurer as set out in Section 8(a) of this Article, including claimants with secured claims and claims based on trust or escrow funds, shall present proof of the same to the receiver at a place specified by him within a period of time to be specified by the court, in no event, however, less than ninety (90) days [~~nor more than one (1) year~~] after the date of the entry of the order specifying such time. The receiver shall notify all persons who may have claims against such insurer as disclosed by its books and records, to present proof of the same to him within the time as fixed. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court. Receipt of the required proof of claim by the receiver is a condition precedent to the payment of any claim, and except as provided by Subsection (b) of this section, claims that are not filed within the time specified by the court shall not participate in any distribution of the assets by the receiver.

(b) Late Filing. Subject to court approval, the receiver may accept claims filed after the date specified by the court if the claims are filed with the receiver not later than the ninetieth (90th) day after the date notice of the claimant's right to file a proof of claim is mailed to the claimant [~~Proofs of claims may be filed subsequent to the date specified but in no event later than one (1) year after the entry of the court's order specifying the time for filing claims. Claims filed subsequent to the date~~

~~specified in the court's order, but prior to the expiration of one (1) year after the entry of such order, may participate only in future dividends. Claims which are not filed within the expiration of such one-year period shall not participate in any distribution of the assets by the receiver~~].

(e) Third Party Claims. Where a liquidation, rehabilitation or conservation order has been entered in a proceeding against an insurer under this Article, any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim with the receiver, regardless of the fact that such claim may be unliquidated or undetermined, and such claim may be approved (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such persons shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. A judgment entered against an insured or insurer before the date on which the delinquency proceedings commenced may not be accorded higher than a Class 3 priority under Section 8(a) of this Article unless the judgment creditor proves to the receiver's satisfaction the allegations supporting the judgment. No judgment against an insured taken after the date of the commencement of the delinquency proceedings shall be considered in the proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings shall be considered as conclusive evidence in the proceeding, either of the liability of such insured to such person upon such cause of action, or of the amount of damages to which such person is therein entitled.

SECTION 6.07. Section 4, Article 21.28, Insurance Code, is amended by amending Subsections (d) and (f) and adding Subsection (i) to read as follows:

(d) Subpoenas. In addition to the authority granted by law to the receiver relating to the taking of depositions of witnesses in civil actions, the receiver may request the court ex parte to issue a subpoena to compel the attendance and testimony of witnesses before the receiver and the production of any books, accounts, records, papers, and correspondence or other records relating to any matter that pertains to a receivership estate, and for this purpose the receiver or his designated representative may administer oaths and affirmations, examine witnesses, and receive evidence. In this connection the court has statewide subpoena power and may compel attendance and production of records before the receiver at his offices in Austin, Texas. Any person served with a subpoena under this subsection may file a motion with the court for a protective order as provided by Rule 166b of the Texas Rules of Civil Procedure. In a case of disobedience of a subpoena, or of the contumacy of a witness appearing before the receiver or his designated representative, the receiver may invoke the aid of the court, and the court may issue an order requiring the person subpoenaed to obey the subpoena or give evidence or produce books, accounts, records, papers, and correspondence or other records respecting the matter in question. Any failure to obey such an order of the court may be punished as contempt by the court.

Each witness who is not a party and who is required to attend before the receiver is entitled to receive:

(1) reimbursement for travel in the same amount per mile as the mileage travel allowance for state employees for going to and returning from the place where his presence is required, if the place is more than 25 miles from the witness's place of residence; and

(2) a fee of not less than Ten Dollars ($10) a day for each day or part of a day the witness is necessarily present as a witness, but in lieu of such Ten Dollar ($10) fee, a witness will receive a fee equal to the per diem travel allowance of a state employee if the amount exceeds Ten Dollars ($10). All disbursements made in the payment of these fees shall be included and paid in the same manner as provided for the payment of other expenses in Section 12 of this Article.

The sheriff's or constable's fee for serving the subpoena shall be the same as those paid the sheriff or constable for similar services. Any subpoena issued under this subsection may be served, at the receiver's discretion, by the receiver, his authorized agent, a sheriff, or a constable.

On certification by the receiver or the State Board of Insurance under official seal, any books, accounts, records, papers, correspondence, and other records and documents produced or testimony taken pursuant to this Article and held by the receiver are admissible in evidence in all cases without prior proof of their correctness and without other proof except the certificate of the receiver or the State Board of Insurance that the books, accounts, records, papers, correspondence, documents, and testimony were received from the person producing the material or testifying. The certified books, accounts, records, papers, correspondence, and other records and documents, or certified copies of them, are prima facie evidence of the facts they disclose. This section may not be construed to limit any other provision of this Article or any law that provides for the admission of evidence or for its evidentiary value.

(f) Pending Lawsuits. No judgment or order rendered by any court of this State or of any other jurisdiction in any action pending by or against the delinquent insurer after the commencement of delinquency proceedings shall be binding upon the receiver unless the receiver shall have been made a party to such suit.

A receiver and his agents and employees are not liable for and a cause of action may not be brought against any of them for an action taken or not taken by them relating to the adjustment, negotiation, or settlement of claims.

(i) Criminal History Information. A receiver is entitled to obtain criminal history information records maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or other law enforcement agency to investigate any matter relating to a receivership estate.

All criminal history information records obtained by the receiver are privileged information and are for the exclusive use of the receiver. Except on court order or with the consent of the person being investigated, the records may not be released to any other person or agency. The receiver may destroy the criminal history information records after the records are used for the purposes authorized by this subsection. A person commits an offense if the person releases or discloses any information received under this subsection without the authorization provided by this subsection. An offense under this subsection is a Class A misdemeanor.

SECTION 6.08. Section 6, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 6. PRIORITY OF CLAIMS FOR WAGES. All wages actually owed to employees of an insurer against whom a proceeding under this Article is commenced, for services rendered within three (3) months prior to the commencement of such proceeding not exceeding One Thousand Dollars ($1,000) [~~Three Hundred Dollars ($300)~~] to each employee shall be paid by the receiver as provided by Section 8(a) of this Article. The receiver shall pay wages actually owed to employees of an insurer against whom a temporary restraining order has been issued under this Article for services rendered during the period covered by the temporary restraining order. Payment for those services must be made at the rate and in the same manner as if paid by the insurer. The receiver may pay wages actually owed to employees of an insurer against whom a temporary injunction has

been issued under this Article for services rendered after the issuance of the temporary injunction. Payment for those services is made at the discretion of the receiver and as an expense of administration [~~prior to the payment of every other debt or claim, and in the discretion of the court may be paid as soon as practicable after the proceeding has been commenced, except that at all times there shall be reserved such funds as will be sufficient for the expenses of administration by the receiver~~].

SECTION 6.09. Sections 7(a) and (b), Article 21.28, Insurance Code, are amended to read as follows:

(a) Application. Within four (4) years from the date of an order of rehabilitation, or liquidation, of a domestic insurer, the receiver may make an application to the court to levy an assessment against the members of a mutual insurer, [~~or the underwriters or~~] members of a reciprocal exchange, or the insureds of a [~~underwriters at~~] Lloyds who have been issued an insurance policy that provides that the policy is subject to assessment. Such application shall set forth the reasonable value of the assets of such insurer, its probable liabilities, and the probable necessary assessment, if any, to pay all possible claims and expenses in full, including expenses of administration and collection.

(b) Levy. After [~~Upon such~~] notice to each member or insured in the manner [~~as may be~~] designated by the court, the court shall proceed to consider such report and may levy one or more assessments. Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the estimated cost of collection and percentage of uncollectibility thereof. An [~~No such~~] assessment shall not be levied against any such member or insured with respect to a policy that does not contain an express provision that the policy is an assessable policy [~~subscriber with respect to any policy which contains a nonassessable or noncontingent liability provision or provisions and which has been issued under authority granted by the Board~~].

SECTION 6.10. Section 8(a), Article 21.28, Insurance Code, is amended to read as follows:

(a) Priority of Distribution of [~~General~~] Assets. Notwithstanding any other provision of law, the priority of distribution of [~~general~~] assets from the insurer's estate shall be in accordance with the order of each class as provided by this subsection. Additional subclasses may not be established within any class.

Class 1.

(1) All of the receiver's, conservator's, and supervisor's costs and expenses of administration, including repayment of funds advanced to the receiver from the abandoned property fund of the State Board of Insurance.

(2) All of the expenses of an insurance guaranty association or foreign insurance guaranty association in handling claims.

(3) Wages owed to employees of the insurer as provided for in Section 6 of this Article.

(4) Secured creditors to the extent of the value of the security as provided by Section 8(c) of this Article.

Class 2.

(1) All claims by policyholders, beneficiaries, insureds, and liability claims against insureds covered under insurance policies and insurance contracts issued by the insurer.

(2) All claims by an insurance guaranty association or a foreign insurance guaranty association that are payments of proper policyholder claims.

Class 3.

All other claims of general creditors not falling within any other priority under this section including claims for taxes and debts due the federal government or any state or local government which are not secured claims.

Class 4.

Claims of surplus or contribution note holders, holders of debentures or holders of similar obligations and proprietary claims of shareholders, members, or other owners according to the terms of the instruments.

SECTION 6.11. Section 2(c), Article 21.28-A, Insurance Code, is amended to read as follows:

(c) "Exceeded its Powers" includes and means but is not limited to the following circumstances:

(1) if an insurance company has refused to permit examination of its books, papers, accounts, records, or affairs by the Commissioner of Insurance, his deputy, or duly commissioned examiners; or if any insurance company, organized in the State of Texas, has removed from the state such books, papers, accounts or records necessary for an examination of such insurance company, or

(2) if an insurance company has failed to promptly answer inquiries authorized by Article 1.24 [~~1.25~~] of this Code, or

(3) if an insurance company has neglected or refused to observe an order of the Commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or surplus, or

(4) if an insurance company without first having obtained written approval of the Commissioner has by contract or otherwise: (i) totally reinsured its entire outstanding business, or (ii) merged or consolidated substantially its entire property or business with another insurer; or

(5) if any insurance company is continuing to write business after its license has been revoked or suspended; or

(6) if an insurance company is in a condition that renders the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance.

SECTION 6.12. Section 5, Article 21.28-A, Insurance Code, is amended to read as follows:

Sec. 5. CONSERVATORSHIP OR LIQUIDATION. If, after notice and opportunity for hearing, it is determined that such insurance company is insolvent, or its condition is such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the company appears to have exceeded its powers as defined in this Article, or has failed to comply with any lawful requirements of the Commissioner, or upon consent by an insurance company, and if it is determined that supervision is inadequate to accomplish the rehabilitation of the company, the Commissioner in his discretion may appoint a conservator, who shall immediately take charge of such insurance company and all of the property, books, records, and effects thereof, and conduct the business thereof, and take such steps toward the removal of the causes and conditions, which have necessitated such order, as the Commissioner may direct. During the pendency of conservatorship, the conservator shall make such reports to the Commissioner from time to time as may be required by the Commissioner, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such insurance company, including claims or causes of action belonging to or which may be asserted by such insurance company, and to deal with the same in his own name as conservator, and shall be empowered to file, prosecute, and defend any suit or suits which have been filed or which may thereafter be filed by or against such insurance company which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. If at the time of appointment of a conservator or at any time during the pendency of such conservatorship it appears that the interest of the policy holders or certificate holders of such insurance company can best be protected by reinsuring the same, the conservator may, with the approval of or at the direction

of the Commissioner: (1) reinsure all or any part of such insurance company's policies or certificates of insurance with some solvent insurance company authorized to transact business in this state, and (2) to the extent that such insurance company in conservatorship is possessed of reserves attributable to such policies or certificates of insurance, the conservator may transfer to the reinsuring company such reserves or any portion thereof as may be required to consummate the reinsurance of such policies, and any such reserves so transferred shall not be deemed a preference of creditors. The liquidator of the State Board of Insurance, or his duly appointed deputy, may be appointed to serve as the conservator. During the pendency of a conservatorship, the Commissioner may schedule a hearing relating to the insurance company in conservatorship with not less than ten (10) days' written notice to all parties of record on his own motion or that of any party of record; provided, however, that notice may be waived by the parties of record. If the Commissioner of Insurance is satisfied at any time and regardless of the presence or absence of any state of supervision or conservatorship, that such insurance company is not in condition to continue business in the interest of its policy or certificate holders, the Commissioner of Insurance shall give notice to the Attorney General who shall thereupon apply to any Court in Travis County, Texas, having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such insurance company or to require it to comply with the law or to satisfy the Commissioner of Insurance as to its solvency, and to satisfy the requirement that its condition is such as to render the continuance of its business not hazardous to the public or to the holders of its policies or certificates of insurance. It shall be in the discretion of the Commissioner of Insurance to determine at any time whether or not the insurance company is placed in supervision or he will operate the insurance company through a conservator, as provided above, or report it to the Attorney General for the purpose of taking any remedial action including, without limitation, applying for appointment of a receiver under Article 21.28 of this code. No period of supervision or conservatorship is necessary as a prerequisite for the Attorney General to take that remedial action. When all the policies of an insurance company are reinsured or terminated, and all of its affairs concluded, as herein provided, the Commissioner of Insurance shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the insurance company so reinsured and liquidated. Where the Commissioner of Insurance lends his approval to the merger, consolidation or reinsurance of all the policies of one insurance company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the insurance company from which the policies were merged, consolidated or reinsured, in the same manner as is provided for the charters of companies totally reinsured or liquidated. The cost incident to the supervisor's and conservator's service shall be fixed and determined by the Commissioner of Insurance and, subject to Section 8(a), Article 21.28, of this code, shall be a charge against the assets and funds of the insurance company to be allowed and paid as the Commissioner of Insurance may determine.

A conservator and his agents and employees are not liable for and a cause of action may not be brought against any of them for an action taken or not taken by them relating to the adjustment, negotiation, or settlement of claims.

SECTION 6.13. Section 5(2), Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), is amended to read as follows:

(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer

licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State. "Covered claim" shall also include seventy-five percent (75%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed One Thousand Dollars ($1,000). Individual "covered claims" shall be limited to One Hundred Thousand Dollars ($100,000), except that the association shall pay the full amount of any "covered claim" arising out of a workers' compensation policy. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys fees and expenses, court costs, interest and penalties, and interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act. "Covered claim" shall not include any punitive, exemplary, extra-contractual, or bad faith damages awarded in a court judgment against an insured or insurer. With respect to a "covered claim" for unearned premiums, both persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an "impaired insurer" shall be considered to have "covered claims" under this Act. Where the impaired insurer has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a "covered claim" under this Act.

SECTION 6.14. Sections 6, 7, 12, and 16, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), are amended to read as follows:

Sec. 6. TERMINATION OF POLICIES. This Act shall apply to covered claims existing prior to the determination that an insurer is an impaired insurer and to covered claims arising within thirty (30) days after the determination of impairment, or before the policy expiration date if less than thirty (30) days after the determination of impairment, or before the insured replaces the policy or effects its cancellation, if he does so within thirty (30) days of the determination of impairment.

Upon the determination by the Commissioner that an insurer is an impaired insurer, the conservator or receiver appointed under Article 21.28 or Article 21.28-A of this code [~~Commissioner~~] shall notify the insureds of the impaired insurer of the determination and of their rights under this Act. Such notification shall be by mail at each insured's [~~last known~~] address as disclosed by the books and records of the insurer[~~, where available,~~] but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation printed in this State shall be sufficient. Such notification may be combined with notice provided under Section 3(a), Article 21.28, of this code.

Sec. 7. ASSESSMENTS. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. The receiver or conservator shall advise the board of directors of the association of such estimates, and the board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver or conservator to carry out an

efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need therefor arises for each impaired insurer.

When the board of directors shall determine that additional funds are needed in any of the three accounts, they shall advise the Commissioner who shall make such assessments as may be needed to produce the necessary funds. The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such or lines of business [~~during the next preceding year~~] bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. The Commissioner shall determine the total net direct written premium of an individual insurer and for all insurers in the state from the insurers' annual statements for the year preceding the assessment. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the Commissioner determines that such insurer is no longer an impaired insurer.

It shall be the duty of each insurer to pay the amount of its assessment to the association within thirty (30) days after the Commissioner gives notice of the assessment, and assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising hereunder.

Funds advanced by the association under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14A(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account the Commissioner shall assess member insurers to obtain the needed funds in the same manner as hereinbefore set out, provided, that he shall take into consideration the net direct written premium collected in the State of Texas for all lines of business covered by this article, and provided further that no assessment for administrative expenses incurred by a supervisor or conservator appointed by the Commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state shall exceed $1,000,000 each calendar year.

Sec. 12. NONDUPLICATION OF RECOVERY. Any person having a claim against an insurer under any provision in an insurance policy other than a

policy of an impaired insurer, which is also a covered claim, shall be required to exhaust first his right under such policy. The amount of an approved [~~Any amount payable on a covered~~] claim under this Act shall be reduced by the policy limits of or amount paid under [~~amount of any recovery under~~] such insurance policy, whichever amount is greater. When a claimant exhausts his right under a policy other than a policy of an impaired insurer, the insurer issuing that policy is not entitled to sue or continue a suit against the insured of the impaired insurer to recover any amount paid the claimant under that policy.

Any recovery under this Act shall be reduced by the amount of recovery under any other insurance guaranty act, or its equivalent, in any other state. Any person having a covered claim who is a resident of another state shall not be entitled to payment under this Act unless and until he furnishes adequate sworn proof that he has exhausted any and all rights of recovery that he has in his state of residence and the state of residence of the insured under any insurance guaranty act or its equivalent; provided, however, that any nonresident holder of a covered claim for damage to property with a permanent location in this State shall be entitled to payment of the covered claim without first having exhausted his right of recovery in his state of residence.

Sec. 16. IMMUNITY. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer of the association [~~insurer subject to this Act~~] or its agents or employees, the [~~advisory~~] association or its agents or employees, members of the board of directors, or the Commissioner or his representatives for any action taken or not taken by them in the performance of their powers and duties under this Act.

SECTION 6.15. The Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code) is amended by adding Section 7B to read as follows:

Sec. 7B. EMERGENCY CLAIMS. (a) In this section, "emergency claims" means those claims:

(1) that would be covered claims if the insurer was declared an impaired insurer;

(2) for which no bona fide dispute exists as to the liability of the insurer on the claim, or for which payments were begun on liability accepted before the finding of insolvency;

(3) for which a bona fide hardship exists or will exist with certain policyholders or claimants if their claims are not handled forthwith; and

(4) for which the insurer under conservation or receivership does not have sufficient funds to pay the emergency claims.

(b) If before a determination by the Commissioner that the insurer has become an impaired insurer, an insurer has been placed in conservation under an order of the Commissioner based on a finding of insolvency, or temporary or permanent receivership under a court order based upon a finding of insolvency, the Commissioner may request from the board of directors of the association the advancement of funds to enable the conservator or receiver to have sufficient funds to pay emergency claims.

(c) The Commissioner shall certify to the board of directors of the association a list of active claims that are emergency claims and shall certify the amount of additional funds needed to supplement the assets of the insurer to make payment of those emergency claims.

(d) The Commissioner, in his request, shall state the reason or reasons that a bona fide hardship exists or will exist, that the insurer has not been declared an impaired insurer, and when the Commissioner reasonably anticipates that it will be declared an impaired insurer or released from conservation or receivership.

(e) Upon receipt of the required certifications, the board of directors may advance the funds necessary to pay the additional claims.

(f) In order to avoid undue delay in the payment of emergency claims, the conservator or receiver may contract with an insurer licensed to do business in this State, or any other qualified organization, for the handling and adjustment of those emergency claims.

(g) If an insolvent insurer is subsequently rehabilitated, any amounts advanced by the association shall be repaid to the association by the insurer, or pursuant to any plan of rehabilitation. If an insolvent insurer is subsequently declared an impaired insurer, amounts advanced pursuant to this section shall be considered assessments for covered claims under Section 7 and subject to the provisions of this article.

SECTION 6.16. Section 8, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), is amended to read as follows:

Sec. 8. PENALTY FOR FAILURE TO PAY ASSESSMENTS. A. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any member insurer who fails to pay an assessment when due, and the association shall promptly report to the Commissioner any such failure. Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

B. As an alternative to the penalty provided by Subsection A of this section, the Commissioner may levy a monetary penalty on a member insurer who fails to pay an assessment when due. The monetary penalty may not exceed five percent of the unpaid assessment a month and may not be less than $100 a month.

SECTION 6.17. Section 5(4), Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act (Article 21.28-D, Insurance Code), is amended to read as follows:

(4) "Contractual obligation" means any policy or contract benefit (including but not limited to death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations to the owner, beneficiary, assignee, certificate holder, or third-party beneficiary), arising from an insurance policy or annuity contract to which this Act applies, issued or assumed by an insurer who becomes an impaired insurer. A contractual obligation shall not include:

(a) death benefits in an amount in excess of $300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of $100,000 in the aggregate under one or more covered policies on any one life;

(b) an amount in excess of $100,000 in the aggregate under one or more annuity contracts within the scope of this Act issued to the same holder of individual annuity policies or to the same annuitant or participant under group annuity policies or an amount in excess of $5,000,000 in unallocated annuity contract benefits with respect to any one contract holder irrespective of the number of such contracts;

(c) an amount in excess of $200,000 in the aggregate under one or more accident and health, accident, or health insurance policies on any one life;

(d) any benefits that would have been payable under any group life, accident, or health policies or contracts of the impaired insurer for claims incurred after the next renewal date under those policies or contracts or 90 days, but in no event less than 60 days, after the date that a permanent receiver has been appointed for the insurer by a court of competent jurisdiction, whichever occurs first; or

(e) punitive, exemplary, extra-contractual, or bad faith damages, whether agreed to or assumed by an insurer or insured, or imposed by a court of competent jurisdiction.

If the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship of the impaired insurer, that portion of the expenses of administration incurred in the processing and payment of claims against the impaired insurer shall also be a contractual obligation under this Act.

SECTION 6.18. Section 9(1), Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act (Article 21.28-D, Insurance Code), is amended to read as follows:

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall determine the amount necessary and the commissioner shall assess the member insurers, separately for each account established by Section 6 of this Act, at such times and for such amounts as the board of directors finds necessary. All assessments ordered by the commissioner shall be payable to the association and are due on a date specified by the commissioner which may not be earlier than the 30th day after the date on which prior [~~the board of directors shall collect the assessments after 30 days~~] written notice is given to the member insurers. Interest accrues on the unpaid amount at a rate of 10 percent beginning on the [~~before payment is~~] due date.

SECTION 6.19. Section 9(3), Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act (Article 21.28-D, Insurance Code), is amended to read as follows:

(3)(a) The amount of any Class A assessment for each account shall be determined by the board of directors taking into consideration one or more of the following: annual premium receipts, admitted assets, or insurance in force, as reflected in the annual statements for the year preceding the assessment. The amount of any Class B assessment shall be divided among the separate accounts as reflected in the annual statements for the year preceding the assessment in the same proportion that the premiums from the policies covered by each account were received by such insolvent or impaired insurer from all covered policies during the [~~preceding calendar~~] year preceding impairment;

(b) Class A assessments shall be allowed as a credit on the amount of premium taxes in the manner provided by Article 1.16 of this code. Class B assessments against member insurers for each account shall be in the proportion that premiums received on all business by each assessed member insurer on policies covered by each account bears to such premiums received on all business by all assessed member insurers;

(c) Assessments for funds to meet the requirements of the association with respect to an insolvent or impaired insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under Paragraph (2), above, and computation of assessments under this paragraph shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

SECTION 6.20. Section 13(5), Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act (Article 21.28-D, Insurance Code), is amended by adding Subdivisions (f) and (g) to read as follows:

(f) Claims against an impaired insurer placed under an order of liquidation, rehabilitation, or conservation shall be processed and acted on by the receiver in the same manner as other claims under Article 21.28 of this code.

(g) A person who has a claim against an insurer under a provision in an insurance policy other than a policy of an impaired insurer, that also is a contractual obligation under this Act, must first exhaust his right under that policy. The amount of an approved claim under this Act shall be reduced by the policy limits of or amount paid under that insurance policy, whichever amount is greater. If a claimant exhausts his right under a policy other than a policy of an impaired

insurer, the insurer issuing that policy is not entitled to sue or continue a suit against the insured of the impaired insurer to recover an amount paid the claimant under that policy. Notwithstanding the foregoing, a person having a contractual obligation as defined by this Act under a life insurance policy or annuity contract issued by an impaired insurer is not required to exhaust other coverage for that claim, and the amount of an approved claim under a life insurance policy or annuity contract issued by an impaired insurer may not be reduced because of that duplicate coverage.

SECTION 6.21. The Loss Claimant's Priorities Act (Article 21.28-B, Insurance Code) is repealed.

SECTION 6.22. Article 9.48, Insurance Code, is amended by adding Section 7A to read as follows:

Sec. 7A. PURPOSE OF ASSESSMENTS. The amounts provided pursuant to assessments made under this article are considered to be supplemental to the marshaling of assets for the purpose of making payments on behalf of an impaired insurer.

SECTION 6.23. Article 21.28-C, Insurance Code, is amended by adding Section 7A to read as follows:

Sec. 7A. PURPOSE OF ASSESSMENTS. The amounts provided pursuant to assessments made under this article are considered to be supplemental to the marshaling of assets for the purpose of making payments on behalf of an impaired insurer.

SECTION 6.24. Section 9, Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act (Article 21.28-D, Insurance Code), is amended by adding Subsection (10) to read as follows:

(10) The amounts provided pursuant to assessments made under this section are considered to be supplemental to the marshaling of assets for the purpose of making payments on behalf of an impaired insurer.

ARTICLE 7. REINSURANCE

SECTION 7.01. Articles 3.10 and 5.75-1, Insurance Code, are amended to read as follows:

Art. 3.10. MAY REINSURE. (a) Any domestic company may reinsure in any solvent assuming insurer, any risk or part of a risk which it may assume; provided, however, no credit for the reserve liability on such reinsurance may be taken by the ceding insurer except as provided in this section, [~~unless the assuming insurer is licensed to do business in this state, or such reinsurance and the ceding insurer and assuming insurer comply with the provisions of Article 3.10A of this code;~~] and, provided further, no company operating under Section 2(a) of Article 3.02 shall reinsure any risk or part of a risk with any insurer which is not licensed to do business in this state. No such domestic company shall have the power to reinsure its entire outstanding business [~~unless the assuming insurer is licensed in this state and~~] until the contract therefor shall be submitted to the Commissioner of Insurance of Texas and approved by him as protecting fully the interests of all policy holders.

(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when:

(1) The reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state; or

(2) The reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which: submits to this state's jurisdiction; submits to this state's authority to examine its books and records; is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state; files annually

a copy of its annual statement, filed with the insurance department of its state of domicile, with the State Board of Insurance; and maintains a surplus as regards policyholders in an amount not less than $20 million; or

(3) The reinsurance is ceded to an assuming insurer which is domiciled in or in the case of a United States branch of an alien assuming insurer is entered through a state which employes standards regarding credit for reinsurance substantially similar to those applicable under Subdivisions (1) and (2) of this section and such assuming insurer submits to the authority of this state to examine its books and records; or

(4) The reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in Subsection (e)(7), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the State Board of Insurance information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers to enable to the State Board of Insurance to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trusteed surplus of not less than $20 million. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, include a trusteed surplus of not less than $100 million and the group shall make available to the State Board of Insurance an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter. Such trust shall be established in a form approved by the State Board of Insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the State Board of Insurance. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust. Not later that February 28 of each year the trustees of the trust shall report to the State Board of Insurance in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31; or

(5) The reinsurance is ceded to an assuming insurer not meeting the requirements of Subdivision (1), (2), (3), or (4), but only with respect to the insurance of risks located in jurisdiction where such reinsurance is required by applicable law or regulation of that jurisdiction.

(c) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by Subsections (b)(3) and (4) of this article shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any State of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any Appellate Court in the event of an appeal; and

(2) to designate the State Board of Insurance or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any

action, suit, or proceeding instituted by or on behalf of the ceding company. This provision, however, is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(d) A reduction from liability for the reinsurance ceded to an assuming insurer not meeting the requirements of Subsection (b) shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution, as defined in Subsection (e). This security may be in the form of:

(1) cash;

(2) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in Subsection (e)(1).

Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

(4) any other form of security acceptable to the Commissioner.

(e) Qualified United States Financial Institutions. (1) For the purposes of Subsection (d)(3), a "qualified United States financial institution" means an institution that:

(A) is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;

(B) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(C) has been determined by either the Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

(2) A "qualified United States financial institution" means, for the purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(A) is organized, or (in the case of a United States branch or agency office or a foreign banking organization) licensed, under the laws of the United States or any state thereof and has been granted the authority to operate with fiduciary powers, and

(B) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(f) The Commissioner may adopt rules and regulations implementing the provisions of this law.

(g) Subsections (a) through (f) of this Act shall apply to all reinsurance agreements having an inception, anniversary, or renewal date not less than four months after the effective date of this statute.

(h) A person does not have any rights against a reinsurer that are not specifically set forth in the contract of reinsurance or in a specific agreement between the reinsurer and the person.

(i) The State Board of Insurance shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as the Board may direct.

(j) Credit may not be given in the accounting and financial statements, either as an asset or a deduction from liability, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer, and is payable directly to the ceding insurer or to its domiciliary liquidator or receiver, except:

(1) Where the contract of reinsurance specifically provides another payee of the reinsurance in the event of insolvency of the ceding insurer; or

(2) Where the assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the ceding insurer as direct obligations of the assuming insurer to the payee under the policies and in substitution for the obligation of the ceding insurer to the payee.

(k) "Assuming insurer" means the insurer who under a contract of reinsurance incurs to the ceding insurer an obligation of which the performance is contingent on incurring of liability or loss by the ceding insurer under its contract or contracts of insurance made with third persons.

(l) An insurer shall account for reinsurance agreements and shall record those reinsurance agreements in the insurer's financial statement in a manner that accurately reflects the effect of the reinsurance agreements on the financial condition of the company. The State Board of Insurance may adopt reasonable rules relating to the accounting and financial statement requirements of this section and the treatment of reinsurance agreements between insurance companies, including asset debits or credits, reinsurance debits or credits, and reserve debits or credits relating to the transfer of risks or liabilities by reinsurance agreements and any contingencies arising from reinsurance agreements.

Art. 5.75-1. REINSURANCE. (a) Every company authorized to do business in Texas, writing any line of insurance regulated by Chapter 5 of this Code, and while in compliance with all laws applicable to it, will be eligible to reinsure its liability or any part of its liability which it may assume as a direct writer under authority of law. No such company shall have the power to reinsure its entire outstanding business until the contract therefor shall be submitted to the State Board of Insurance, and be by it approved, as protecting fully the interests of all the policyholders. This Article shall be cumulative of other provisions of this Code pertaining to reinsurance.

(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when:

(1) The reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state; or

(2) The reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which: submits to this state's jurisdiction; submits to this state's authority to examine its books and records; is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state; files annually a copy of its annual statement, filed with the insurance department of its state of domicile, with the State Board of Insurance; and maintains a surplus as regards policyholders in an amount not less than $20 million; or

(3) The reinsurance is ceded to an assuming insurer which is domiciled in or in the case of a United States branch of an alien assuming insurer

is entered through a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Subdivisions (1) and (2) of this subsection and such assuming insurer submits to the authority of this state to examine its books and records; or

(4) The reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in Subsection (e)(2), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the State Board of Insurance information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers to enable the State Board of Insurance to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trusteed surplus of not less than $20 million. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, include a trusteed surplus of not less than $100 million; and the group shall make available to the State Board of Insurance an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter. Such trust shall be established in a form approved by the State Board of Insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the State Board of Insurance. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust. Not later than February 28 of each year the trustees of the trust shall report to the State Board of Insurance in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31; or

(5) The reinsurance is ceded to an assuming insurer not meeting the requirements of Subdivisions (1), (2), (3), or (4), but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

(c) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by Subsections (b)(3) and (4) of this article shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any State of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any Appellate Court in the event of an appeal; and

(2) to designate the State Board of Insurance or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company. This provision, however, is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(d) A reduction from liability for the reinsurance ceded to an assuming insurer not meeting the requirements of Subsection (b) shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely, by and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution, as defined in Subsection (e). This security may be in the form of:

(1) cash;

(2) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in Subsection (e)(1).

Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

(4) any other form of security acceptable to the Commissioner.

(e) Qualified United States Financial Institutions. (1) For the purposes of Subsection (d)(3), a "qualified United States financial institution" means an institution that:

(A) is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;

(B) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(C) has been determined by either the Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

(2) A "qualified United States financial institution" means, for the purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(A) is organized, or (in the case of a United States branch or agency office or a foreign banking organization) licensed, under the laws of the United States or any state thereof and has been granted the authority to operate with fiduciary powers; and

(B) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(f) Subsections (a) through (e) of this article shall apply to all reinsurance agreements having an inception, anniversary, or renewal date not less than four months after the effective date of this statute. [~~the reserve liability on any reinsurance may not be taken by a domestic ceding insurer unless the assuming insurer is licensed to do business in this state or the reinsurance and the ceding insurer and assuming insurer comply with Article 5.75-2 of this Code.~~]

(g) [~~(c)~~] A person does not have any rights against a reinsurer that are not specifically set forth in the contract of reinsurance or in a specific agreement between the reinsurer and the person.

(h) [~~(d)~~] The State Board of Insurance shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as the board may direct.

(i) [~~(e)~~] Credit may not be given in the accounting and financial statements, either as an asset or a deduction from liability, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer, and is payable directly to the ceding insurer or to its domiciliary liquidator or receiver, except:

(1) where the contract of reinsurance specifically provides another payee of the reinsurance in the event of insolvency of the ceding insurer; or

(2) where the assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payee under the policies and in substitution for the obligations of the ceding insurer to the payee.

(j) [~~(f)~~] "Assuming insurer" means the insurer who under a contract of reinsurance incurs to the ceding insurer an obligation of which the performance is contingent on incurring of liability or loss by the ceding insurer under its contract or contracts of insurance made with third persons.

(k) [~~(g)~~] Each company authorized to do business in this state, writing any line of insurance regulated by this chapter, and while in compliance with all laws applicable to it, may provide reinsurance as provided by Subsection (a) of this article.

(l) [~~(h)~~] A life insurance company authorized to do business in this state may provide reinsurance on the same basis as companies described in Subsection (k) [~~(g)~~] of this article.

(m) [~~(i)~~] The State Board of Insurance may adopt necessary and reasonable rules under this article to protect the public interest.

SECTION 7.02. Articles 3.10A and 5.75-2, Insurance Code, are repealed.

ARTICLE 8. MISCELLANEOUS PROVISIONS

SECTION 8.01. This Act takes effect September 1, 1989.

SECTION 8.02. Section 1, Article 3.02, Insurance Code, as amended by this Act, applies only to articles of incorporation required to be filed by that section and acquisition applications that are filed on and after the effective date of this Act. Articles of incorporation filed before that date are governed by the law that existed at the time those articles were filed, and that law is continued in effect for that purpose.

SECTION 8.03. Section 5A, Article 21.28-A, Insurance Code, as added by this Act, applies only to conservatorships ordered by the commissioner of insurance on and after September 1, 1989.

SECTION 8.04. (a) With regard to an insurer that was put under supervision by the commissioner of insurance before September 1, 1989, the insurance company under supervision must comply with the requirements established by the commissioner under Section 3, Article 21.28-A, Insurance Code, as amended by this Act, not later than December 1, 1989.

(b) With regard to an insurer that was put under conservatorship under Article 21.28-A, Insurance Code, as amended by this Act, before September 1, 1989, the conservator must accomplish the purposes and complete his duties and responsibilities not later than December 1, 1989. If the conservator has not completed his duties by that date, he is automatically discharged as conservator for the insurance company.

SECTION 8.05. The right to file suit and limitations and conditions placed on the right to file suit under amendments made under Article 6 of this Act apply only to suits filed on or after September 1, 1989. Suits filed before that date are

governed by the law that existed at the time the suit was filed, and those laws are continued in effect for that purpose.

SECTION 8.06. The change in the formulas for making assessments against insurers for guaranty purposes under amendments made by Article 6 of this Act applies only to assessments made by the commissioner of insurance or the board of directors of a guaranty fund on and after September 1, 1989. Assessments made before that date are governed by the law that existed at the time the assessments were made, and that law is continued in effect for that purpose.

SECTION 8.07. Immunity from liability granted by Section 17, Article 9.48, Insurance Code, and Section 4, Article 21.28, Insurance Code, and the Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), as amended by this Act, applies only to behavior occurring on and after September 1, 1989. Behavior occurring before that date is governed by the law that existed at the time the behavior occurred and that law is continued in effect for that purpose.

SECTION 8.08. The amendment to Section 2(b), Article 21.28, Insurance Code, made by this Act, and the amendment of the times for filing claims and late claims and for giving notices made by Article 6 of this Act apply only for proceedings that begin on and after September 1, 1989. The law that existed before those amendments is continued in effect for the proceedings beginning before that date.

SECTION 8.09. Changes in claims that are covered and not covered, the priority of claims, the reduction in claims, rights to claims, and the distribution of assets made by amendments under Article 6 of this Act apply only to claims and asset distributions to which a right has not accrued before September 1, 1989. A claim or an asset distribution to which a right has accrued before that date is governed by the law that existed at the time the right to the claim or asset distribution accrued, and that law is continued in effect for that purpose.

SECTION 8.10. 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 - S. Thompson

Amend **C.S.S.B. 255** on page 1 line _____ by adding the following language:

PREAMBLE; LEGISLATIVE INTENT

This act is prospective in nature. Nothing in this act is intended to affect any pending litigation.

Floor Amendment No. 2 - Cavazos

Amend **C.S.S.B. 255** as follows:

On page 15, lines 2 and 3, strike the words "$2 million in net direct premiums written annually" and insert in lieu thereof the words "$500,000 in direct premiums written".

On page 16, line 23, strike the word "one" and insert in lieu thereof the word "two", and on page 16, line 26, strike the word "three" and insert in lieu thereof the word "five", and delete the word "net" immediately before the word "direct".

On page 18, strike Sec. 7(g) in its entirety.

Floor Amendment No. 3 - Cavazos

Amend **C.S.S.B. 255** as follows:

On page 42, line 13, insert the words "not more than" before the word "ninety" and delete the words ", or another period designated by the Commissioner" in its entirety after the word "days".

On page 43, line 27, delete the word "within" before the word "ninety" and insert in its place the words "not later than", and delete the words ", or the period designated by the Commissioner,".

On page 44, lines 3-6, delete the words "on written determination by the Commissioner that there is a substantial likelihood of rehabilitation. No hearing is required before the Commissioner makes the determination." and insert in its place the words "of thirty (30) days each for a total period of extensions not to exceed one hundred and eighty (180) successive days, if the Commissioner determines and issues written findings that there is a substantial likelihood of rehabilitation.

Floor Amendment No. 4 - Pennington

Amend **C.S.S.B. 255** as follows:

(1) On page 81, between lines 17 and 18, insert Section 6.25 to read as follows:

SECTION 6.25. Chapter 21, Insurance Code, is amended by adding Article 21.28-E to read as follows:

Art. 21.28-E. DISCLOSURE OF GUARANTY FUND NONPARTICIPATION IN INSURANCE POLICIES, CONTRACTS, AND APPLICATIONS AND IN CERTIFICATES AND EVIDENCES OF COVERAGE. (a) Each insurance policy or contract or application or certificate or evidence of coverage delivered or issued for delivery in this state that is not covered by an insurance guaranty fund or other solvency protection arrangement authorized by this code must have affixed to the first page in 10-point type a statement to the effect that, in the event the insurer is unable to fulfill its contractual obligation under this policy or contract or the certificate or evidence of coverage, the insurer is not covered by an insurance guaranty fund or other solvency protection arrangement.

(b) The State Board of Insurance by rule shall promulgate the statements that must be used by insurers to comply with this article, and an insurer may not include in an insurance policy, contract, or application or a certificate or evidence of coverage a statement that does not conform to the appropriate statement promulgated by the board.

(2) On page 99, between lines 5 and 6, insert a new Section 8.10 to read as follows:

SECTION 8.10. Article 21.28-E, Insurance Code, as added by this Act applies to all insurance policies, contracts, and applications and to all certificates and evidences of coverage delivered, issued for delivery, or renewed in this state on and after January 1, 1990. Policies, contracts, and applications and certificates and evidences of coverage delivered, issued for delivery, or renewed in this state before January 1, 1990, are governed by the law that existed immediately before September 1, 1989, and that law is continued in effect for that purpose.

(3) On page 99, line 6, strike 8.10 and substitute 8.11.

Floor Amendment No. 5 - McKinney

Amend **C.S.S.B. 255** as follows:

(1) Amend Sec. 3A.(a) on page 39, to read as follows:

Section 3A.(a) Notwithstanding any other provision of law, hearings, orders, notices, correspondence, reports, records, and other information in the possession of the State Board of Insurance relating to the supervision or conservatorship of any insurance company are not confidential unless the commissioner determines and issues written findings that confidentiality during the initial period of supervision is necessary to accomplish the purposes of this article. The commissioner shall make this determination of confidentiality on the date the first notice of supervision is

given. The period of confidentiality determined the commissioner may not be for a period that exceeds 60 days after the date of the commissioner's determination.

(2) Amend **C.S.S.B. 255** on page 41 by adding Sec. 5A to Article 1.40, Insurance Code, to read as follows:

Sec. 5A. (a) On appointment of a conservator as provided by Sections 5 and 6 of this Act, the Commissioner shall publish notice of the conservatorship in at least one newspaper with general circulation in each county that has a population of at least 100,000 according to the most recent federal decennial census.

(b) The notice must include:

(1) the name of the insurer placed in conservatorship;

(2) The date on which the insurer was placed in conservatorship in this state;

(3) the reasons for placing the insurer in conservatorship; and

(4) any courses of action with relation to the insurer available to policyholders and any duties with which the policyholders may be required to comply.

(c) The Commissioner must publish the notice required by this section not later than the seventh day after the date the Commissioner enters an order placing the insurer in conservatorship.

Floor Amendment on Third Reading - Uher, Shine

Amend **C.S.S.B. 255** as follows:

On page 14, line 21, strike the words "farm mutual insurance companies".

On page 14, line 22, strike the words "county mutual insurance companies".

The amendments were read.

Senator Montford 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. 255** 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 Montford, Chairman; Lyon, Parker, Harris and Caperton.

HOUSE BILL 2312 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. 2312, Relating to certain offenses involving computers and to civil causes of action arising from those crimes.

The bill was read second time.

Senator Montford offered the following committee amendment to the bill:

Amend **H.B. 2312** by adding on page 4, line 6 of the bill between the words "system," and "or" the word "data,".

The committee amendment was read and was adopted viva voce vote.

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 viva voce vote.

HOUSE BILL 2312 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2312** 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 viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1292 ON SECOND READING

On motion of Senator Barrientos 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. 1292, Relating to public school parent involvement programs.

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

COMMITTEE SUBSTITUTE HOUSE BILL 1292 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1292** 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.

COMMITTEE SUBSTITUTE HOUSE BILL 2178 ON SECOND READING

On motion of Senator Henderson 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. 2178, Relating to a revision of Title 15, Election Code, regulating political funds and campaigns.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Amend **C.S.H.B. 2178** on page 4, line 42 by deleting subsection (d) and substituting the following:

(d) During the period prescribed by Subsection (a), a general-purpose committee may not make a direct campaign expenditure or officeholder expenditure for directly supporting or assisting a statewide officeholder or member of the legislature, unless that statewide officeholder or member of the legislature is a candidate in a special election which is sheduled to occur during the prohibited period described in (a).

The amendment was read and was adopted viva voce vote.

On motion of Senator Henderson 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 viva voce vote.

HOUSE BILL 9 ON SECOND READING

On motion of Senator Tejeda 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. 9, Relating to the offenses of aggravated assault and deadly assault on a peace officer, member or employee of the Board of Pardons and Paroles, jailer or guard, or probation officer or employee of an adult probation department.

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

HOUSE BILL 9 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 9** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

Question - Shall the bill be read third time?

VOTE ON SUSPENSION OF THREE-DAY RULE ON HOUSE BILL 9 RECONSIDERED

On motion of Senator Tejeda and by unanimous consent, the vote by which the Three-Day Rule on **H.B. 9** was suspended was reconsidered.

Question - Shall the Three-Day Rule be suspended?

VOTE ON PASSAGE TO THIRD READING ON HOUSE BILL 9 RECONSIDERED

On motion of Senator Tejeda and by unanimous consent, the vote by which **H.B. 9** was passed to third reading was reconsidered.

Question - Shall **H.B. 9** be passed to third reading?

VOTE BY WHICH HOUSE BILL 9 WAS READ SECOND TIME RECONSIDERED

On motion of Senator Tejeda and by unanimous consent, the vote by which **H.B. 9** was read second time was reconsidered.

Question - Shall **H.B. 9** be read second time?

HOUSE BILL 9 ON SECOND READING

Senator Tejeda moved to suspend the regular order of business to take up for consideration at this time on its second reading and passage to third reading:

H.B. 9, Relating to the offenses of aggravated assault and deadly assault on a peace officer, member or employee of the Board of Pardons and Paroles, jailer or guard, or probation officer or employee of an adult probation department.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Glasgow, Ratliff, Washington.

The bill was read second time.

Senator Washington offered the following amendment to the bill:

Amend **H.B. 9** as follows:

Section 3 on page 2, line 1 after the word "causes" insert the word "serious".

The amendment was read and was adopted viva voce vote.

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

The bill as amended was again passed to third reading viva voce vote.

RECORD OF VOTES

Senators Washington and Glasgow asked to be recorded as voting "Nay" on the passage of the bill to third reading.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1989

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. 75, Relating to discrimination in certain transactions concerning housing; providing civil and criminal penalties. (As amended)

S.B. 237, Relating to the regulation of the practice of chiropractic. (As substituted and amended)

S.B. 410, Relating to certain insurance coverage for spouses who separate or divorce. (As substituted and amended)

S.B. 619, Relating to sick leave for public school employees. (As amended)

S.B. 642, Relating to the bond required before the issuance of an order restraining or enjoining foreclosure on the homestead of an indigent person. (As amended)

S.B. 924, Relating to the delivery of an order withholding income of a person for the payment of child support to the employer of the person.

S.B. 1090, Relating to court administration and jurisdiction in El Paso County and to the creation of the County Court at Law No. 6 of El Paso County, Texas. (As amended)

S.B. 1197, Relating to procedures regarding certain State agency orders and decisions. (As amended)

S.B. 1646, Relating to the creation, administration, powers, duties, operation and financing of the West Travis County Municipal Utility District No. 3. (As amended)

S.B. 1647, Relating to the creation, administration, powers, duties, operation and financing of the West Travis County Municipal Utility District No. 4. (As amended)

S.B. 1648, Relating to the creation, administration, powers, duties, operation and financing of the West Travis County Municipal Utility District No. 5. (As amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT
SENATE BILL 189

Senator Henderson submitted the following Conference Committee Report:

Austin, Texas
May 24, 1989

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. 189** 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.

HENDERSON	WILSON
GREEN	ECKELS
BROWN	A. LUNA
WHITMIRE	S. THOMPSON
WASHINGTON	A. SMITH
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the operation and regulation of certain metropolitan rapid transit authorities and passenger conduct thereon; authorizing penalties.

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

SECTION 1. Subsection (e), Section 4, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended by amending Subdivision (2) and adding Subdivisions (4) and (5) to read as follows:

(2)(A) In addition to the methods [~~method~~] of removal of board members provided by Subdivisions (1) and (4) [~~Subsection (e)(1)~~] of this subsection [~~section~~], board members of an authority in which the rate of the sales and use tax is one percent and whose principal city has a population of more than 1,200,000, according to the most recent federal census, are subject to removal by the recall procedure provided by this subdivision.

(B) [~~(i)~~] The qualified voters of the authority by petition may require that the appointing political subdivision reconsider their appointment of a board member to determine whether a member of the board is to be removed from office. A petition is valid if it states that it is intended to require

a reconsideration on the question of removing an identified board member, if it is signed by qualified voters equal in number to at least 10 percent of the number of voters of the authority voting in the previous governor's election, if the signatures are collected within a period of 90 days prior to the date on which the petition is presented to the appointing political subdivision, and if it is submitted to the appointing political subdivision before the first day of the final six months of the term of the member whose removal is sought.

(C) [~~(ii)~~] After receiving a petition, the appointing political subdivision shall submit it to the secretary of state, who, not later than the 10th day after the day he or she receives the petition, shall determine whether or not the petition is valid and shall notify the appointing political subdivision of the finding. If the secretary of state fails to act within the time allowed, the petition is treated as if it had been found valid.

(D) [~~(iii)~~] If the appointing political subdivision receives notice from the secretary of state that the petition is valid or if the secretary of state has failed to act within the time allowed, the appointing political subdivision shall reconsider such appointment and take action to either remove or reconfirm such appointee.

(E) [~~(iv)~~] The appointing authority that appointed the member removed by recall shall fill the vacancy not later than the 30th day after the day of removal.

(F) [~~(v)~~] A member removed by recall is not eligible for reappointment to fill the vacancy and is not eligible for appointment to any other position on the board for a length of time after the day of removal equal to the length of a normal term of a member of the board.

(4) In addition to the methods of removal of board members provided by Subdivisions (1) and (2) of this subsection, a board member of an authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, may be removed by the agency that appointed the member. In the case of the principal city, removal under this subsection is by recommendation of the mayor and confirmation of that city's governing body. Grounds for removal under this subdivision are the grounds described by Subdivisions (1) and (5) of this subsection. Before removing a board member under this subdivision, the appointing agency or, in the case of a member appointed by the mayor of the principal city and confirmed by that city's governing body, the mayor of the principal city shall furnish to the member a statement of the charges as grounds for removal. Before the 11th day after the date the member receives the statement, the member may request a hearing before the appointing or confirming agency. At a hearing, the member is entitled to be represented in person or through counsel. After a hearing, if the appointing or confirming agency determines that the charges are true, it shall remove the member from the board.

(5)(A) In addition to the grounds described by Subdivision (1) of this subsection, it is a ground for removal from the board of an authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, if a member:

(i) does not have at the time of appointment the qualifications required by Sections 4(d) and 6B(e) of this Act;

(ii) does not maintain during service on the board the qualifications required by Sections 4(d) and 6B(e) of this Act;

(iii) violates a prohibition established by Subsection (d) of this section or Chapter 171, Local Government Code;

(iv) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(v) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless 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 is taken when a ground for removal of a board member exists. However, an action taken when a ground for removal exists under Paragraph (A)(iii) of this subdivision is voidable if the measure that was the subject of the action would not have passed the board without the vote of the person who is the subject of that ground for removal.

(C) If the general manager of the authority has knowledge that a potential ground for removal exists, the general manager shall notify the chairman of the board of the ground. The chairman shall then notify the appointing agency that a potential ground for removal exists.

SECTION 2. Section 6, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended by adding Subsections (t), (u), and (v) to read as follows:

(t) Except as provided by Subsection (u) of this section, an authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, may construct, reconstruct, or maintain any highway, road, thoroughfare, or arterial or local street, including any bridge or grade separation, within the boundaries of the authority and may undertake traffic signalization and control improvements of any kind within the boundaries of the authority. An authority may exercise any portion of the powers granted by this subsection through contracts or other agreements with other governmental entities.

(u) An authority may not act under Subsection (t) of this section in a municipality without:

(1) the consent of the governing body of the municipality; or

(2) a contract with the municipality that specifies the actions the authority may take in the municipality.

(v) Subsection (t) of this section does not apply to the exercise of activities undertaken by an authority under Subsection (e) of this section.

SECTION 3. Section 6B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended by amending Subsection (e) and adding Subsection (h) to read as follows:

(e) The terms of office of any members of the board appointed after the confirmation and tax election and after the effective date of this Act are four years, except as otherwise provided by this section and except that in order to provide staggered terms, the terms of office of one-half of the first members appointed by an appointing agency after the effective date of this Act, if an even number is to be appointed by an agency, and a bare majority of the first members appointed by the agency, if an odd number greater than one is to be appointed by an agency, are two years. In addition, the appointing agency may shorten the initial terms to make the expiration dates coincide with those of the previously existing positions. To be eligible for appointment to the board, a person must be a qualified voter residing within the boundaries of the authority. Except as provided by Subsection (c) of this section, a person may not serve more than two consecutive four-year terms as a member of the board.

(h) A member of the board of an authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, serves a term of two years. A vacancy on a board subject to this subsection shall be filled by the agency that appointed the member whose position has become vacant for the remainder of the unexpired term. In the case of a vacancy in a position whose previous occupant was appointed by the mayor of the principal city and confirmed by that city's governing body, the vacancy shall be filled by appointment of the

mayor and confirmation of the governing body. A person may not serve a total of more than eight years, whether or not consecutive, on a board subject to this subsection, except as a holdover pending the qualification of a successor, and may not be appointed if, at the end of the term for which the person is being considered, the person's service would exceed this requirement.

SECTION 4. Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended by adding Section 6H to read as follows:

Sec. 6H. ADVISORY COMMITTEES FOR CERTAIN AUTHORITIES. (a) The board of an authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, may establish advisory committees to make recommendations to the board or general manager about the operation of the authority.

(b) An advisory committee established under this section exists at the pleasure of the board. The board shall appoint members to an advisory committee from a list of persons recommended by the general manager to serve at the pleasure of the board. In making appointments to an advisory committee established under this section, the board shall appoint persons who have knowledge about and interest in and represent a broad range of viewpoints concerning the work of the committee.

(c) The board shall specify the purpose, powers, duties, and manner of reporting the results of the work of an advisory committee established under this section.

(d) Members of an advisory committee appointed under this section may not receive compensation but are entitled to reimbursement by the authority for actual and necessary expenses incurred in the performance of the work of the committee.

SECTION 5. Subsection (i), Section 7, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) Notwithstanding the provisions of Section 7, the authority, acting by board order or resolution, has the power to issue short-term bonds or notes secured by revenues or taxes for any purpose; provided that the repayment of the bonds or notes must be satisfied out of revenues or taxes received during the period from the date of issuance to the last day of the fiscal year following the fiscal year in which the bonds or notes are issued, and the bonds or notes may not be issued for a term exceeding 12 months. Any such short-term bonds or notes need not be approved by the Attorney General of Texas nor registered by the Comptroller of Public Accounts of the State of Texas.

SECTION 6. Section 12, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. MANAGEMENT. (a) Except as otherwise provided by this section, the [~~The~~] responsibility for the management, operation and control of the properties belonging to an authority shall be vested in its board. The board may:

(1) [~~(a)~~] employ all persons, firms, partnerships or corporations deemed necessary by the board for the conduct of the affairs of the authority, including, but not limited to, a general manager, bookkeepers, auditors, engineers, attorneys, financial advisers and operating or management companies, and prescribe the duties, tenure and compensation of each. All employees may be removed by the board;

(2) [~~(b)~~] become a subscriber under the Texas workers' compensation laws [~~Workmen's Compensation Act~~] with any old-line legal-reserve insurance company authorized to write policies in the State of Texas;

(3) [~~(c)~~] adopt a seal for the authority;

(4) [~~(d)~~] invest funds of the authority in direct or indirect obligations of the United States, the state, or any county, city, school district or other

political subdivision of the state; funds of the authority may be placed in certificates of deposit of state or national banks or savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the State of Texas; the board, by resolution, may provide that an authorized representative of the authority may invest and reinvest the funds of the authority and provide for money to be withdrawn from the appropriate accounts of the authority for the investments on such terms as the board considers advisable;

(5) [~~(e)~~] fix the fiscal year for the authority;

(6) [~~(f)~~] establish a complete system of accounts for the authority and each year shall have prepared an audit of its affairs by an independent certified public accountant or a firm of independent certified public accountants which shall be open to public inspection; and

(7) [~~(g)~~] designate one or more banks to serve as the depository for the funds of the authority.

(b) All funds of the authority shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the authority's bonds or notes.

(c) To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds of counties of the State of Texas.

(d) The board, by resolution, may authorize a designated representative to supervise the substitution of securities pledged to secure the authority's funds.

(e) The board of an authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, shall employ a general manager to administer the daily operations of the authority. The general manager may employ persons to conduct the affairs of the authority and may prescribe their duties and compensation, subject to board approval of the budget of the authority and in accordance with personnel policies adopted by the board. Subject to those policies, only the general manager may remove an employee. The general manager may, subject to approval of the board, contract with individuals, partnerships, corporations, or other entities to perform work or provide materials for the authority.

(f) The board of an authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the authority.

SECTION 7. Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended by adding Sections 12C and 12D to read as follows:

Sec. 12C. AUDIT REQUIREMENTS FOR CERTAIN AUTHORITIES. In addition to the filing required by Section 12B(c) of this Act, the board of an authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, shall deliver a copy of the report of an audit performed under Section 12B of this Act to the state auditor for review and comment. The state auditor shall file any comments relating to the authority's audit with the Legislative Audit Committee and the board of the authority. The state auditor may examine any work papers from the audit or audit the financial transactions of the authority if the state auditor determines that the audit is necessary.

Sec. 12D. PERFORMANCE AUDITS OF CERTAIN AUTHORITIES. (a) The board of an authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, shall contract with a firm to conduct a performance audit of the authority. A contracting firm under this section must have experience in reviewing the performance of transit agencies. A performance audit is required to be conducted under this section every four years.

(b) The purposes of a performance audit under this section are to provide evaluative information necessary for the performance of oversight functions by state and local officers and to provide information to the authority to assist in the making of changes to improve the efficiency and effectiveness of authority operations. The board shall determine one or more subjects for a particular audit from among the subjects of administration and management of the authority, transit operations, and system maintenance. Each of those subjects must be examined at least once in every third performance audit.

(c) Each performance audit must include, in addition to an examination of subjects determined under Subsection (b) of this section, an examination of the authority's compliance with this Act and other applicable state law and an examination of the following performance indicators:

(1) operating cost per passenger;
(2) sales and use tax receipts per passenger;
(3) operating cost per revenue hour;
(4) operating cost per revenue mile;
(5) fare recovery rate;
(6) average vehicle occupancy;
(7) on-time performance;
(8) the number of accidents per 100,000 miles; and
(9) the number of total miles between mechanical road calls.

(d) In this section:

(1) "Accidents" includes:

(A) all collisions that involve a revenue vehicle of the authority and that result in property damage, injury, or death, other than collisions in which the revenue vehicle is lawfully parked; and

(B) all incidents that result in the injury or death of a person aboard, boarding, or alighting from a revenue vehicle of the authority.

(2) "Mechanical road call" means any interruption in revenue service caused by equipment failure of a revenue vehicle that requires assistance from someone other than the vehicle operator before the vehicle can be operated normally.

(3) "Operating cost" means the authority's costs of providing public transit service, including the cost of purchased transit service not performed by the authority, but excluding the costs of depreciation, amortization, capitalized charges, charter bus operations, and coordination of carpool and vanpool activities.

(4) "Passenger fare revenue" means revenues provided by passengers of revenue vehicles of the authority or the sponsors of those passengers and includes cash fares, passes, tokens, tickets, and route guarantees. The term excludes charter revenues, advertising income, interest income, and other operating income.

(5) "Passenger trips" means a total of all passenger boardings, including transfers but excluding charter passengers and carpool and vanpool passengers whose trips are only coordinated by an authority.

(6) "Revenue service" means the time a revenue vehicle of an authority is in operation to carry passengers other than charter passengers.

(7) "Revenue vehicle" means a vehicle that is used to carry paying passengers and that is operated directly by an authority or as a purchased service.

(8) "Revenue vehicle hours" means a total of scheduled hours that revenue vehicles of an authority are in revenue service.

(9) "Revenue vehicle miles" means a total of miles traveled by revenue vehicles of an authority while in revenue service.

(e)(1) The operating cost per passenger is derived by dividing annual operating cost by passenger trips during the same period.

(2) The sales and use tax receipts per passenger is derived by dividing an annual amount of receipts by an authority from a local sales and use tax by passenger trips for the same period.

(3) The operating cost per revenue hour is derived by dividing annual operating cost by revenue vehicle hours for the same period.

(4) The operating cost per revenue mile is derived by dividing annual operating cost by revenue vehicle miles for the same period.

(5) The fare recovery rate is derived by dividing annual passenger fare revenue by operating cost for the same period.

(6) The average vehicle occupancy is derived by dividing annual passenger miles by revenue vehicle miles for the same period. The number of annual passenger miles is derived by multiplying annual passenger trips by the average distance ridden by passengers during the same period.

(7) On-time performance is derived by determining an annual percentage of revenue vehicle trips performed by revenue vehicles of an authority that depart from selected locations at a time not earlier than the published departure time and not later than five minutes after the published departure time.

(8) The number of accidents per 100,000 total miles is derived by multiplying an annual total of accidents of revenue vehicles of an authority by 100,000 and dividing the result by the total number of miles for all service directly operated by the authority for the same period, including charter service and nonrevenue service.

(9) The number of miles between mechanical road calls is derived by dividing an annual total number of miles for all service directly operated by an authority, including charter service and nonrevenue service, by the total number of mechanical road calls for revenue vehicles of the authority for the same period.

(f) An authority for which a performance audit is conducted under this section shall prepare a written response to the report of the performance audit. The response must include any proposals for action, whether pending, adopted, or rejected, relating to recommendations contained in the performance audit report.

(g) The authority shall conduct a public hearing on each performance audit report conducted under this section and the authority's written response to that report. The authority shall cause notice of the hearing to be published in a newspaper with general circulation in the area included within the authority at least 14 days before the date of the hearing. The authority also shall make copies of the report and response available for public inspection at offices of the authority during normal business hours.

(h) A copy of each report of a performance audit conducted under this section and the response of the authority shall be delivered by the authority to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, the presiding officer of the governing body of each county and municipality having territory included within the authority, and each member of the state legislature whose district includes territory within the authority. The copies shall be delivered before February 1 of every second odd-numbered year.

SECTION 8. Title 28, Revised Statutes, is amended by adding Article 1118x-1 to read as follows:

Art. 1118x-1. COUNTY REGULATION OF PASSENGER CONDUCT

Sec. 1. This article applies only to a county in which is located a part or all of a transit authority that is in a metropolitan area whose municipality of greatest population has a population of more than 1.2 million, according to the most recent federal census, and that is created, organized, and operating under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes).

Sec. 2. In this article:

(1) "Access point" means a bus stop or any other place designated as an entry or exit point to or from a vehicle operated by a public transit service.

(2) "Principal municipality" means the municipality with the greatest population in a county.

(3) "Public transit service" means a transit service established and operating under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes).

(4) "Transit facility" means a building, storage unit, parking lot, or other facility owned or operated by a public transit service.

(5) "Transit route" means a route or dedicated lane over which a transit vehicle travels that is specifically labeled or numbered for the purpose of picking up or discharging passengers at regularly scheduled stops and intervals.

Sec. 3. The commissioners court of a county by order may adopt an ordinance of the principal municipality in the county relating to the conduct of a person while riding a vehicle operated by a public transit service, while awaiting transportation on the vehicle at an access point, or while in a transit route or facility. An order adopted under this section applies in any part of the county.

Sec. 4. If an order under this article defines an offense, the offense is a Class C misdemeanor.

SECTION 9. (a) The first performance audit required by this Act shall be conducted and copies of the first report of a performance audit and transit authority response required by this Act shall be delivered before February 1, 1991.

(b) The change in law made by this Act in the maximum length of service of a member of the board of a metropolitan transit authority in which the largest city has a population of more than 1,200,000, according to the most recent federal census, applies only to appointments that are made for terms that begin or for vacancies that are filled on or after the effective date of this Act.

SECTION 10. (a) Action taken before the effective date of this Act by the board of a metropolitan rapid transit authority in which the largest city has a population of more than 1,200,000, according to the most recent federal census, may not be held invalid on the ground that the action was taken at a time when the members of the board served or were authorized under color of law to serve terms of four years.

(b) Action that was taken before the effective date of this Act by the board of a metropolitan rapid transit authority in which the largest city has a population of more than 1,200,000, according to the most recent federal census, and that is authorized under Subsections (t), (u), and (v), Section 6, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), as added by this Act, may not be held invalid on the ground that the action was not authorized at the time it was taken.

SECTION 11. This Act takes effect September 1, 1989.

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 Conference Committee Report was read and was filed with the Secretary of the Senate.

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 2352

CONFERENCE COMMITTEE REPORT ON SENATE BILL 264 ADOPTED

Senator Tejeda called from the President's table the Conference Committee Report on **S.B. 264**. (The Conference Committee Report having been filed with the Senate and read on Wednesday, May 24, 1989.)

On motion of Senator Tejeda, the Conference Committee Report was adopted viva voce vote.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

H.C.R. 108	**H.B. 337**	**H.B. 1597**	**H.B. 2370**
H.C.R. 219	**H.B. 346**	**H.B. 1639**	**H.B. 2532**
H.C.R. 222	**H.B. 362**	**H.B. 1668**	**H.B. 2614**
H.C.R. 230	**H.B. 414**	**H.B. 1821**	**H.B. 2622**
H.C.R. 287	**H.B. 570**	**H.B. 1874**	**H.B. 2647**
H.B. 115	**H.B. 582**	**H.B. 1950**	**H.B. 2657**
H.B. 121	**H.B. 1044**	**H.B. 1991**	**H.B. 2678**
H.B. 187	**H.B. 1196**	**H.B. 2008**	**H.B. 2774**
H.B. 260	**H.B. 1272**	**H.B. 2296**	**H.B. 2853**
H.B. 310	**H.B. 1408**	**H.B. 2317**	**H.B. 3040**
	H.B. 1566	**H.B. 2318**	**H.B. 3070**

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **S.B. 489**.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 489 ADOPTED

Senator Santiesteban called from the President's table the Conference Committee Report on **S.B. 489**. (The Conference Committee Report having been again filed with the Senate and read on Thursday, May 25, 1989.)

On motion of Senator Santiesteban, the Conference Committee Report was adopted viva voce vote.

RECORD OF VOTES

Senators Armbrister, Bivins and Sims asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Harris, on behalf of Senator Caperton, and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Finance might consider the following bills at 9:00 a.m. tomorrow:

H.B. 1270
H.B. 1348

SENATE RULE 11.11 SUSPENDED

On motion of Senator Parker and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Education might consider the following bills and resolution at 9:00 a.m. tomorrow:

H.B. 2625
H.B. 1498
S.C.R. 173

MEMORIAL RESOLUTIONS

S.R. 740 - By Parker: In memory of Paul Douglas Hulsey, Jr.

S.R. 741 - By Parker: In memory of Howard McDaniel of Nederland.

S.R. 742 - By Parker: In memory of Dewey Maurice "Teddy Bear" Cox, Sr., of Orange.

S.R. 743 - By Parker: In memory of Marlin Neal Thompson, Jr., and Linda Frederick Thompson of Orange.

CONGRATULATORY RESOLUTIONS

H.C.R. 242 - (Leedom): Recognizing the Texas Bluebonnet Tartan as the Official Tartan of Texas.

H.C.R. 289 - (Barrientos): Declaring Sunday, May 28, 1989, to be "Dr. Jack D. Heacock Day in Texas."

S.C.R. 174 - By Barrientos: Honoring Dr. Thomas David Kirksey on his outstanding contributions and accomplishments in the field of medicine.

S.R. 734 - By Washington: Commending A. Robert Hinojosa on his service as president of the Mexican-American Bar Association of Houston.

S.R. 735 - By Glasgow: Recognizing the forthcoming Centennial of the University of North Texas.

S.R. 737 - By Barrientos: Declaring that the State of Texas recognize the third Tuesday of September as International Day of Peace and that the cities and school districts be encouraged to pass similar resolutions of recognition.

S.R. 738 - By Montford: Commending the contributions of the Texas Tech University Health Sciences Center to the health and well-being of all Texans.

S.R. 739 - By Parker: Paying tribute to the life and career of the great music personality, Janis Lyn Joplin.

S.R. 744 - By Brown: Extending congratulations to the Knights of Columbus in Texas on the past successes of their annual Texas State Slow Pitch Softball Tournament.

S.R. 751 - By Barrientos: Expressing great pride and best wishes upon the Atlantic Exchange Program.

S.R. 752 - By Barrientos: Commending Ruth Ellinger, who retired as Education Director of the Texas American Federation of Labor-Congress of Industrial Organizations.

S.R. 753 - By Barrientos: Extending congratulations to Cecilia Hart for her achievement in graduating from the Federal Bureau of Investigation National Academy.

S.R. 754 - By Barrientos: Extending congratulations to Mrs. Hattie Pope of Granger on her 100th birthday.

S.R. 755 - By Whitmire: Commending Mrs. Elizabeth Deuble for 23 years of commendable service for the Houston Independent School District.

S.R. 756 - By Parker: Commending the life of public service embraced by Ms. Dolores Lawless.

S.R. 758 - By Henderson: Extending congratulations to Christopher Elbert Coker of Spring on achieving the rank of Eagle Scout.

RECESS

On motion of Senator Brooks, the Senate at 4:01 p.m. took recess until 8:00 a.m. tomorrow.

APPENDIX

Signed by Governor
(May 24, 1989)

S.C.R. 23
S.C.R. 51
S.C.R. 122
H.C.R. 92
H.C.R. 159
H.C.R. 203
H.C.R 211
H.C.R. 235

Sent to Governor
(May 25, 1989)

S.C.R. 169

Filed with Secretary of State
(May 25, 1989)

H.J.R. 4

SEVENTY-THIRD DAY
(Continued)
(Friday, May 26, 1989)

AFTER RECESS

The Senate met at 8:00 a.m. and was called to order by Senator Glasgow.

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 100
C.S.H.B. 3072

By unanimous consent, Senator Santiesteban submitted the following report for the Committee on Natural Resources:

H.B. 1458 (Amended)
H.B. 183 (Amended)