SEVENTIETH DAY
(Sunday, May 19, 1991)

The Senate met at 4:00 p.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, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Henderson, Johnson, Krier, Leedom, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Zaffirini.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Heavenly Father, on this Sabbath day, we pause and give thanks for the mercies shown us and grant that on this day we will be obedient to Your will. Hear our petition for a day that brings satisfaction with ourselves and when it is done we will have lived it in a manner pleasing to Thee.

Bless today's session with a sense of hope and remind us often—what is right, what is good, and what is true. Challenge these who serve and sustain them with the knowledge and confidence to make changes, the courage and will to challenge, the energy and wisdom to lead. In Jesus' name. 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.

LEAVES OF ABSENCE

Senator Lyon was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Whitmire was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Harris of Dallas was granted leave of absence for today on account of important business on motion of Senator Brooks.

MOTION TO STAND AT EASE

On motion of Senator Brooks and by unanimous consent, the Senate agreed to stand At Ease until 4:30 p.m. upon completion of Morning Call.

REPORTS OF STANDING COMMITTEES

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

C.S.H.B. 2004

Senator Moncrief, Acting Chair, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 2420
C.S.H.B. 1704

SENATE BILL ON FIRST READING

Article III, Section 5 of the Texas Constitution and Senate Rule 7.07(b) having been suspended, the following bill was introduced, read first time and referred to the Committee indicated:

S.B. 1612 by Parker — Administration
Relating to appointment, service, and duties of masters in proceedings for court-ordered mental health services.

HOUSE BILLS ON FIRST READING

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

H.B. 201, To Committee on Finance.
H.B. 222, To Committee on Economic Development.
H.B. 283, To Committee on Economic Development.
H.B. 358, To Committee on Jurisprudence.
H.B. 413, To Committee on Criminal Justice.
H.B. 455, To Committee on State Affairs.
H.B. 544, To Committee on State Affairs.
H.B. 546, To Committee on Economic Development.
H.B. 615, To Committee on Economic Development, Subcommittee on Insurance.
H.B. 618, To Committee on Finance.
H.B. 625, To Committee on Jurisprudence.
H.B. 799, To Committee on State Affairs.
H.B. 843, To Committee on Health and Human Services.
H.B. 1037, To Committee on Economic Development, Subcommittee on Insurance.
H.B. 1114, To Committee on Economic Development.
H.B. 1143, To Committee on Education.
H.B. 1175, To Committee on Economic Development.
H.B. 1314, To Committee on Education.
H.B. 1363, To Committee on State Affairs.
H.B. 1376, To Committee on Finance.
H.B. 1436, To Committee on Intergovernmental Relations.
H.B. 1447, To Committee on Criminal Justice.
H.B. 1532, To Committee on Economic Development.
H.B. 1548, To Committee on Criminal Justice.
H.B. 1599, To Committee on Intergovernmental Relations.
H.B. 1621, To Committee on Health and Human Services.
H.B. 1632, To Committee on Economic Development.
H.B. 1682, To Committee on Health and Human Services.
H.B. 1718, To Committee on Intergovernmental Relations.
H.B. 1816, To Committee on Criminal Justice.
H.B. 1819, To Committee on Health and Human Services.
H.B. 1889, To Committee on Health and Human Services.
H.B. 1890, To Committee on Health and Human Services.
H.B. 2003, To Committee on Intergovernmental Relations.

H.B. 2019, To Committee on Intergovernmental Relations.
H.B. 2059, To Committee on Jurisprudence.
H.B. 2085, To Committee on Health and Human Services.
H.B. 2111, To Committee on Finance.
H.B. 2138, To Committee on Intergovernmental Relations.
H.B. 2140, To Committee on Criminal Justice.
H.B. 2265, To Committee on Economic Development.
H.B. 2275, To Committee on Health and Human Services.
H.B. 2330, To Committee on Intergovernmental Relations.
H.B. 2378, To Committee on State Affairs.
H.B. 2496, To Committee on Economic Development, Subcommittee on Insurance.
H.B. 2502, To Committee on Intergovernmental Relations.
H.B. 2569, To Committee on Jurisprudence.
H.B. 2638, To Committee on Intergovernmental Relations.
H.B. 2665, To Committee on Natural Resources.
H.B. 2732, To Committee on Criminal Justice.
H.B. 2769, To Committee on Jurisprudence.
H.B. 2782, To Committee on Intergovernmental Relations.
H.B. 2783, To Committee on State Affairs.
H.B. 2787, To Committee on Jurisprudence.
H.B. 2804, To Committee on Intergovernmental Relations.
H.B. 2811, To Committee on Economic Development.
H.B. 2840, To Committee on Health and Human Services.
H.B. 2855, To Committee on Intergovernmental Relations.
H.B. 2858, To Committee on Natural Resources.
H.B. 2863, To Committee on Intergovernmental Relations.
H.B. 2866, To Committee on Intergovernmental Relations.
H.B. 2870, To Committee on Intergovernmental Relations.
H.B. 2882, To Committee on Criminal Justice.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Haley and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might consider **S.B. 1612** today.

PERMISSION TO MEET GRANTED

On motion of Senator Haley and by unanimous consent, the Committee on Administration was granted permission to meet while the Senate was in session.

REPORT OF STANDING COMMITTEE

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

S.B. 1612

AT EASE

In accordance with a previously adopted motion, the President at 4:07 p.m. announced the Senate would stand At Ease until 4:30 p.m.

IN LEGISLATIVE SESSION

The President at 4:30 p.m. called the Senate to order as In Legislative Session.

CONFERENCE COMMITTEE ON HOUSE BILL 2395

Senator Carriker 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. 2395** 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. 2395** 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 Carriker, Chair; Glasgow, Dickson, Green, Lyon.

SENATE BILL 382 WITH HOUSE AMENDMENT

Senator Carriker called **S.B. 382** from the President's table for consideration of the House amendment to the bill.

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

Amendment on Third Reading - Laney

Amend **S.B. 382** on third reading on page 9, line 16, by inserting the following after "1991.":

The abolition date prescribed by this section does not require the Sunset Advisory Commission to conduct any review or prepare any report other than the review undertaken before the convening of the 72nd Legislature, Regular Session, 1991, or the report submitted to that legislature.

The amendment was read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendment to **S.B. 382** by a viva voce vote.

SENATE BILL 85 WITH HOUSE AMENDMENT

Senator Ratliff called **S.B. 85** from the President's table for consideration of the House amendment to the bill.

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

Amendment - Sadler

Amend **S.B. 85** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the fees paid to the commissioners and surveyors partitioning real property and to costs of court in partition actions.

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

SECTION 1. Section 23.005, Property Code, is amended to read as follows:

Sec. 23.005. FEES. The judge of a court that hears an action to partition real property shall examine the report of the commissioners appointed to partition the property and shall determine from the report and from evidence submitted by the parties the complexity and difficulty of making the partition. The court shall then award the commissioners, and any surveyor appointed by the court or retained by the commissioners, a reasonable fee for the services rendered. The fees awarded shall be taxed and collected as costs of court in the same manner as the other costs in the action [~~A court that hears an action to partition real property shall pay each~~

~~commissioner in partition and the surveyor, if any, $3 a day for making and returning the partition. The court shall tax and collect this fee in the same manner as the other costs in the action~~].

SECTION 2. This Act applies to an action, without regard to whether the action was commenced before or is commenced on or after the effective date of this Act, in which, on the effective date of this Act, no award of costs has been entered.

SECTION 3. This Act takes effect September 1, 1991.

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 amendment was read.

On motion of Senator Ratliff and by unanimous consent, the Senate concurred in the House amendment to **S.B. 85** by a viva voce vote.

SENATE BILL 352 WITH HOUSE AMENDMENTS

Senator Barrientos called **S.B. 352** from the President's table for consideration of the House amendments to the bill.

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

Amendment - A. Hill

Amend **S.B. 352** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the State Department of Highways and Public Transportation.

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

SECTION 1. Article 6663, Revised Statutes, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The State Department of Highways and Public Transportation is subject to [~~the Texas Sunset Act~~ (]Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter [~~Act~~], the department is abolished September 1, 2003 [~~1991~~].

(d) The State Department of Highways and Public Transportation is subject to the requirements of Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 2. Chapter 678, Acts of the 64th Legislature, 1975 (Article 6663b, Vernon's Texas Civil Statutes), is amended by adding Section 2A to read as follows:

Sec. 2A. (a) The governor, lieutenant governor, and speaker of the house of representatives shall appoint a public transportation advisory committee consisting of nine members. Each officer shall make three appointments. The appointing officers shall allocate among themselves the authority for appointment of members with various qualifications. The committee shall include:

(1) one member to represent public transportation providers in rural areas;

(2) one member to represent municipal transit systems in urban areas with populations of less than 200,000;

(3) one member to represent metropolitan transit authorities in urban areas with populations of 200,000 or more;

(4) one member to represent transportation providers for the elderly and handicapped; and

(5) five members to represent the general public who have a knowledge of and interest in the area of public transportation.

(b) A member serves at the pleasure of the officer appointing the member. A member of the advisory committee is not entitled to receive compensation for serving as a member. A member is entitled to reimbursement for reasonable expenses incurred in performing duties as a member of the advisory committee.

(c) The advisory committee shall:

(1) advise the Commission on the needs and problems of the state's public transportation providers, including the methods for allocating state public transportation funds;

(2) comment on rules changes involving public transportation during their development and before their final adoption unless an emergency requires immediate action by the Commission; and

(3) perform other duties as determined by the Commission.

(d) The public transportation advisory committee shall meet quarterly or as requested by the Commission.

(e) The Commission may adopt rules to govern the operations of the advisory committee.

SECTION 3. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6663e to read as follows:

Art. 6663e. EMERGENCY MEDICAL SERVICES ADMINISTRATION. (a) Except as provided by Subsection (b) of this article, if the State Department of Highways and Public Transportation receives state or federal highway safety funds that may be used for emergency medical services, it shall:

(1) contract with the Texas Department of Health for the administration of the funds for emergency medical services by the Texas Department of Health; and

(2) designate a portion of the funds to be used for improvements of emergency medical services.

(b) If an agency of the federal government formally notifies the State Department of Highways and Public Transportation that a contract described by Subsection (a) of this article would cause the loss of any federal highway safety funds or would violate federal law, the department may not execute the contract or, if the contract has been executed, the contract is void.

(c) Any responsibility of the State Department of Highways and Public Transportation for oversight of state or federal highway safety funds is not affected by this article.

SECTION 4. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6663f to read as follows:

Art. 6663f. REVENUE ENHANCEMENT. The Commission shall adopt a program to enhance existing sources of revenue and to generate alternate sources of revenue. The Commission shall include provisions for:

(1) maximizing revenue generation from existing department real estate and other assets;

(2) increasing the role of the private sector and public-private projects in the leasing of real estate and other assets in the development of highway projects;

(3) setting and attempting to meet annual revenue enhancement goals for this program;

(4) reporting on the progress toward the revenue enhancement goals in the Department's annual report; and

(5) contracting for an independent audit of the Department's management and business operations in the year 2001 and every 12 years after that year.

SECTION 5. Article 6664, Revised Statutes, is amended to read as follows:

Art. 6664. COMMISSION. (a) The Commission shall consist of three members [~~citizens of the State~~]. No two members of the commission shall reside in the same geographic area of the State. With the advice and consent of the Senate, the Governor shall biennially appoint one member to serve for a term of six years, the classification to continue as constituted by law. One member must reside in a rural area. The Governor shall designate one [~~such~~] member as chairman. Each member shall execute a bond payable to the State in the sum of five thousand dollars, to be approved by the Governor, and conditioned upon the faithful performance of his or her duties. The premium on such bonds shall be paid out of the State Highway Fund.

(b) All members must be representatives of the general public and citizens of the State. Except as provided by Subsection (c) of this article, a person is not eligible for appointment as a member of the Commission if the person or the person's spouse:

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

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

(3) uses or receives a substantial amount of tangible goods, services, or funds from the Department, other than compensation or reimbursement authorized by law for Commission membership, attendance, or expenses.

(c) A person is not disqualified under this article from appointment to or service on the Commission because the person receives or has received funds from the Department if the funds are or were received as compensation for the acquisition of highway right-of-way.

(d) An officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, automobile dealers, or outdoor advertising may not be a member of the Commission.

(e) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, automobile dealers, or outdoor advertising may not be a member of the Commission.

(f) A person may not serve as a member of the Commission 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.

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

(h) The Department shall provide to Commission members, as often as necessary, information regarding the members' qualifications for office under this article and their responsibilities under applicable laws relating to standards of conduct for state officers.

(i) In this chapter:

(1) "Commission" means the State Highway and Public Transportation Commission.

(2) "Department" means the State Department of Highways and Public Transportation.

(3) "Engineer-Director" means the State Engineer-Director for Highways and Public Transportation.

(4) "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state

designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 6. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6664a to read as follows:

Art. 6664a. GROUNDS FOR REMOVAL OF COMMISSIONER. (a) It is a ground for removal from the Commission if a member:

(1) does not have at the time of appointment the qualifications required by Article 6664, Revised Statutes;

(2) does not maintain during service on the Commission the qualifications required by Article 6664, Revised Statutes;

(3) violates a prohibition established by Article 6664, Revised Statutes;

(4) 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

(5) is absent from more than half of the regularly scheduled Commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the Commission.

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

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

SECTION 7. Article 6665, Revised Statutes, is amended to read as follows:

Art. 6665. ORGANIZATION. (a) The Commission shall hold regular meetings once each month. They shall attend the same and such special or called meetings as they may provide by rule or the chair [~~chairman~~] may call. They shall formulate plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. They shall biennially submit a report of their work to the Governor and the legislature, with their recommendations and those of the State Engineer-Director [~~Highway Engineer~~]. A quarterly statement containing an itemized list of all moneys received and from what source and of all money paid out and for what purpose shall be prepared and filed in the records of the Department and a copy sent to the Governor. These records shall be open to public inspection.

(b) In addition to the reporting requirements of Subsection (a) of this article, the Commission shall file annually with the Governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the 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.

(c) The Commission shall develop and implement policies that clearly define the respective responsibilities of the Commission and the staff of the Department.

SECTION 8. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6665a to read as follows:

Art. 6665a. PUBLIC ACCESS AND 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 Commission 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 Commission may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the department;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the Department; or

(3) in a bill for service provided by an individual or entity regulated by the Department.

(c) The Department shall keep an information file about each written 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.

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

(f) 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 9. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6668a to read as follows:

Art. 6668a. EMPLOYEE QUALIFICATIONS AND PROGRAMS. (a) An officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, automobile dealers, or outdoor advertising 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.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, automobile dealers, or outdoor advertising may not be a Department employee 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 may not act as general counsel to the Department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(d) The engineer-director or the engineer-director's designee shall develop an intraagency career ladder program covering all full-time classified and exempt positions. The program shall require intraagency postings of all nonentry positions concurrently with any public posting.

(e) The engineer-director or the engineer-director'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.

(f) The Department shall provide to its employees, as often as necessary, information regarding their qualifications for employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state employees.

(g) The department may, if the commission finds that it is in the best interest of the state, reimburse transferred or newly hired employees for the expense or increased costs of selling existing housing and purchasing comparable replacement housing. The department may not:

(1) purchase or pay any part of the purchase price of an employee's home;

(2) reimburse more than 25 employees during a fiscal year under this section; or

(3) reimburse an employee more than $15,000 under this section.

SECTION 10. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6668b to read as follows:

Art. 6668b. EQUAL EMPLOYMENT OPPORTUNITY. (a) The engineer-director or the engineer-director'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.

(b) A policy statement prepared under Subsection (a) of this article 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 article. The report may be made separately or as a part of other biennial reports made to the legislature.

(d) The Department's designated equal employment opportunity officer shall report directly to the engineer-director.

SECTION 11. Article 6669, Revised Statutes, is amended to read as follows:

Art. 6669. ENGINEER-DIRECTOR. (a) The Commission shall elect a State Engineer-Director for Highways and Public Transportation who shall be a Registered Professional Engineer in the State of Texas experienced and skilled:

(1) in highway construction and maintenance; and

(2) in public and mass transportation planning or development.

(b) He or she shall hold his or her position until removed by the Commission. He or she shall first execute a bond payable to the state in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his or her duties. He or she shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction, public and mass transportation development, and statement of expenditures. He or she shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission.

SECTION 12. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6669a to read as follows:

Art. 6669a. HIRING OF WOMEN AND MINORITIES

Sec. 1. DEFINITIONS. In this article, "minority" includes African Americans, Hispanic Americans, Asian Americans, American Indians, Alaska natives, and Pacific islanders.

Sec. 2. RECRUITMENT. For the purpose of providing adequate numbers of women and minority applicants for all job positions in the Department, the Department shall:

(1) open all positions compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 21, of the position

classification salary schedule to applicants both from within and outside the Department;

(2) seek applicants both from this state and, when sufficient numbers are not available from this state, from the rest of the United States;

(3) coordinate recruiting efforts with college placement officers and college student organizations;

(4) develop an extensive cooperative education program with colleges; and

(5) ensure that employees are aware of continuing educational opportunities and encourage employee participation in the programs.

Sec. 3. HIRING GOALS. The Department shall designate a central authority to set and monitor women and minority hiring goals. The central authority shall:

(1) set, after consultation with appropriate persons in each division and regional office, and monitor progress toward annual women and minority hiring goals in each division and regional office of the Department; and

(2) provide recruiting and technical assistance to the divisions and regional offices of the Department as needed.

Sec. 4. ANNUAL REPORT. The State Engineer-Director for Highways and Public Transportation shall report not later than February 1 of each year to the Commission, each house of the state legislature, and the Sunset Advisory Commission on the progress of the Department in the recruitment and hiring of women and minority job applicants.

SECTION 13. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6669c to read as follows:

Art. 6669c. DISADVANTAGED BUSINESSES

Sec. 1. PROGRAM. The Department shall establish a disadvantaged business program.

Sec. 2. CONTRACT GOALS. (a) The Department shall set and strive to meet annual goals for the awarding of all state or federally funded contracts including construction, maintenance, supply, and service contracts to disadvantaged businesses.

(b) The department shall perform a capacity study to assess the availability of disadvantaged businesses in the state.

(c) The Department shall attempt to identify disadvantaged businesses in the state that provide or have the potential to provide supplies, materials, equipment, or services to the Department. The Department shall give disadvantaged businesses full access to the contract bidding process. The Department shall inform and offer assistance to disadvantaged businesses regarding the Department's contract bidding process and identify barriers to participation by disadvantaged businesses in the Department's bidding process.

(d) The Department shall allocate responsibility for performing the duties provided by this article among persons in the Department's headquarters and regional offices.

(e) This article does not exempt the Department from competitive bidding requirements provided by law.

Sec. 3. EQUAL OPPORTUNITY OFFICE PARTICIPATION. The Department's equal opportunity office shall participate in the development of requests for proposals and other departmental documents relating to the bidding process.

SECTION 14. Sections 1, 2, and 3, Chapter 757, Acts of the 70th Legislature, Regular Session, 1987 (Article 6673a-3, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. DEFINITIONS [~~DEFINITION~~]. In this Act:

(1) "Department" [~~, "department"~~] means the State Department of Highways and Public Transportation.

(2) "Highway assets" means all interests in real property held or controlled by the department for highway or department purposes.

(3) "Road authority" means any political subdivision, agency, or quasi-governmental entity of the state with the authority to construct or maintain roads, bridges, or highways.

Sec. 2. AUTHORITY TO LEASE. The department may lease for any purpose not inconsistent with applicable highway uses any highway asset, part of the right-of-way for, or the airspace above or underground space below, a highway that is a part of the state highway system if the department has determined that the area to be leased will not be needed for highway purposes during the period of the lease. The department shall charge, as a minimum, fair market value, with certain exceptions to be determined by the department for leases of highway assets to public utility providers and for social, environmental, and economic mitigation purposes.

Sec. 3. TERMS OF LEASE. (a) The duration of the lease and all other terms of the lease may be determined by the department, except that:

(1) a tenant may not be required to post a bond or other security for a lease in an amount in excess of six months' rental under the lease; and

(2) the lease must allow the tenant to mortgage or otherwise pledge or grant security interests in the leasehold for the purposes of securing financing for the acquisition of the leasehold and the construction and operation of improvements permitted under the lease.

(b) The [the] department may not convey title to, or sever from the real property, any permanent improvements constructed on the area leased under this Act.

(c) The lease may contain provisions for early termination at the option of either party, with or without cause, and may provide that the right of one party to terminate the lease without cause before its stated termination date may be conditioned on payment of an amount negotiated by the parties and set forth in the lease. The department may consider, in evaluating the consideration proposed by the lessee, the value of any land proposed to be donated or conveyed for highway purposes by the lessee. Tenants of highway assets leased from the department are entitled to erect and maintain on the leasehold property signs and other advertising displays relating to the business conducted on the leasehold property, subject to rules adopted by the commission for the preservation of safety and scenic beauty.

SECTION 15. Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w-1 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 4C to read as follows:

Sec. 4C. (a) Prior to acquisition of property pursuant to this Act, the State Department of Highways and Public Transportation may purchase the rights to lease the property to third parties, provided that the department first determines that the owner is unable to lease or rent the property by reason of its impending acquisition for highway purposes.

(b) The consideration for the purchase of such rights may not exceed the fair market rental value of the property as determined by the department and shall be credited against the total compensation due the owner at the time the department acquires the property through negotiated purchase or through the exercise of the power of Eminent Domain. Payment under this section may be made in periodic increments until the property is acquired by the department, provided that the aggregate total of payments prior to acquisition may not exceed the department's approved appraised value of the property.

(c) The department shall promulgate reasonable rules for the implementation of this section.

SECTION 16. Section 4.301, County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes), is amended by adding Subsection (g) to read as follows:

(g)(1) Prior to acquisition of property pursuant to this section, the county or city may purchase the rights to lease the property to third parties, provided that the city or county first determines that the owner is unable to lease or rent the property by reason of its impending acquisition for highway purposes.

(2) The consideration for the purchase of such rights may not exceed the fair market rental value of the property as determined by the city or county and approved by the State Department of Highways and Public Transportation and shall be credited against the total compensation due the owner at the time the property is acquired through purchase or condemnation. Payments under this subsection may be made in periodic increments until the property is acquired, provided that the aggregate total of payments prior to acquisition may not exceed the approved appraised value of the property as determined by the State Department of Highways and Public Transportation.

(3) Exercise of the authority granted by this subsection shall conform with applicable administrative rules and policies of the State Department of Highways and Public Transportation.

SECTION 17. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6673g to read as follows:

Art. 6673g. ENVIRONMENTAL REVIEW

Sec. 1. RULES. (a) The Commission shall adopt rules providing for environmental reviews of state-funded highway projects. The rules must contain provisions for:

(1) public comment, including the types of projects for which public hearings are required, on environmental reviews of state-funded highway projects;

(2) the environmental factors and impacts the department will use in its environmental reviews; and

(3) environmental review of alternative routes for a proposed state-funded highway project.

(b) A rule adopted under Subsection (a)(1) of this section also must provide a procedure for a public hearing to be requested on an environmental review for which a public hearing is not required. An environmental review provided by a rule adopted under this section must be conducted before the location or alignment of the project has been adopted.

(c) At least once every five years, the Commission shall, after a public hearing, review the existing environmental review rules and make appropriate changes.

Sec. 2. ENVIRONMENTAL ADVISORY COMMITTEE. (a) The governor, the lieutenant governor, and the speaker of the house of representatives each shall appoint two members to a committee to advise the Commission on the adoption of rules for the environmental review of state-funded highway projects.

(b) The advisory committee consists of six members, each of whom represents the general public. A member serves at the pleasure of the officer appointing the member. A member of the advisory committee is not entitled to receive compensation for serving as a member but is entitled to reimbursement for reasonable expenses incurred in performing duties as a member of the advisory committee.

(c) On passage of initial rules for environmental review of state-funded highway projects, the advisory committee is abolished. When the commission reviews the rules on environmental review, a new advisory committee shall be established in the same manner as the original committee. The new committee is abolished on the final disposition of any changes to the rules.

(d) The Commission may adopt rules to govern the operations of the advisory committee.

Sec. 3. MEMORANDUM OF UNDERSTANDING. (a) The Department shall adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archeological resources. Each memorandum of understanding must:

(1) describe each agency's responsibilities regarding the review of the potential environmental, historical, or archeological impacts of highway projects;

(2) specify the responsibilities of each agency entering into the memorandum regarding the review of highway projects;

(3) specify the types of information the Department must provide to the reviewing agency and the period of time in which the Department must provide the information;

(4) specify the length of time in which the reviewing agency must review the highway project and provide comments to the Department; and

(5) include any other agreements necessary for the effective coordination of the review of the environmental, historical, and archeological impacts of highway projects.

(b) The Department shall coordinate the development of each memorandum of understanding.

(c) If the Department and an agency are unable to agree on a memorandum of understanding, they shall each submit a proposed memorandum of understanding to the attorney general not later than February 1, 1992. Not later than April 1, 1992, the attorney general shall issue a memorandum of understanding that is binding between the Department and the other state agency. In preparing the memorandum of understanding the attorney general may receive written and oral remarks from the Department and the agency. The agency and the Department may, on agreement, amend a memorandum of understanding issued by the attorney general.

(d) Not later than January 1, 1997, and every fifth year after that date, the Department and each agency that has entered into a memorandum of understanding with the Department shall review and update the memorandum of understanding required by Subsection (a) of this section. The Department and each of the agencies by rule shall adopt the memorandum and all revisions to the memorandum.

Sec. 4. PARTICIPATION IN REGIONAL HABITAT CONSERVATION PLANS. If the Department acquires for a transportation project a habitat of one or more species declared endangered under the federal Endangered Species Act (Chapter 35, Title 16, U.S.C.), and within the boundaries of a regional habitat conservation plan, the Department may participate in the regional habitat conservation plan. If the Department does not comply with the regional habitat conservation plan, it shall comply with the federal Endangered Species Act and the applicable requirements of the United States Fish and Wildlife Service.

SECTION 18. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6673h to read as follows:

Art. 6673h. BICYCLE ROAD USE

Sec. 1. BICYCLE COORDINATOR. The Department shall designate a statewide bicycle coordinator and a bicycle coordinator within each regional office. The general duty of a bicycle coordinator is to assist the Department in developing rules and plans to enhance the use of the state highway system by bicyclists.

Sec. 2. RULES. (a) The Commission shall adopt rules regarding bicycle road use on the state highway system, including provisions for:

(1) the specific duties of the statewide bicycle coordinator and the regional bicycle coordinators;

(2) obtaining comment from bicyclists on highway projects that might affect bicycle use, on use of highways for bicycle events, and on departmental policies affecting bicycle use of state highways;

(3) the consideration of acceptable national bicycle design, construction, and maintenance standards on projects in areas with significant bicycle use; and

(4) other matters the Commission determines necessary to enhance the use of the state highway system by bicyclists.

(b) A rule adopted under this section may not be inconsistent with Article XXI, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

Sec. 3. RULES ADVISORY COMMITTEE. (a) The Commission shall appoint a rules advisory committee to advise the Commission on the adoption of rules regarding bicycle road use on the state highway system.

(b) The advisory committee consists of five members, at least three of whom represent bicyclists in the state. The members serve at the pleasure of the Commission. A member of the advisory committee is not entitled to receive compensation for serving as a member but is entitled to reimbursement for reasonable expenses incurred in performing duties as a member of the advisory committee.

(c) On passage of initial rules regarding bicycle road use, the advisory committee is abolished.

(d) The Commission may adopt rules to govern the operations of the advisory committee.

SECTION 19. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6673i to read as follows:

Art. 6673i. RECLAIMED ASPHALT PAVEMENT

Sec. 1. In this article:

(1) "Reclaimed asphalt pavement" means hot mix asphalt pavement and any accompanying tack coat, seal coat, or chip seal removed as millings or broken pavement pieces from a road during construction, reconstruction, or repavement under the authority of the department.

(2) "Road" means a paved road in the state highway system.

(3) "Department" means the State Department of Highways and Public Transportation.

Sec. 2. (a) The department has title and shall retain title to all reclaimed asphalt pavement from roads in the state highway system, except as otherwise provided by this subsection. The department shall maximize the use of reclaimed asphalt pavement. The department shall, when feasible, remove and recycle hot mix asphalt from any road being repaved. The department may transfer title to reclaimed asphalt pavement to another governmental entity for use on roads.

(b) The department shall ensure that the reclaimed asphalt pavement be kept as free as possible from contamination by non-asphaltic materials during its removal, transportation, and storage.

(c) All state agencies, departments, and commissions shall give precedence for the use of lands under their control for the storage of reclaimed asphalt products when environmental and economic constraints permit.

(d) The department shall keep a public record of the location and amount of state-owned reclaimed asphalt products.

(e) The department shall, not later than January 1, report annually to the legislative audit committee on the department's use of recycled asphalt pavement.

SECTION 20. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6673k to read as follows:

Art. 6673k. PROJECT SELECTION HEARINGS. The Commission shall hold annual hearings on its highway project selection process and the relative importance of the various criteria on which the Commission bases its project selection decisions.

SECTION 21. Article 6674, Revised Statutes, is amended to read as follows:

Art. 6674. OPERATING EXPENSES. The legislature shall make appropriations for the maintenance and running expenses of the Department, fix the compensation of the State Engineer-Director for Highways and Public Transportation [~~Highway Engineer~~] and all other employes of the Department, and determine the number of such employes; and shall fix the compensation of the members of the Commission [~~at not exceeding twenty-five hundred dollars per annum~~]. The State Purchasing and General Services Commission [~~Board of Control~~] shall make contracts for equipment and supplies (including seals and number plates) required by law in the administration of the registration of licensed vehicles, and in the operation of said Department. All money herein authorized to be appropriated for the operation of the Department and the purchase of equipment shall be paid from the State Highway Fund, and the remainder of said fund shall be expended by the Commission for the furtherance of public road construction and the establishment of a system of State highways as herein provided.

SECTION 22. Section 1, Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6701d-12, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. Vehicles used exclusively to transport ready-mixed concrete, which is hereby defined as a perishable product, may be operated upon the public highways of this state with a tandem axle load not to exceed 44,000 pounds, a single axle load not to exceed 20,000 pounds and a gross load not to exceed 64,000 pounds[~~; provided that where the vehicle is to be operated with a tandem axle load in excess of 34,000 pounds, the owner of such vehicle shall first file with the State Department of Highways and Public Transportation a surety bond in the principal sum as fixed by the department, which sum shall not be set at a greater amount than $15,000 for each vehicle; said bond to be conditioned that the owner of such vehicle will pay to the State of Texas, within the limit of such bond, all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds; such bond shall be subject to the approval of the State Department of Highways and Public Transportation~~].

SECTION 23. Section 1, Chapter 966, Acts of the 68th Legislature, Regular Session, 1983 (Article 6701d-19a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. Vehicles used exclusively to transport solid waste (except hazardous waste), as defined in Chapter 361, Health and Safety Code [~~the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)~~], may be operated upon the public streets and highways of this state with a tandem axle gross load not to exceed 44,000 pounds, a single axle gross load not to exceed 21,000 pounds and a gross load for the vehicle not to exceed 64,000 pounds[~~, provided that where the vehicle is to be operated with a tandem axle gross load in excess of 34,000 pounds, the owner, except if the owner is a municipality, of such vehicle shall first file with the State Department of Highways and Public Transportation a surety bond in the principal sum as fixed by the department, which sum shall not be set at a greater amount than $15,000 for each vehicle; said bond to be conditioned that the owner of such vehicle will pay to the State of Texas and to any municipality in which such vehicle is operated on city streets, within the limit of such bond, all damages done to the highways and the city streets by reason of the operation of such vehicle with a tandem axle gross load in excess of 34,000 pounds; such bonds shall be subject to the approval of the State Department of Highways and Public Transportation~~].

SECTION 24. Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Chapters 230, 813, and 1084, Acts of the 71st Legislature, Regular Session, 1989, 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;

(3) the Texas Department of Corrections; [~~and~~]

(4) the Department of Agriculture;[~~.~~]

(5) [~~(4)~~] the Central Education Agency;[~~.~~]

(6) [~~(4)~~] the Texas Higher Education Coordinating Board; and

(7) the State Department of Highways and Public Transportation.

SECTION 25. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 66731 to read as follows:

Art. 66731. DETERMINATION OF COUNTY ROAD AND BRIDGE FEE. If the commission determines that it is in the best interest of a county with a population of 2,390,000 or more, according to the most recent federal census, the county commissioners court may impose a fee under Section 9a(a), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-9a, Vernon's Texas Civil Statutes), that does not exceed $10 for each vehicle registered in the county.

SECTION 26. Notwithstanding Section 13.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by this Act, and Article 6663, Revised Statutes, as amended by this Act, the competitive cost review provisions shall apply only to one activity chosen by the State Department of Highways and Public Transportation for the period ending August 31, 1993.

SECTION 27. The first policy statement required to be filed under Article 6668b, Revised Statutes, as added by this Act, must be filed before November 1, 1991.

SECTION 28. The requirements of Article 6673i, Revised Statutes, as added by this Act, relating to recycled asphalt pavement does not affect a contract existing between the department and another person, partnership, corporation, or government entity on the effective date of this Act.

SECTION 29. Members of the State Highway and Public Transportation Commission holding office on the effective date of this Act continue to serve the remainder of their terms, unless they are removed as provided by law. If, on the effective date of this Act, the commission does not contain a member who resides in a rural area as required by the change in law made by this Act, the governor shall appoint to the commission at the first opportunity a person residing in a rural area.

SECTION 30. Nothing in this Act shall influence or require a preference for one type of pavement design over another.

SECTION 31. This Act takes effect September 1, 1991.

SECTION 32. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Cain

Amend **C.S.S.B. 352** as follows:

(1) After Section 28, add the following new section, numbered appropriately:

SECTION ____. (a) Sections 3(a) and (e), Chapter 41, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701a, Vernon's Texas Civil Statutes), are repealed.

(b) Sections 5B(g) and (h), Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), are repealed.

(2) Renumber the remaining sections accordingly.

Amendment - Denton

Amend **C.S.S.B. 352** as follows:

(1) On page 7, line 16, strike "or".

(2) On page 7, line 20, strike the period and substitute "; or".

(3) On page 7, between lines 20 and 21 insert the following:

(6) receives pecuniary benefit from a decision of the Commission or the Department that is greater than that received by members of the general public.

Amendment - Bomer

Amend **C.S.S.B. 352** as follows:

(1) On page 11, delete lines 18 through 27.

(2) On page 12, delete line 1.

Amendment - Dutton

Amend **C.S.S.B. 352** by adding on page 15, line 18 after the period the following: "Contract goals shall approximate the federal requirement on federal monies used in highway construction and maintenance.

Amendment - Greenberg

Amend **C.S.S.B. 352**, Section 17 so that Sec. 1 of the new Art. 6673g reads as follows:

Sec. 1. RULES (a) The Commission shall adopt rules providing for environmental reviews of Department transportation projects that are not subject to review under the National Environmental Policy Act (Chapter 55, Title 42, U.S.C.). The Commission shall consider the results of its reviews in executing its duties. The rules must contain provisions for:

(1) public comment, including the types of projects for which public hearings are required, on the Department's environmental reviews;

(2) the Department's evaluation of direct and indirect effects of its projects;

(3) analysis of project alternatives; and

(4) a written report that briefly explains the Department's decision regarding a project and that specifies the mitigation measures to environmental harm on which the project is conditioned.

Amendment - Von Dohlen

Amend **C.S.S.B. 352** as follows:

(1) After Section 19, add a new section, appropriately numbered, to read as follows:

SECTION _____. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6673j to read as follows:

Art. 6673j. NOTICE TO LEGISLATORS OF COMPLETED PROJECTS. Not later than the 10th day before the date a major road project is scheduled for completion, the department shall inform each member of the legislature representing the county in which the road project is located of the location of and the completion date of the road project.

(2) Renumber the following sections accordingly.

Amendment - Von Dohlen

Amend **C.S.S.B. 352** as follows:

(1) After Section 19, add a new section, appropriately numbered, to read as follows:

SECTION _____. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6673j-1 to read as follows:

Art. 6673j-1. INTERNATIONAL TRADE. (a) The department shall review its proposed road projects annually to determine whether they are adequate to handle the projected volume of highway traffic resulting from international trade over the next five years. The department shall reassign priorities to its projects in accordance with the review.

(b) Not later than February 1 of each odd-numbered year, the department shall report to the legislature on the ability of the state highway system to handle the projected volume of highway traffic resulting from international trade over the next five years.

(2) Renumber the following sections accordingly.

Amendment - Repp

Amend the Von Dohlen amendment to **C.S.S.B. 352** as follows:

(1) After Section 19, add a new section, appropriately numbered, to read as follows:

SECTION _____. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6673j-1 to read as follows:

Art. 6673j-1. INTERNATIONAL TRADE. (a) The department shall review its proposed road projects annually to determine whether they are adequate to handle the projected volume of highway traffic resulting from international trade over the next five years. The department may reassign priorities to its projects in accordance with the review.

(b) Not later than February 1 of each odd-numbered year, the department shall report to the legislature on the ability of the state highway system to handle the projected volume of highway traffic resulting from international trade over the next five years.

(2) Renumber the following sections accordingly.

Amendment - Colbert

Amend **C.S.S.B. 352** by adding a new SECTION 21 to read as follows and renumber the present SECTION 21 and subsequent sections accordingly:

SECTION 21. Section 1, Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w-1, Vernon's Texas Civil Statutes), is amended to read as follows:

1. Authorization for Modernization of Highway Facilities. To effectuate the purposes of this Act, the State Highway Commission is empowered to lay out, construct, maintain, and operate a modern State Highway System, with emphasis on the construction of controlled access facilities and to convert, wherever necessary, existing streets, roads and highways into controlled access facilities to modern standards of speed and safety; and, to plan for future highways. The State Highway Commission is further empowered to lay out, construct, maintain and operate any designated State Highway, now or hereafter constructed, with such control of access thereto as is necessary to facilitate the flow of traffic, and promote the Public Safety and Welfare, in any area of the State, whether in or outside of the limits of any incorporated city, town or village, including Home Rule Cities, and to exercise all of the powers and procedures to it granted by existing laws and this

Act for the accomplishment of such purposes and the exercise of such powers and duties; provided, however, that in the case of any project involving the bypassing of or going through any county, city, town, or village, including Home Rule Cities, the State Highway Commission shall afford the opportunity for not less than one (1) public hearing in the locality before an authorized representative of the State Highway Commission, at which persons interested in the development of the project shall have the opportunity for attendance, discussion and inspection of the design and schematic layout presented and filed with the governing body of such county, city, town or village, including Home Rule Cities, at least seven (7) days before the public hearing, by the State Highway Department. Such hearing shall be held not less than three (3) days nor not more than ten (10) days after the publication in the locality of notice of such hearing.

1A. The State Department of Highways and Public Transportation shall promulgate reasonable rules: (a) providing abutting landowners and affected local governments and public officials notice and an opportunity for comment on a state highway project for the addition of one or more vehicular lanes to an existing highway or for the construction of a highway on a new location; (b) providing those persons additional notice and opportunity for comment on such projects when conditions relating to land-use, traffic volumes, and traffic patterns have changed significantly from the time the project originally underwent public review and comment; and (c) providing procedures for informing such persons of impending construction.

2. Control of Access. The State Highway Commission, by proper order entered in its minutes, is hereby authorized and empowered:

(a). To designate any existing or proposed State Highway, of the Designated State Highway System, or any part thereof, as a Controlled Access Highway;

(b). To deny access to or from any State Highway, presently or hereafter designated as such, whether existing, presently being constructed, or hereafter constructed, which may be hereafter duly designated as a Controlled Access Highway, from or to any lands, public, or private, adjacent thereto, and from or to any streets, roads, alleys, highways or any other public or private ways intersecting any such Controlled Access Highway, except at specific points designated by the State Highway Commission; and to close any such public or private way at or near its point of intersection with any such Controlled Access Highway;

(c). To designate points upon any designated Controlled Access Highway, or any part of any such highway, at which access to or from such Controlled Access Highway shall be permitted, whether such Controlled Access Highway includes any existing State Highway or one hereafter constructed and so designated;

(d). To control, restrict, and determine the type and extent of access to be permitted at any such designated point of access;

(e). To erect appropriate protective devices to preserve the utility, integrity, and use of such designated Controlled Access Highway; and,

(f). To modify or repeal any order entered pursuant to the powers herein granted.

Provided, however, that nothing in the foregoing subparagraphs (a) through (f), inclusive, shall be construed to alter the existing rights of any person to compensation for damages suffered as a result of the exercise of such powers by the State Highway Commission under the Constitution and laws of the State of Texas.

Subject to the foregoing limitations any order issued by the State Highway Commission pursuant to such powers shall supersede and be superior to any rule, regulation or ordinance of any department, agency or subdivision of the State or any county, incorporated city, town or village, including Home Rule Cities, in conflict therewith.

No injunction shall be granted to stay or prevent the denial of previously existing access to any State Highway upon the order of the Commission except at

the suit of the owner or lessee of real property actually physically abutting on that part of such State Highway to which such access is to be denied pursuant to the Commission's order, and then only in the event that said abutting owner or lessee shall not have released his claim for damages resulting from such denial of access or a condemnation suit shall not have been commenced to ascertain such damages, if any.

Along new Controlled Access State Highway locations, abutting property owners shall not be entitled to access to such new Controlled Access State Highway locations as a matter of right, and any denial of such access shall not be deemed as grounds for special or exemplary damages, except where access to such new Controlled Access State Highway shall have been specifically authorized by the State Highway Commission to or from particular lands abutting upon such new Controlled Access State Highway in connection with the purchase or condemnation of lands or property rights from such abutting owners to be used in such new Controlled Access State Highway location, and the State Highway Commission thereafter denies access to or from such particular abutting lands to such State Highway at the point where such lands actually abut upon such State Highway.

Amendment - Robnett

Amend **C.S.S.B. 352**, Section 22, by striking lines 2-17, page 27 and substituting the following:

"Sec. 1. Vehicles used exclusively to transport ready-mixed concrete, which is hereby defined as a perishable product, may be operated upon the public highway of this state with a tandem axle load not to exceed 46,000 [~~44,000~~] pounds, a single axle load not to exceed 23,000 [~~20,000~~] pounds, or at a weight that does not exceed the allowable axle weight by a tolerance allowance of 10 percent and if the combined gross load weight does not exceed 69,000 [~~and a gross load not to exceed 64,000~~] pounds[~~, provided that where the vehicle is to be operated with a tandem axle load in excess of 34,000 pounds, the owner of such vehicle shall first file with the State Department of Highways and Public Transportation a surety bond in the principal sum as fixed by the department, which sum shall not be set at a greater amount than $15,000 for each vehicle, said bond to be conditioned that the owner of such vehicle will pay to the State of Texas, within the limit of such bond, all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds, such bond shall be subject to the approval of the State Department of Highways and Public Transportation~~]."

Amendment - Von Dohlen

Amend **C.S.S.B. 352** as follows:

(1) After Section 25, add a new section, appropriately numbered, to read as follows:

SECTION _____. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6673m to read as follows:

Art. 6673m. LOCAL FINANCING OF STATE HIGHWAY SYSTEM PROJECTS. A unit of government that has the authority to build roads may finance the construction of an approved project for the state highway system. If funds become available, the department may make contracts to reimburse the governmental unit that provided the financing for the road project.

(2) Renumber the following sections accordingly.

Amendment - Granoff

Amend **C.S.S.B. 352** as follows:

(1) On page 29 between lines 12 and 13 insert the following section, appropriately numbered:

SECTION _____. Subchapter E, Chapter 497, Government Code, as revised by **S.B. 232**, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Section 497.096 to read as follows:

Sec. 497.096. CONTRACT WITH STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION. The board may enter into contracts with the State Department of Highways and Public Transportation for the use of the labor of inmates or other persons subject to the supervision of the institutional division.

(2) Renumber the following sections accordingly.

Amendment on Third Reading - Junell

Amend **C.S.S.B. 352** on third reading as follows:

(1) After SECTION 25 add a new section, appropriately numbered, to read as follows:

SECTION _____. Section 5, Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes), is amended by adding Subsections (n) and (o) to read as follows:

(n) A county in a district is not liable for an act or a failure to act by the district.

(o) A commissioners court by order may withdraw the county from the district. A withdrawal by a county does not dissolve the district or remove from the district any portion of the district's rail line that is in the county withdrawing from the district.

(2) Renumber the remaining sections accordingly.

Amendment on Third Reading - Denton

Amend **C.S.S.B. 352** on third reading by adding an appropriately numbered section to read as follows and by renumbering the existing sections of the bill accordingly:

SECTION _____. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6673j-2 to read as follows:

"Art. 6673j-2. PROHIBITED BIDDERS. The department may not accept a bid from a person, either as an individual or as a corporate entity, if the commission determines that the person has committed a violation of:

(1) Subchapter A, Chapter 15, Business and Commerce Code; or

(2) a federal law that is substantially similar to Subchapter A, Chapter 15."

The amendments were read.

Senator Barrientos 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. 352** 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 Barrientos, Chair; Dickson, Rosson, Ratliff, Turner.

SENATE BILL 928 ON SECOND READING

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

S.B. 928, Relating to peace officers commissioned by the Comptroller of Public Accounts.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Dickson.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

SENATE BILL 928 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 928** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Dickson.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

VOTE ON FINAL PASSAGE OF HOUSE BILL 553 RECONSIDERED

On motion of Senator Leedom and by unanimous consent, the vote by which **H.B. 553** was finally passed was reconsidered.

Question—Shall **H.B. 553** be finally passed?

Senator Leedom offered the following amendment to the bill:

Amend **H.B. 553** by striking SECTION 1 in its entirety and inserting in lieu thereof the following:

SECTION 1. Subchapter F, Chapter 118, Local Government Code, is amended by adding Section 118.134 to read as follows:

Sec. 118.134. PAYMENT OF COSTS INCURRED FOR CARE OF CERTAIN PROPERTY. (a) A sheriff or constable may keep possession of property legally acquired until the party seeking to replevy the property pays the officer's costs incurred for the storage, security, or management of the property.

(b) Subsection (a) of this section does not apply to costs incurred on property seized in conjunction with an offense alleged under the Penal Code, Code of Criminal Procedure, or Title 116, Vernon's Texas Civil Statutes, when the owner of the property is subsequently found to be not guilty of an offense or other proscribed activity described in those statutes, or if other charges whether criminal or civil are dropped.

By unanimous consent, the amendment was read and was adopted by a 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 again finally passed by the following vote: Yeas 27, Nays 0.

Absent: Dickson.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

COMMITTEE SUBSTITUTE
SENATE BILL 1256 ON SECOND READING

On motion of Senator Ellis 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. 1256, Relating to the commission of peace officers.

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

COMMITTEE SUBSTITUTE
SENATE BILL 1256 ON THIRD READING

Senator Ellis moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1256** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Dickson.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0. (Same as previous roll call)

COMMITTEE SUBSTITUTE
SENATE BILL 1376 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 engrossment:

C.S.S.B. 1376, Relating to the preservation of water quality in the Colorado River, establishing a non-degredation policy in certain undeveloped and urban watersheds, establishing obligations for the assessment of water quality by the Water Commission, the Lower Colorado River Authority, the City of Austin, and the Barton Springs-Aquifer Underground Conservation District, requiring the adoption of ordinances and ensuring representation of areas on bodies governed by such ordinances, limiting appeals of such ordinances, limiting the expenditure of state and federal funds for certain projects in certain areas, establishing standards and limitations on wastewater treatment and sewer line location, limitations on the creation of certain districts, and declaring an emergency.

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

COMMITTEE SUBSTITUTE SENATE BILL 1376 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1376** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Dickson.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0. (Same as previous roll call)

SENATE BILL 1590 ON SECOND READING

On motion of Senator Moncrief 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:

S.B. 1590, Relating to the qualifications for judges of municipal courts of record in Fort Worth.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Amend **S.B. 1590** as follows:

(1) On page 1, line 11, add after "state" a period and the following:

"The judge must maintain residence in the city during the tenure of office".

(2) Strike SECTIONS 2 and 3 and substitute the following:

"SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Moncrief 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 by a viva voce vote.

SENATE BILL 1590 ON THIRD READING

Senator Moncrief moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 1590** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Harris of Tarrant.

Absent: Dickson.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

RECORD OF VOTE

Senator Harris of Tarrant asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 1602 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 engrossment:

S.B. 1602, Relating to the creation, powers, and duties of a Congressional Medal of Honor advisory committee.

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

SENATE BILL 1602 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 1602** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Dickson.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0. (Same as previous roll call)

COMMITTEE SUBSTITUTE SENATE BILL 1605 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 engrossment:

C.S.S.B. 1605, Relating to the definition of a division order.

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

RECORD OF VOTES

Senators Bivins, Moncrief and Montford asked to be recorded as voting "Present-not voting" on the passage of the bill to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 1605 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1605** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 0, Present-not voting 3.

Yeas: Armbrister, Barrientos, Brooks, Brown, Carriker, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Henderson, Johnson, Krier, Leedom, Lucio, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Zaffirini.

Present-not voting: Bivins, Moncrief, Montford.

Absent: Dickson.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

RECORD OF VOTES

Senators Bivins, Moncrief and Montford asked to be recorded as voting "Present-not voting" on the final passage of the bill.

COMMITTEE SUBSTITUTE SENATE BILL 938 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 engrossment:

C.S.S.B. 938, Relating to the regulation of the practice of chiropractic.

The bill was read second time.

Senator Green offered the following amendment to the bill:

Amend **C.S.S.B. 938**, by adding a new SECTION 2 and renumbering the remaining sections accordingly.

SECTION 2. "This article shall not be construed to prohibit the review of chiropractic services to determine third party payment."

The amendment was read and was adopted by a 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 engrossment by a viva voce vote.

HOUSE BILL 53 ON SECOND READING

On motion of Senator Zaffirini 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. 53, Relating to promotion of tourism in this state.

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

HOUSE BILL 53 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 53** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

HOUSE BILL 504 ON SECOND READING

On motion of Senator Sibley 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. 504, Relating to the offense of preventing or obstructing a peace officer from arresting, searching, or transporting an individual.

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

HOUSE BILL 504 ON THIRD READING

Senator Sibley moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 504** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

HOUSE BILL 1290 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. 1290, Relating to authorizing certain counties to issue longevity pay to deputy constables.

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

HOUSE BILL 1290 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1290** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0. (Same as previous roll call)

MESSAGE FROM THE HOUSE

House Chamber
May 19, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

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

H.B. 2876, Relating to the authority of municipal utility districts.

H.B. 1877, Relating to bailiffs serving the district courts and statutory county courts of Potter and Randall counties.

H.B. 1215, Relating to administrative penalties for the violation of certain water rights laws, rules, orders, permits, certificates, and certified filings, and certain dam safety laws, rules, and orders.

H.B. 1065, Relating to the authority of a county to regulate the use of fireworks in certain climatic conditions; providing a penalty.

H.B. 2744, Relating to the power and authority of Trophy Club Municipal Utility District No. 2 of Denton County, Texas, to conduct certain election

procedures outside the boundaries of the district under certain circumstances; providing for the cumulative nature of such power and authority; finding and declaring that the applicable requirements of Article XVI, Section 59(d) and Section 59(e), Constitution of Texas, have been performed and accomplished; enacting other provisions relating to the above subjects; providing a severability clause; and declaring an emergency.

H.B. 850, Relating to the regulation of private ditches in certain counties; providing a penalty.

H.B. 2054, Relating to validation inspections of hospitals by the Texas Department of Health; and declaring an emergency.

H.B. 2670, Relating to persons who are authorized to sell marital aids and other devices designed to promote safe sexual practices.

H.B. 1225, Relating to release of claims against insurer by endorsement of negotiable instrument.

H.B. 1801, Relating to a holder in due course of a negotiable instrument as an "owner" for the purposes of the Penal Code, to the offense of making a false statement to obtain property or credit from a financial institution, and to the presumption for theft by check.

H.B. 2187, Relating to the definition of "retail installment transaction" or "transaction."

H.B. 2746, Relating to providing legal defense for County employees for actions arising from the performance of public duty.

H.B. 2561, Relating to the authority of certain counties to adopt zoning and other regulations to protect certain historical areas.

H.B. 2327, Relating to procedures for the enforcement of the Texas Meat and Poultry Inspection Act; providing for administrative penalties; amending Chapter 433, Health and Safety Code; and declaring an emergency.

H.B. 2166, Related to the payment of child support to local registries and the state registry for the collection of court-ordered child support and income withholding for child support.

H.B. 2822, Relating to the creation, administration, powers, and duties of the Greater Greenspoint Management District of Harris County.

H.B. 2862, Relating to the powers and authority of The Woodlands Metro Center Municipal Utility District, of Montgomery County, Texas, to exclude lands and properties from its boundaries and taxing jurisdiction under certain circumstances; and enacting other provisions relating to the subject.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 1126 ON SECOND READING

On motion of Senator Turner 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. 1126, Relating to fees for personal identification cards, a change in class of driver's license, and a duplicate commercial driver's license or permit.

The bill was read second time and was passed to third reading by the following vote: Yeas 19, Nays 9.

Yeas: Armbrister, Barrientos, Bivins, Carriker, Dickson, Green, Henderson, Krier, Leedom, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Turner.

Nays: Brooks, Brown, Ellis, Glasgow, Haley, Harris of Tarrant, Johnson, Truan, Zaffirini.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

MOTION TO PLACE
HOUSE BILL 1126 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1126** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 22, Nays 6. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Glasgow, Green, Henderson, Krier, Leedom, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner.

Nays: Ellis, Haley, Harris of Tarrant, Johnson, Lucio, Zaffirini.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

(Senator Glasgow in Chair)

COMMITTEE SUBSTITUTE
HOUSE BILL 1431 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:

C.S.H.B. 1431, Relating to the jurisdiction of the county, justice, and small claims courts, to the processing and storage of information in the civil docket of a justice of the peace, and to the jurisdiction of certain municipal courts over certain hearings relating to stored motor vehicles.

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

COMMITTEE SUBSTITUTE
HOUSE BILL 1431 ON THIRD READING

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1431** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

COMMITTEE SUBSTITUTE HOUSE BILL 1584 ON SECOND READING

On motion of Senator Bivins 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. 1584, Relating to the application of the hotel occupancy tax to permanent residents.

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

COMMITTEE SUBSTITUTE HOUSE BILL 1584 ON THIRD READING

Senator Bivins moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1584** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

HOUSE BILL 1664 ON SECOND READING

On motion of Senator Bivins 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. 1664, Relating to the operation of an alternative incarceration program by the institutional division of the Texas Department of Criminal Justice.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

Amend **H.B. 1664** as follows:

On page 5, between lines 18 and 19, insert the following new section:

"Section 3.04. Section 499.051, Government Code, as revised by **S.B. 232**, Acts of the 72nd Legislature, Regular Session, 1991, is repealed."

Renumber the following sections appropriately.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Bivins 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 by a viva voce vote.

RECORD OF VOTE

Senator Green asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1664 ON THIRD READING

Senator Bivins moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1664** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Green.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

RECORD OF VOTE

Senator Green asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 1777 ON SECOND READING

Senator Barrientos asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 1777, Relating to counselors and counseling programs in public schools.

There was objection.

Senator Barrientos then moved to suspend the regular order of business and take up **H.B. 1777** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 5.

Yeas: Armbrister, Barrientos, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Henderson, Johnson, Krier, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sims, Tejeda, Truan, Turner, Zaffirini.

Nays: Bivins, Brown, Harris of Tarrant, Leedom, Sibley.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

RECORD OF VOTES

Senators Bivins, Brown, Harris of Tarrant, Leedom and Sibley asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1777 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1777** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 5.

Yeas: Armbrister, Barrientos, Brooks, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Henderson, Johnson, Krier, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sims, Tejeda, Truan, Turner, Zaffirini.

Nays: Bivins, Brown, Harris of Tarrant, Leedom, Sibley.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

RECORD OF VOTES

Senators Bivins, Brown, Harris of Tarrant, Leedom and Sibley asked to be recorded as voting "Nay" on the final passage of the bill.

GUESTS PRESENTED

Senator Sibley was recognized and introduced his parents, Dale and Marilyn Sibley.

The Senate welcomed Mr. and Mrs. Sibley.

(President in Chair)

COMMITTEE SUBSTITUTE HOUSE BILL 1492 ON SECOND READING

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

C.S.H.B. 1492, Relating to death benefits payable to the survivors of certain public servants and to the imposition of a cost of court on certain criminal convictions.

The motion prevailed by the following vote: Yeas 24, Nays 4.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Green, Haley, Harris of Tarrant, Henderson, Krier, Leedom, Lucio, Moncrief, Parker, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Zaffirini.

Nays: Glasgow, Johnson, Montford, Ratliff.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1492** as follows:

On page 1, line 27, strike $100 and add $40
On page 1, line 29, strike $50 and add $20

The amendment was read and was adopted by a viva voce vote.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 1492** in Section 5, page 5, on line 5, by striking after the words "state treasury to the credit of" the words "an account in".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Lucio 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 by a viva voce vote.

RECORD OF VOTES

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

MOTION TO PLACE COMMITTEE SUBSTITUTE HOUSE BILL 1492 ON THIRD READING

Senator Lucio moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1492** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 22, Nays 6. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Green, Haley, Harris of Tarrant, Henderson, Krier, Leedom, Lucio, Moncrief, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Zaffirini.

Nays: Ellis, Glasgow, Johnson, Montford, Parker, Ratliff.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

HOUSE BILL 1979 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. 1979, Relating to providing for methods and procedures for the eradication of boll weevils in cotton; providing penalties.

The bill was read second time.

Senator Carriker offered the following amendment to the bill:

Amend **H.B. 1979** by deleting all of Subsection (c), Section 74.105 beginning on line 25, page 5, and substituting in lieu thereof:

(c) The balloting in the referendum shall be conducted in person on a date determined by the commissioner, in at least one location centrally located within each county of the affected region. The physical balloting place shall be staffed by an official of the foundation and a representative of the secretary of state, at a location or locations to be assigned by a majority vote of the county commissioners court in the affected counties. For purposes of protecting the integrity of the referendum, producers shall present, prior to casting their ballot in the assessment, documents certifying the extent of their production within the affected region. For producers participating in the Agriculture Stabilization and Conservation Service (A.S.C.S.) program, those documents shall be evidence of participation in signup for the federal cotton program of the most recent crop year. For producers not participating in the Federal A.S.C.S. program, the commissioner shall promulgate rules for the verification of producers acreage. The referendum will be considered valid if over 50 percent of the producers affected cast ballots in favor of the referendum.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTES

Senators Carriker and Montford asked to be recorded as voting "Present-not voting" on the adoption of the amendment.

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 by a viva voce vote.

RECORD OF VOTES

Senators Carriker and Montford asked to be recorded as voting "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 1979 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1979** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 1, Present-not voting 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Henderson, Krier, Leedom, Lucio, Moncrief, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Zaffirini.

Nays: Johnson.

Present-not voting: Carriker, Montford.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

RECORD OF VOTE

Senator Johnson asked to be recorded as voting "Nay" on the final passage of the bill.

RECORD OF VOTES

Senators Carriker and Montford asked to be recorded as voting "Present-not voting" on the final passage of the bill.

COMMITTEE SUBSTITUTE SENATE BILL 432 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 engrossment:

C.S.S.B. 432, Relating to the continuation, composition, and functions of the Texas Real Estate Commission; providing workers' compensation coverage for certain real estate brokers and salesmen; providing penalties.

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

COMMITTEE SUBSTITUTE SENATE BILL 432 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 432** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

SENATE BILL 138 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 engrossment:

S.B. 138, Relating to regulating cancellation of insurance agency contracts.

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

RECORD OF VOTE

Senator Truan asked to be recorded as voting "Present-not voting" on the passage of the bill to engrossment.

SENATE BILL 138 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 138** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0, Present-not voting 1.

Present-not voting: Truan.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0, Present-not voting 1. (Same as previous roll call)

SENATE BILL 1440 ON SECOND READING

On motion of Senator Turner 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:

S.B. 1440, Relating to the clarification of the application of the nepotism law to appraisal districts.

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

SENATE BILL 1440 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 1440** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0. (Same as previous roll call)

COMMITTEE SUBSTITUTE SENATE BILL 1105 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 engrossment:

C.S.S.B. 1105, Relating to a reduced oil production tax rate for oil from certain enhanced recovery projects.

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

RECORD OF VOTES

Senators Bivins, Moncrief and Montford asked to be recorded as voting "Present-not voting" on the passage of the bill to engrossment.

COMMITTEE SUBSTITUTE
SENATE BILL 1105 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1105** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 0, Present-not voting 3.

Yeas: Armbrister, Barrientos, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Henderson, Johnson, Krier, Leedom, Lucio, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Zaffirini.

Present-not voting: Bivins, Moncrief, Montford.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

RECORD OF VOTES

Senators Bivins, Moncrief and Montford asked to be recorded as voting "Present-not voting" on the final passage of the bill.

COMMITTEE SUBSTITUTE
SENATE BILL 1408 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 engrossment:

C.S.S.B. 1408, Relating to rulings relating to the effect of anticipated transactions on the ad valorem taxation of property.

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

COMMITTEE SUBSTITUTE
SENATE BILL 1408 ON THIRD READING

Senator Krier moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1408** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

SENATE BILL 1612 ON SECOND READING

Senator Parker moved to suspend the regular order of business, Senate Rule 5.14 and Senate Rule 7.14 to take up for consideration at this time:

S.B. 1612, Relating to appointment, service, and duties of masters in proceedings for court-ordered mental health services.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

SENATE BILL 1612 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 1612** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0. (Same as previous roll call)

COMMITTEE SUBSTITUTE
SENATE BILL 3 ON SECOND READING

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

C.S.S.B. 3, Relating to offenses involving driving a motor vehicle or operating an airplane, helicopter, or boat while intoxicated and possession of an open container of alcoholic beverage, and to the civil and criminal consequences of those offenses, including the suspension of a driver's license or driving privilege.

The bill was read second time.

Senator Truan offered the following amendment to the bill:

Amend **C.S.S.B. 3** by striking all below the enacting clause and substituting the following:

SECTION 1. Title 10, Penal Code, is amended by adding Chapter 49 to read as follows:

CHAPTER 49. INTOXICATED DRIVER OFFENSES

Sec. 49.01. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Alcohol concentration" means:

(A) the number of grams of alcohol per 100 milliliters of blood;

(B) the number of grams of alcohol per 210 liters of breath;

(C) the number of grams of alcohol per 67 milliliters of urine.

(3) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(4) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

(5) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or

(B) having an alcohol concentration of 0.10 or more.

(6) "Public place" has the meaning assigned by Section 1.07(a) of this code.

(7) "Serious bodily injury" means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

Sec. 49.02. HOMICIDE CAUSED BY INTOXICATED DRIVER. (a) A person commits an offense if by accident or mistake when operating a motor vehicle, airplane, helicopter, or boat while intoxicated and, by reason of such intoxication, the person causes the death of an individual.

(b) An offense under this section is a felony of the second degree.

Sec. 49.03. INTOXICATED DRIVER OFFENSE. (a) A person commits an offense if the person is intoxicated while driving or operating a motor vehicle in a public place. The fact that any person charged with a violation of this section is or has been entitled to use a controlled substance or drug under the laws of this state is not a defense.

(b) Except as provided by Subsections (c)-(f) of this section, an offense under this section is punishable by confinement in jail for a term of not less than 72 hours or more than two years and a fine of not less than $100 or more than $2,000.

(c) If it is shown on the trial of an offense under this section that the person has previously been convicted one time of an offense under this chapter, the offense is punishable by confinement in jail for a term of not less than 15 days or more than two years and a fine of not less than $300 or more than $2,000.

(d) If it is shown on the trial of an offense under this section that the person has previously been convicted two times of an offense under this chapter, the offense is punishable by:

(1) a fine of not less than $500 or more than $10,000; and

(2) confinement in jail for a term of not less than 30 days or more than two years or imprisonment in the institutional division of the Texas Department of Criminal Justice for a term of not less than two years or more than 10 years.

(e) If it is shown on the trial of an offense under this section that the person has previously been convicted three or more times of an offense under this chapter, the punishment for the offense is the punishment provided by Section 12.42 of this code.

(f) If it is shown on the trial of a person punished for an offense under Subsection (b), (c), (d), or (e) of this section that the person committed the offense and as a direct result of the offense another person suffered serious bodily injury, the minimum term of confinement for the offense is increased by 60 days and the maximum fines for the offense are increased by $500. If it is shown on the trial of a person punished for an offense under this chapter that the person committed the offense and at the time of the offense the person operating the motor vehicle had an open container of an alcoholic beverage in the person's immediate possession, the minimum term of confinement for the offense is increased by:

(1) three days, and the minimum and the maximum fines for the offense are increased by $100, if the person is punished for an offense under Subsection (b) of this section;

(2) six days, and the minimum and maximum fines for the offense are increased by $200, if the person is punished for an offense under Subsection (c) of this section; and

(3) 12 days, and the minimum and maximum fines for the offense are increased by $400, if the person is punished for an offense under Subsection (d) of this section.

(g) The increases in maximum and minimum punishments provided by Subsection (f) of this section are cumulative. If it is shown on the trial of the offense

that the person committed the offense, that as a direct result of the offense a person suffered serious bodily injury, and that at the time of the offense the person was operating a motor vehicle with an open container of an alcoholic beverage present in the passenger portion of the vehicle, both increases in punishment authorized by Subsection (f) apply.

(h) On conviction of an offense under this chapter, the court shall impose a cost of $15 on a defendant if, after the arrest of the defendant, a law enforcement agency visually recorded the defendant with an electronic device. Costs imposed under this subsection are in addition to other court costs and are due whether or not the defendant is granted probation in the case. The court shall collect the costs in the same manner as other costs are collected in the case.

(i) On conviction of an offense punishable under Subsection (b) of this section, the court shall impose as a cost of court on the defendant an amount that is equal to the cost of an evaluation of the defendant performed under Section 9(h) or 13(a), Article 42.12, Code of Criminal Procedure. Costs imposed under this subsection are in addition to other court costs and are due whether or not the defendant is granted probation in the case, except that if the court determines that the defendant is indigent, the court may waive the imposition of the cost.

Sec. 49.04. APPLICATION OF OTHER LAW. Section 12.44 of this code does not apply to persons convicted under this chapter.

Sec. 49.05. USE OF PRIOR CONVICTIONS. (a) For the purposes of this chapter, a conviction for an offense under Article 6701l-1, Revised Statutes, as that law existed before September 1, 1991, or an offense under Article 6701l-2, Revised Statutes, as that law existed before January 1, 1984, is a conviction of an offense under this chapter.

(b) For the purposes of this chapter, a conviction for an offense under this chapter or Article 6701l-1, Revised Statutes, that occurs on or after September 1, 1991, is a final conviction, whether or not the sentence for the conviction is probated.

(c) A conviction may not be used for purposes of enhancement under Section 49.03 of this chapter if:

(1) the conviction was a final conviction under the provisions of Subsections (a) and (b) of this section and was for an offense committed more than 10 years before the offense for which the person is being tried was committed; and

(2) the person has not been convicted of an offense under this chapter or Section 19.05(a)(2), Penal Code, or Article 6701l-1 or 6701l-2, Revised Statutes, as those laws existed before the effective date of this chapter, committed within 10 years before the date on which the offense for which the person is being tried was committed.

Sec. 49.06. REQUIRED EVALUATION. (a) A magistrate may require as a condition of bond for a defendant charged with an offense under this chapter that the defendant participate in an evaluation as provided by Section 13(a)(2), Article 42.12, Code of Criminal Procedure.

(b) If a person who is not released on bond does not participate in an evaluation as provided by Section 13(a)(2), Article 42.12, Code of Criminal Procedure, the person may not earn good conduct time while confined.

SECTION 2. Section 19.05, Penal Code, is amended to read as follows:

Sec. 19.05. INVOLUNTARY MANSLAUGHTER. (a) A person commits an offense if he[:

[~~(1)~~] recklessly causes the death of an individual[~~; or~~

[~~(2) by accident or mistake when operating a motor vehicle, airplane, helicopter, or boat while intoxicated and, by reason of such intoxication, causes the death of an individual~~].

(b) [~~For purposes of this section, "intoxicated" has the meaning assigned that term by Subsection (a), Article 6701l-1, Revised Statutes.~~

[~~(c)~~] An offense under this section is a felony of the third degree.

SECTION 3. Section 13, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

Sec. 13. DWI PROBATION. (a) A court granting probation to a defendant convicted of an offense under Section 49.03, Penal Code, [~~Article 6701l-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article~~] shall require as a condition of probation that the defendant submit to:

(1) 72 hours of detention in a jail if the defendant was convicted under Section 49.03(c), Penal Code [~~Subsection (d) of Article 6701l-1, Revised Statutes~~]; 10 days of detention in a jail if the defendant was convicted under Section 49.03(d) or (e), Penal Code [~~Subsection (e) of Article 6701l-1, Revised Statutes~~]; or 30 days of detention in a jail if the defendant was convicted under Section 49.03(f), Penal Code [~~Subsection (f) of Article 6701l-1, Revised Statutes~~]; and

(2) an evaluation by a probation officer or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of having the facility prescribe and carry out a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

(b) A court granting probation to a defendant convicted of an offense under [~~Subdivision (2), Subsection (a);~~] Section 49.02 [~~19.05~~], Penal Code, shall require as a condition of probation that the defendant submit to a period of imprisonment in the institutional division of the Texas Department of Criminal Justice [~~detention in a penal institution~~] to serve a term [~~of confinement~~] of not less than 120 days.

(c) If the director of a facility to which a person is referred under Subdivision (2) of Subsection (a) of this section determines that the person is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the court that referred the person of that fact.

(d) If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the court shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay. The court may, in its discretion, credit such cost paid by the defendant against the fine assessed. In making a determination of a defendant's ability to pay the cost of rehabilitation under this subsection, the court shall consider whether the defendant has insurance coverage that will pay for rehabilitation.

(e) The imprisonment imposed shall be treated as a condition of probation and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

(f) If a court grants probation to a defendant convicted of an offense under Section 49.02 or 49.03, Penal Code [~~Article 6701l-1, Revised Statutes, and punished under Subsection (c) of that article~~], and if before receiving probation the defendant has not submitted to an evaluation under Section 9 of this article, the court shall require the defendant to submit to the evaluation as a condition of probation. If the evaluation indicates to the court that the defendant is in need of treatment for drug or alcohol dependency, the court shall require the defendant to submit to that treatment as a condition of probation in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse or in a program or facility that complies with standards established by the community justice assistance division of the Texas Department of Criminal Justice, after consultation by the division with the commission.

(g) If the jury recommends probation for a person convicted of an offense under Section 49.03, Penal Code [~~Article 6701l-1, Revised Statutes, and punished under Subsection (c) of that article~~], it may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts

of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), not be suspended.

(h) If a person convicted of an offense under Section 49.03, Penal Code, [~~Article 6701l-1, Revised Statutes, is punished under Subsection (c) of that article and~~] is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse, the Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the community justice assistance division of the Texas Department of Criminal Justice [~~Texas Adult Probation Commission~~] designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the offender's school and work schedule, the offender's health, the distance that the offender must travel to attend an educational program, and the fact that the offender resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is required, as a condition of probation, to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the person's driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person's driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Section 24(g)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes). This subsection does not apply to a defendant if a jury recommends probation for the defendant and also recommends that the defendant's driver's license not be suspended.

(i) If a person convicted of an offense under Section 49.02 or 49.03 [~~Article 6701l-1, Revised Statutes, or Section 19.05(a)(2)~~], Penal Code, is placed on probation, the court may require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle is equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator. The court shall require the defendant to obtain the device at his own cost. The Department of Public Safety shall approve devices for use under this subsection. The provisions of Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), apply to the approval of a device under this subsection and the consequences of that approval. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the

course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted.

(j) The court may require or permit a person who was previously convicted of an offense under Chapter 49, Penal Code [~~Article 6701l-1, Revised Statutes~~], and who was required to attend an educational program under Subsection (h) of this section as a condition of probation, to attend an educational program under Subsection (h) of this section with a curriculum for repeat offenders approved by the Texas Commission on Alcohol and Drug Abuse if the court determines that attendance at a program would be in the person's best interest.

(k) Notwithstanding Section 24(g), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), if the court, under Subsection (h) or (j) of this section, permits or requires a person to attend an educational program as a condition of probation, and the person has previously been convicted of an offense under Chapter 49, Penal Code [~~Article 6701l-1, Revised Statutes~~], and has previously been required to attend such a program, the court nonetheless shall automatically suspend the driver's license, permit, or operating privilege of that person for a period determined by the court according to the following schedule:

(1) not less than 90 days or more than 365 days, if the person is punished under Section 49.03(b), Penal Code [~~Subsection (c), Article 6701l-1, Revised Statutes~~], whether or not the punishment is increased under Subsection (f) of that section [~~article~~]; or

(2) not less than 180 days or more than two years, if the person is punished under Section 49.03(c), (d), or (e), Penal Code [~~Subsection (d) or (e), Article 6701l-1, Revised Statutes~~], whether or not the punishment is increased under Subsection (f) of that section [~~article~~].

(l) If the Department of Public Safety receives notice that a person has been required or permitted to attend an educational program under Subsection (h) of this section, but the court has not ordered a period of suspension, the department shall suspend the person's driver's license, permit, or operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit for a period of 365 days.

SECTION 4. Section 4A(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 303, Acts of the 68th Legislature, Regular Session, 1983, is amended to read as follows:

(a) The Department may not issue a license or permit to a person convicted of an offense under Chapter 49 [~~Article 6701l-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05~~], Penal Code, unless the period of suspension that would have applied had the person had a license, permit, or privilege at the time of the conviction has expired. The Department may not issue a license or permit to a person if the Department has been ordered by a juvenile court under Section 54.042, Family Code, to deny the person a license or permit, unless the period of time specified in the order has expired.

SECTION 5. Section 23A(d), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If the petitioner's license was suspended following a conviction for an offense under Chapter 49, Penal Code [~~Article 6701l-1 or 6701l-2, Revised Statutes, or an offense under Subdivision (2), Subsection (a), Section 19.05 or Section 19.07,~~

~~Penal Code, as amended~~], the clerk of the court shall send by certified mail a copy of the verified petition and notice of the hearing to the attorney representing the state.

SECTION 6. Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), as amended by Chapters 473 and 1127, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(f) The judge hearing the petition shall enter an order either finding that no essential need exists for the operation of a motor vehicle or enter an order finding an essential need for operating a motor vehicle. In the event the judge enters the order finding an essential need, he shall also, as part of the order, determine the actual need of the petitioner in operating a motor vehicle. The order shall require the petitioner to give proof of a valid policy of automobile liability insurance in accordance with the Texas Motor Vehicle Safety-Responsibility Act[~~, as amended~~] (Article 6701h, Vernon's Texas Civil Statutes). If the person's license has been suspended following a conviction under Chapter 49 [~~Article 6701l-1, Revised Statutes, or Section 19.05(a)(2)~~], Penal Code, but only on conviction of a second or subsequent offense under this article or section, the order may restrict the person to the operation of a motor vehicle equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the restricted operator. The defendant shall obtain the device at his own cost. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted. The order shall be definite as to hours of the day, days of the week, specific reasons for travel, and areas or routes of travel to be permitted, except that the petitioner shall not be allowed to operate a motor vehicle more than four (4) hours in any twenty-four (24) consecutive hours. On a proper showing of necessity, however, the court may waive the four-hour restriction and allow the petitioner to operate a motor vehicle for any period determined by the court that does not exceed twelve (12) hours in any twenty-four (24) consecutive hours. An order entered by the court shall extend for the period of the original suspension. A certified copy of the petition and the court order setting out the judge's finding and the restrictions shall be forwarded to the Department. The petitioner may use a copy of the court order as a restricted license for 30 [~~thirty (30)~~] days after the date the order is entered. The Department of Public Safety shall promulgate rules and regulations for the approval of models and classes of devices used under this subsection and Section 25(a) of this Act. The Department by rule shall establish standards for the calibration and maintenance of devices, but the calibration and maintenance of each individual device is the responsibility of the manufacturer of that device. If the Department approves a device, the Department shall notify the manufacturer in writing of that fact. Written notice from the Department to a manufacturer approving a device is admissible in any civil or criminal proceeding in this state. The manufacturer shall reimburse the Department for any cost incurred by the Department in approving a device under this subsection. The Department may not be held liable in a civil or criminal proceeding arising out of the use of a device approved under this subsection.

SECTION 7. Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 24. AUTOMATIC SUSPENSION OF LICENSE. (a) Except as provided by Subsection (g) of this Section, the license of any person shall be automatically suspended upon final conviction [~~of any~~] of the following offenses:

1. An offense under Section 19.07, Penal Code, committed as a result of the person's criminally negligent operation of a motor vehicle[~~, or an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code~~];

2. An offense under Chapter 49, Penal Code [~~Article 6701l-1, Revised Statutes~~];

3. Any offense punishable as a felony under the motor vehicle laws of this State;

4. A conviction of a driver of a motor vehicle involved in an accident or collision, upon a charge of failure to stop, render aid, and disclose his identity at the scene of said accident or collision;

5. An offense under Section 32 or 32A of this Act.

(b) Except as provided by Subsections (d), (e), (g), (h), and (i) of this Section, the suspension above provided shall in the first instance be for a period of twelve (12) months. In event any license shall be suspended under the provision of this Section for a subsequent time, said subsequent suspension shall be for a period of eighteen (18) months, except as provided by Subsections (d), (e), (g), (h), and (i) of this Section.

(c) The suspension of any license shall be automatically extended upon licensee being convicted of operating a motor vehicle while the license of such person is suspended; such extended period of suspension to be for a like period as the original suspension, and is in addition to any other penalty assessed, as provided in this Act.

(d) Except as provided by Subsections (g) and (h) of this Section, if a person is convicted of an offense under Chapter 49, Penal Code [~~Article 6701l-1, Revised Statutes, as amended~~], the suspension of the person's license shall be for a period determined by the court according to the following schedule:

(1) not less than ninety (90) or more than three hundred sixty-five (365) days, if the person is punished under Section 49.03(b), Penal Code [~~Subsection (c) of that article~~], whether or not the punishment is increased under Subsection (f) of that section [~~article~~]; or

(2) not less than one hundred eighty (180) days or more than two (2) years, if the person is punished under Subsection (c), (d), or (e) of that section [~~article~~], whether or not the punishment is increased under Subsection (f) of that section [~~article~~].

(e) If a person is convicted of an offense under [~~Subdivision (2), Subsection (a),~~] Section 49.02 [~~19.05~~], Penal Code, the suspension of the person's license shall be for a period determined by the court of not less than one hundred eighty (180) days or more than two (2) years.

(f) Except as otherwise provided by this subsection, the court shall credit toward the period of suspension of a person's license required by this article a period of suspension imposed on the person for refusal to give a specimen under Chapter 434, Acts of the 61st Legislature, Regular Session, 1965 (Article 6701l-5, Vernon's Texas Civil Statutes), if the refusal followed an arrest for the same offense for which the court is suspending the person's license under this article. The court may not extend the credit to a person that has been previously convicted of an offense under Chapter 49 [~~Article 6701l-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05~~], Penal Code.

(g)(1) Except as provided by Subdivision (2) of this subsection, the Department may not, during the period of probation, suspend the driver's license, permit, or nonresident operating privilege of a person if the person is required under Section 13(f) [6d], Article 42.12, Code of Criminal Procedure, to attend and successfully complete an educational program designed to rehabilitate persons who have driven

while intoxicated. The Department also may not suspend the driver's license, permit, or nonresident operating privilege of a person for whom the jury has recommended, under Section 4(b) [~~3a(b)~~], Article 42.12, Code of Criminal Procedure, no suspension.

(2) After the date has passed, according to records of the Department, for successful completion of an educational program designed to rehabilitate persons who have driven while intoxicated, if the records do not indicate successful completion of the program, the Director shall suspend the person's driver's license, permit, or nonresident operating privilege or, if the person is a resident without a license or permit to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license or permit. A suspension or prohibition order under this subsection is effective for a period of twelve (12) months.

(3) The Director shall promptly send notice of a suspension or prohibition order issued under this subsection, by certified mail, return receipt requested, to the person at the person's most recent address as listed in records of the Department. The notice must include the date of the suspension or prohibition order, the reason for the suspension or prohibition, and the beginning and ending dates of the suspension or prohibition. A suspension or prohibition under this subsection may not take effect before the twenty-eighth (28th) day after the date the person receives notice by certified mail or the thirty-first (31st) day after the Director sends notice by certified mail, if the person has not accepted delivery of the notice. The notice must also include a statement that the person has a right to demand in writing that a hearing on the suspension or prohibition be held. If, not later than the twentieth (20th) day after the date on which the person receives notice by certified mail or the twenty-third (23rd) day after the date the Director sent notice by certified mail, if the person has not accepted delivery of the notice, the Department receives a written demand that a hearing be held, the Department shall, not later than the tenth (10th) day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. If a person demands a hearing as provided by this subsection, the suspension or prohibition does not take effect until resolution of the hearing.

(4) A hearing on suspension or prohibition shall be held in a municipal or justice court in the county of the person's residence in the manner provided for a hearing on suspension under Section 22(a) of this Act. At a hearing, the issues to be determined are whether the person has successfully completed an educational program that was imposed under Section 13(f) [6c], Article 42.12 [~~42.13~~], Code of Criminal Procedure, [~~1965,~~] and whether the period for completion of the program has passed. If the court determines that the educational program imposed has not been completed and the period for completion of the program has passed, the court shall confirm the suspension or prohibition and notify the Department of that fact. If the court finds that the program imposed has been completed or that the period for completion has not passed, the court shall direct the Department to promptly rescind the order and reinstate in the records of the Department any driver's license, permit, or privilege of the person. The court may modify or revoke an order of suspension or prohibition if the court determines for good cause shown that the person was unable to complete an educational program within the period originally specified by the court. The court shall condition the modification or revocation of the order on the person's completion of the course within a period specified by the court not to exceed one (1) year from the beginning date of the person's probation.

(h) The Department shall suspend the license of a person on receiving an order from a juvenile court under Section 54.042, Family Code, to suspend that person's license. The period of the suspension shall be for the period specified in the order.

(i) If a person is convicted of an offense under Section 32 or 32A of this Act, the suspension of the person's license shall be for a period determined by the court of not less than ninety (90) days or more than three hundred and sixty-five (365) days.

SECTION 8. Sections 3(a) and (i), Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701l-5, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Upon the trial of any criminal action or proceeding arising out of an offense under Chapter 49 [~~Subdivision (2), Subsection (a), Section 19.05~~], Penal Code, [~~or an offense under Article 6701l-1, Revised Statutes,~~] evidence of the alcohol concentration or presence of a controlled substance or drug as shown by analysis of a specimen of the person's blood, breath, urine, or any other bodily substances taken at the request or order of a peace officer, shall be admissible.

(i) A peace officer shall require a person to give a specimen under Section 2 of this Act if:

(1) the officer arrests the person for an offense under Chapter 49 [~~Subdivision (2), Subsection (a), Section 19.05~~], Penal Code[~~, or an offense under Article 6701l-1, Revised Statutes, as amended~~];

(2) the person was the operator of a motor vehicle involved in an accident that the officer reasonably believes occurred as a result of the offense;

(3) at the time of the arrest the officer reasonably believes that a person has died or will die as a direct result of the accident; and

(4) the person refuses the officer's request to voluntarily give a specimen.

SECTION 9. Article 6701l-6, Revised Statutes, is amended to read as follows:

Art. 6701l-6. ALLOWING DANGEROUS DRIVER TO BORROW MOTOR VEHICLE. (a) A person commits an offense if he knowingly or intentionally permits another to operate a motor vehicle owned by the person and he knows that at the time permission is given, the other person's license has been suspended as a result of a conviction of an offense under Chapter 49, Penal Code [~~Article 6701l-1, Revised Statutes~~], or as a result of a failure to give a specimen under Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701l-5, Vernon's Texas Civil Statutes).

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

SECTION 10. Subsection (a), Article 6701l-7, Revised Statutes, is amended to read as follows:

(a) When a person is arrested for an offense under Chapter 49 [~~Subdivision (2), Subsection (a), Section 19.05~~], Penal Code, [~~or an offense under Article 6701l-1, Revised Statutes,~~] the arresting officer shall immediately notify the district or the county attorney if:

(1) the person was on probation for an offense under Section 49.02 [~~Subdivision (2), Subsection (a), Section 19.05~~], Penal Code, at the time of the arrest; or

(2) the person has previously been finally convicted three or more times of[:

[~~(A)~~] an offense under Chapter 49, Penal Code [~~Article 6701l-1, Revised Statutes;~~

[~~(B) an offense under Article 6701l-2, Revised Statutes;~~

[~~(C) an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code; or~~

[~~(D) any combination of offenses under Subdivision (2), Subsection (a), Section 19.05, Penal Code, and Section 6701l-1 or 6701l-2, Revised Statutes~~].

SECTION 11. Article 6701l-1, Revised Statutes, is repealed.

SECTION 12. (a) The repeal by this Act of Article 6701l-1, Revised Statutes, and changes in law to Section 19.05, Penal Code, and relating to the suspension of driver's licenses do not apply to an offense committed before the effective date of this Act. The changes in law relating to the suspension of a driver's license apply only to a person who is arrested on or after the effective date of this Act.

(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. For the purposes of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date of this Act. The suspension of a driver's license based on an alleged offense committed before the effective date of this Act is controlled by the law in effect when the action that is the basis for the suspension occurred.

SECTION 13. This Act takes effect September 1, 1992.

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.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Truan 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 by a viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 3 ON THIRD READING

Senator Truan moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 3** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0.

Absent-excused: Harris of Dallas, Lyon, Whitmire.

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

SENATE RULE 11.11 SUSPENDED

On motion of Senator Dickson and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Economic Development might consider **H.B. 2811** tomorrow.

CONGRATULATORY RESOLUTIONS

S.R. 790 - By Barrientos: Extending congratulations to Ms. Anne Lowry of McCallum High School, First Place winner of the Gray Panthers Essay Contest.

S.R. 791 - By Barrientos: Extending congratulations to Ms. Briana Shay of McCallum High School, named the Second Place winner in the Gray Panthers Essay Contest.

S.R. 792 - By Barrientos: Extending congratulations to Ms. Lauren Schmidt of McCallum High School, Third Place winner in the Gray Panthers Essay Contest.

S.R. 793 - By Barrientos: Extending congratulations to Mr. Brady Gray of McCallum High School, runner-up in the Gray Panthers Essay Contest.

S.R. 794 - By Barrientos: Extending congratulations to Ms. Melissa Gilbert of McCallum High School, runner-up in the Gray Panthers Essay Contest.

S.R. 795 - By Barrientos: Extending congratulations to Ms. Courtney King of McCallum High School, runner-up in the Gray Panthers Essay Contest.

ADJOURNMENT

On motion of Senator Glasgow, the Senate at 6:21 p.m. adjourned until 11:00 a.m. tomorrow.

SEVENTY-FIRST DAY
(Monday, May 20, 1991)

The Senate met at 11:00 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, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Zaffirini.

Absent-excused: Whitmire.

A quorum was announced present.

The Reverend Nehemiah Davis, Mt. Pisgah Baptist Church, Fort Worth (guest of Senator Moncrief), offered the invocation as follows:

Eternal God, the great creator and caretaker of the universe, we thank You for the gracious and significant role You have given the Members of this chamber. We pray that You will continue to guide, bless, strengthen and keep them. Grant them the vision, the conviction, the courage and the compassion to make those decisions that will best serve the common good of the people of this great State. This is our prayer. 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.

LEAVE OF ABSENCE

Senator Whitmire was granted leave of absence for today on account of important business on motion of Senator Brooks.

MESSAGE FROM THE HOUSE

House Chamber
May 20, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

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

H.B. 2190, Relating to bail bonds.

H.B. 1411, Relating to regulation of persons transporting newspapers, newspaper supplements, or magazines for recycling.