SEVENTY-EIGHTH DAY
(Monday, May 27, 1991)

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

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, 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, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend John Pitts, St. Matthews Episcopal Church, Austin, offered the invocation as follows:

O heavenly Father, who is our strength at all times in our lives and who is the fountain of all wisdom and truth: We ask You this day, the last day of this regular session for the Senate of the State of Texas, to guide and bless the Senators that they may have strength this day to do Your will in all that they do; endue them with the spirit of wisdom, and allow them to be seekers after the truth. Calm their spirits this day that they may see and feel Your hand among them as they go about the important ministry of leading this great State and passing the statutes which will allow this State to be an even better place for Your children. Give them a sense of unity as they are bound together for the hours that stretch before them. All this we ask through Your son Jesus Christ, who is the author of peace, unity and tranquility. Amen.

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

REPORTS OF STANDING COMMITTEES

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

C.S.H.B. 2029

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

H.B. 1843

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2277

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2277** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONCRIEF	NAISHTAT
BROOKS	LINEBARGER
LUCIO	VOWELL
	VAN DE PUTTE
On the part of the Senate	On the part of the House

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

BILLS AND RESOLUTIONS SIGNED

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

S.C.R. 31	**S.B. 461**	**S.B. 1280**
S.C.R. 46	**S.B. 661**	**S.B. 1282**
S.C.R. 68	**S.B. 834**	**S.B. 1337**
S.C.R. 85	**S.B. 928**	**S.B. 1358**
S.B. 31	**S.B. 945**	**S.B. 1369**
S.B. 64	**S.B. 952**	**S.B. 1426**
S.B. 134	**S.B. 954**	**S.B. 1497**
S.B. 337	**S.B. 1041**	**S.B. 1509**
S.B. 377	**S.B. 1046**	**S.B. 1517**
S.B. 409	**S.B. 1186**	**S.B. 1550**
S.B. 410	**S.B. 1200**	**S.B. 1605**
S.B. 460	**S.B. 1204**	

SENATE RESOLUTION 861

Senator Parker offered the following resolution:

WHEREAS, The Senate of the State of Texas proudly recognizes Lieutenant Commander Jacob Dwight Johnson of the United States Navy for his loyal service as a combat pilot during Operation Desert Storm; and

WHEREAS, Operating from the aircraft carrier USS John F. Kennedy, Lieutenant Commander Johnson flew 26 missions over enemy territory using the A-6 Intruder aircraft; and

WHEREAS, An exemplary gentleman and dedicated to his work, he is a former employee of the Texas Senate and a graduate of The University of Texas at Austin; and

WHEREAS, Proud of being a part of the American armed forces, he demonstrated exceptional valor and devotion to his country in flying on these dangerous missions; and

WHEREAS, He has served this country ably and heroically and our nation is grateful to have men and women of his caliber defending our country and its ideals; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, hereby commend Lieutenant Commander Jacob Dwight Johnson for his courage and faithful service to our country; and, be it further

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

The resolution was read.

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

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

SENATE RESOLUTION 885

Senator Leedom offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in recognizing Marilyn Schwartz on the joyous occasion of her 60th birthday, May 27, 1991, and on her upcoming 40th wedding anniversary, July 14, 1991; and

WHEREAS, Marilyn and her husband, Senator Babe Schwartz, are the proud parents of four sons: Robert, Richard, John, and Tommy; and

WHEREAS, Talented and successful in their careers, Robert and Richard practice law in Houston; John, who lives in New York, is a senior writer for Newsweek and has been appointed the acting deputy editor of the business section; and Tommy is an ophthalmologist in Galveston; and

WHEREAS, The couple also has six beloved grandchildren: Elizabeth, Melissa, Madison, Jason, Justin, and Samuel Austin; and

WHEREAS, Marilyn Schwartz was born in Corpus Christi on May 27, 1931, and was raised in Harlingen and San Diego, Texas; and

WHEREAS, She attended The University of Texas at Austin as an art major and married Babe Schwartz of Galveston on July 14, 1951, in Harlingen; and

WHEREAS, The "valley girl," as Marilyn is referred to with affection by her husband, quickly became a respected and popular leader in the Galveston community and has for many years contributed through her talent and dedication to the State of Texas; and

WHEREAS, Over the years, she has managed a brilliant balance of time and commitment to both family life and civic causes; and

WHEREAS, Vice-president of the '50s Club in Galveston, Marilyn is a past chairman of the Galveston Park Board of Trustees; and

WHEREAS, A former president of the Senate Ladies Club, Marilyn has been the backbone of the organization; talented at making party favors and centerpieces for various functions, she has warmly welcomed newcomers into the club; and

WHEREAS, A distinguished "Aggie mother," she has devoted considerable time and energy on behalf of Texas A&M University; she served on both the Target 2000 Committee and the Presidential Selection Committee, and she was a chairman and is a current member of the Texas A&M University at Galveston Board of Visitors; and

WHEREAS, A longtime supporter of advances in the nursing profession, she is on the Advisory Council of The University of Texas Medical Branch School of Nursing; and

WHEREAS, Charming, witty, and graceful, Marilyn Schwartz has throughout her life manifested unusual concern for the welfare of others and the community; and

WHEREAS, A devoted wife and mother and a humanitarian and civic leader, Marilyn deserves to be proud of her many accomplishments; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, hereby extend heartiest congratulations to Marilyn Schwartz on her 60th birthday and send best wishes to her and her husband, the Honorable Babe Schwartz, for a happy and celebratory 40th anniversary; and, be it further

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

LEEDOM
BROOKS

The resolution was read.

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

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

(Senator Sibley in Chair)

SENATE RESOLUTION 877

Senator Barrientos offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 72nd Legislature, Regular Session, 1991, that Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **H.B. 734** to consider and take action of the following specific matters:

Senate Rule 12.03 (4) is suspended to permit the committee to amend Subsection (t) of Section 6, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), to read as follows:

(t) Except as provided by Subsection (u) of this section, each authority that was confirmed at a tax election under Section 5 of this Act before July 1, 1985, other than an authority that is authorized under Subsection (e) of Section 6C of this Act to include regional economic development facilities in its station or terminal complex [~~an authority in which the principal city has a population of more than 1,200,000 according to the most recent federal census~~], may construct, reconstruct, or maintain any highway, road, thoroughfare, or arterial or local street, including any bridge or grade separation, within the boundaries of the authority and may undertake traffic signalization and control improvements of any kind within the boundaries of the authority. An authority may exercise any portion of the powers granted by this subsection through contracts or other agreements with other governmental entities.

Explanation: This change expands this provision so that Austin's Capital Metropolitan Transit Authority is included in addition to Houston Metropolitan Transit Authority, to whom it already applies under current law.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 886

Senator Brooks offered the following resolution:

WHEREAS, The Senate of the State of Texas proudly joins with their fellow Americans in observing the national holiday, Memorial Day, on Monday, May 27, 1991; and

WHEREAS, This special day is an opportunity for Americans everywhere to express their heartfelt gratitude to the United States veterans, both living and dead, for the valor and dedication they have shown on behalf of our beloved country; and

WHEREAS, Proud of being Americans and ever mindful of the duties and responsibilities inherent in good citizenship, the men and women of our armed services deserve praise for their loyal defense of our country and its ideals; and

WHEREAS, Those who died for their country have left behind legacies of courage and devotion and memories that will be treasured forever in the hearts and minds of all who knew them; and

WHEREAS, It is a grateful nation today that reflects upon our American heritage and recognizes the extreme sacrifices made by all who serve in the armed forces; and

WHEREAS, Twenty-nine brave Texans gave the ultimate sacrifice of their lives in the defense of liberty during Operation Desert Shield and Operation Desert Storm; and

WHEREAS, True patriots, these Texas heroes should be remembered in thoughts and prayers by all who cherish freedom; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, hereby express appreciation to all the brave men and women who have served our country; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of all who died in an effort to protect their beloved families and our great nation.

BROOKS
LUCIO

The resolution was read.

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

On motion of Senator Brooks, the resolution was adopted by a rising vote of the Senate.

CAPITOL PHYSICIAN

Senator Brooks was recognized and presented Dr. P. J. Mock of La Porte as the "Doctor for the Day."

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

(President in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 302

Senator Tejeda 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. 302** 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. 302** before appointment.

Senator Lyon moved to instruct the Conference Committee to retain the Senate language in the bill.

The motion prevailed.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Tejeda, Chair; Lyon, Moncrief, Bivins, Ellis.

CONFERENCE COMMITTEE ON HOUSE BILL 1657

Senator Tejeda 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. 1657** 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. 1657** 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 Tejeda, Chair; Ellis, Zaffirini, Lyon, Green.

CONFERENCE COMMITTEE ON HOUSE BILL 549

Senator Ellis called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 549** 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. 549** 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 Ellis, Chair; Lyon, Montford, Tejeda, Johnson.

CONFERENCE COMMITTEE ON HOUSE BILL 2719

Senator Sims 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. 2719** 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. 2719** 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 Sims, Chair; Armbrister, Haley, Harris of Tarrant, Leedom.

CONFERENCE COMMITTEE ON HOUSE BILL 749

Senator Green called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 749** 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. 749** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chair; Whitmire, Leedom, Zaffirini, Montford.

SENATE BILL 270 WITH HOUSE AMENDMENT

Senator Green called **S.B. 270** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment - Danburg

Amend **S.B. 270** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to election services contracts.

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

SECTION 1. Section 31.100, Election Code, is amended to read as follows:

Sec. 31.100. DISPOSITION OF CONTRACT MONEY; PAYMENT OF CONTRACTING OFFICER'S EXPENSES. (a) Money paid to a county election officer under an election services contract shall be deposited in a separate fund in the county treasury. The county election officer may make expenditures [~~pay the expenses of performing election services contracts~~] from the fund without budgeting or appropriation by the commissioners court. However, claims against the fund shall be audited and approved in the same manner as other claims against the county before they are paid.

(b) Only actual expenses directly attributable to an election services contract may be paid from the election services contract fund, and the county election officer may not charge for performing any duties that the officer is required by law to perform.

(c) An election services contract must include an itemized list of estimated election expenses. If the estimated expenses, not including the fee charged under Subsection (d), exceed the actual expenses, the amount of the difference shall be refunded to the contracting authority.

(d) The county election officer may not be personally compensated for election services performed under an election services contract. A fee charged by the officer for general supervision of the election may not exceed five percent of the total amount of the contract.

(e) Salaries of personnel regularly employed by the county election officer shall be paid from funds regularly budgeted and appropriated for that purpose, except that those employees may be paid from the election services contract fund for contractual duties performed outside of normal business hours. Salaries [but ~~salaries~~] and wages paid to persons temporarily employed to perform duties under an election services contract [~~and the other expenses directly attributable to a contract that are charged to the county election officer~~] shall be paid out of the election services contract fund. The amount paid from the fund may not exceed the normal rate of pay in that locality for the same or similar services.

(f) A surplus in the election services contract fund may be used only to defray expenses of the county election officer's office in connection with election-related duties or functions. The secretary of state shall prescribe regulations for the use of any surplus in a fund.

(g) The commissioners court may not consider the availability of the election services contract fund in adopting the county budget for the office of the county election officer.

[~~(c) The county election officer may direct the treasurer or other appropriate officer to transfer all or any part of the surplus in the election services contract fund to the voter registrar.~~]

SECTION 2. This Act takes effect September 1, 1991.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Green and by unanimous consent, the Senate concurred in the House amendment to **S.B. 270** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1744

Senator Truan 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. 1744** 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. 1744** 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 Truan, Chair; Sims, Barrientos, Carriker, Rosson.

CONFERENCE COMMITTEE ON HOUSE BILL 2110

Senator Montford 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. 2110** and moved that the request be granted.

The motion prevailed.

RECORD OF VOTE

Senator Ratliff asked to be recorded as voting "Nay" on the motion to grant the request to appoint a Conference Committee.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 2110** 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 Montford, Chair; Barrientos, Brooks, Parker, Haley.

CONFERENCE COMMITTEE ON HOUSE BILL 907

Senator Barrientos 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. 907** 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. 907** 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 Barrientos, Chair; Armbrister, Ratliff, Parker, Brooks.

CONFERENCE COMMITTEE ON HOUSE BILL 1314

Senator Barrientos 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. 1314** 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. 1314** 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 Barrientos, Chair; Johnson, Brooks, Green, Whitmire.

VOTE ON CONCURRENCE OF HOUSE AMENDMENT TO SENATE BILL 1203 RECONSIDERED

On motion of Senator Barrientos and by unanimous consent, the vote by which the Senate concurred in the House amendment to **S.B. 1203** was reconsidered.

Question—Shall the Senate concur in the House amendment to **S.B. 1203**?

Senator Barrientos moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 1203** 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; Zaffirini, Krier, Rosson, Johnson.

CONFERENCE COMMITTEE ON HOUSE BILL 2265

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. 2265** 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. 2265** 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, Turner, Haley.

SENATE BILL 379 WITH HOUSE AMENDMENTS

Senator Carriker called **S.B. 379** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment - Naishtat

Amend **S.B. 379** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to abolition of the Texas Health and Human Services Coordinating Council and the transfer of certain of the council's functions to the governor's office, the Texas Department of Health, the Texas Department of Community Affairs, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, the Department of Information Resources, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Commerce, and the Texas Department of Human Services.

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

SECTION 1. Title 9, Human Resources Code, is amended by adding Chapters 136 and 137 to read as follows:

CHAPTER 136. GOVERNOR'S COUNCIL ON HEALTH AND HUMAN SERVICES

Sec. 136.001. COUNCIL. (a) The Governor's Council on Health and Human Services is created within the office of the governor.

(b) The council consists of:

(1) six public members who may not be employed by a state agency other than a public school or other state educational institution and who are appointed by the governor with the advice and consent of the senate; and

(2) the administrative head of each of the following agencies, who serves as a nonvoting member of the council:

(A) Texas Department of Human Services;
(B) Texas Department of Health;
(C) Texas Department of Mental Health and Mental Retardation;
(D) Texas Department on Aging;
(E) Texas Commission on Alcohol and Drug Abuse;
(F) Texas Commission for the Blind;
(G) Texas Commission for the Deaf;
(H) Texas Rehabilitation Commission;
(I) Central Education Agency;
(J) Texas Employment Commission;
(K) Texas Department of Commerce;
(L) Texas Department of Community Affairs;
(M) Texas Juvenile Probation Commission;
(N) Texas Youth Commission; and
(O) Texas Housing Agency.

Sec. 136.002. TERMS OF OFFICE. A nonvoting council member who represents a state agency serves until termination of the person's service with the agency. Public members serve staggered six-year terms, with the terms of two public members expiring on February 1 of each odd-numbered year.

Sec. 136.003. COUNCIL OFFICERS. The governor shall designate a public member as chair of the council to serve in that capacity at the pleasure of the governor. The members of the council shall elect one of the remaining public members as vice-chair.

Sec. 136.004. QUORUM. A majority of the six public members of the council constitutes a quorum.

Sec. 136.005. COMPENSATION AND REIMBURSEMENT OF COUNCIL MEMBERS. A member of the council may not receive compensation for service on the council but is entitled to be reimbursed for actual and necessary expenses incurred in performing functions as a member of the council, subject to any applicable limitation on reimbursement provided by the General Appropriations Act for a state employee. Reimbursement of nonvoting members shall be paid from the funds of the office or agency in which the member serves.

Sec. 136.006. MEETINGS. The council shall meet at the call of the chair or the governor or as provided by a rule of the council.

Sec. 136.007. STAFF SUPPORT. The employees of the office of the governor shall provide staff support for the council as directed by the governor.

Sec. 136.008. AD HOC COMMITTEES. With the governor's approval, the council may appoint ad hoc committees necessary for the performance of its duties. Subject to the availability of funds, a member of an ad hoc committee may be reimbursed for actual and necessary expenses incurred in performing functions as an ad hoc committee member. Reimbursement of ad hoc committee members shall be paid in the same manner as reimbursement of members of the council.

Sec. 136.009. FUNCTIONS OF COUNCIL. The council shall:

(1) develop a long-range strategic plan for health and human services with an initial emphasis on services for children, youth, and families, including in the plan provisions for:

(A) coordinated planning and budgeting by state agencies;

(B) collaborative planning, budgeting, and service delivery at the local level; and

(C) identifying specific and measurable performance standards by which the plan can be evaluated;

(2) assist state agencies represented on the council in developing a coordinated budget proposal for health and human services that conforms with the requirements of the Governor's Office of Budget and Planning and the Legislative Budget Board;

(3) review the planning and operational documents of state agencies that provide health or human services to identify potential conflicts and opportunities for coordination, collaboration, or consolidation of functions;

(4) submit at the beginning of each state fiscal biennium for the governor's approval a plan showing the work to be undertaken by the council for that biennium; and

(5) submit to the governor and legislature at the end of each state fiscal biennium a report that contains an assessment of the accomplishments of the council during the preceding biennium.

Sec. 136.010. GIFTS, GRANTS, AND DONATIONS. The council may solicit and accept gifts, grants, and donations to support the council or to carry out the council's functions.

Sec. 136.011. APPLICATION OF TEXAS SUNSET ACT. The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2003.

Sec. 136.012. FUNDING. All funding made to support the functions of the council shall be made through interagency contracts with the agencies represented on the council. Interagency contract amounts shall be provided as advance funding for the services to be provided by the council. To assist with the cash flow needs of the council, the comptroller shall transfer funds as necessary from the agencies to

the council. The comptroller is authorized to prescribe procedures necessary to implement this provision.

CHAPTER 137. INFORMATION ON HEALTH AND HUMAN SERVICES

Sec. 137.001. REFERENCE GUIDE. The governor's office shall publish a reference guide describing available public and private health and human services in the state and shall make the guide available to all interested parties and agencies.

SECTION 2. Title 7, Government Code, as added by **S.B. 448**, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Chapter 752 to read as follows:

CHAPTER 752. IMMIGRATION

SUBCHAPTER A. GOVERNOR'S ADVISORY COMMITTEE ON IMMIGRATION

Sec. 752.001. GOVERNOR'S ADVISORY COMMITTEE ON IMMIGRATION. The Governor's Advisory Committee on Immigration is created within the office of the governor. The committee shall advise and make recommendations to the governor's office on immigration issues, including the State Legalization Impact Assistance Grant (SLIAG) program authorized by the Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq.).

Sec. 752.002. COMPOSITION OF COMMITTEE; TERMS; PRESIDING OFFICER. (a) The committee consists of:

(1) a representative of the governor's office, appointed by the governor;

(2) a representative of the Texas Department of Health, appointed by the commissioner of health;

(3) a representative of the Texas Department of Human Services, appointed by the commissioner of human services;

(4) a representative of the Central Education Agency, appointed by the commissioner of education;

(5) a representative of the Texas Department of Mental Health and Mental Retardation, appointed by the Commissioner of Mental Health and Mental Retardation;

(6) a representative of the office of the comptroller of public accounts, appointed by the comptroller, who shall serve as a nonvoting member of the committee;

(7) three representatives of local provider programs, one each from a public health, public assistance, and education program, as defined by the Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq.), appointed by the governor;

(8) two representatives, one each from an immigration-related legal organization and an immigration-related service organization, appointed by the governor; and

(9) a representative of the client population served by providers eligible for reimbursement under the SLIAG program, appointed by the governor.

(b) A person appointed under Subsection (a)(9) may not be affiliated with an agency or organization from which a person was previously appointed to the committee by the governor.

(c) A member of the committee serves at the will of the officer who appoints the member.

(d) The governor shall designate one member of the committee as the chair of the committee to serve in that capacity at the pleasure of the governor.

Sec. 752.003. COMPENSATION AND REIMBURSEMENT OF COMMITTEE MEMBERS. A member of the committee may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties subject

to any applicable limitation on reimbursement provided by the General Appropriations Act for a state employee.

Sec. 752.004. FUNCTIONS OF COMMITTEE. The committee shall:

(1) advise and make recommendations to the governor's office regarding the SLIAG program;

(2) advise and make recommendations to the governor's office regarding health and human service matters relating to federal immigration laws and rules as well as education matters relating to implementation of the SLIAG program;

(3) encourage communication among local agencies and programs, state agencies, immigration-related legal and service agencies, and the federal government;

(4) assist the governor's office in applying for the maximum amount of federal funds available for SLIAG-related programs and activities and in identifying local programs and costs relating to immigration for which the state or a political subdivision may receive reimbursement;

(5) provide information to programs and activities that serve and encourage legalization and education of residents of this state;

(6) review federal issues regarding the SLIAG program and make recommendations to the governor's office to encourage the development of a state response to federal issues;

(7) review and make recommendations to the governor's office and state agencies to ensure that the system of fiscal and program operations for the SLIAG program is consistent with existing state and federal requirements;

(8) assist the governor's office in the development of an annual report on the status of the SLIAG program in the state;

(9) advise and make recommendations to the governor's office on other related matters as directed by the governor; and

(10) assist the governor's office in the development of a spending plan for fiscal years 1993 and 1994 proposing spending priorities for SLIAG funds for services to eligible legalized aliens.

Sec. 752.005. COMMITTEE'S ANNUAL PROGRESS REPORT. The committee annually shall submit a progress report to the governor's office.

Sec. 752.006. AD HOC COMMITTEES. The committee may create any ad hoc committees it considers necessary to perform its duties.

Sec. 752.007. APPLICATION OF TEXAS SUNSET ACT. The committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this subchapter expires September 1, 2003.

[Sections 752.008 to 752.020 reserved for expansion]

SUBCHAPTER B. OTHER IMMIGRATION FUNCTIONS WITHIN THE GOVERNOR'S OFFICE

Sec. 752.021. APPLICATION FOR AND DISTRIBUTION OF FEDERAL FUNDS. The governor's office shall apply for federal funds available through the Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq.). The governor's office shall apply for those funds and shall distribute the funds to agencies responsible for providing services to newly legalized aliens in accordance with the chapter. The governor's office may retain a portion of the federal funds to cover reasonable costs incurred in securing and administering the funds. The governor's office may delegate to an appropriate state agency the administration of funds under this section.

Sec. 752.022. ANNUAL REPORT ON SLIAG PROGRAM. The governor's office shall annually submit a report on the status of the SLIAG program to the Legislative Budget Board and the Governor's Office of Budget and Planning,

detailing the actual amount of SLIAG funds received and the purposes for which the funds were expended. The report shall be developed in conjunction with state agencies receiving funds and in consultation with the Governor's Advisory Committee on Immigration.

Sec. 752.023. SPENDING PLAN FOR SLIAG FUNDS. The governor's office shall develop a spending plan for fiscal years 1992, 1993, and 1994 proposing spending priorities for SLIAG funds for services to eligible legalized aliens. The plan shall be developed in conjunction with affected state agencies and with the advice and recommendations of the Governor's Advisory Committee on Immigration. The plan shall be submitted to the Legislative Budget Board and the Governor's Office of Budget and Planning not later than September 1, 1992.

SECTION 3. Section 104.022, Health and Safety Code, is amended by amending Subsection (b) to read as follows:

(b) The statewide health coordinating council, in consultation with the Governor's Council on Health and Human Services [~~health and human services coordinating council~~], shall issue overall directives for the development of the state health plan.

SECTION 4. Chapter 461, Health and Safety Code, is amended by adding Section 461.0123 to read as follows:

Sec. 461.0123. REPORTING OF CHILDREN INVOLVED IN SUBSTANCE ABUSE OR FROM A FAMILY INVOLVED IN SUBSTANCE ABUSE. (a) The Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, and the Texas Juvenile Probation Commission shall:

(1) attempt to determine whether a child under the agency's jurisdiction is involved in substance abuse or is from a substance-abusing family;

(2) record its determination in the case record of the child; and

(3) record the information for statistical reporting purposes.

(b) The agencies shall revise their assessment forms, as needed, to include a determination under this section.

(c) The commission shall coordinate the efforts of the agencies described by Subsection (a) in complying with this section.

SECTION 5. Subtitle E, Title 2, Human Resources Code, as added by Chapter 867, Acts of the 67th Legislature, Regular Session, 1981, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. SERVICES FOR DYSFUNCTIONAL FAMILIES

Sec. 53.001. MEMORANDUM OF UNDERSTANDING ON SERVICE CONTRACTS FOR DYSFUNCTIONAL FAMILIES. (a) The Texas Department of Human Services, the Texas Youth Commission, and the Texas Juvenile Probation Commission shall maintain a joint memorandum of understanding to develop or expand nonresidential community contracts to help dysfunctional families in each agency's client population. The memorandum must include:

(1) parent skills training;

(2) coping skills training for youth, including communication, problem solving, decision making, and conflict management skills;

(3) support groups for children of substance-abusing and dysfunctional families, including support groups for the parents of the children; and

(4) individual counseling for a limited number of crisis referrals from the support groups.

(b) The memorandum must provide that:

(1) the agencies jointly determine the pilot counties in which the joint contract proposals are to be developed;

(2) each agency determine the portion of its own agency funding designated for each type of contract to serve its own clients; and

(3) joint requests for proposals be issued for the services.

(c) The department shall act as the lead agency in coordinating the development and implementation of the memorandum.

(d) Not later than the last month of each state fiscal year, the agencies shall review and update the memorandum.

(e) Each agency by rule shall adopt the memorandum and any revisions to the memorandum.

SECTION 6. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.21A to read as follows:

Sec. 2.21A. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING. (a) The department, the Texas Department of Human Services, the Texas Youth Commission, the Texas Juvenile Probation Commission, and the Central Education Agency shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the agencies involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families;

(2) provide for the establishment of an interagency task force, including private and agency clinical and training staff, to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementation of the training, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training;

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals; and

(D) submit a report to the governor, lieutenant governor, and speaker of the house of representatives by October 15 of every even-numbered year;

(3) provide that the task force consist of:

(A) one clinical professional and one training staff member from each agency, who are appointed by the agency; and

(B) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency;

(4) provide that the meetings of the task force are at the call of the department; and

(5) be revised by September 1, 1992, to:

(A) outline individual agency responsibility for the plan for implementation developed by the interagency task force; and

(B) provide that all current and future staff covered by the memorandum and selected by the agencies for the training complete the program as designed by the task force.

(b) The department shall act as the lead agency in coordinating the development and implementation of the memorandum.

(c) Not later than the last month of each state fiscal year, the agencies shall review and update the memorandum.

(d) Each agency by rule shall adopt the memorandum and any revisions to the memorandum.

SECTION 7. Subchapter C, Chapter 141, Human Resources Code, is amended by adding Section 141.0475 to read as follows:

Sec. 141.0475. MEMORANDUM OF UNDERSTANDING ON SERVICE DELIVERY FOR RUNAWAYS. (a) The commission and the Texas Department of Human Services shall maintain a joint memorandum of understanding to coordinate local-level interagency service delivery to runaways. The memorandum must:

(1) require local county-level agreements to be signed by the department and local juvenile probation offices receiving state aid and to be updated annually that:

(A) designate the entity responsible for initial assessment for the service needs for runaways;

(B) require joint investigations on request of either entity when abuse or neglect is suspected and jurisdiction is unclear;

(C) require the local offices of the two entities to contact each other before a runaway case file is closed;

(D) provide for a plan to develop additional voluntary and purchased community resources for runaways;

(E) provide a plan to coordinate services for runaways with law enforcement and local school districts; and

(F) provide for each local entity to jointly present a plan to the commissioners of a county with a high number of runaways for developing or contracting for emergency services for runaways that includes a specific request for funding for needed services for runaways and their families and encourages and allows intercounty efforts to provide services for runaway children;

(2) provide for the development of a model cooperative agreement to be distributed to local agencies;

(3) designate the number of runaways for each county that shall be considered as a high number;

(4) provide for a procedure in which foster homes may be dually licensed or approved by both the department and the local juvenile probation department to serve runaways; and

(5) require both agencies to report annually to the governor, lieutenant governor, and speaker of the house of representatives regarding:

(A) the types of services offered to runaways and their families;

(B) the number of runaways and families receiving each type of service; and

(C) the number of runaways and families who were eligible to receive each service but who were not served because of staff or resource shortfalls.

(b) The commission shall act as the lead agency in coordinating the development and implementation of the memorandum.

(c) Not later than the last month of each state fiscal year, the department and the commission shall review and update the memorandum.

(d) Each agency by rule shall adopt the memorandum and any revision to the memorandum.

SECTION 8. Chapter 481, Government Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. AT-RISK YOUTH AND DROPOUTS

Sec. 481.321. GUIDELINES FOR ACCESS TO FUNDS FOR AT-RISK YOUTH AND DROPOUTS. (a) In this section:

(1) "Funds" means funds available under the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes).

(2) "Service delivery area" has the meaning assigned by Section 4, Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes).

(b) The department shall maintain guidelines for the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, the Texas Juvenile Probation Commission, the Central Education Agency, and the Texas Youth Commission to facilitate access to funds for dropouts and youth who are at risk of becoming dropouts. The guidelines shall establish the procedures for the state agencies' county or regional representatives to follow to submit an application to the appropriate service delivery area for funds for youth-related projects.

(c) Each agency shall:

(1) appoint one state agency level employee to assist the local agency representatives with the funding process;

(2) identify projects that meet the requirements for obtaining funds;

(3) distribute the information to local agency representatives on a timely basis; and

(4) assist its local agency representatives in the development and submission of project applications and, if a project receives funds, in the development of the necessary documentation to comply with the project guidelines.

(d) Not later than the last month of each state fiscal year, the department and the agencies described in Subsection (b) shall review and update the guidelines.

SECTION 9. Section 9, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended by adding Subsection (m) to read as follows:

(m) The department may develop and maintain a client omnibus registry and exchange data base to cover public and private health and human services, programs, and clients and to facilitate the exchange of data among the state's health and human services agencies. The department must assure in maintaining the information that:

(1) health and mental health communications and records privileged under Chapter 239, Acts of the 66th Legislature, Regular Session, 1979 (Article 5561h, Vernon's Texas Civil Statutes), the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), and the Texas Rules of Civil Evidence remain confidential and privileged;

(2) personally identifiable health and mental health communications and records of persons involved in the receipt or delivery of health or human services are confidential and privileged; and

(3) a private source is not required to provide confidential health and mental health communications or records unless a law specifically requires disclosure.

SECTION 10. Chapter 781, Government Code, as added by **S.B. 448**, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Section 781.0175 to read as follows:

Sec. 781.0175. INTERAGENCY COUNCIL FOR SERVICES FOR THE HOMELESS. (a) The Interagency Council for Services for the Homeless is created in the department and consists of:

(1) one representative from each of the following agencies, appointed by the administrative head of each of the following agencies:

(A) the Texas Department of Health;
(B) the Texas Department of Human Services;
(C) the Texas Housing Agency;
(D) the Texas Department of Mental Health and Mental Retardation;
(E) the Texas Department of Community Affairs;
(F) the Texas Department on Aging;
(G) the Texas Rehabilitation Commission;
(H) the Central Education Agency; and
(I) the Texas Commission on Alcohol and Drug Abuse; and

(2) three members representing service providers to the homeless, one each appointed by the governor, the lieutenant governor, and the speaker of the house.

(b) A member of the council serves at the pleasure of the appointing official or until termination of the member's employment with the entity the member represents. The members shall annually elect one member to serve as chair. The council shall meet at least quarterly. Any actions taken by the council must be approved by a majority vote of the members present.

(c) The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this section expires September 1, 2003.

(d) The council may select and use lay and professional advisors as necessary.

(e) The department shall provide clerical and advisory support staff to the council.

(f) The council shall:

(1) survey current resources for services for the homeless in the state;

(2) initiate an evaluation of the current and future needs for the services;

(3) assist in coordinating and providing statewide services for all homeless persons in the state;

(4) increase the flow of information among separate providers and appropriation authorities; and

(5) develop guidelines to monitor the provision of services for the homeless and the methods of service delivery.

(g) The council shall annually submit a progress report to the governing bodies of the agencies represented on the council.

(h) The department shall establish a transitional housing pilot program in four areas of the state if funds are made available. The program must address the needs of homeless persons for:

(1) interim housing;
(2) health services;
(3) literacy training;
(4) job training;
(5) family counseling;
(6) credit counseling; and
(7) other services that will prevent homelessness.

SECTION 11. Chapter 32, Health and Safety Code, is amended by adding Section 32.020 to read as follows:

Sec. 32.020. MATERNAL AND CHILD HEALTH ADVISORY COMMITTEE. (a) The Maternal and Child Health Advisory Committee shall advise the department, the Texas Department of Human Services, and the legislature on issues concerning services to pregnant women and children in order

to maximize a coordinated system of services to eligible pregnant women and children throughout the state.

(b) The committee shall:

(1) monitor the delivery of maternal and child health services through programs including this chapter, Medicaid, the Early and Periodic Screening, Diagnosis and Treatment program, the chronically ill and disabled children program, and the Women, Infant and Children's program;

(2) monitor the coordination of programs delivered by the department and the Texas Department of Human Services to avoid unnecessary duplication of services;

(3) recommend improvements in programs to the department, the Texas Department of Human Services, and the legislature as appropriate;

(4) review all related proposed legislation and rules to determine their impact on access, delivery, and coordination of services; and

(5) report annually to the department, the Texas Department of Human Services, and the legislature concerning maternal and child health services, including the populations served, gaps in coverage and services to each population, and the efficiency of the coordination of these services throughout the state.

(c) The committee is composed of:

(1) one member of the board or its designated representative selected by the board;

(2) one member of the Texas Board of Human Services or its designated representative selected by the board;

(3) five members appointed by the governor as follows:

(A) one physician licensed to practice medicine in this state who is board-certified in obstetrics and who has been actively engaged in the practice of obstetrics for at least five years;

(B) one physician licensed to practice medicine in this state who is board-certified in family medicine and who has been actively engaged in family practice for at least five years;

(C) one physician licensed to practice medicine in this state who is board-certified in pediatrics and who has been actively engaged in the practice of pediatrics for at least five years;

(D) one professional nurse registered by the Board of Nurse Examiners who has experience in providing neonatal care and who has been actively engaged in the practice of professional nursing for at least five years; and

(E) one professional nurse registered by the Board of Nurse Examiners who has experience in providing care to mothers and infants and who has been actively engaged in the practice of professional nursing for at least five years;

(4) five public members, one of whom must be a consumer of a program for pregnant women and children, appointed by the lieutenant governor; and

(5) five additional public members, one of whom must be a consumer of a program for pregnant women and children, appointed by the speaker of the house of representatives.

(d) The chair and vice-chair of the committee are selected from and by the members of the committee.

(e) Committee members serve staggered six-year terms, with the terms of five members expiring August 31 of each odd-numbered year.

(f) A vacancy on the committee is filled in the same manner as other appointments to the committee.

(g) A member of the committee may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses

incurred in performing duties under this section. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.

(h) The committee may adopt rules and bylaws not inconsistent with this section as may be necessary for the governing of its own proceedings and the performance of its duties.

(i) The committee is administratively attached to the department, and the department shall provide staff support to the committee.

(j) The committee shall execute a contract with the department under which the department reimburses the committee for any expenses incurred by the committee in performing its duties under this section. The department shall reimburse the committee from funds appropriated to the department to administer the maternal and child health program.

(k) The department and the Texas Department of Human Services shall cooperate with the committee by making resource staff available to the committee when information relating to the agencies' programs is needed.

SECTION 12. Chapter 22, Human Resources Code, is amended by adding Section 22.025 to read as follows:

Sec. 22.025. STATEWIDE NEEDS APPRAISAL PROJECT. The department may implement the Statewide Needs Appraisal Project (SNAP) to obtain county-specific demographic data concerning health and human service needs in the state. If collected, data shall be made available for use in planning and budgeting for health and human service programs by state agencies. The department shall coordinate its activities in obtaining data with the appropriate health and human service agencies.

SECTION 13. Subsection (a), Section 102.009, Health and Safety Code, is amended to read as follows:

(a) The council shall:

(1) work in cooperation and coordination with the Legislative Task Force on Cancer in Texas during its existence to implement the Texas Cancer Plan;

(2) continually monitor and revise the Texas Cancer Plan as necessary;

(3) promote the development and coordination of effective and efficient statewide public and private policies, programs, and services for persons with cancer;

(4) encourage cooperative, comprehensive, and complementary planning among the public, private, and volunteer sectors involved in cancer research, prevention, and treatment;

(5) coordinate administrative responsibilities with the department to avoid unnecessary duplication of facilities and services; and

(6) report to the legislature and to the Governor's Council on [~~Texas~~] Health and Human Services [~~Coordinating Council~~] not later than January 31 of each odd-numbered year.

SECTION 14. Section 104.023, Health and Safety Code, is amended to read as follows:

Sec. 104.023. REVIEW OF STATE HEALTH PLAN. The statewide health coordinating council shall submit the state health plan to the Governor's Council on Health and Human Services [~~health and human services coordinating council~~] for review and comment before the plan is sent to the governor.

SECTION 15. Subsection (b), Section 311.038, Health and Safety Code, is amended to read as follows:

(b) The advisory committee must include representatives from:

(1) the hospital industry;

(2) private business;

(3) the insurance industry;

(4) state agencies, such as the [~~Texas Health and Human Services Coordinating Council;~~] Texas Department of Human Services[;] and Employees Retirement System of Texas;

(5) consumer organizations; and

(6) the Statewide Health Coordinating Council.

SECTION 16. Section 41.027, Human Resources Code, is amended to read as follows:

Sec. 41.027. PLACEMENT OF CHILDREN. (a) The department shall use a system for the placement of children in contract residential care, including foster care, that conforms to the levels of care [~~developed and~~] adopted and maintained by the Governor's Council on [~~Texas~~] Health and Human Services [~~Coordinating Council~~].

(b) The department shall use the standard application for the placement of children in contract residential care, as [~~developed and~~] adopted and maintained by the Governor's Council on [~~Texas~~] Health and Human Services [~~Coordinating Council~~].

SECTION 17. Subsection (c), Section 52.002, Human Resources Code, is amended to read as follows:

(c) The council consists of one representative of the attorney general's child support enforcement division, appointed by the attorney general, seven private sector representatives recommended by appropriate private sector agencies, and one representative from each of the following agencies, appointed by the executive director or commissioner of each agency:

(1) the Central Education Agency;

(2) the Texas Department of Human Services;

(3) the Texas Department of Health;

(4) the Texas Department of Community Affairs;

(5) the Texas Employment Commission;

(6) [~~the Texas Health and Human Services Coordinating Council;~~

[~~(7)~~] the Texas Department of Mental Health and Mental Retardation; and

(7) [~~(8)~~] the Texas Department of Commerce.

SECTION 18. The following laws are repealed:

(1) Subchapter H, Chapter 85, Health and Safety Code, as added by **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991;

(2) Chapter 71, Human Resources Code;

(3) Chapter 131, Human Resources Code;

(4) Subsection (b), Section 132.005 and Subsection (b), Section 133.005, Human Resources Code; and

(5) Section 2, Chapter 1240, Acts of the 71st Legislature, Regular Session, 1989.

SECTION 19. (a) The Texas Health and Human Services Coordinating Council, including its advisory committees not continued under this Act, is abolished. All appropriate records, personnel, and property of that council are transferred to the office of the governor in accordance with this Act.

(b) The Commission on Children, Youth, and Family Services is abolished. All appropriate records and property of that commission are transferred to the office of the governor in accordance with this Act.

(c) All records and property relating to the client omnibus registry and exchange maintained under Subdivision (1), Subsection (a), Section 131.004, Human Resources Code, as of August 31, 1991, are transferred to the Department of Information Resources in accordance with this Act.

SECTION 20. (a) The Governor's Advisory Committee on Immigration, as established by Chapter 752, Government Code, as added by this Act, is a continuation of the Advisory Committee on Immigration previously established by Section 131.010, Human Resources Code.

(b) The change in law made by this Act relating to the membership of the Governor's Advisory Committee on Immigration does not affect the entitlement of a member serving immediately before the effective date of this Act, except those members appointed by the Texas Health and Human Services Coordinating Council, to continue to hold office at the will of the person who appointed the member. A member appointed by the Texas Health and Human Services Coordinating Council shall hold office until replaced by an appointee of the governor.

SECTION 21. Before implementing the project authorized by Subsection (m), Section 9, Information Resources Management Act (Article 4413(32j), Revised Statutes), as amended by this Act, the Department of Information Resources shall conduct a study regarding the project's feasibility, cost-effectiveness, and usefulness in the provision of health and human services in the state. The department shall complete the study required by this section before December 31, 1992. All funding made to support the completion of this study shall be made through interagency contracts with the agencies represented on the Governor's Council on Health and Human Services. Interagency contract amounts shall be provided as advance funding for the study. To assist with the cash flow needs of the department, the comptroller shall transfer funds as necessary from the agencies to the department. The comptroller is authorized to prescribe procedures necessary to implement this provision. If the department decides to implement the project following completion of the study, it shall request from the legislature at the earliest opportunity any additional statutory amendments or appropriations necessary for implementation.

SECTION 22. The levels of care and the standard application used for the placement of children in contract residential care, including foster care, adopted by the Texas Health and Human Services Coordinating Council continue in effect as if they were adopted by the Governor's Council on Health and Human Services.

SECTION 23. This Act takes effect September 1, 1991.

SECTION 24. 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 - McDonald

Amend **C.S.S.B. 379** as follows:

(1) Strike Section 2 of the bill and substitute the following:

SECTION 2. Title 7, Government Code, as added by **S.B. 448**, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Chapter 752 to read as follows:

CHAPTER 752. IMMIGRATION

SUBCHAPTER A. OFFICE OF IMMIGRATION AND REFUGEE AFFAIRS

Sec. 752.001. OFFICE OF IMMIGRATION AND REFUGEE AFFAIRS. The Office of Immigration and Refugee Affairs is created within the governor's office.

Sec. 752.002. EXECUTIVE DIRECTOR. The governor shall appoint an executive director for the office to serve at the pleasure of the governor. The executive director shall serve as the chief administrative officer of the office.

Sec. 752.003. REFUGEE COORDINATOR. The governor shall appoint a refugee coordinator for the office to serve at the pleasure of the governor. The

refugee coordinator shall ensure coordination of public and private resources in refugee resettlement.

Sec. 752.004. APPLICATION FOR AND DISTRIBUTION OF FEDERAL FUNDS. The office shall apply for the maximum amount of federal funds available through the Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq.) and the Refugee Act of 1980 (8 U.S.C. Section 1521 et seq.). The office shall apply for those funds and shall distribute the funds to agencies responsible for providing services to newly legalized aliens and refugees in accordance with federal law. The office may retain a portion of the federal funds to cover reasonable costs incurred in securing and administering the funds. The office may delegate to an appropriate state agency the administration of funds under this section.

Sec. 752.005. ANNUAL REPORT ON STATE LEGALIZATION IMPACT ASSISTANCE GRANT (SLIAG) AND REFUGEE ASSISTANCE PROGRAMS. The office shall annually submit a report on the status of the SLIAG program and refugee assistance programs to the Legislative Budget Board and the Governor's Office of Budget and Planning, detailing the actual amount of federal funds received and the purposes for which the funds were expended. The report shall be developed in conjunction with state agencies receiving funds and in consultation with the Governor's Advisory Committee on Immigration and Refugees. The office shall submit the first report under this section not later than September 1, 1992.

Sec. 752.006. SPENDING PLAN FOR FEDERAL FUNDS. The office shall develop a spending plan for fiscal years 1993 and 1994 proposing spending priorities for SLIAG funds for services to eligible legalized aliens and for other federal funds available to benefit immigrants and refugees in the state. The plan shall be developed in conjunction with affected state agencies and with the advice and recommendations of the Governor's Advisory Committee on Immigration and Refugees. The plan shall be submitted to the Legislative Budget Board and the Governor's Office of Budget and Planning not later than September 1, 1992.

Sec. 752.007. OTHER FUNCTIONS OF OFFICE. In addition to other duties prescribed by this subchapter, the office shall:

(1) coordinate public and private programs for the benefit of immigrants and refugees;

(2) receive and address inquiries relating to the services available to immigrants or refugees at the local, state, and federal levels; and

(3) assist local communities with the development of programs to address the needs of immigrants and refugees at the local level.

Sec. 752.008. GIFTS, GRANTS, AND DONATIONS. The office may solicit and accept gifts, grants, and donations for the benefit of immigrant or refugee programs within the state.

Sec. 752.009. FUNDING. Except for any unspent appropriations transferred under this Act or any gifts, grants, or donations accepted under this Act, the Office of Immigration and Refugee Affairs may use only federal funds to perform the duties prescribed by this Act.

[Sections 752.010-752.020 reserved for expansion]

SUBCHAPTER B. GOVERNOR'S ADVISORY COMMITTEE ON IMMIGRATION AND REFUGEES

Sec. 752.021. GOVERNOR'S ADVISORY COMMITTEE ON IMMIGRATION AND REFUGEES. The Governor's Advisory Committee on Immigration and Refugees is created within the office of the governor. The committee shall advise and make recommendations to the Office of Immigration and Refugee Affairs on immigration and refugee issues, including the SLIAG program authorized by the Immigration Reform and Control Act of 1986 (8 U.S.C.

Section 1101 et seq.) and the refugee assistance programs authorized by the Refugee Act of 1980 (8 U.S.C. Section 1521 et seq.).

Sec. 752.022. COMPOSITION OF COMMITTEE; TERMS; PRESIDING OFFICER. (a) The committee is composed of 12 members appointed by the governor with the advice and consent of the senate as follows:

(1) two representatives of the refugee population;

(2) two representatives of the immigrant population;

(3) three representatives of local provider programs that serve immigrants or refugees and that receive federal funds, with one each from a public health program, a public assistance program, and an education program;

(4) three representatives from voluntary resettlement agencies that receive state or federal funds;

(5) one representative from a legal organization that is involved in issues relating to immigrants or refugees; and

(6) one representative from a service organization that works with immigrants or refugees.

(b) Committee members serve for terms of two years that expire February 1 of each odd-numbered year.

(c) The governor shall appoint a member of the committee to serve as the chair of the committee for a one-year term.

Sec. 752.023. COMPENSATION AND REIMBURSEMENT OF COMMITTEE MEMBERS. A member of the committee may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties subject to any applicable limitation on reimbursement provided by the General Appropriations Act for a state employee.

Sec. 752.024. FUNCTIONS OF COMMITTEE. The committee shall:

(1) advise and make recommendations to the Office of Immigration and Refugee Affairs regarding policy, planning, and priorities for the SLIAG program and refugee assistance programs;

(2) advise and make recommendations to the Office of Immigration and Refugee Affairs regarding coordination of the efforts of all public agencies involved in health, human services, and education matters that relate to federal immigration and refugee laws and rules or implementation of the SLIAG program or refugee assistance programs;

(3) encourage communication and cooperation among local agencies and programs, state agencies, immigration-related and refugee-related legal and service agencies, and the federal government;

(4) assist the Office of Immigration and Refugee Affairs in applying for the maximum amount of federal funds available for SLIAG-related programs and activities and refugee-related programs and activities and in identifying local programs and costs relating to immigration or refugees for which the state or a political subdivision may receive reimbursement;

(5) provide information to programs and activities that serve and encourage legalization and education of residents of this state;

(6) review federal issues regarding the SLIAG program and refugee assistance programs and make recommendations to the Office of Immigration and Refugee Affairs to encourage the development of a state response to federal issues;

(7) review and make recommendations to the Office of Immigration and Refugee Affairs and state agencies to ensure that the system of fiscal and program operations for the SLIAG program and refugee assistance programs is consistent with existing state and federal requirements;

(8) assist the Office of Immigration and Refugee Affairs in the development of an annual report on the status of the SLIAG program and refugee assistance programs in the state;

(9) advise and make recommendations to the Office of Immigration and Refugee Affairs on other related matters as directed by the governor; and

(10) assist the Office of Immigration and Refugee Affairs in the development of a spending plan for fiscal years 1993 and 1994 proposing spending priorities for SLIAG funds for services to eligible legalized aliens and for other federal funds available to benefit immigrants or refugees in the state.

Sec. 752.025. APPLICATION OF TEXAS SUNSET ACT. The committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this subchapter expires September 1, 1995.

Sec. 752.026. FUNDING. Except for any unspent appropriations transferred under this Act or gifts, grants, or donations accepted under this Act, the Governor's Advisory Committee on Immigration and Refugees may use only federal funds to perform the duties prescribed by this Act.

(2) Strike Section 20 of the bill and substitute the following:

SECTION 20. (a) The Advisory Committee on Immigration is abolished.

(b) Possession and responsibility for all property, records, employees, contracts, and unspent appropriations that related to the implementation of Sections 131.010 and 131.011, Human Resources Code, are transferred from the Texas Health and Human Services Coordinating Council to the Office of Immigration and Refugee Affairs.

The amendments were read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendments to **S.B. 379** by a viva voce vote.

SENATE BILL 378 WITH HOUSE AMENDMENTS

Senator Carriker called **S.B. 378** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment - Black

Amend **S.B. 378** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and operation of the Texas Cosmetology Commission; providing penalties.

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

SECTION 1. Section 2, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. TEXAS COSMETOLOGY COMMISSION. (a) The Texas Cosmetology Commission is [~~created. The commission shall be~~] composed of six members. One [one] member must hold [~~holding~~] a valid beauty shop license and have [~~who has~~] no direct or indirect affiliation with or interest, financial or otherwise, in a private beauty culture school. One[~~; one~~] member must hold [~~holding~~] a valid private beauty culture school license and have [~~who has~~] no direct or indirect affiliation with or interest, financial or otherwise, in a beauty shop. Two[; ~~two~~] members must hold [~~holding~~] valid operator licenses and [~~who~~] have no direct or indirect affiliation with or interest, financial or otherwise, in a private beauty culture school or beauty shop[~~; and two members of the general public who are not licensees under this Act and who have no direct or indirect affiliation with or interest, financial or otherwise, in any facet of the beauty industry~~]. Two members

must be representatives of the general public. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of cosmetology;

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

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

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

(b) The associate commissioner for occupational education and technology of the Central Education Agency or his authorized representative shall as part of his duties serve as an ex officio member of the commission with voting privileges. [~~Members shall be appointed without consideration of race, color, religion, sex, or national origin.~~]

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

(d) [~~(b)~~] To qualify as a member, a person must be a citizen of the United States and a resident of Texas at least 25 years of age, must be actively engaged in the area that the person represents for a period of five years immediately preceding appointment.

(e) [~~(c)~~] The members of the commission shall be appointed by the governor with the advice and consent of the senate. Members of the commission hold office for staggered terms of six years, with two members' terms expiring on December 31 of each odd-numbered year. No person may serve more than two consecutive terms.

(f) [~~(d)~~] Each appointee to the commission shall qualify by taking the constitutional oath of office within 15 days from the date of his appointment. On presentation of the oath, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members of the commission.

(g) 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 Subsections (a) and (d) of this section;

(2) does not maintain during service on the commission the qualifications required by Subsections (a) and (d) of this section;

(3) violates a prohibition established by Section 7 of this Act;

(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.

(h) 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.

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

(j) [~~(e) Each member of the commission shall be present for at least one-half of the regularly scheduled commission meetings held each year. Failure of a~~

~~commission member to meet this requirement automatically removes the member from the commission and creates a vacancy on the commission.~~

[~~(f)~~] In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

(k) [~~(g)~~] The Texas Cosmetology Commission is subject to [~~the Texas Sunset Act~~ (]Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter [~~the Act~~], the commission is abolished and this Act expires September 1, 2003 [~~1991~~].

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

SECTION 2. Subsection (a), Section 3, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The governor shall designate one member of the commission as chairman of the commission to serve in that capacity at the pleasure of the governor. The commission [~~shall elect from its members for a term of two years a chairman and~~] may appoint committees that it considers necessary to carry out its duties.

SECTION 3. Section 4, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. POWERS AND DUTIES OF THE COMMISSION. (a) The commission may issue rules consistent with this Act after a public hearing in accordance with the Administrative Procedure and Texas Register Act[~~, as amended~~] (Article 6252-13a, Vernon's Texas Civil Statutes). [~~If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, transmit to the commission statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the commission receives the committees' statements.~~]

(b) The commission may not adopt rules restricting competitive bidding or advertising by a person regulated by the commission except to prohibit false, misleading, or deceptive practices by that person.

(c) The commission may not include in the rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(d) The commission shall prescribe the minimum curricula of the subjects and hours of each to be taught by private beauty culture schools and vocational cosmetology programs in public schools.

(e) [~~(c) The commission shall prescribe the method and content of the examinations administered under this Act. The examination shall include practical examinations as well as theory tests relating to the subject matter established as curricula by the commission.~~

[~~(d)~~] The commission shall establish sanitation rules designed to prevent the spread of infectious or contagious diseases.

(f) [~~(e)~~] The commission may recognize, prepare, or administer [~~adopt rules governing~~] continuing education programs for the practice of cosmetology [~~licensees~~]. Participation in the programs is voluntary.

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

(h) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

(i) 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.

(j) The commission 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 commission's programs.

(k) The commission shall set and monitor hiring goals for women and minorities for each program area of the agency and shall coordinate recruiting efforts with student organizations and other groups able to assist in meeting those hiring goals. The executive director shall prepare and submit a report to the commission not later than February 1 of each year outlining the progress of the agency in the recruitment and hiring of women and minority job applicants.

SECTION 4. Section 6, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. EXECUTIVE DIRECTOR; STAFF; BIENNIAL REPORT. (a) The commission may employ an executive director who is the executive head of the commission and performs its administrative duties.

(b) The executive director may employ staff members necessary for administering the functions of the commission. [~~A person who is required to register as a lobbyist under Chapter 305, Government Code, may not act as the general counsel to the commission or serve as a member of the commission.~~]

(c) The commission may employ executive directors at its discretion.

(d) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(e) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity 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 related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

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

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

(4) reasonable methods to address appropriately those areas of significant underutilization.

(g) A policy statement prepared under Subsection (f) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(h) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (g) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 5. Section 7, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of cosmetology may not be a member of the commission or an employee of the commission 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 cosmetology may not be a member of the commission and may not be an employee of the commission 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 serve as a member of the commission or act as the general counsel to 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 commission.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. ~~[An employee of the commission whose duties include the administration of the commission's functions under this Act may not:~~

~~[(1) have, other than as a consumer, a financial interest in the cosmetology industry;~~

~~[(2) be an officer, employee, or paid consultant of a trade association in the cosmetology industry; or~~

~~[(3) be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the cosmetology industry.~~

~~[(b) A member of the commission may not be:~~

~~[(1) an officer, employee, or paid consultant of a trade association in the cosmetology industry; or~~

~~[(2) related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the cosmetology industry.~~

~~[(c) An employee who violates this section is subject to dismissal. A member who violates this section is subject to removal.]~~

SECTION 6. Section 8, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

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

SECTION 7. Section 9, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) A person may not conduct or operate a vocational cosmetology program in a public school or lease space on the premises of a beauty shop to engage in the practice of cosmetology as an independent contractor without first obtaining a license issued under this Act.

SECTION 8. Subsection (b), Section 11, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An applicant for a manicurist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 250 [~~150~~] hours of instruction in manicuring through a training program approved by the commission.

SECTION 9. Subsection (b), Section 12, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An applicant for an instructor license must be at least 18 years of age, have completed the 12th grade or its equivalent, have a valid operator license, and have completed a [~~six-month~~] course consisting of 750 hours of instruction in cosmetology courses and methods of teaching in a licensed private beauty culture school or in a vocational training program of a publicly financed postsecondary institution or at least two [~~three~~] years of verifiable experience as a licensed [~~an~~] operator and at least 250 hours of instruction in cosmetology in a training program approved by the commission [~~under a license from the Texas Cosmetology Commission~~].

SECTION 10. Subsections (b), (c), and (d), Section 13, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a specialty certificate must be at least 16 years of age, have completed the seventh grade or its equivalent, and have the necessary requisites as determined by the commission in the particular specialty in which certification is sought, including training through a training program approved by the commission.

(c) The application must be on a form prescribed by the commission [~~and must be filed at least 10 days before the date set for examination~~].

(d) The applicant is entitled to a specialty certificate if he possesses the qualifications enumerated in Subsection (b) of this section, [~~satisfactorily completes the examination,~~] pays a $25 certificate fee, and has not committed an act that constitutes a ground for denial of a certificate.

SECTION 11. Subsection (b), Section 17, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The applicant shall submit an application on a form prescribed by the commission and pay a $100 fee, plus the applicable license or certification fee.

SECTION 12. Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by adding Section 20A to read as follows:

Sec. 20A. BOOTH RENTAL LICENSE. (a) A person licensed or certified under this Act may not lease space on the premises of a beauty shop to engage in the practice of cosmetology as an independent contractor unless the person also holds a booth rental license issued under this section.

(b) An applicant for a booth rental license must submit an application on a form prescribed by the commission. The application must contain information as required by rule by the commission and must be verified by the applicant.

(c) The applicant is entitled to a booth rental license if the applicant:

(1) pays the application fee set by the commission in an amount reasonable and necessary to cover the costs of administering the booth rental licensing program;

(2) shows compliance with the rules of the commission; and

(3) has not committed an act that constitutes a ground for denial of a license or certificate.

(d) The commission shall adopt rules relating to the information submitted for a booth rental license, including information regarding the applicant's compliance with state and federal tax laws.

SECTION 13. Section 21, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. PRIVATE BEAUTY CULTURE SCHOOL LICENSE; APPLICATION; REFUND POLICY. (a) A person holding a private beauty culture school license may maintain an establishment in which any practice of cosmetology is taught.

(b) An applicant for a private beauty culture school license must submit an application on a form prescribed by the commission. Each application must be verified by the applicant and must contain:

(1) a detailed floor plan of the school building divided into three separate areas, one for instruction in theory, one for practice work of senior students, and one for practice work of juniors; and

(2) a statement that the building is fireproof and of permanent type construction, contains a minimum of 3,500 square feet of floor space, with separate restrooms for male and female students, and contains or will contain before classes commence the equipment established by rule of the commission as sufficient to properly instruct a minimum of 50 students.

(c) The commission shall determine that an applicant for a private beauty culture school license is financially sound and capable of fulfilling the school's commitments for training before granting the license. [~~Each applicant shall furnish a good and sufficient surety bond payable to the State of Texas in the amount of $5,000. The bond must be conditioned to refund any unused portion of the tuition paid if the school closes or ceases operation before the courses of instruction have been completed.~~]

(d) [~~A student is entitled to a pro rata refund of tuition if the student becomes physically unable to complete the courses of instruction.~~

[~~(e)~~] Each application for a private beauty culture school license must be accompanied by payment of a $500 license fee and a $200 inspection fee. Each application for certification as a public secondary or public postsecondary beauty culture school must be accompanied by a $200 inspection fee. The inspection fee is charged for each inspection trip required before approval of the license or certificate.

(e) [~~(f)~~] The facilities of each applicant shall be inspected. The applicant is entitled to a private beauty culture school license if the inspection shows that this Act and the rules of the commission have been met and the applicant has not committed an act that constitutes a ground for denial of a license.

(f) Each holder of a private beauty culture school license must maintain a cancellation and settlement policy that provides a full refund of all money paid by a student if:

(1) the student cancels the enrollment agreement or contract not later than midnight of the third day after the date on which the agreement or contract is signed by the prospective student, excluding Saturdays, Sundays, and legal holidays; or

(2) the enrollment of the student was procured as a result of a misrepresentation made in the advertising or promotional materials of the school or a representation by an owner or representative of the school.

(g) Each holder of a private beauty culture school license must maintain a refund policy for the refund of the unused part of tuition, fees, and other charges

assessed a student if the student, at the expiration of the cancellation period established under Subsection (f) of this section, fails to enter the course of training, withdraws from the course of training, or is terminated from the course of training before completion of the course. The refund policy must provide that:

(1) a refund is based on the period of the student's enrollment, computed on the basis of course time expressed in clock hours;

(2) the effective date of the termination for refund purposes is the earliest of:

(A) the last date of attendance, if the student is terminated by the school;

(B) the date of receipt by the license holder of written notice of withdrawal by the student; or

(C) 10 school days after the last date of attendance; and

(3) if tuition is collected before beginning the course of training and if, after the expiration of the cancellation period, the student does not begin the course of training, the school may retain not more than $100.

(h) If a student who begins a course of training that is scheduled to run not more than 12 months withdraws from the course or is terminated from the course by the school, the private beauty culture school may retain $100 in tuition and fees paid by that student and is not obligated to refund any additional outstanding tuition if the student withdraws or is terminated during the last 50 percent of the course. If the student withdraws or is terminated before the last 50 percent of the course begins, the school shall refund the following percentages of any outstanding tuition:

(1) for withdrawal or termination occurring during the first week or first one-tenth of the course, whichever is less, 90 percent;

(2) for withdrawal or termination occurring after the first week or first one-tenth of the course, whichever is less, but within the first three weeks of the course, 80 percent;

(3) for withdrawal or termination occurring after the first three weeks of the course but not later than the completion of the first 25 percent of the course, 75 percent; and

(4) for withdrawal or termination occurring not later than the completion of the second 25 percent of the course, 50 percent.

(i) For students withdrawing or terminating after 50 percent of the course has been completed, the school must allow that student to reenter at any time during the 48-month period following the date of withdrawal or termination.

(j) A refund owed under this section must be paid not later than the 30th day after the date on which the student becomes eligible for the refund.

(k) If a refund is not made within the period required by this section, the school shall pay interest on the refund for the interval beginning with the first day following the expiration of the refund period and ending with the day immediately preceding the date the refund is made. If the refund is made to a lending institution, the interest shall also be paid to that institution and applied against the student's loan. The commissioner of education annually shall establish the level of interest at a level sufficient to provide a deterrent to the retention of student funds. The commission may exempt a school from the payment of the interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the commission on request documentation of the effort to locate the student.

(l) A private beauty culture school shall record a grade of "incomplete" for a student who withdraws but is not entitled to a refund under Subsection (h) of this section if the student requests the grade at the time the student withdraws and if the student withdraws for an appropriate reason unrelated to the student's academic status. A student who receives a grade of incomplete may re-enroll in the program

during the 48-month period following the date the student withdraws and complete those incomplete subjects without payment of additional tuition.

SECTION 14. Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by adding Sections 21A, 21B, and 21C to read as follows:

Sec. 21A. TUITION PROTECTION FUND. (a) In addition to the bond requirements imposed under Section 21(c) of this Act, at the time that each private beauty culture school pays its annual renewal fee, in the years provided by Subsection (c) of this section, the commission shall also collect a fee from the school for deposit in a special fund established in the state treasury called the private beauty culture school tuition protection fund.

(b) The commission shall determine the amount of the fee by applying a percentage to each school's annual renewal fee. The percentage is the rate determined by the commission that, when applied to the total of all renewal fees, will result in the collection of $200,000 for deposit in the fund in the first three years that the fee is collected. The fee assessed under this section may not exceed $200 per year.

(c) Beginning on January 1, 1992, the commission shall collect the fee for three years. If on January 1, 1995, or on January 1 of any subsequent year the amount in the fund is less than $200,000, the commission shall collect a fee during that year by applying a percentage to each school's annual renewal fee at a rate that will bring the balance of the fund to $200,000.

(d) The state treasurer shall invest the fund in the same manner as other state funds. Sufficient funds from the tuition protection fund shall be appropriated to the commission for the purpose outlined in this section. The commission shall administer claims made against the fund.

(e) If a school closes, the commission shall attempt to arrange for students of the closed school to attend another private beauty culture school.

(f) The expense incurred by a private beauty culture school in providing training that is directly related to educating a student who was enrolled in a closed school and placed in the school under this section, including the applicable tuition for the period of time for which the student has paid tuition, shall be paid from the private beauty culture school tuition protection fund.

(g) If the student cannot be placed in another school, the student's tuition and fees shall be refunded under Section 21 of this Act.

(h) If a student does not accept a place that is available and reasonable in another school, the student's tuition and fees shall be refunded under the refund policy maintained by the closing school under Section 21 of this Act.

(i) Refunds shall be paid from the private beauty culture school tuition protection fund in an amount not to exceed $35,000.

(j) If another school assumes responsibility for the closed school's students and there are no significant changes in the quality of the training, the student formerly enrolled in the closed school is not entitled to a refund under Subsection (g) or (h) of this section.

(k) Attorney fees, court costs, or damages may not be paid from the private beauty culture school tuition protection fund.

Sec. 21B. COURSE LENGTH AND CURRICULUM OF PRIVATE BEAUTY CULTURE SCHOOL. (a) A private beauty culture school must submit to the commission for approval the course lengths and curriculum content for each course offered by the school. The course lengths and content may not be implemented unless the commission approves them. The course lengths and content shall reasonably ensure that students develop the job skills and knowledge necessary for employment.

(b) The commission shall require a school to account fully for all curriculum contents and course lengths before issuing or renewing a license, and a school that

is manipulating course lengths below or above industry standards shall be placed on probation until justification for the deviation is proved or the practice ceases.

Sec. 21C. TEMPORARY WORK PERMIT. (a) The commission may issue a temporary work permit to any student who has completed 1,500 hours of instruction in an approved private beauty school program or 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses in a public school vocational program and who has applied for the practical examination. The temporary work permit expires on the earlier of the date the student is scheduled for the practical examination or 90 days from the date the temporary permit is issued.

(b) The commission may assess a fee for a temporary work permit. The commission shall set the fee in an amount reasonable and necessary to defray the costs of administering this section.

SECTION 15. Section 22, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22. PRIVATE BEAUTY CULTURE SCHOOLS. (a) The holder of a [~~A~~] private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours not less than two full-time instructors licensed under this Act, except that one instructor will be sufficient whenever the student enrollment drops below 15;

(3) maintain a daily record of attendance of students;

(4) establish regular class and instruction hours and grades, and hold examinations before issuing diplomas;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 250 [~~four weeks and not less than 150~~] hours instruction for a complete course in manicuring;

(7) require no student to work or be instructed or receive credit for more than eight hours of instruction in any one day or for more than six days in any one calendar week;

(8) maintain a copy of its curriculum in a conspicuous place and verify that this curriculum is being followed as to subject matter being taught; and

(9) submit to the executive director the name of each student within 10 days after enrollment in the school and notify the executive director of the withdrawal or graduation of a student within 10 days of the withdrawal or graduation.

(b) Each holder of a private beauty culture school license shall furnish to the commission:

(1) the current course completion rates of students who attend a course of instruction offered by the school; and

(2) job placement rates and employment rates of students who complete a course of instruction.

(c) On the graduation of a student from a course of training offered by a private beauty culture school or the student's withdrawal or transfer from a course of training without completion of the training, the private beauty culture school shall send the commission a certified written copy of the student's record, indicating all course hours completed by the student and whether the agreed tuition has been paid.

(d) A holder of a private beauty culture school license shall furnish each prospective student with:

(1) a copy of the course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy required under Section 21 of this Act;

(4) school regulations relating to absences;

(5) the school grading policy;

(6) the school rules of operation and conduct;

(7) school regulations relating to incomplete grades;

(8) the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission; and

(9) the current rates of job placement and employment of students who complete a course of training.

(e) A holder of a private beauty culture school license shall publish in its catalogue and enrollment contract a description of the refund policy required under Section 21 of this Act.

(f) If the commission has reasonable cause to believe that a private beauty culture school has violated this Act or a rule adopted under this Act, the commission may order a peer review of the school or suspend the admission of students to the school. A peer review ordered under this subsection shall be conducted by a peer review team composed of knowledgeable persons selected by the commission. The commission shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states. The team shall provide the commission with an objective assessment of the content of the school's curriculum and its application. The school under review shall pay the costs of the peer review.

(g) A private beauty culture school that violates this Act or a rule adopted under this Act is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. The civil penalty may not exceed $1,000 a day for each violation. The attorney general, at the request of the commission, may bring a civil action to collect a civil penalty under this subsection. Civil penalties recovered in a suit brought under this subsection shall be deposited in the state treasury to the credit of the General Revenue Fund.

SECTION 16. Section 23, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23. TRANSFER OF HOURS OF INSTRUCTION. Any student of a private beauty culture school or a vocational cosmetology program in a public school may transfer completed hours of instruction to a private beauty culture school or vocational cosmetology program in a public school in this state. A transcript showing the number and courses of completed hours certified by the school in which the instruction was given must be submitted to the executive director. In evaluating the student's transcript, the executive director shall determine whether the agreed tuition has been paid. If the tuition has not been paid, the executive director shall notify the student that his or her transcript cannot be certified to the school to which the student desires a transfer until proof of paid tuition is provided. On evaluation and approval, the executive director shall certify in writing to the student and to the school to which the student desires a transfer that the stated hours and courses have been successfully completed and that the student is not required to repeat the instructions.

SECTION 17. Section 26, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. EMPLOYMENT OF LICENSEES OR CERTIFICATE HOLDERS. (a) A private beauty culture school may not employ a person holding an operator or[;] manicurist license[;] or a specialty certificate solely to perform the practices of cosmetology for which the person is licensed or certified or employ a person holding an instructor license to perform any acts or practices of cosmetology.

(b) A licensee may not operate a beauty salon unless it is at all times under the direct supervision of a person holding an operator license or instructor license. A licensee or certificate holder may not operate a specialty shop unless it is at all times under the direct supervision of an operator, instructor, or specialty certificate holder.

(c) A person holding a beauty shop or specialty shop license may not employ a person as an operator or specialist who has not first obtained a license or certificate under this Act or who has not first obtained a license or certificate under the law regulating barbers.

SECTION 18. Section 28, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 28. CONSUMER INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission and the procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and to 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 commission for the purpose of directing complaints to the commission. The commission may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated under this Act;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or

(3) in a bill for service provided by an individual or entity regulated under this Act. [~~There shall at all times be prominently displayed in each shop and salon regulated under this Act, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the regulatory board having jurisdiction over those individuals licensed under this Act and which shall contain a statement informing consumers that complaints against licensees can be directed to the regulatory board.~~]

SECTION 19. Section 30, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 30. EXAMINATIONS. (a) The commission shall use a written examination, selected by the commission, to examine license applicants and may require a practical examination for licenses and certificates issued under this Act, as the commission considers necessary. The written examination must be validated by independent testing professionals or be purchased from a national testing service. The commission shall prescribe the method and content of any practical examination.

(b) On receipt of a written request by a student, the commission may provide for the early written examination of a cosmetology operator license student who has completed at least 1,000 hours of instruction in a training program approved by the commission. Agency inspectors may administer an examination conducted under this subsection on-site at beauty culture schools throughout the state.

(c) Examinations shall be conducted beginning the first of each month unless it is a legal holiday, in which case the examination shall begin on the following day. The site of the examinations shall be announced at least six months prior to the administration date. Examinations may not be conducted in the schools of commission members.

(d) Not later than the 30th day after the date on which an examination is administered under this Act, the commission shall notify each examinee of the

results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day [~~on which a person completes an examination administered by the commission, the commission shall send to the person his examination results~~]. If requested in writing by a person who fails the examination, the commission shall send to the person not later than the 60th day after the day on which the request is received by the commission an analysis of the person's performance on the examination.

SECTION 20. Subsection (b), Section 32, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A person holding a beauty or specialty shop license, [~~or~~] a private beauty culture school license, or a license to operate a vocational cosmetology program in a public school may not employ any person to perform any practice or practices of cosmetology knowing that the licensee is suffering from an infectious or contagious disease.

SECTION 21. Section 33, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by amending Subsection (h) and adding Subsection (i) to read as follows:

(h) A private beauty culture school license that has been expired for more than 30 days may not be renewed. The licensee [~~establishment~~] may apply for an original license under the current requirements and fees. The commission may not accept credit hours for examination after the 30th day of expiration of a [~~beauty culture school~~] license subject to this subsection.

(i) The commission by rule shall establish the delinquency fee for a booth rental license.

SECTION 22. Section 34, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 34. RENEWAL FEES. (a) Renewal fees under this Act are:

(1) Operator or specialty license $25;

(2) Instructor license $50;

(3) Manicurist license $25;

(4) Private beauty school license $200 per year; and

(5) Beauty or specialty shop license $35.

(b) The commission by rule shall establish the renewal fee for a booth rental license.

SECTION 23. Section 38, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 38. INJUNCTION. (a) The commission may sue in district court to enjoin or restrain a person from violating any section of this Act or the commission rules.

(b) An action for an injunction under this section must be brought in Travis County.

SECTION 24. Subsection (b), Section 41, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, 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 [~~relating to a cosmetologist or cosmetology establishment, the commission, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved~~].

SECTION 25. (a) The changes in law made by this Act in the qualifications of persons appointed to the Texas Cosmetology Commission apply only to a member appointed on or after September 1, 1991.

(b) The first policy statement required to be filed under Subsection (g), Section 6, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1991.

SECTION 26. Section 14, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is repealed.

SECTION 27. This Act takes effect September 1, 1991.

SECTION 28. 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 - S. Thompson

Amend **C.S.S.B. 378**, on page 13, between lines 12 and 13, insert a new SECTION 11 to read as follows and renumber the subsequent sections appropriately:

SECTION 11. Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by adding Section 13A to read as follows:

Sec. 13A. FACIALIST SPECIALTY LICENSE. (a) A person holding a facialist specialty license may perform only the practice of cosmetology as defined in Paragraph (F) of Subdivision (3) of Section 1 of this Act.

(b) An applicant for a facialist specialty license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have the necessary requisites as determined by the commission in the facialist specialty.

(c) The application must be on a form prescribed by the commission and must be filed at least 10 days before the date set for examination.

(d) The applicant is entitled to a facialist specialty license if the applicant possesses the qualifications enumerated in Subsections (b) of this section, satisfactorily completes the examination, pays a $25 license fee, and has not committed an act that constitutes a ground for denial of a license.

(e) Subsection (a) of this section does not apply to an individual who has an instructor license or operator license issued by the commission.

Amendment - Repp

Amend **C.S.S.B. 378** as follows:

(1) On page 28, after line 27, insert the following:
except as otherwise provided by this subsection,

(2) On page 29, line 10, between the period and "If" insert the following: If the examinee is a student in a vocational cosmetology program in a public school, the commission shall grade the examination and may not submit the examination for grading by a national testing service.

The amendments were read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendments to **S.B. 378** by a viva voce vote.

SENATE BILL 856 WITH HOUSE AMENDMENT

Senator Brooks called **S.B. 856** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment - Linebarger

Amend **S.B. 856** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the use of scrap tires by political subdivisions for road construction or repair.

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

SECTION 1. Article 6674i-1, Revised Statutes, is amended to read as follows:

Art. 5574i-1. AWARDING OF CERTAIN CONTRACTS. (a) In this article:

(1) "Scrap [~~section, "~~scrap] tire" means a tire that can no longer be used for its original intended purpose.

(2) "Rubberized asphalt" means an asphalt material containing at least 15 percent by weight of a reacted whole scrap tire.

(b) If the State Department of Highways and Public Transportation, a county, or a municipality uses rubberized asphalt paving, the department, county, or municipality electing to use rubberized asphalt shall use scrap tires converted to rubberized asphalt paving by a facility in this state if that paving material is available.

(c) In comparing bids submitted for road construction that require paving, the department, county, or municipality may give a preference to bids the paving materials portion of which includes the use of rubberized asphalt paving made from scrap tires by a facility in this state if the cost of those materials does not exceed by more than 15 percent the bid costs of alternative paving materials for the same job.

SECTION 2. This Act takes effect September 1, 1991, and applies only to bids submitted to a county or municipality on or after that date.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brooks and by unanimous consent, the Senate concurred in the House amendment to **S.B. 856** by a viva voce vote.

SENATE BILL 284 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 284** 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 - Naishtat

(1) Amend **S.B. 284** on page 1, line 10 by striking "Five (5)" and substituting "Four (4)".

(2) Amend **S.B. 284** on page 1, line 15 by striking "Four (4)" and substituting "Five (5)".

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to **S.B. 284** by a viva voce vote.

SENATE BILL 470 WITH HOUSE AMENDMENT

Senator Tejeda called **S.B. 470** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment - Eckels

Amend **S.B. 470** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to a prohibition of cigarette or other tobacco product advertising within 500 feet of a school or church.

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

SECTION 1. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6674v-3a to read as follows:

Art. 6674v-3a. CIGARETTE OR TOBACCO PRODUCT ADVERTISING ON OUTSIDE SIGNS WITHIN 500 FEET OF CERTAIN INSTITUTIONS

Sec. 1. DEFINITIONS. In this Article:

(1) "Church" means a facility that is owned by a religious organization and that is used primarily for religious services.

(2) "School" means a private or public elementary or secondary school.

(3) "Sign" means an outdoor medium that is used to advertise or inform, including a structure, sign, display, light device, figure, painting, drawing, message, plaque, poster, or billboard, and that is visible from the main-travelled way of a street or highway.

(4) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Sec. 2. PROHIBITION. (a) A sign containing an advertisement for cigarettes or tobacco products may not be located closer than 500 feet to a church, or school.

(b) The measurement of the distance between the sign containing an advertisement for cigarettes or tobacco products and an institution listed in Subsection (a) of this section shall be from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(c) The prohibition in this section shall not be applicable to signage or a sign located on or in a facility owned or leased by a professional sports franchise or in a facility, where professional sports events are held at least 10 times during a 12 month period.

Such facility shall be defined as the stadium, arena, or events center itself and any land or property owned or leased by the professional sports franchise which is connected to or is immediately contiguous to the stadium arena or event center.

SECTION 2. The prohibitions on cigarette or other tobacco product advertising in this Act do not apply to contracts for cigarette or other tobacco product advertisements entered into before the effective date of this Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to read on three several days in

each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Tejeda moved to concur in the House amendment to **S.B. 470**.

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

SENATE BILL 1397 WITH HOUSE AMENDMENT

Senator Tejeda called **S.B. 1397** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment - Willy

Amend **S.B. 1397** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to inspections for fire hazards.

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

SECTION 1. Local Government Code Section 352.016, Subsection (c) is amended and Subsection (d) is added to read as follows:

(c) The commissioners court by order may authorize the county fire marshal to charge a fee to the owner of a business, a multi-family dwelling or commercial property for ~~(a person requesting)~~ a fire inspection conducted under this section in a reasonable amount determined by the commissioners court to cover the cost of the inspection.

(d) The commissioners court by order may authorize the owner of a single family residence for a fire inspection conducted under this section in a reasonable amount determined by the commissioners court to cover the cost of the inspection, if, the inspection is requested by the owner of the property.

SECTION 2. This act takes effect September 1, 1991.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Tejeda and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1397** by a viva voce vote.

SENATE BILL 637 WITH HOUSE AMENDMENTS

Senator Harris of Tarrant called **S.B. 637** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment - Wolens

Amend **S.B. 637** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to foreign trade zones established by joint airport boards.

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

SECTION 1. Section 2, Chapter 129, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446.8, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. Authorized boards are hereby authorized to apply for permits, licenses, and other grants of authority, and to accept the same, to establish, operate, and maintain one or more foreign trade zones within any county or counties in which the airport of the authorized board is situated, as Texas ports of entry under federal law, and to establish, operate, and maintain other sub-zones or other additions to an existing zone inside or outside those counties, subject to all requirements of federal law and to the regulations of the Foreign Trade Zones Board of the United States or successor agency.

SECTION 2. Section 25.07(b), Tax Code, is amended to read as follows:

(b) Except as provided by Subsections (b) and (c) of Section 11.11 of this code, a leasehold or other possessory interest in exempt property may not be listed if:

(1) the property is permanent university fund land;

(2) the property is county public school fund agricultural land;

(3) the property is a part of a public transportation facility owned by an incorporated city or town and:

(A) is an airport passenger terminal building or a building used primarily for maintenance of aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;

(B) is an airport fueling system facility; or

(C) is in a foreign-trade zone:

(i) that has been granted to a joint airport board under Chapter 129, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446.8, Vernon's Texas Civil Statutes);

(ii) the area of which in the portion of the zone located in the airport operated by the joint airport board does not exceed 2,500 acres; and

(iii) that is established and operating pursuant to federal law [~~if the area of the zone does not exceed 250 acres~~];

(4) the interest is in a part of a park, market, fairground, or similar public facility that is owned by an incorporated city or town; or

(5) the interest involves only the right to use the property for grazing or other agricultural purposes.

SECTION 3. This Act takes effect immediately except for Section 2, which takes effect January 1, 1992.

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, and that this Act take effect and be in force according to its terms, and it is so enacted.

Amendment - Carter

Amend **C.S.S.B. 637** as follows:

(1) On page 2, line 8, strike the word "or".

(2) On page 2, line 19, add the word "or" at the end of Subsection C (iii).

(3) On page 2, between lines 19 and 20 add a new paragraph (D) to read as follows:

(D) (i) is in a foreign trade zone established pursuant to federal law after June 1, 1991, which operates pursuant to federal law;

(ii) is contiguous to or has access via a taxiway to an airport located in two counties, one of which has a population of 500,000 or more according to the federal decennial census most recently preceding the establishment of the foreign trade zone; and

(iii) is owned, directly or through a corporation organized under the Development Corporation Act of 1979 (Article

5190.6, Vernon's Texas Civil Statutes), by the same incorporated city or town which owns the airport;

The amendments were read.

Senator Harris of Tarrant moved to concur in the House amendments to **S.B. 637**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 2054

Senator Harris of Tarrant 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. 2054** 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. 2054** 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 Harris of Tarrant, Chair; Armbrister, Brooks, Moncrief, Sibley.

(Senator Carriker in Chair)

SENATE BILL 1129 WITH HOUSE AMENDMENTS

Senator Tejeda called **S.B. 1129** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Schoolcraft

Amend **S.B. 1129** on page 4, between lines 10 and 11, by inserting a new SECTION 2 of the bill, to read as follows, and renumbering the subsequent sections appropriately:

"SECTION 2. Subsection 773.004(a), Health and Safety Code, as amended by Section 240, **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended as follows:

'(a) This chapter does not apply to:

'(1) a ground or air transfer vehicle and staff used to transport a patient who is under a physician's care between medical facilities or between a medical facility and a private residence;

(2) ground or air transfer that does not advertise as an ambulance service and that is not licensed by the department;

'(3) the use of ground or air transfer vehicles to transport sick or injured persons in a casualty situation that exceeds the basic vehicular capacity or capability of emergency medical services providers in the area;

'(4) [~~(3)~~] an industrial ambulance; or

'(5) [~~(4)~~] a physician, registered nurse, or other health care practitioner licensed by this state unless the health care practitioner staffs an emergency medical services vehicle regularly.'"

Committee Amendment - Schoolcraft

Amend **S.B. 1129** as follows:

(1) On page 24, line 19, after "(c)", add the following and redesignate the existing language of (c) as "(d)":

"(c) A member of the technical advisory serves a six-year term, with the terms of one-third of the members expiring on August 31 of each odd-numbered year.

(2) On page 29, between lines 23 and 24, insert the following and renumber the following sections of the bill appropriately:

SECTION 9. Members serving on the technical advisory committee established in Section 773.118, Health and Safety Code, on the effective date of this bill, may continue to serve on the technical advisory committee. The members who wish to continue to serve shall draw lots to determine each member's initial term. The board shall fill any resulting vacancies on the committee in such a manner that the terms of four members shall expire August 31, 1993; four members shall expire August 31, 1995; and four members shall expire August 31, 1997.

Committee Amendment - Schoolcraft

Amend **S.B. 1129** on page 9, line 18 by striking "must" and substitute "may".

Amendment - Stiles

Amend **S.B. 1129** as follows:

On page 4, line 12, insert "and Subsection (f)" between "(e)" and "to".

On page 4, between lines 14 and 15, add Subsection (f) to read as follows:

(f) Subsection (a) of this section does not apply to an emergency medical services vehicle operated by an emergency medical services volunteer provider in a county with a population of less than 20,000 and staffed by one individual certified as an emergency care attendant or certified at a higher level of training in addition to the vehicle operator.

The amendments were read.

Senator Tejeda 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 Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 1129** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Tejeda, Chair; Brooks, Zaffirini, Moncrief, Leedom.

SENATE BILL 1035 WITH HOUSE AMENDMENT

Senator Bivins called **S.B. 1035** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Eckels

1. Amend **S.B. 1035** by adding a new SECTION 3 as follows and renumbering all subsequent sections appropriately:

SECTION 3. Subchapter A, Chapter 111, Local Government Code, is amended by adding Section 111.103 to read as follows:

Sec. 111.013. LIMITATION ON BUDGET OF COUNTY AUDITOR. An increase from one fiscal year to the next in the amount budgeted for expenses of the county auditor's office or the salary of an assistant auditor shall not exceed five (5) percent without approval of the commissioners court.

2. Amend **S.B. 1035** by adding a new SECTION 4 as follows and renumbering all subsequent sections appropriately:

SECTION 4. Subchapter B, Chapter 111, Local Government Code, is amended by adding Section 111.044 to read as follows:

Sec. 111.044. LIMITATION ON BUDGET OF COUNTY AUDITOR. An increase from one fiscal year to the next in the amount budgeted for expenses of the county auditor's office or the salary of an assistant auditor shall not exceed five (5) percent without approval of the commissioners court.

3. Amend **S.B. 1035** by adding a new SECTION 5 as follows and renumbering all subsequent sections appropriately:

SECTION 5. Subchapter C, Chapter 111, Local Government Code, is amended by adding Section 111.074 to read as follows:

Sec. 111.074. LIMITATION ON BUDGET OF COUNTY AUDITOR. An increase from one fiscal year to the next in the amount budgeted for expenses of the county auditor's office or the salary of an assistant auditor shall not exceed five (5) percent without approval of the commissioners court.

The amendment was read.

Senator Bivins moved to concur in the House amendment to **S.B. 1035**.

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

CONFERENCE COMMITTEE ON SENATE BILL 587 DISCHARGED

On motion of Senator Truan and by unanimous consent, the Senate conferees on **S.B. 587** were discharged.

Question—Shall the Senate concur in the House amendments to **S.B. 587**?

On motion of Senator Truan and by unanimous consent, the Senate concurred in the House amendments to **S.B. 587** by a viva voce vote.

SENATE BILL 1000 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 1000** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Kubiak

Amend **S.B. 1000** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to student services fees at public institutions of higher education.

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

SECTION 1. Section 54.503, Education Code, is amended by amending Subsections (a), (b), and (f) and adding Subsection (i) to read as follows:

(a) For the purposes of this section:

(1) "Student services" means activities which are separate and apart from the regularly scheduled academic functions of the institution and directly involve or benefit students, including textbook rentals, recreational activities, health

and hospital services, medical services, intramural and intercollegiate athletics, artists and lecture series, cultural entertainment series, debating and oratorical activities, student publications, student government, the student fee advisory committee, student transportation services other than services under Sections 54.504, 54.511, 54.512, and 54.513 of this code, and any other student activities and services specifically authorized and approved by the governing board of the institution of higher education. The term does not include services for which a fee is charged under another section of this code.

(2) "Compulsory fee" means a fee that is charged to all students enrolled at the institution.

(3) "Voluntary fee" means a fee that is charged only to those students who make use of the student service for which the fee is established.

(b) The governing board of an institution of higher education may charge and collect from students registered at the institution fees to cover the cost of student services. The fee or fees may be either voluntary or compulsory as determined by the governing board. The total of all compulsory student services fees collected from a student at an institution of higher education [~~other than the University of Texas at Austin~~] for any one semester or summer session shall not exceed $150 [~~$90~~]. All compulsory student services fees charged and collected under this section by the governing board of an institution of higher education, other than a public junior college, shall be assessed in proportion to the number of semester credit hours for which a student registers. No portion of the compulsory fees collected may be expended for parking facilities or services, except as related to providing shuttle bus services.

(f) If, in an academic year, the total compulsory fee charged under this section is more than 10 percent higher than the compulsory fee charged for the previous academic year, the increase does not take effect unless the increase is approved by a majority vote of the students enrolled at the institution voting in an election held for that purpose or by a majority vote of the student government at the institution [~~Prior to recommending the student fee budget to the governing board, the president of each institution shall duly consider the recommendations of a student fee advisory committee. A majority of the committee's members shall be students enrolled in the institution and appointed by the student governing body or elected by a majority of students enrolled in the institution in an election held for that purpose. Other committee members from the staff and faculty may be included and selected as the president sees fit. The regents may duly consider the matter of raising student fees in open meeting. Along with his own recommendations, the president may make known to the Board of Regents the student fee committee's recommendations. If the president's recommendations to the board are substantially different from the student fees advisory committee's recommendations to the institution's administration, the administration shall notify the student fees advisory committee. The notice shall be given as soon as practicable, to provide the committee sufficient time to request that the committee be included on the agenda of the board's meeting at which the president's recommendations are to be considered and be permitted to comment on the committee's recommendations to the administration. If the decision of the board differs from that of the student fee committee, the president shall deliver to the student fee committee a written explanation of the board's decision within 30 days of that decision~~].

(i) General revenue appropriations, other educational and general income, and funds appropriated under Article VII, Section 17 or 18, of the Texas Constitution may be expended on a proportional use basis to support the services, activities, and facilities provided for in this section to the extent that the use of such funds is not otherwise restricted by the Texas Constitution or general law.

SECTION 2. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5031 to read as follows:

Sec. 54.5031. STUDENT FEE ADVISORY COMMITTEE. (a) A student fee advisory committee is established at each institution of higher education to advise the governing board and administration of the institution on the type, amount, and expenditure of compulsory fees for student services under Section 54.503 of this code.

(b) Each committee is composed of the following nine members:

(1) at least five student members who are enrolled for not less than six semester credit hours at the institution and who are representative of all students enrolled at the institution, both graduate and undergraduate, selected under Subsection (c) of this section; and

(2) up to four members who are representative of the entire institution, appointed by the president of the institution, including at least one faculty member and one staff member.

(c) If the institution has a student government, the student government shall appoint three students to serve two-year terms on the committee and the remaining students to serve one-year terms on the committee. If the institution does not have a student government, the students enrolled at the institution shall elect three students to serve two-year terms on the committee and the remaining students to serve one-year terms on the committee. A candidate for a position on the committee must designate whether the position is for a one-year or two-year term.

(d) A student member of the committee who withdraws from the institution must resign from the committee.

(e) A vacancy in an appointive position on the committee shall be filled for the unexpired portion of the term in the same manner as the original appointment. A vacancy in an elective position on the committee shall be filled for the unexpired portion of the term by appointment by the president of the institution.

(f) The committee shall:

(1) study the type, amount, and expenditure of a compulsory fee under Section 54.503 of this code; and

(2) meet with appropriate administrators of the institution, submit a written report on the study under Subdivision (1) of this subsection, and recommend the type, amount, and expenditure of a compulsory fee to be charged for the next academic year.

(g) The president of the institution shall consider the report and recommendations of the committee. Any suggested changes of the report shall be sent back to the committee within fifteen days for discussion and possible revision. The committee will adopt a final report and submit it to the president. The president shall forward the final report and recommendations of the governing board of the institution for adoption. The board shall adopt the committee's recommended fee amount and allocation unless the amount or allocation violates a law. If the board rejects the fee amount or allocation submitted by the committee, the board shall send to the committee a written explanation of the board's decision within thirty days of the date of that decision. The board may adopt only a fee amount or allocation that is submitted by the committee.

SECTION 3. The following provisions of the Education Code are repealed:

(1) Section 54.503(h); and

(2) 54.513.

SECTION 4. This Act applies beginning with the fall semester in 1991.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment - Von Dohlen

Amend **C.S.S.B. 1000** by inserting a new section of the bill, to be numbered appropriately, to read as follows:

"SECTION _____Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5132 to read as follows:

Sec. 54.5132. INTERNATIONAL EDUCATION FEE. (a) After prior approval has been granted by a majority vote of students voting in an election held for that purpose, the governing board of an institution of higher education may charge and collect from students registered at the institution a fee of $1 for each semester or summer session.

(b) Fees collected under this section shall be deposited in the institution's international education financial aid fund, a fund outside the state treasury. Money in the fund may be used only to assist students participating in international student exchange or study programs.

(c) The international education financial aid fund shall be used in accordance with general guidelines adopted by the Texas Higher Education Coordinating Board and with guidelines jointly developed by the student governing body of the institution, the administration of the institution, and the coordinating board. If an institution does not have a student governing body, the president may appoint a committee of students to assist with the development of the guidelines. Not more than one-half of the funds allotted to an individual may be used to pay for travel expenses.

(d) This section does not apply to The University of Texas at Austin."

Amendment - Campbell

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

(1) On page 6, line 13, insert a new SECTION 4 to read as follows:

"SECTION 4. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5085 to read as follows:

Sec. 54.5085. MEDICAL SERVICES FEE; TEXAS WOMAN'S UNIVERSITY. (a) The board of regents of Texas Woman's University may charge each student registered at the university a medical services fee not to exceed $30 for each semester of the regular term or 12-week summer session and not to exceed $15 for each six-week or shorter term of the summer session.

(b) Before the board imposes a fee under this section, the board shall consider the recommendations of a student fee advisory committee established by the president of the university. A majority of the members of the advisory committee must be students appointed by the presiding officer of the student governing body and the remainder of the members must be appointed by the president of the university.

(c) A medical services fee charged under this section may be used only to provide medical services to students registered at the university.

(d) A medical services fee charged under this section is in addition to any other fee the board is authorized by law to charge."

(2) Renumber current SECTIONS 4 and 5 appropriately.

The amendments were read.

Senator Montford moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 1000** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Montford, Chair; Barrientos, Haley, Armbrister, Sims.

SENATE BILL 887 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 887** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Watkins

Amend **S.B. 887** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to certain student rentals, fees, and other charges collected by public institutions of higher education.

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

SECTION 1. Subsection (a), Section 55.16, Education Code, is amended to read as follows:

(a) Each board shall be authorized to fix and collect rentals, rates, charges, and/or fees from students and others for the occupancy, services, use, and/or availability of all or any of its property, buildings, structures, activities, operations, or other facilities, in such amounts and in such manner as may be determined by the board; provided, however, that all student use fees shall be fixed and collected in proportion to the number of semester credit hours for which a student registers, and shall not exceed $\underline{\$12}$ [~~$6~~] per semester hour, except that those schools charging more than $6 per semester hour as of May 1, 1975, shall not exceed the amount being charged as of that date, and except as provided by Subsection (b) of this section. The board may waive all or any part of any such student use fees in the case of any student for whom the payment of such student use fee would cause an undue economic hardship, except that the number of such students for whom such waivers are granted shall not exceed 5% of the total enrollment; and further provided that nothing in this section shall affect, limit, or impair any pledge, covenant, or option made or reserved by the board with respect to any revenue bonds outstanding as of the 1975 amendment to this section, issued by the board pursuant to this chapter; and provided that hereafter if bonds are issued pursuant to Section 55.17 of this code, to be secured by a pledge of a limited or unlimited use fee, and if, at the time of authorizing the issuance of the bonds, (1) the estimated maximum amount per semester hour of such pledged use fee (based on then current enrollment and conditions) during any future semester necessary to provide for the payment of the principal of and interest on the bonds when due, together with (2) the aggregate amount of all use fees which were levied on a semester hour basis for the then current semester to pay the principal of and interest on all previously issued bonds, do not exceed $\underline{\$12}$ [~~$6~~] per semester hour, except as provided by subsection (b) of this section, then such limited or unlimited use fee shall be levied and collected when and to the extent required by the resolution authorizing the issuance of the bonds in any amount required to provide for the payment of the principal of and interest on the bonds, regardless of any other provision of this section or the limitations contained herein.

SECTION 2. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.537 to read as follows:

Sec. 54.537. FEES FOR STUDENT SERVICES BUILDING; THE UNIVERSITY OF TEXAS AT AUSTIN. (a) The board of regents of The University of Texas System may charge each student enrolled at The University of Texas at Austin a fee not to exceed $1.10 per registered semester hour. The fee may be used only for financing the construction, repair, maintenance, renovation, improvement, or replacement of a student services building at the university.

(b) The university shall collect the student services building fee imposed under this section and deposit the money collected into an account to be known as the student services building account. The money collected and placed in the account shall be used only for the purpose of financing the construction, repair, maintenance, renovation, improvement, or replacement of a student services building and may be pledged for the payment of obligations issued for those purposes.

(c) A fee may not be imposed under this section until the semester in which a student services building will be available for use.

(d) The student services building fee imposed under this section shall not be counted in determining the maximum student services fee which may be charged to the students of The University of Texas at Austin under this subchapter.

(e) The powers granted to the board of regents under this section are cumulative of all other powers granted to that board.

SECTION 3. Subsection (a), Section 55.16, Education Code, as amended by this Act, applies only to rentals, rates, charges, and fees that become due beginning with the fall semester in 1991. Rentals, rates, charges, and fees that became due before that semester are governed by the law in effect at the time those assessments became due.

SECTION 4. Notwithstanding the increase in student use fees authorized in Section 1 of this Act, no board may increase the student use fees charged at any institution more that $2 per semester hour for the academic year beginning in fall, 1991 or more than $2 per semester hour in each of the immediately succeeding academic years.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment - Greenberg

Amend **C.S.S.B. 887** as follows:

(1) On page 1, amend lines 5 and 6 to read as follows:

SECTION 1. Section 55.16, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(2) On page 2, between lines 19 and 20, insert the following:

(c) The Student Fee Advisory Committee as established in Section 54.503 of this code shall review and make recommendations on the fixing, collection, and expenditure of building use and general fees collected from students for the retirement of bonds issued for capital improvements. The president of each institution shall duly consider the recommendations of the Student Fee Advisory Committee on building use and general fees. This review shall take place before the governing board of each institution approves the budget for the upcoming year.

Amendment - Cavazos

Amend **C.S.S.B. 887** by striking SECTION 2 of the bill and renumbering the following sections appropriately.

The amendments were read.

Senator Montford moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 887** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Montford, Chair; Barrientos, Haley, Armbrister, Sims.

SENATE BILL 884 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 884** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Cain

Amend **S.B. 884** as follows:

(1) On page 1, line 22, insert the following after "state" and before "and": ", must be board certified in administrative law,".

The amendment was read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendment to **S.B. 884** by a viva voce vote.

SENATE BILL 885 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 885** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Evans, Hilbert

Amend **S.B. 885** on page 2, line 15 by adding the following before the period:

, provided that the bailiff or law enforcement officer may not carry a weapon in the presence of the child

Floor Amendment on Third Reading - Jones

Amend **S.B. 885** on third reading by adding Subsection (d) to Section 51.09, Family Code:

(d) This section does not preclude the admission of a statement made by the child if:

(1) the child makes the statement:

(A) in open court at the child's adjudication hearing;

(B) before a grand jury considering a petition, under Section 53.045 of this code, that the child engaged in delinquent conduct; or

(C) at a preliminary hearing concerning the child held in compliance with this code, other than at a detention hearing under Section 54.01 of this code;

(2) the statement does not stem from custodial interrogation; or

(3) without regard to whether the statement stems from custodial interrogation, the statement is voluntary and has a bearing on the credibility of the child as a witness.

The amendments were read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendments to **S.B. 885** by a viva voce vote.

SENATE BILL 26 WITH HOUSE AMENDMENT

Senator Glasgow called **S.B. 26** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Culberson

Amend **S.B. 26** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the composition, powers, and duties of the Texas Council on Offenders with Mental Impairments.

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

SECTION 1. Sections 1, 3, 5, 7, 8, and 9, Article 4413(49a), Revised Statutes, are amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Offender with mental illness" [~~"Mentally ill offender"~~] means a juvenile or adult [~~person~~] arrested or charged with a criminal offense who has a mental illness.

(2) "Mental illness" has the meaning assigned by Section 4, Texas Mental Health Code (Article 5547-4, Vernon's Texas Civil Statutes) [~~means an illness, disease, or condition that either:~~

[~~(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or~~

[~~(B) grossly impairs a person's behavior, as manifested by recent disturbed behavior~~].

(3) "Offender with mental retardation" [~~"Mentally retarded offender"~~] means a juvenile or adult [~~person~~] arrested or charged with a criminal offense who has mental retardation, other than a mentally disordered person, whose mental deficit requires him to have special training, education, supervision, treatment, care, or control in his home or community or in a private or state school for the mentally retarded.

(4) "Mental retardation" has the meaning assigned by Section 3, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes) [~~means significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period~~].

(5) "Offender with a mental disability" means a juvenile or adult arrested or charged with a criminal offense who has a developmental disability.

(6) "Developmental disability" [~~"Developmentally disabled"~~] means a [~~condition of~~] severe, chronic disability of a person that:

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

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely;

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

(i) self-care;

(ii) self-direction;

(iii) learning;

(iv) receptive and expressive language;

(v) mobility;

(vi) capacity for independent living; or

(vii) economic self-sufficiency; and

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

(7) [~~(6)~~] "Adaptive behavior" means the effectiveness with which a person meets the standards of personal independence and social responsibility reasonably expected of the person's age and cultural group.

(8) [~~(7)~~] "Case management" means a process by which one person, or a team that is responsible for establishing and remaining in contact with a mentally ill, developmentally disabled, or mentally retarded person on a continuing basis, provides to the person access to the services required by that person and ensures the coordinated delivery of those services to that person.

(9) [~~(8)~~] "Council" means the Texas Council on Offenders with Mental Impairments.

(10) "Offender with a mental impairment" [~~(9) "Offenders with Mental Impairments"~~] means an offender with mental illness, mental retardation, or a mental disability [~~a mentally ill offender, a mentally retarded offender, or a developmentally disabled offender as those terms are defined in this Act~~].

Sec. 3. MEMBERSHIP. (a) The council is composed of 28 members. The governor shall appoint, with the advice and consent of the senate, nine at-large members to serve on the council. The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated representative, shall serve as members of the council:

(1) the institutional division of the Texas Department of Criminal Justice;

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

(3) the pardons and paroles division of the Texas Department of Criminal Justice;

(4) the community justice assistance division;

(5) the Texas Juvenile Probation Commission;

(6) the Texas Youth Commission;

(7) the Texas Rehabilitation Commission;

(8) the Central Education Agency;

(9) the Criminal Justice Policy Council;

(10) the Mental Health Association in Texas;

(11) the Texas Commission on Alcohol and Drug Abuse;

(12) the Commission on Law Enforcement Officer Standards and Education;

(13) the Texas Council of Community Mental Health and Mental Retardation Centers;

(14) the Commission on Jail Standards;

(15) the Texas Planning Council for Developmental Disabilities;
(16) the Texas Association for Retarded Citizens;
(17) the Texas Alliance for the Mentally Ill;
(18) the Parent Association for the Retarded of Texas, Inc.; and
(19) the Texas Department of Human Services.

(b) The governor shall appoint:

(1) four members who have expertise in mental health, mental retardation, or developmental disabilities, one of whom must be a psychiatrist;
(2) one member who is the judge of a court with criminal jurisdiction;
(3) one member who is a prosecuting attorney;
(4) one member who is a criminal defense attorney;
(5) one member from an established pretrial services agency; and
(6) one member who has expertise in the criminal justice system.

(c) In making the appointments the governor shall attempt to reflect the geographic and economic diversity of the state.

(d) It is a ground for removal if an at-large member:

(1) is not eligible for appointment at the time of appointment as provided by Subsections (b) and (e) of this section;
(2) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during each calendar year; or
(3) is absent from more than two consecutive regularly scheduled council meetings that the member is eligible to attend.

(e) If an executive head of a state agency designates a representative as a member, the representative must be an officer or employee of the agency at the time of the designation and during the time of his service on the council. If the director of the Criminal Justice Policy Council designates a representative as a member, the representative must be an employee of the Criminal Justice Policy Council at the time of the designation and during the time of service on the council. At the time of their appointment or designation and during the term of their service, the [~~association members and the at-large~~] members who are not associated with a state agency or division must have expertise in the rehabilitation of persons with mental illness, mental retardation, or a developmental disability [~~mentally retarded, developmentally disabled, or mentally ill persons~~].

Sec. 5. OFFICERS; MEETINGS; QUORUM. (a) At the first meeting of each calendar year, the council shall elect a presiding officer [~~chairman~~] from its members.

(b) The council shall meet at least four times each year. The council may meet at other times at the call of the presiding officer [~~chairman~~] or as provided by council rule.

(c) A quorum consists of 15 members.

Sec. 7. POWERS AND DUTIES. The council shall:

(1) determine the status of offenders with mental impairments in the state criminal justice system;
(2) identify needed services for offenders with mental impairments;
(3) develop a plan for meeting the treatment, rehabilitation, and educational needs of offenders with mental impairments, including a case management system and the development of community-based alternatives to incarceration;
(4) cooperate in coordinating procedures of represented agencies for the smooth and orderly provision of services for offenders with mental impairments;
(5) evaluate various in-state and out-of-state programs for offenders with mental impairments and recommend to the directors of current state programs methods of improving those programs;

(6) collect and disseminate information about available programs to judicial officers, law enforcement officers, probation and parole officers, providers of social services or treatment, and the general public;

(7) distribute money appropriated by the legislature to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of programs for offenders with mental impairments;

(8) apply for and receive money made available by the federal or state government or by any other public or private source to be used by the council to perform its duties; and

(9) develop and implement pilot projects to demonstrate a cooperative program that identifies, evaluates, and manages outside of incarceration offenders with mental impairments [~~and~~] who do not have an instant offense that is an offense described in Section 3g, Article 42.12, Code of Criminal Procedure.

Sec. 8. DEVELOPMENT OF PILOT PROGRAM. (a) The council shall establish a pilot program in a county selected by the council to implement a collaborative community-based alternative system to divert [~~nonviolent mentally or emotionally impaired offenders~~] from the criminal justice system in Texas offenders with mental impairments who do not have an instant offense that is described in Section 3g, Article 42.12, Code of Criminal Procedure, and to rehabilitate them. The program shall conform with the report and recommendations made by the Texas Department of Mental Health and Mental Retardation and the Texas Department of Corrections to the 70th Legislature as directed by **S.C.R. No. 128**, 69th Legislature, Regular Session, 1985. The council may contract for or employ and train a case management team to carry out project purposes and to coordinate the joint efforts of agencies represented on the council.

(b) The agencies represented on the council shall perform duties and offer services as required by the council to further the purposes of the project and the council.

Sec. 9. BIENNIAL REPORT. Not later than February 1 of each odd-numbered year, the council shall file a report with the governor, lieutenant governor, and speaker of the house of representatives detailing the activities of the council during the preceding biennium. The report must include an evaluation of any demonstration project undertaken by the council, an evaluation of the council's progress toward developing a plan for meeting the treatment, rehabilitative, and educational needs of [~~mentally retarded, developmentally disabled, and mentally ill~~] offenders with mental impairments, recommendations of the council made in accordance with Subdivision (5) of Section 7 of this Act, and any other recommendations that the council considers appropriate.

SECTION 2. This Act takes effect September 1, 1991.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Glasgow and by unanimous consent, the Senate concurred in the House amendment to **S.B. 26** by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 355 ADOPTED

Senator Zaffirini called from the President's table the Conference Committee Report on **S.B. 355**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Zaffirini, the Conference Committee Report was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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.C.R. 252, Designating the first full week in May of each year as Energy Appreciation Week.

H.C.R. 253, Expressing support for the city of Corpus Christi in its efforts to become the permanent home of the replicas of the Christopher Columbus caravels.

S.C.R. 155, Commending D. Jerrell Huffman.

S.C.R. 156, Commending Ben F. Bane.

S.C.R. 159, Resolving that the 72nd Texas Legislature adopt as the official design of the reverse side of the Great Seal of Texas the design described in **S.C.R. 159**.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 6 ADOPTED

Senator Leedom called from the President's table the Conference Committee Report on **S.J.R. 6**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Leedom, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 841 ADOPTED

Senator Armbrister called from the President's table the Conference Committee Report on **H.B. 841**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1704 ADOPTED

Senator Brooks called from the President's table the Conference Committee Report on **H.B. 1704**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Brooks, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1367 ADOPTED

Senator Krier called from the President's table the Conference Committee Report on **H.B. 1367**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Krier, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2555 ADOPTED

Senator Brown called from the President's table the Conference Committee Report on **H.B. 2555**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1004 ADOPTED

Senator Johnson called from the President's table the Conference Committee Report on **H.B. 1004**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Johnson, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1314

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1314** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS	RODRIGUEZ
JOHNSON	LUNA
GREEN	BLAIR
WHITMIRE	COLBERT
BROOKS	SCHOOLCRAFT
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1770 ADOPTED

Senator Lucio called from the President's table the Conference Committee Report on **H.B. 1770**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Lucio, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2140 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **H.B. 2140**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 1412 WITH HOUSE AMENDMENTS

Senator Tejeda called **S.B. 1412** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Schoolcraft

Amend the quoted subdivision (19) of Section 773.003, Health and Safety Code, of Section 3 of **S.B. 1412** by deleting the words "or traumatic" following the word "medical" at lines 17-18, page 4, thereof.

Amendment - Schoolcraft

Amend the quoted subdivision (b)(1) of Section 4 of **S.B. 1412** to read as follows:

"(1) three licensed physicians, one of whom must be ~~[a board-certified emergency physician;]~~ appointed from nominations received from a statewide professional association of physicians, one of whom must be a board-certified emergency physician appointed from nominations received from a statewide professional association of emergency physicians, and one of whom must be a physician experienced in emergency medicine appointed from nominations received from a statewide professional association of emergency physicians;"

Amendment - Schoolcraft

Amend **S.B. 1412** by adding new SECTIONS 4 and 5 thereof, renumbering the remaining sections accordingly, as follows:

SECTION 4. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding new Sections 7.03 and 7.04 thereof, to read as follows:

"Sec. 7.03. STANDARD OF PROOF IN CERTAIN CASES. (a) In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care, the person bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows by clear and convincing

evidence that the physician or health care provider did not use the degree to care and skill that:

(1) may reasonably be expected of a prudent, competent physician or health care provider in the same or similar circumstances; and

(2) is commensurate with the care and skill of other physicians or health care providers of similar training, experience, or certification.

(b) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care, the court shall instruct the trier of fact to consider, together with all other relevant matters:

(1) whether the person providing care lacked the patient's medical history or was unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the lack of a preexisting physician-patient relationship; and

(3) the circumstances constituting the emergency.

(c) The provisions of Subsections (a) and (b) of this Section do not apply to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient; or

(2) that is unrelated to the original medical emergency.

"Sec. 7.04. CONFLICT WITH TEXAS RULES OF CIVIL EVIDENCE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Evidence, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, the Supreme Court may not ascend or adopt rules in conflict with this subchapter."

SECTION 5. Section 14.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by inserting a new subsection (b) and renumbering and amending subsection (b) thereof, to read as follows:

"(b) In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care, a person may qualify as an expert witness on the issue of whether the physician or health care provider departed from accepted standards of medical care or health care only if:

(1) for a claim against a physician or health care provider who is certified in a specialty by a nationally recognized private medical or health professional specialty organization, the person is actively practicing in that specialty and was actively practicing at the time the claim arose and been certified by the board in that specialty for a period of at least three years preceding the filing of the claim and has actual knowledge of accepted standards of medical care or health care for the diagnosis, care or, treatment of the illness, injury or condition involved in the claim; or

(2) for a claim against a physician or health care provider who is not certified in a specialty by a nationally recognized private medical or health professional specialty organization, the person is actively practicing in the same or similar medical or health care field at the time such testimony is given and was actively so practicing at the time the claim arose and has actual knowledge of accepted standards of medical care or health care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim.

(c) [~~(b)~~] For the purposes of subdivision (a)(1) and subsection (b) of this section, "practicing" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy, or other health care profession; [~~or~~] serving as a consulting physician to other physicians or health care professionals who provide direct patient care, upon the request of such other physicians; or providing direct patient care for an average of forty (40) hours per month.

The amendments were read.

Senator Tejeda 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 Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 1412** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Tejeda, Chair; Zaffirini, Moncrief, Lyon, Brooks.

SENATE BILL 1436 WITH HOUSE AMENDMENT

Senator Bivins called **S.B. 1436** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - De La Garza

Amend **S.B. 1436** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the availability of certain defenses to the prosecution of the offense of causing injury to a child, an elderly individual, or an invalid.

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

SECTION 1. Section 22.04, Penal Code, is amended by adding Subsection (l) to read as follows:

(l) It is a defense to prosecution under this section that the actor did not intend to engage in the conduct described in Subsections (a)(1)-(a)(4) of this section. It is not a defense to prosecution under this section that the actor did not intend the result of the actor's conduct.

SECTION 2. This Act takes effect September 1, 1991.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Bivins moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.B. 1436** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Bivins, Tejeda, Sims, Armbrister.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2411 ADOPTED

Senator Lyon called from the President's table the Conference Committee Report on **H.B. 2411**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Lyon, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1103 ADOPTED

Senator Sims called from the President's table the Conference Committee Report on **S.B. 1103**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Sims, the Conference Committee Report was adopted by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 112

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 112, Affirming continued support for and commitment to a dual banking system.

The resolution was read.

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

HOUSE CONCURRENT RESOLUTION 228

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 228, Recognizing 1991 as the Bill of Rights Bicentennial.

The resolution was read.

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

(President in Chair)

CONFERENCE COMMITTEE ON SENATE BILL 380 DISCHARGED

On motion of Senator Carriker and by unanimous consent, the Senate conferees on **S.B. 380** were discharged.

Question—Shall the Senate concur in the House amendments to **S.B. 380**?

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendments to **S.B. 380** by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 91

The President laid before the Senate the following resolution:

H.C.R. 91, Reauthorizing the State Preservation Board to erect, on the Capitol grounds, a memorial honoring Texans who fought and died in the Korean war and the war in Vietnam and Southeast Asia.

The resolution was read.

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

SENATE RESOLUTION 887

Senator Brooks offered the following resolution:

S.R. 887, Resolving that the State of Texas will take all actions for the full implementation of the Americans with Disabilities Act.

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

SENATE BILL 1538 WITH HOUSE AMENDMENT

Senator Harris of Dallas called **S.B. 1538** 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 - Cain

Amend **S.B. 1538** as follows:

(1) On page 1, line 24, insert "contract" before the word "duty".

(2) On page 2, line 5, insert between "cause" and "." the following: ", determined in light of reasonable commercial standards"

(3) On page 2, insert the following new Section 4 of the bill after current Section 3 of the bill, and renumber all subsequent sections of the bill accordingly:

"SECTION 4. The duties created under this Act are not actionable in tort."

(4) Delete current Section 4 of the bill and insert the following:

"SECTION 5. The laws of Texas apply to a franchise in which the franchisee is doing business in Texas. An action brought to resolve a dispute arising under a franchise covered by this Act in which the franchisee is doing business in Texas shall be brought in the appropriate forum in Texas.

(5) On page 2, after line 10, insert the following new Section 6 of the bill:

"SECTION 6. This Act applies only to a franchise executed, renewed, or extended on or after the effective date of this Act."

The amendment was read.

Senator Harris of Dallas moved to concur in the House amendment to **S.B. 1538**.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2719

Senator Sims submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2719** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

SIMS	P. GALLEGO
HALEY	SCHECHTER
HARRIS OF TARRANT	UHER
LEEDOM	SMITHEE
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2054

Senator Harris of Tarrant submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2054** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS OF TARRANT	PARK
MONCRIEF	MADLA
BROOKS	HARRIS
SIBLEY	SMITHEE
ARMBRISTER	
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 66 ADOPTED

Senator Dickson called from the President's table the Conference Committee Report on **H.B. 66**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Dickson, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 818 WITH HOUSE AMENDMENTS

Senator Barrientos called **S.B. 818** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment - R. Lewis

Amend **S.B. 818** as follows:

On pages 4 and 5, strike subsection (h) and substitute the following:

(h) The Texas Water Commission shall apportion, assess and recover the reasonable costs of administering water quality management programs under this section from all users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. The cost to river authorities and others to conduct regional water quality assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality assessment and associated costs. The rules shall insure that water users and wastewater dischargers do not pay excessive amounts; that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section; and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Sec. 26.177 of this chapter.

Committee Amendment - R. Lewis

Amend **S.B. 818** as follows:

On page 7, line 7, after "review" add:
and in accordance with rules and submission schedules promulgated by the commission.

Amendment - Oliveira

Amend **S.B. 818** as follows:

Insert (j) on page 2, before Subsection 2 and after (i)(1) and (2) the following and renumber accordingly:

SUBCHAPTER L. PLUMBING IMPROVEMENT LOANS

Sec. 15.731. DEFINITIONS. In this subchapter:

(1) "Fund" means the plumbing loan fund.

(2) "Plumbing assistance loan" means a loan provided by the board to a political subdivision for the political subdivision's plumbing improvement loan program.

(3) "Plumbing improvement loan" means a loan provided by a political subdivision to an individual under this subchapter.

(4) "Political subdivision" means a county, a municipality, a nonprofit member-owned, member-controlled water supply corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), or a district or authority created and operating under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(5) "Water conservation" has the meaning assigned by Section 17.921 of this code.

Sec. 15.732. PLUMBING LOAN FUND. (a) The plumbing loan fund is created.

(b) The fund is held separately from other funds outside the state treasury. The board shall keep and maintain the fund and any accounts established in the fund.

(c) At the direction of the board, the fund or accounts in the fund may be kept and held in escrow and in trust by the state treasurer for and on behalf of the board. If the fund or accounts in the fund are held in escrow and in trust by the state treasurer, the fund or accounts may be used only as provided by this subchapter and, pending their use, shall be invested in authorized investments as provided by any order, resolution, or rule of the board.

(d) Legal title to money and investments in the fund is in the board unless or until paid out as provided by this subchapter or rules of the board.

(e) The state treasurer, as custodian, shall administer the funds strictly and solely as provided by this subchapter and in the orders, resolutions, and rules of the board, and the state shall take no action with respect to the fund other than that specified in this subchapter, an agreement made with the Environmental Protection Agency or another federal agency, applicable federal requirements, and the rules of the board.

Sec. 15.733. ADMINISTRATION AND OPERATION OF FUND. (a) The board shall administer the fund in accordance with state law, rules of the board, and any federal requirements imposed because of a grant of money to the fund by an agency of the federal government.

(b) The board may execute agreements with the Environmental Protection Agency or any other federal agency to establish and administer the fund and may discharge the duties and responsibilities required for the administration of the fund.

(c) The fund consists of money derived from federal grants, from earnings on the investment of money credited to the fund, and, at the board's discretion, from any other available source.

(d) The board shall deposit money received for repayment of a plumbing assistance loan made to a political subdivision in the fund.

(e) At the direction of the governor, any money in the fund may be transferred to the state water pollution control revolving fund under Subchapter J of this chapter.

(f) The fund remains available in perpetuity for providing loans under this subchapter, except to the extent that the fund may be reduced or eliminated as provided by this subchapter.

Sec. 15.734. USE OF FUND. The board may use money in the fund, unless prohibited by an agreement made with a federal agency under this subchapter, to:

(1) make a plumbing assistance loan;

(2) administer the fund; and

(3) grant or lend money to a political subdivision to defray the political subdivision's expenses incurred in administering a plumbing improvement loan program.

Sec. 15.735. APPLICATION SUBMISSION AND APPROVAL. (a) A political subdivision located in the county of Brewster, Cameron, El Paso, Hidalgo, Hudspeth, Maverick, Presidio, Starr, Terrell, Val Verde, Webb, or Zapata in which residences do not have water or wastewater facilities that meet minimum standards established by the Texas Department of Health or the Texas Water Commission or in any other area designated by federal law to benefit from the fund may submit to the board an application for a plumbing assistance loan in accordance with rules adopted by the board. The application must include:

(1) the legal name of the political subdivision and a citation to the law under which it operates and was created;

(2) a description of the water conservation methods to be used in the provision of water and wastewater service in the area the political subdivision proposes to affect by its plumbing improvement loan program;

(3) a map showing the location of the area the political subdivision proposes to affect by its plumbing improvement loan program;

(4) a description of the subdivision's proposed plumbing improvement loan program; and

(5) other information as required by board rule.

(b) The board may approve a plumbing assistance loan to a political subdivision only if the political subdivision is in a county that has adopted the model rules developed under Section 16.343 of this code. The board may approve a plumbing assistance loan to a municipality only if the municipality has adopted the model rules developed under Section 16.343 of this code.

(c) The board may approve a plumbing assistance loan to a political subdivision only if the political subdivision is, or is in an area within the jurisdiction of, an authorized agent of the Texas Department of Health under Subchapter C, Chapter 366, Health and Safety Code.

(d) The board may not approve an application for a plumbing assistance loan to a political subdivision unless the board finds that the political subdivision is financially capable of managing a plumbing improvement loan program and that the public interest will be served by the plumbing assistance loan.

(e) The board shall set interest rates to be charged to political subdivisions on plumbing assistance loans.

Sec. 15.736. POLITICAL SUBDIVISION PLUMBING IMPROVEMENT LOAN PROGRAM ADMINISTRATION; PLUMBING ASSISTANCE LOAN REPAYMENT. (a) A political subdivision that receives a plumbing assistance loan shall establish and administer a program to make plumbing improvement loans to individuals at an interest rate lower than the current market rate, including charging no interest.

(b) A political subdivision may use the proceeds from a plumbing assistance loan to make a plumbing improvement loan to be used to pay:

(1) costs to connect a residence to a water distribution system;

(2) costs to provide yard service connections;

(3) costs to provide a residence with indoor plumbing facilities and fixtures;

(4) costs of connecting a residence to a sewer collection system or of providing a residence with a suitable on-site wastewater disposal system for the residence to meet applicable county or municipal code requirements;

(5) costs of building improvements or correction of building deficiencies necessary to allow plumbing to be installed in a residence;

(6) necessary connection fees and permit fees; or

(7) necessary costs of design related to plumbing improvements.

(c) The political subdivision shall repay its plumbing assistance loan from the money it receives as repayment of plumbing improvement loans it has made. To the extent the political subdivision is unable to collect the payments on its plumbing improvement loans made from the proceeds of a plumbing assistance loan, the political subdivision is not obligated to repay a plumbing assistance loan.

(d) A political subdivision shall use all reasonable means to collect payments on plumbing improvement loans. The board may bring a mandamus action in a district court in Travis County, or may use any other legal means, to compel a political subdivision to take action to collect plumbing improvement loan payments.

Sec. 15.737. RULES. The board may adopt rules necessary to carry out this subchapter.

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 amendments were read.

Senator Barrientos moved to concur in the House amendments to **S.B. 818**.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1679 ADOPTED

Senator Montford called from the President's table the Conference Committee Report on **H.B. 1679**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Montford, the Conference Committee Report was adopted by a viva voce vote.

(Senator Green in Chair)

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

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

Senator Barrientos moved confirmation of the nominees reported Friday, May 24, 1991, by the Committee on Nominations.

The Presiding Officer asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees as reported by the Committee on Nominations were confirmed by the following vote: Yeas 31, Nays 0.

Member, Texas Board on Aging: MRS. PENNY BUTLER, Harris County.

Member, Board of Directors, Nueces River Authority: ALVARO D. SAENZ, Nueces County.

SENATE RESOLUTION 864

Senator Johnson offered the following resolution:

S.R. 864, Resolving that the 72nd Legislature of the State of Texas hereby encourage the governor to issue an executive order to foster increased state agency contracts with historically underutilized businesses, consisting of minority-owned, women-owned, and small businesses.

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

HOUSE CONCURRENT RESOLUTION 237

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 237, Encouraging the Texas Department of Human Services to develop a system of appropriate rate setting methodology which has as its focus the goal of quality care in all necessary and desirable settings.

The resolution was read.

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

SENATE CONCURRENT RESOLUTION 162

Senator Lucio offered the following resolution:

S.C.R. 162, Directing the State Board of Insurance to remove pharmacies from class 8017, "Retail Not Otherwise Classified" and provide a separate and discrete classification with a rate more appropriate to the actual loss history of Texas pharmacies.

The resolution was read.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 858

Senator Harris of Dallas submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 858** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HARRIS OF DALLAS	GIBSON
GREEN	JONES
HENDERSON	CRAWFORD
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the payment for a certified court reporter's charges for a deposition.

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

SECTION 1. Subchapter E, Chapter 52, Government Code, is amended by adding Section 52.059 to read as follows:

Sec. 52.059. CHARGES FOR DEPOSITIONS. (a) Except as provided by Subsection (c), an attorney who takes a deposition and the attorney's firm are jointly and severally liable for a shorthand reporter's charges for:

(1) the shorthand reporting of the deposition;

(2) transcribing the deposition; and

(3) each copy of the deposition transcript requested by the attorney.

(b) Except as provided by Subsection (c), an attorney who appears at a deposition and the attorney's firm are jointly and severally liable for a shorthand reporter's charges for each copy of the deposition transcript requested by the attorney.

(c) Prior to the taking of any deposition, a determination of the person who will pay for the deposition costs will be made on the record, if an attorney is unwilling to be bound by the provisions of Subsection (a) or (b).

(d) In this section:

(1) "Firm" means:

(A) a partnership organized for the practice of law in which an attorney is a partner or with which an attorney is associated; or

(B) a professional corporation organized for the practice of law of which an attorney is a shareholder or employee.

(2) An attorney "takes" a deposition if the attorney:

(A) obtains the deponent's appearance through an informal request;

(B) obtains the deponent's appearance through formal means, including a notice of deposition or subpoena; or

(C) asks the first question in the deposition.

SECTION 2. This Act takes effect September 1, 1991, and applies to a deposition taken on or after that date, without regard to the date on which an informal request, notice of deposition, or subpoena regarding the deposition was delivered or served.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 263

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 25, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 263** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS	DANBURG
KRIER	GIBSON
ROSSON	RUSSELL
BROWN	
LYON	
On the part of the Senate	On the part of the House

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

HOUSE CONCURRENT RESOLUTION 180

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 180, Granting the National Hispanic Institute permission to use the chambers of the Texas Senate and House of Representatives on July 31 and August 1-2, 1991.

The resolution was read.

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

HOUSE CONCURRENT RESOLUTION 103

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 103, Granting Bluebonnet Girls State permission to use the Senate and House chambers on June 17, 1991, and June 22, 1992.

The resolution was read.

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

HOUSE CONCURRENT RESOLUTION 153

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 153, Designating the square dance as the official State Folk Dance of Texas.

The resolution was read.

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

(President Pro Tempore Glasgow in Chair)

HOUSE CONCURRENT RESOLUTION 7

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

H.C.R. 7, Honoring the memory of the Republic of the Rio Grande and recognizing its flag as the seventh flag over Texas.

The resolution was read.

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

HOUSE CONCURRENT RESOLUTION 160

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

H.C.R. 160, Supporting the passage of **H.R. 1223** by the Congress of the United States, directing the Secretary of the Army to remove a railroad swing bridge crossing Clear Creek, Texas.

The resolution was read.

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

CONFERENCE COMMITTEE ON HOUSE BILL 1258 DISCHARGED

On motion of Senator Dickson and by unanimous consent, the Senate conferees on **H.B. 1258** were discharged.

PERMISSION TO MEET GRANTED

On motion of Senator Brooks and by unanimous consent, all conference committees were granted permission to meet while the Senate was in session.

AT EASE

Senator Brooks announced that the Senate would stand At Ease until 1:45 p.m.

IN LEGISLATIVE SESSION

Senator Glasgow called the Senate to order as In Legislative Session at 1:45 p.m.

SENATE BILL 543 WITH HOUSE AMENDMENTS

Senator Henderson called **S.B. 543** from the President's table for consideration of the House amendments to the bill.

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

Amendment - Oakley

Amend **S.B. 543** as follows:

(1) On page 5, line 4, strike "465.0082,".
(2) On page 7, strike lines 3-8.

Amendment - Oakley

Amend **S.B. 543** on page 8 by striking lines 5 and 6 and substituting the following:

"must comply with State Board of Insurance requirements relating to self-insurance."

Amendment - Conley

Amend **S.B. 543** on page 2 by inserting the following on line 23 after the period:

In making appointments under this section, the governor shall attempt to appoint members of different minority groups including females, African-Americans, Hispanic-Americans, Native Americans, and Asian-Americans.

Amendment - Dutton

Amend **S.B. 543** as follows:

(1) On page 25, between lines 8 and 9, add new SECTIONS 20, 21, and 22 to read as follows:

SECTION 20. Subdivision (5), Section 51.602, Education Code, is amended to read as follows:

(5) "Institution of higher education" means a public institution of higher education as defined by Subdivision (8) of Section 61.003 of the Education Code or a private college or university that issues degrees in this state and is accredited by a recognized accrediting agency as defined by Section 61.003 of this code.

SECTION 21. Section 51.604, Education Code, is amended to read as follows:

Sec. 51.604. USE OF FUND. The commissioner shall allocate the fund to eligible nonprofit organizations for the purpose of:

(1) establishing or operating educational programs to assist women or minority group members in preparing for or participating in programs leading to an undergraduate degree in engineering or science from an institution of higher education; [and]

(2) disseminating information concerning:

(A) educational and career opportunities in engineering and science; and

(B) the fund and programs funded under this subchapter; and

(3) establishing or operating programs to assist women and minority group members in preparing for careers in superconductivity research, including:

(A) recruitment seminars and mentorship programs, in cooperation with the Texas National Research Laboratory Commission and institutions of higher education that conduct superconductivity research;

(B) career exploration programs, in cooperation with public school districts; and

(C) career exploration programs, recruitment seminars, and mentorship programs, in cooperation with engineering and scientific research organizations.

SECTION 22. Subsections (c) and (d), Section 51.607, Education Code, are amended to read as follows:

(c) In addition, the committee members shall include:

(1) the presiding officer [~~chairman~~] of the House Higher Education Committee or the presiding officer's [~~chairman's~~] designee;

(2) a person appointed by the presiding officer [~~chairman~~] of the House Higher Education Committee;

(3) the presiding officer [~~chairman~~] of the Senate Education Committee or the presiding officer's [~~chairman's~~] designee; [~~and~~]

(4) a person appointed by the presiding officer [~~chairman~~] of the Senate Education Committee;

(5) the presiding officer of the House Science and Technology Committee; and

(6) a person appointed by the presiding officer of the House Science and Technology Committee.

(d) The presiding officer [~~chairman~~] of the House Higher Education Committee, [~~and~~] the presiding officer [~~chairman~~] of the Senate Education Committee, and the presiding officer of the House Science and Technology Committee serve as ex officio members of the committee. All other members serve terms of two years expiring on February 1 of each odd-numbered year. All appointed or designated committee members are eligible for reappointment or redesignation to consecutive terms.

(2) Renumber subsequent sections.

Amendment on Third Reading - Von Dohlen, Oakley

Amend **S.B. 543** on third reading, Sec. 465.010 by deleting subsection (b) and inserting in lieu thereof the following:

(b) The insurance arrangements authorized by this section are not subject to any statute or rule inconsistent with this section or to the Insurance Code. Provided, however, should the federal government wholly fail to fund the coverage specified in subsection (a) of this section, the Texas National Research Laboratory Commission shall so advise the State Board of Insurance which shall take appropriate action.

Amendment on Third Reading - Von Dohlen, Oakley

Amend **S.B. 543** on third reading as follows:

1. Add to Section 5, page 7, line 3 the following:

Sec. 465.0082. PURCHASING RULES. The commission shall adopt rules to guide its purchases of supplies, materials, services and equipment to carry out eligible undertakings as defined by Section 465.021. The commission shall use as a guide, whenever consistent with the commission's purposes, the rules of the State Purchasing and General Services Commission.

2. On page 20, lines 9-10, place a period after the word "rule" and strike the words "under sec. 465.0082, Government Code.".

The amendments were read.

On motion of Senator Henderson and by unanimous consent, the Senate concurred in the House amendments to **S.B. 543** by a viva voce vote.

SENATE BILL 430 WITH HOUSE AMENDMENTS

Senator Green called **S.B. 430** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment - Black

Amend **S.B. 430** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and operation of the State Board of Barber Examiners; providing penalties.

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

SECTION 1. Section 7, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for registration as a Class A registered barber:

(1) [~~(a)~~] being at least 16 years of age; and

(2) [~~(b)~~] successfully passing a written and practical examination demonstrating to the satisfaction of the board the applicant's fitness and competence to practice the art and science of barbering.

SECTION 2. Section 9, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (e), and (t) and by adding Subsections (u), (v), (w), (x), and (y) to read as follows:

(a) Any person desiring to conduct or operate a barber school or college in this state shall first obtain a permit from the board after demonstrating that said school or college has first met the requirements of this section. Said permit shall be prominently displayed at all times at such school or college. The board shall determine that an applicant for a barber school or college permit is financially sound and capable of fulfilling its commitments for training before granting the permit. Each applicant shall furnish a surety bond in the amount of $10,000, payable to the state, and conditioned to refund unpaid tuition if the school or college closes or ceases operation before its courses of instruction have been completed.

(e) A barber school or college shall submit a monthly progress report to the board regarding each student in attendance at the school or college. The report must certify the daily attendance record of the student and the number of credit hours earned by the student during the previous month. The school or college may not increase, decrease, or withhold for any reason the number of credit hours earned by a student. On completion by a student of a prescribed course of instruction, the school or college shall certify to the board that the student has completed the required number of hours and is eligible to take the appropriate examination. Each barber school or college permittee shall furnish to the board:

(1) the current course completion rates of students who attend a course of instruction offered by the school or college; and

(2) job placement rates and employment rates of students who complete a course of instruction.

(t) The Attorney General [~~or any District or County Attorney~~] may institute any injunction proceedings or such other proceeding as to enforce the provisions of this Act, and to enjoin any barber or school or college from operating without having complied with the provisions hereof, and each shall forfeit to the State of Texas the sum of Twenty-five Dollars ($25) per day as a penalty for each day's violation, to be recovered in a suit by the [~~District or County Attorney, and/or the~~] Attorney General. An action for an injunction under this section must be brought in Travis County.

(u) A holder of a barber school or college permit shall furnish each prospective student with:

(1) a copy of the course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy imposed under Section 9A of this Act;

(4) regulations relating to absences;

(5) the grading policy;

(6) the rules of operation and conduct;

(7) regulations relating to incomplete grades;

(8) the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; and

(9) the current rates of job placement and employment of students who complete a course of training.

(v) A holder of a barber school or college permit shall publish in its catalogue and enrollment contract a description of the refund policy required under Section 9A of this Act.

(w) If the board has reasonable cause to believe that a barber school or college has violated this Act or a rule adopted under this Act, the board may order a peer review of the school or college or suspend the admission of students to the school or college. A peer review ordered under this subsection shall be conducted by a peer review team composed of knowledgeable persons selected by the board. The board shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states. The team shall provide the board with an objective assessment of the content of the curriculum and its application. The school or college under review shall pay the costs of the peer review.

(x) A barber school or college must submit to the board for approval the course lengths and curriculum content for each course offered by the school or college. The course lengths and content may not be implemented unless the board approves them. The course lengths and content shall reasonably ensure that students develop the job skills and knowledge necessary for employment. The board shall require a school or college to account fully for all curriculum contents and course lengths before issuing or renewing a permit, and a school or college that is manipulating course lengths below or above industry standards shall be placed on probation until justification for the deviation is proved or the practice ceases.

(y) A barber school or college that violates this Act or a rule adopted under this Act is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. The civil penalty may not exceed $1,000 a day for each violation. The Attorney General, at the request of the board, may bring a civil action to collect a civil penalty under this subsection. Civil penalties recovered in a suit brought under this subsection shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 3. Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by adding Section 9A to read as follows:

Sec. 9A. (a) Each holder of a barber school or college permit must maintain a cancellation and settlement policy that provides a full refund of all money paid by a student if:

(1) the student cancels the enrollment agreement or contract not later than midnight of the third day after the date on which the agreement or contract is signed by the prospective student, excluding Saturdays, Sundays, and legal holidays; or

(2) the enrollment of the student was procured as a result of a misrepresentation made in the advertising or promotional materials of the school or college or a representation by an owner or representative of the school or college.

(b) Each holder of a barber school or college permit must maintain a refund policy for the refund of the unused part of tuition, fees, and other charges assessed a student if the student, at the expiration of the cancellation period established under Subsection (a) of this section, fails to enter the course of training, withdraws from the course of training, or is terminated from the course of training before completion of the course. The refund policy must provide that:

(1) a refund is based on the period of the student's enrollment, computed on the basis of course time expressed in clock hours;

(2) the effective date of the termination for refund purposes is the earliest of:

(A) the last date of attendance, if the student is terminated by the school or college;

(B) the date of receipt by the permit holder of written notice of withdrawal by the student; or

(C) 10 school days after the last date of attendance; and

(3) if tuition is collected before beginning the course of training and if, after the expiration of the cancellation period, the student does not begin the course of training, the school or college may retain not more than $100.

(c) If a student who begins a course of training that is scheduled to run not more than 12 months withdraws from the course or is terminated from the course by the school or college, the barber school or college may retain $100 in tuition and fees paid by that student and is not obligated to refund any additional outstanding tuition if the student withdraws or is terminated during the last 50 percent of the course. If the student withdraws or is terminated before the last 50 percent of the course begins, the school or college shall refund the following percentages of any outstanding tuition:

(1) for withdrawal or termination occurring during the first week or first one-tenth of the course, whichever is less, 90 percent;

(2) for withdrawal or termination occurring after the first week or first one-tenth of the course, whichever is less, but within the first three weeks of the course, 80 percent;

(3) for withdrawal or termination occurring after the first three weeks of the course but not later than the last date of the first 25 percent of the course, 75 percent; and

(4) for withdrawal or termination occurring not later than the completion of the second 25 percent of the course, 50 percent.

(d) For students withdrawing or terminating after 50 percent of the course has been completed, the school must allow that student to reenter at any time during the 48-month period following the date of withdrawal or termination.

(e) A refund owed under this section must be paid not later than the 30th day after the date on which the student becomes eligible for the refund.

(f) If a refund is not made within the period required by this section, the school or college shall pay interest on the refund for the interval beginning with the first day following the expiration of the refund period and ending with the day

immediately preceding the date the refund is made. If the refund is made to a lending institution, the interest shall also be paid to that institution and applied against the student's loan. The commissioner of education annually shall establish the level of interest at a level sufficient to provide a deterrent to the retention of student funds. The board may exempt a school or college from the payment of the interest if the school or college makes a good faith effort to refund the tuition but is unable to locate the student. The school or college shall provide to the agency on request documentation of the effort to locate the student.

(g) A barber school or college shall record a grade of "incomplete" for a student who withdraws but is not entitled to a refund under Subsection (c) of this section if the student requests the grade at the time the student withdraws and the student withdraws for an appropriate reason unrelated to the student's academic status. A student who receives a grade of incomplete may reenroll in the program during the 48-month period following the date the student withdraws and may complete those incomplete subjects without payment of additional tuition.

SECTION 4. Section 10, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. (a) Each applicant for an examination shall:

(1) apply [~~(a) Make application~~] to the Board on blank forms prepared and furnished by the Board for an examination before the Board, which application shall be in such form and shall contain such matters as may be required by the Board, and shall be verified by the oath of said applicant;[:]

(2) [~~(b) Each applicant shall at the time of the presentation of the application~~] furnish to the Board at the time of application photographs of such applicant, one to accompany the application and one to be returned to the applicant to be presented to the Board when applicant appears for examination; and[:]

(3) [~~(c) Each applicant shall at the time of the presentation of the application~~] pay to the Board at the time of application the fee required under this Act.

(b) Not later than the 30th day after the date on which an examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination not later than the 14th day after the date on which the Board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the examination, the Board shall furnish the person with an analysis of the person's performance on the examination.

(c) The [~~(d) Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested in writing by a person who fails the examination, the Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.~~

[~~(e) On a reciprocal basis with other states or countries, the~~] Board may waive any license requirement for [~~issue, without examination, a certificate, license, or permit to~~] an applicant with a valid [~~who has a corresponding certificate,~~] license from[~~, or permit issued by~~] another state or country having [~~standards for the certificate,~~] license requirements[~~, or permit that are at least~~] substantially equivalent to those of this state [~~and who pays the fee prescribed by this Act~~]. The Board may not require a personal interview as part of the application process.

SECTION 5. Section 11, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The Board shall examine [~~conduct examination of~~] applicants for certificates of registration to practice as Class A registered barbers and [~~of applicants to enter~~] barber teachers [~~schools to determine their educational fitness;~~] not less than four times each year, at such times and places as the Board may determine and designate. The Board shall use a written examination, selected by the Board, to examine applicants. The examination shall include a practical examination [~~of applicants for certificates of registration as Class A registered barbers shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the Board~~]. The written examination must be validated by independent testing professionals or be purchased from a national testing service.

(c) On receipt of a written request by a student, the Board may provide for the early written examination of a Class A registered barber or barber teacher student who has completed at least 1,000 hours of instruction in a training program approved by the Board. Agency inspectors may administer an examination conducted under this subsection on-site at barber schools and colleges throughout the state.

SECTION 6. Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by adding Section 11A to read as follows:

Sec. 11A. (a) The board may issue a temporary work permit to any student who has completed 1,500 hours of instruction in an approved barber school or college program and who has applied for the practical examination. The temporary work permit expires on the earlier of the date the student is scheduled for the practical examination or 90 days from the date the temporary permit is issued.

(b) The board may assess a fee for a temporary work permit. The board shall set the fee in an amount reasonable and necessary to defray the costs of administering this section.

SECTION 7. Sections 14(b) and (c), Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a barber technician license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed a course of instruction through a training program approved by the Board of not less than 300 hours in a period of not less than eight weeks. The course must include the theory and practice of the following subjects:

(1) all laws governing the practice of barbering in this state;
(2) hygienic bacteriology;
(3) histology of the skin, muscles, and nerves;
(4) the structure of the head, neck, and face;
(5) elementary chemistry relating to sterilization and antiseptics;
(6) common disorders of the skin;
(7) massaging and manipulating muscles of the scalp, face, and neck;
(8) shampooing;
(9) administering facial treatments;
(10) preparing patrons and making appointments; and
(11) any other skills, techniques, services, treatments, or undertakings within the definition of the practice of barbering under Subsection (a) of this section.

(c) The application must be made on a form prescribed by the Board, accompanied by the $10 administration fee. [~~The application and fee must be filed not later than the 10th day before the date set for the examination.~~]

SECTION 8. Sections 15(b) and (c), Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a manicurist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 300 hours instruction in manicuring through a training program approved by the board.

(c) The application shall be made on a form prescribed by the board and a $10 administration fee must accompany the application. [~~The application and fee shall be filed at least 10 days prior to the date set for the examination.~~]

SECTION 9. Sections 16(b) and (c), Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a wig specialist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 300 hours of instruction through a training program approved by the board in the care and treatment of wigs.

(c) The application shall be made on a form prescribed by the commission and a $10 administration fee must accompany the application. [~~The application and fee must be filed at least 10 days prior to the date set for the examination.~~]

SECTION 10. Sections 17(b) and (c), Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a wig instructor license must have a valid wig specialist license and have completed 200 hours of instruction through a training program approved by the board in advanced wig courses and methods of teaching.

(c) The application shall be made on a form prescribed by the board and a $5 administration fee must accompany the application. [~~The application and fee must be filed at least 10 days prior to the date set for the examination.~~]

SECTION 11. Section 20b, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20b. The board by rule may adopt a system under which certificates or licenses expire on various dates during the year. For the year in which the expiration date is changed, certificate renewal or license fees payable on November 1 shall be prorated on a monthly basis so that each certificate or license holder shall pay only that portion of the certificate or license renewal fee which is allocable to the number of months during which the certificate or license is valid. On renewal of the certificate or license on the new expiration date, the total certificate or license renewal fee is payable.

SECTION 12. Section 21, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. (a) The board shall either refuse to issue or to renew, or shall suspend or revoke any certificate of registration or license for any one of, or a combination of the following causes:

(1) [~~(A)~~] Gross malpractice;

(2) [~~(B)~~]Continued practice by a person knowingly having an infectious or contagious disease;

(3) [~~(C)~~] Advertising by means of knowingly making false or deceptive statements;

(4) [~~(D)~~] Advertising, practicing, or attempting to practice under another's trade name or another's name; or

(5) [~~(E)Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;~~

[~~(F)~~] The commission of any of the offenses described in Section 24 of this Act.[;]

(b) [~~(G)~~] No certificate or license shall be issued or renewed, unless and until each applicant shall present a health certificate from a practicing doctor of medicine or doctor of osteopathic medicine showing that the applicant is free from any kind of infectious or contagious diseases[~~, tuberculosis, communicable diseases, and free from the use of any kind of morphine, cocaine, or other habit-forming drug, or a habitual drunkard and that said applicant shall make affidavit to said doctor that all of the said facts are true~~].

SECTION 13. Section 22, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22. VIOLATION OR NONCOMPLIANCE WITH REQUIREMENT; HEARING; DENIAL, REVOCATION OR REFUSAL TO RENEW CERTIFICATE; APPEAL. (a) If a barber inspector believes that any of the grounds specified in Section 21 exist, or that the holder of a certificate, license, or permit has failed to comply with any of the requirements of this Act, he shall notify the holder of the certificate, license, or permit of that fact and summons him to appear for hearing as provided in this section. The hearing shall be had not less than twenty (20) days after notification in writing to the holder of the certificate, license, or permit, specifying the violation or non-compliance alleged. For the purpose of hearing such cases concurrent jurisdiction is vested in the county court of the county where the holder of the certificate, license, or permit resides and in the county court of the county where the violation allegedly occurred. The court may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. The holder of the certificate, license, or permit shall have the right to be represented by counsel. At the hearing, the board shall be represented by the attorney general, district attorney, or county attorney. At such a hearing the issue to be determined is whether any grounds exist under Section 21 for denial, refusal to renew, suspension, or revocation of the certificate, license, or permit. The judge who presides at the hearing shall report his finding to the board, which may, if the finding warrants, deny, suspend, revoke, or refuse to renew the certificate, license, or permit.

(b) If the board proposes to suspend, revoke, or refuse to issue or renew a license, registration, certificate, or permit, the person is entitled to a hearing before the board or a hearings officer appointed by the board. The board shall prescribe procedures by which such decisions are made by or are appealable to the board.

(c) If, after due notice and hearing, the board denies, revokes, or refuses to renew any certificate, license, or permit, the holder thereof shall have the right to appeal from the order of the board. An appeal under this subsection is subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). [~~Any appeals filed hereunder shall be filed within 20 days from the date of the order of the board in a district court of the county where the person filing such appeal has his residence, or in any of the district courts of Travis County, Texas. In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial~~

~~evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act.~~]

SECTION 14. Section 26, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. (a) The State Board of Barber Examiners is composed [~~hereby created and shall consist~~] of six members appointed by the governor with the advice and consent of the senate.

(b) Two [~~The board shall be composed of the following: two~~] members shall be Class A barbers actually and actively engaged in the practice of barbering for at least five years prior to being appointed and while serving as members of the board [~~and~~] who are not holders of [a] barber shop permits [~~permit~~] issued by the board, one of whom must be a resident of a county with a population of 25,000 or less, according to the most recent federal census,[;] one member shall be a barber shop owner holding a permit issued by the board and who is actively and actually engaged in the practice of barbering for at least five years prior to being appointed and while serving as a member of the board, and[;] one member shall be a person holding a permit from the board to conduct or operate a barber school or college. The remaining[~~, and~~] two members must [~~shall~~] be representatives of the general public, one of whom must be a resident of a county with a population of 25,000 or less, according to the most recent federal census [~~who are not regulated under this Act and who do not have, other than as consumers, any financial interests in barbering~~]. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of barbering;

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

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

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

(c) The terms of office shall be for six years with terms for two of the six board members expiring at the same time every two years. All members appointed by the governor to fill vacancies in the board caused by death, resignation, or removal shall serve during the unexpired term of such member's predecessor. Before entering upon the duties of office, each member of the board shall take the constitutional oath of office and file it with the secretary of state. Members of the board may be removed from office for cause in the manner provided by the statutes of this state for public officials who are not subject to impeachment. In case of death, resignation, or removal, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

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

(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section;

(2) does not maintain during service on the board the qualifications required by Subsection (b) of this section;

(3) violates a prohibition established by Section 29B or 29D of this Act;

(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 board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

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

(f) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

(g) [~~(b) A person holding office as a member of the State Board of Barber Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.~~

[~~(c) The governor shall appoint two public members to fill the offices of the two incumbent members whose terms expire on May 19, 1981. The governor shall appoint a barber shop owner and a barber school owner to fill the offices of the incumbent members whose terms expire on May 19, 1983. The governor shall appoint two Class A barbers to fill the offices of the two incumbent members whose terms expire on May 19, 1985.~~

[~~(d) The terms of office for the appointees who fill the offices of incumbent members whose terms expire May 19, 1981, May 19, 1983, and May 19, 1985, shall expire on January 31, 1987, January 31, 1989, and January 31, 1991, respectively.~~

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

(h) The governor shall designate one member of the board as chairman of the board to serve in that capacity at the pleasure of the governor.

[~~(f) Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.~~]

SECTION 15. Section 26a, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26a. The State Board of Barber Examiners 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 board is abolished and this Act expires September 1, 2003 [~~1991~~].

SECTION 16. Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by adding Section 26b to read as follows:

Sec. 26b. (a) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

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

SECTION 17. Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by adding Section 26c to read as follows:

Sec. 26c. (a) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

(c) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity 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 related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

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

(3) procedures by which a determination can be made of significant underutilization in the board 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.

(d) A policy statement prepared under Subsection (c) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(e) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (d) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 18. Subsection (a), Section 27, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The State Board of Barber Examiners shall [~~elect one of its members as president, and shall~~] select an executive director and such other employees, as may be necessary, to carry out the provisions of this Act and provide for the compensation of the executive director and other employees. Said Board shall maintain its office in the City of Austin, Texas, and shall adopt rules and regulations for the transaction of the business herein provided for, including a common seal for the authentication of its orders, certificates and records. The executive director shall keep a record of all proceedings of the Board and shall be the custodian of all such records and shall receive and receipt for all money collected by the Board. All money so received shall be immediately deposited with the State Treasurer, who shall credit same to a special fund to be known as "State Board of Barber Examiners Fund," which money shall be drawn from said special fund upon claims made therefor by the Board to the Comptroller; and if found correct, to be approved by him and vouchers issued therefor, and countersigned and paid by the State Treasurer, which special fund is for the purpose of carrying out all the provisions of this Act. The Board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act. [~~Annually at the close of business on August 31st of each year, a complete report of the business transaction by the Board showing all receipts and disbursements shall be made by the Board to the Governor of the State of Texas.~~] The financial transactions of the Board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

SECTION 19. Section 28, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The Texas Board of Health shall make, establish and promulgate reasonable sanitary rules and regulations for the conduct of barber shops, specialty shops, and barber schools. The State Board of Barber Examiners, by and through the Texas Department of Health, shall have authority, and it is made its duty to enter upon

the premises of all barber shops, specialty shops, barber schools, or any place at which the State Board of Barber Examiners has probable cause to believe that [~~where~~] any of its certificate holders or licensees are practicing illegally [~~or performing any service, act or treatment by authority of any certificate or license issued by the board~~] and inspect same at any time during business hours. On receipt of a formal written complaint by any person that a person who holds a barber or teacher certificate or license or a barber school, barber college, or barber shop permit issued by the State Board of Barber Examiners has violated this Act, that board may inspect the premises of the licensee or certificate holder to investigate the complaint at any time during business hours. A copy of such sanitary rules and regulations adopted by the Texas Board of Health shall be furnished to the executive director of the State Board of Barber Examiners who shall in turn forward to each barber, barber school or licensee of the board a copy of such rules and regulations. A copy of the sanitary rules and regulations promulgated and adopted by the Texas Board of Health shall be posted in barber shops, specialty shops, and barber schools in this State. Subject only to the authority of the Texas Board of Health to make and promulgate reasonable rules and regulations as to sanitation, the State Board of Barber Examiners shall have full authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provisions of this Act, and to regulate the practice and teaching of barbering in all of its particulars in keeping with the purposes and intent of this Act or to insure strict compliance with and enforcement of this Act.

(d) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person. The board may not include in the rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 20. Section 29, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29. (a) The Board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of certificates of registration, licenses, or permits. This record shall also contain the name, place of business, and residence of each registered barber, licensee, or permittee, and the date and number of his certificate of registration, license, or permit. This record shall be open to public inspection at all reasonable times.

(b) The Board shall prepare information of public interest describing the functions of the Board and the procedures by which complaints are filed with and resolved by the Board. The Board shall make the information available to the public and appropriate state agencies.

(c) The Board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board. The Board may provide for that notification:

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

(2) on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or

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

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

(e) The Board 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 may be provided reasonable access to the Board's programs.

SECTION 21. Section 29A, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29A. The board shall keep an information file about each complaint filed with the board that the board has authority to resolve. If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. [~~(a) The State Board of Barber Examiners shall keep an information file about each complaint filed with the board relating to licensees, permittees, or certificate holders under this Act.~~

[~~(b) If a written complaint is filed with the State Board of Barber Examiners relating to a licensee, permittee, or certificate holder under this Act, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.~~]

SECTION 22. Section 29B, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29B. (a) An officer, employee, or paid consultant of a Texas trade association in the field of barbering may not be a member of the board or an employee of the board 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 [~~An employee of the State Board of Barber Examiners whose duties include the administration of the board's functions under this Act may not:~~

[~~(1) have, other than as a consumer, a financial interest in barbering;~~

[~~(2) be an officer, employee, or paid consultant of a trade association in the barbering industry; or~~

[~~(3) be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the barbering industry~~].

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of barbering may not be a board member and may not be a board 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 [~~member of the State Board of Barber Examiners may not be:~~

[~~(1) an officer, employee, or paid consultant of a trade association in the barbering industry;~~

[~~(2) related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the barbering industry~~].

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their

common interest [~~An employee who violates this section is subject to dismissal. A board member who violates this section is subject to removal~~].

SECTION 23. Section 29D, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29D. A person may not serve as a member of the board or act as the general counsel to [~~employed by~~] the board if [~~or a member of the board may not lobby for the board and may not engage in conduct for which~~] 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 board.

SECTION 24. (a) The changes in law made by this Act in the qualifications of persons appointed to the State Board of Barber Examiners apply only to a member appointed on or after September 1, 1991.

(b) The first policy statement required to be filed under Subsection (d), Section 26c, Chapter 65, Acts of the 41st Legislature, Regular Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1991.

SECTION 25. This Act takes effect September 1, 1991.

SECTION 26. 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 - Marchant

Amend **C.S.S.B. 430** on page 30, between lines 11 and 12, by inserting a new SECTION 24 of the bill and renumbering the subsequent sections accordingly:

SECTION 24. Article 8405, Revised Statutes, is amended to read as follows:

Art. 8405. CLEANLINESS. (a) Every person in charge of a barber shop, specialty shop, or barber school shall keep the shop or school and all furniture, tools, appliances and other equipment used therein at all times in a clean condition, and shall cause all combs, hair brushes, and similar articles used therein to be washed thoroughly at least once a day and to be kept clean at all times, and shall cause all mugs, shaving brushes, razors, shears, scissors, clippers and tweezers used therein to be sterilized at least once after each time used as hereinafter provided. The term "persons affected by this chapter" shall include any person working or employed in a barber shop, specialty shop, or barber school or acting as a barber, wig specialist, or manicurist. Every barber or other person affected by this chapter, immediately after using a mug, shaving brush, razor, scissors, shears, clippers, or tweezers, for the service of any person, shall sterilize the same by immersing it in boiling water for not less than a minute, or in the case of a razor, scissors, shears or tweezers, by immersing it for not less than ten minutes in a five per cent aqueous solution of carbolic acid. No barber or other person affected by this chapter shall:

1. Use for the service of any customer a comb, hair brush, or any similar article that is not thoroughly clean, nor any mug, shaving brush, razor, shears, scissors, clippers, or tweezers, that are not thoroughly clean or that have not been sterilized since last used.

2. Serve any customer unless he shall immediately before such service cleanse his hands thoroughly.

3. Use for the service of a customer any towel or wash cloth that has not been laundered since last used.

4. To stop the flow of blood use the same piece of alum or other material for more than one person.

5. Shave any person when the surface to be shaved is inflamed or broken out or contains pus.

6. Permit any person to use the head rest of any barber's chair under his control until after the head rest has been covered with a towel that has been laundered since having been used before, or by clean new paper or similar clean substance.

7. Use a powder puff or a sponge in the service of a customer unless it has been sterilized since last used.

8. Use a finger bowl unless it has been sterilized since last used and fresh water or other liquid placed therein.

9. Serve a customer without the use of a sanitized neck strip, cloth towel, or paper towel between the customer and the chair cloth.

[~~10. Use a hair duster in providing services for any customer.~~]

(b) A barber or other person affected by this chapter may use a neck duster in providing services for a customer.

Amendment - Black

Amend **C.S.S.B. 430** by striking SECTION 12 of the bill and renumbering the following sections appropriately.

The amendments were read.

Senator Green moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the Conference Committee on **S.B. 430** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chair; Whitmire, Ellis, Brooks, Zaffirini.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 942

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 25, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 942** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN	CAVAZOS
HARRIS OF TARRANT	COUNTS

WHITMIRE	BRIMER
HALEY	MARTIN
HENDERSON	TAYLOR
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the applicability of the Texas Motor Vehicle Safety-Responsibility Act and driver's license suspensions under that Act.

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

SECTION 1. Section 1, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. The following words and phrases, when used in this Act, shall, for the purposes of this Act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. "Highway" means the entire width between property lines of any road, street, way, thoroughfare, or bridge in the State of Texas not privately owned or controlled, when any part thereof is open to the public for vehicular traffic and over which the State has legislative jurisdiction under its police power.

2. "Judgment"—Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

3. "Motor Vehicle"—Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers and graders, tractor cranes, power shovels, well drillers and implements of husbandry) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

4. "License"—Any driver's, operator's, commercial operator's, or chauffeur's license, temporary instruction permit or temporary license, or restricted license, issued under Article 6687b, Texas Revised Civil Statutes, pertaining to the licensing of persons to operate motor vehicles.

5. "Nonresident"—Every person who is not a resident of the State of Texas.

6. "Nonresident's Operating Privilege"—The privilege conferred upon a nonresident by the laws of Texas pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in the State of Texas.

7. "Operator"—Every person who is in actual physical control of a motor vehicle.

8. "Owner"—A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this Act.

9. "Person"—Every natural person, firm, copartnership, association, [or] corporation, the United States, the State of Texas, or any political subdivision of this state.

10. "Proof of Financial Responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the following amounts: effective January 1, 1984, Fifteen Thousand Dollars ($15,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, Thirty Thousand Dollars ($30,000) because of bodily injury to or death of two (2) or more persons in any one accident, and Fifteen Thousand Dollars ($15,000) because of injury to or destruction of property of others in any one accident and effective January 1, 1986, Twenty Thousand Dollars ($20,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, Forty Thousand Dollars ($40,000) because of bodily injury to or death of two (2) or more persons in any one accident, and Fifteen Thousand Dollars ($15,000) because of injury to or destruction of property of others in any one accident. The proof of ability to respond in damages may exclude the first Two Hundred Fifty Dollars ($250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one person, may exclude the first Five Hundred Dollars ($500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude the first Two Hundred Fifty Dollars ($250) of liability for the injury to or destruction of property of others in any one accident.

11. "Registration"—Registration or license certificate or license receipt or dealer's license and registration or number plates issued under Article 6675a or Article 6686, Texas Revised Civil Statutes, pertaining to the registration of motor vehicles.

12. "Department" means the Department of Public Safety of the State of Texas, acting directly or through its authorized officers and agents, except in such sections of this Act in which some other State Department is specifically named.

13. "State"—Any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

14. "Volunteer Fire Department" means a company, department, or association whose members receive no or nominal compensation and that is organized in an unincorporated area for the purpose of answering fire alarms and extinguishing fires or answering fire alarms, extinguishing fires, and providing emergency medical services.

SECTION 2. Subsection (a), Section 1C, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person who operates a motor vehicle or knowingly permits a motor vehicle owned by the person to be operated commits an offense if the person fails [~~Failure~~] to maintain financial responsibility. An offense under this section [~~as defined in Section 1(10) of this Act~~] is a Class C misdemeanor, punishable by a fine of not less than One Hundred Seventy-five dollars ($175) and, if the person has been previously convicted under this section, an offense under this section is a [~~Seventy-five Dollars ($75). Subsequent offenses shall be~~] Class B misdemeanor [~~misdemeanors, punishable by a fine of not less than Two Hundred Dollars ($200)~~].

SECTION 3. Section 1C, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended by adding Subsections (e), (f), and (g) to read as follows:

(e) In this section, "financial responsibility" means having in effect an automobile insurance policy insuring against potential losses which may arise out of the operation of the vehicle in at least the minimum amounts stated in Section 1(10) of this Act, having in effect a certificate of self-insurance issued in accordance

with Section 34 of this Act, or having in effect a financial responsibility certificate issued by the Department and evidencing compliance with Section 24, 25, or 1A(b)(6) of this Act.

(f) A person who fails to furnish evidence of financial responsibility as required by Section 1B of this Act or who furnishes false evidence is presumed to have failed to maintain financial responsibility.

(g) It is an affirmative defense to prosecution under this section that the person:

(1) was operating or permitting another to operate a vehicle exempted by Section 1A of this Act;

(2) produced in court an automobile liability insurance policy, financial responsibility certificate, or certificate of self-insurance previously issued to that person or covering the vehicle operated, that was valid at the time of the offense; or

(3) was operating a vehicle which was in the possession of the person for the sole purpose of maintenance or repair and was not owned in whole or in part by the person.

SECTION 4. Sections 1D and 1D-2, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), are repealed.

SECTION 5. Subsection (a), Section 1F, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A second or subsequent conviction of failure to maintain financial responsibility shall also carry a suspension of driver's license and motor vehicle registration unless the defendant establishes and maintains proof of financial responsibility for two years from the date of conviction. For purposes of this section, a conviction for failure to maintain financial responsibility is a second or subsequent conviction if the person has previously been convicted of the offense, regardless of whether the charging instrument in the prosecution of the second or subsequent offense alleged the existence of a previous conviction. The requirement of filing proof of financial responsibility may be waived if satisfactory evidence is filed with the Department that the party convicted was at the time of arrest covered by a policy of liability insurance or was otherwise exempt as provided in Section [~~See.~~] 1A(b) of this Act.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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

CONFERENCE COMMITTEE REPORT
ON SENATE BILL 1135

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 25, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1135** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN	WATKINS
WHITMIRE	B. HUNTER
HENDERSON	KUBIAK
BROOKS	HOLZHEAUSER
ARMBRISTER	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to fees at component institutions of the University of Houston System.

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

SECTION 1. Subsections (b) and (h), Section 54.503, Education Code, are amended to read as follows:

(b) The governing board of an institution of higher education may charge and collect from students registered at the institution fees to cover the cost of student services. The fee or fees may be either voluntary or compulsory as determined by the governing board. The total of all compulsory student services fees collected from a student at an institution of higher education other than The ~~[the]~~ University of Texas at Austin or a component institution of the University of Houston System for any one semester or summer session shall not exceed $90. All compulsory student services fees charged and collected under this section by the governing board of an institution of higher education, other than a public junior college, shall be assessed in proportion to the number of semester credit hours for which a student registers. No portion of the compulsory fees collected may be expended for parking facilities or services, except as related to providing shuttle bus services.

(h) Except for Subsection (g) of this section, this section does not apply to The University of Texas at Austin or a component institution of the University of Houston System.

SECTION 2. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5061 to read as follows:

Sec. 54.5061. STUDENT SERVICES FEES; THE UNIVERSITY OF HOUSTON SYSTEM. (a) In this section:

(1) "Student services" includes textbook rentals; recreational activities; health, hospital, and other medical services; group hospitalization; intramural and intercollegiate athletics; artists and lecture series and other cultural entertainment; debating and oratorical activities; student publications; student government; student fees advisory committees; student transportation services; and any other student activities and services specifically authorized and approved by the board; provided, however, that nothing herein shall affect the setting and collection of any other fee which may be charged under the specific authority of any other section of this code.

(2) "Compulsory fee" means a fee that is charged to all students enrolled at the component institution.

(3) "Voluntary fee" means a fee that is charged only to those students who make use of the student service for which the fee is established.

(b) Subject to Section 54.5062 of this code and Subsections (h) and (i) of this section, the Board of Regents of the University of Houston System may charge and collect from students registered at each component institution of the University of Houston System fees to cover the cost of student services that the board considers necessary or desirable in carrying out the educational functions of each university. The governing board of the system is not required to set uniform fees or rates for component institutions.

(c) The board may make fees for a particular student service voluntary or compulsory.

(d) Any compulsory fees for student services charged under this section shall be assessed in proportion to the number of semester credit hours for which a student registers unless the rate of such fee is specifically established by law or authority and approval of the board to be a minimum amount to be charged to each student for any semester or summer term.

(e) Money collected as fees for student services shall be:

(1) reserved and accounted for in an account kept separate from educational and general funds of the university;

(2) used only for the support of student services;

(3) used only after the compulsory fees to be included in the student services fees budget have been considered as provided in this subchapter; and

(4) placed in a depository bank designated by the board and secured as provided by law.

(f) Each year the board shall approve for each university a separate budget for student activities and services financed by fees authorized by this section. The budget shall show the fees to be assessed, the purpose for which the fees will be used or the functions to be financed, the estimated income to be derived, and the proposed expenditures to be made. Copies of the budget shall be filed annually with the coordinating board, the governor, the Legislative Budget Board, and the state library.

(g) If payment of any compulsory fees authorized by this section would cause an undue financial hardship on a student, the board may waive all or part of the compulsory fees for that student. The number of students granted a waiver under this subsection may not exceed 10 percent of the total enrollment of the university. The board may limit the participation of a student in the activities financed by the fees waived in proportion to the extent of the waiver.

(h) If, in an academic year, the total compulsory fees charged under this section are more than 10 percent higher than the previous year's compulsory fees, the increase is not effective unless approved by a majority vote of the students voting in an election called for that purpose or by a majority vote of the duly elected student government.

(i) The total of all compulsory fees charged under this section to students for any semester or summer session may not exceed $150, unless prior approval has been granted by a majority vote of the students voting in an election called for that purpose or by a majority vote of the duly elected student government.

(j) General revenue appropriations, other educational and general income, and funds appropriated under Article VII, Section 17, of the Texas Constitution, may be expended on a proportional use basis to support the services, activities, and facilities provided for in this section to the extent that the use of such funds is not otherwise restricted by the constitution or general law.

(k) This section does not affect any special fees, including general use fees, that the legislature has authorized to finance revenue bond issues or any other fees authorized by law.

SECTION 3. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5062 to read as follows:

Sec. 54.5062. STUDENT FEES ADVISORY COMMITTEE; THE UNIVERSITY OF HOUSTON SYSTEM. (a) A student fees advisory committee is established at each component institution of the University of Houston System to advise the board of regents, presidents, and administration of the University of Houston System on the type, level, and expenditure of compulsory fees for student services collected at each component institution of the system under Section 54.5061 of this code. Each committee is composed of nine members.

(b) Five of the members of each student fees advisory committee shall be student members. The student members shall be generally representative of the student body and be enrolled in not less than six semester hours at the university. If a student government exists, the student members shall be selected by the student government of the university. The student members shall be selected and designated as appropriate so that three members of the committee are serving terms of two years, and two members are serving terms of one year. If a student government does not exist, the students shall be elected by the students enrolled in the university. At each election, the appropriate number of students shall be elected for terms of appropriate length so that three are serving terms of two years, and two are serving terms of one year. Candidates shall file for either a one-year or a two-year position.

(c) The four remaining members of the student fees advisory committee shall be appointed by the president of the university and shall be generally representative of the total university community. Each member appointed by the president serves for a term of one year but may be reappointed.

(d) A student member who ceases to be a student may not continue to hold a student membership position. If a student vacancy occurs, the student government shall appoint a new member to serve for the remainder of the unexpired term. In the absence of student government or if the vacancy is in a position appointed by the president, the president of the university shall appoint a new member to serve for the remainder of the term.

(e) The committee shall conduct appropriate inquiry into the type, level, and expenditure of any compulsory fees to be charged under Section 54.5061 of this code and into the expenditure of money generated from those fees. The committee shall then meet with appropriate members of the university administration to submit a report recommending the type, level, and expenditure of compulsory fees to be charged to students in the academic year beginning with the following fall semester.

(f) The president shall duly consider the recommendations of the student fees advisory committee during the annual budgetary process. If the president's recommendations to the board of regents are substantially different from those of the student fees advisory committee, the administration shall so notify the student fees advisory committee. Such notification shall be in sufficient time for the committee to request an appearance at the board of regents meeting during which the president's recommendations will be considered. The administration shall provide to a student member designated by the student members of the committee, on that student member's request, the most recent and complete recommendations of the president to the board.

SECTION 4. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.537 to read as follows:

Sec. 54.537. STUDENT CENTER FEE, UNIVERSITY OF HOUSTON-CLEAR LAKE. (a) The Board of Regents of the University of Houston System may levy and collect a student center fee, not to exceed $40 per student for each regular semester and not to exceed $20 per student for each term of the summer session for the sole purpose of financing, constructing, operating, maintaining, and improving a student center for the University of Houston-Clear Lake. The fees herein authorized to be levied are in addition to any use or service

fee now or hereafter authorized to be levied. The student center fee initially levied shall be in an amount approved by a majority vote of the students voting in an election called for that purpose.

(b) The student center fees shall be deposited to an account known as The University of Houston-Clear Lake Student Center Fee Account and shall be placed under the control of and subject to the order of the University Life Council. The council shall annually submit to the board of regents a complete and itemized budget, a recommended fee level, and a complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving the budget.

(c) The board of regents may increase the student center fee levied under this section. However, if the increase is more than 10 percent above the previous fiscal year's fee, it must be approved by a majority of students voting in an election called for that purpose.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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

SENATE BILL 625 WITH HOUSE AMENDMENT

Senator Green called **S.B. 625** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment - Danburg

Amend **S.B. 625** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the contents of an official voter registration application form.

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

SECTION 1. Section 13.122, Election Code, is amended to read as follows:

Sec. 13.122. ADDITIONAL ELEMENTS ON OFFICIAL FORM. (a) In addition to the other statements and spaces for entering information that appear on an officially prescribed registration application form, each official form must include:

(1) the statement: "I understand that the giving of false information to procure the registration of a voter is a misdemeanor.";

(2) a space for the applicant's registration number;

(3) [~~a space for the number of the county election precinct in which the applicant resides;~~

[~~(4)~~] a space for the applicant's telephone number;

(4) [~~(5)~~] a space for the applicant's social security number; and

(5) [~~(6)~~] a statement indicating that the furnishing of the applicant's [~~election precinct number;~~] telephone number[;] and social security number is optional.

(b) The term "residence address" may not be modified on an official registration application form by terms other than those comprising the specific elements of a residence address.

(c) If it becomes permissible under federal law to require an applicant for registration who has a social security number to furnish the number, the secretary of state may implement that requirement.

SECTION 2. (a) The secretary of state shall prescribe an official voter registration application form that complies with Section 13.122, Election Code, as amended by this Act, and shall furnish the forms as provided by Section 13.121, Election Code, not later than December 1, 1991.

(b) The secretary of state shall omit the term "permanent" preceding the term "residence address" on an official voter registration application form that is prescribed on or after the effective date of this Act.

(c) An officially prescribed voter registration application form that complies with the law as it existed on August 31, 1991, remains valid but may not be reproduced.

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.

Senator Green moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the Conference Committee on **S.B. 625** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Green, Chair; Whitmire, Carriker, Ellis, Henderson.

VOTE ON CONCURRENCE OF HOUSE AMENDMENTS TO SENATE BILL 1034 RECONSIDERED

On motion of Senator Bivins and by unanimous consent, the vote by which the Senate concurred in the House amendments to **S.B. 1034** was reconsidered.

Question—Shall the Senate concur in the House amendments to **S.B. 1034**?

Senator Bivins 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 Pro Tempore asked if there were any motions to instruct the Conference Committee on **S.B. 1034** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Krier, Harris of Tarrant, Harris of Dallas, Leedom.

HOUSE CONCURRENT RESOLUTION 256

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

H.C.R. 256, Directing the Enrolling and Engrossing Clerk of the House of Representatives to make corrections to **H.B. 1771**.

The resolution was read.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2277 ADOPTED

Senator Moncrief called from the President's table the Conference Committee Report on **H.B. 2277**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Moncrief, the Conference Committee Report was adopted by a viva voce vote.

BILLS AND RESOLUTIONS SIGNED

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

H.J.R. 114	**H.B. 524**	**H.B. 1469**	**H.B. 1901**
H.C.R. 138	**H.B. 595**	**H.B. 1489**	**H.B. 1984**
H.C.R. 207	**H.B. 640**	**H.B. 1496**	**H.B. 1985**
H.C.R. 212	**H.B. 662**	**H.B. 1627**	**H.B. 2057**
H.C.R. 216	**H.B. 769**	**H.B. 1648**	**H.B. 2059**
H.C.R. 219	**H.B. 851**	**H.B. 1682**	**H.B. 2066**
H.B. 76	**H.B. 1057**	**H.B. 1688**	**H.B. 2395**
H.B. 84	**H.B. 1065**	**H.B. 1739**	**H.B. 2420**
H.B. 124	**H.B. 1132**	**H.B. 1747**	**H.B. 2426**
H.B. 142	**H.B. 1204**	**H.B. 1761**	**H.B. 2478**
H.B. 268	**H.B. 1289**	**H.B. 1763**	**H.B. 2505**
H.B. 278	**H.B. 1328**	**H.B. 1766**	**H.B. 2699**
H.B. 399	**H.B. 1345**	**H.B. 1767**	**H.B. 2782**
H.B. 413	**H.B. 1412**	**H.B. 1801**	**H.B. 2786**
H.B. 434	**H.B. 1414**	**H.B. 1814**	**H.B. 2795**
H.B. 456	**H.B. 1436**	**H.B. 1822**	**H.B. 2825**
H.B. 521	**H.B. 1459**	**H.B. 1900**	**H.B. 2862**

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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.C.R. 183, Granting Christopher and Susan Eakle permission to sue the State and the Texas Department of Human Services.

H.C.R. 257, Relating to a technical correction of **H.B. 2552**.

The House suspended all necessary rules and reconsidered the vote by which the House granted the request of the Senate to appoint a Conference Committee on **S.B. 692**, and discharged the House conferees on **S.B. 692**.

The House has refused to concur in Senate amendments to **H.B. 2885** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Luna, Chair; Glossbrenner, Bomer, Grusendorf, Blair.

The House has adopted the Conference Committee Report on **S.J.R. 6** by a record vote of 130 Ayes, 10 Noes, 2 Present-not voting.

The House has concurred in Senate amendments to **H.B. 271** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 333** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 827** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 853** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 879** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1426** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1816** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1986** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2552** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2454** by a record vote of 139 Ayes, 1 Noes, 1 Present-not voting.

The House has refused to concur in Senate amendments to **H.B. 1020** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Barton, Chair; G. Thompson, Wentworth, Madla, Van de Putte.

The House has refused to concur in Senate amendments to **H.B. 2495** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Tallas, Chair; P. Gallego, Fraser, Larry, Black.

The House has refused to concur in Senate amendments to **H.B. 2065** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Eckels, Chair; Delisi, Martin, Wilson, F. Hill.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1596**: Stiles, Chair; Russell, Hightower, Eckels, Conley.

The House has adopted the Conference Committee Report on **S.B. 1103** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 355** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2555** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2411** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1770** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1367** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1004** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 841** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 734** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 66** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 734 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on **H.B. 734**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Barrientos, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 1409 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1409** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment - Oakley

Amend **S.B. 1409** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to Municipal Drainage Utility systems, including providing for expansion of service areas, adding users of property to the customer base, adopting ordinances and fee schedules, allowing liens for delinquent bills, eliminating exemptions, and validating the operation of municipal billing systems prior to effective date of this Act.

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

SECTION 1. AMENDMENT. Subchapter C, Chapter 402, Local Government Code, is amended to read as follows:

Sec. 402.041. SHORT TITLE. This subchapter may be cited as the Municipal Drainage Utility Systems Act.

Sec. 402.042. LEGISLATIVE FINDING. (a) The legislature finds that authority is needed to:

(1) permit municipalities to establish a municipal drainage utility system within the established service area [~~municipal boundaries~~];

(2) provide rules for the use, operation, and financing of the system;

(3) protect the public health and safety in municipalities from loss of life and property caused by surface water overflows, [~~and~~] surface water stagnation, and pollution arising from nonpoint source runoff within the boundaries of the established service area [~~municipalities~~];

(4) delegate to municipalities the power to declare, after a public hearing, a drainage system created under this subchapter to be a public utility;

(5) prescribe bases on which a municipal drainage utility system may be funded and fees in support of the system may be assessed, levied, and collected;

(6) provide exemptions of certain persons from this subchapter; and

(7) prescribe other rules related to the subject of municipal drainage.

(b) This subchapter is remedial.

Sec. 402.043. APPLICATION OF SUBCHAPTER TO MUNICIPALITIES. This subchapter applies to any municipality.

Sec. 402.044. DEFINITIONS. In this subchapter:

(1) "Benefitted property" means a lot or tract to which drainage service is made available under this subchapter.

(2) "Cost of service" as applied to a drainage system service to any benefitted property means:

(A) the prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the benefitted property;

(B) the prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;

(C) the prorated cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;

(D) the prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;

(E) the prorated cost of funding and financing charges and interest arising from [~~before and during~~] construction projects [~~and for a maximum of two years after completion of construction,~~] and the start-up cost of a drainage facility [~~during construction and for a maximum of two years after completion of construction~~] used in draining the benefitted property;

(F) the prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the municipality; or

(G) the administrative costs of a drainage utility system.

(3) "Drainage" means bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(4) "Drainage charge" means:

(A) the levy imposed to recover the cost of the service of the municipality in furnishing drainage for any benefitted property; and

(B) if specifically provided by the governing body of the municipality by ordinance, an amount made in contribution to funding of future drainage system construction by the municipality.

(5) "Drainage system" means the drainage owned or controlled in whole or in part by the municipality and dedicated to the service of benefitted property, including provisions for additions to the system.

(6) "Facilities" means the property, either real, personal, or mixed, that is used in providing drainage and included in the system.

(7) "Public utility" means a drainage service that is regularly provided by the municipality through municipal property dedicated to that service to the users of benefitted property within the service area [~~every person who has a freehold interest in real property located within the municipal boundaries~~] and that is based on:

(A) an established schedule of charges;

(B) the use of the police power to implement the service; and

(C) nondiscriminatory, reasonable, and equitable terms as declared under this subchapter.

(8) "Service area" means the municipal boundaries and any other land areas outside the municipal boundaries which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the drainage system of a municipality; provided, however, that in no event may a service area extend farther than the boundaries of a municipality's current extraterritorial jurisdiction, nor may a service area of one municipality extend into the boundaries of another incorporated town, city, or municipality. The service area is to be established in the ordinance establishing the drainage utility.

(9) "User" means the person or entity who owns or occupies a benefitted property.

Sec. 402.045. ADOPTION OF SYSTEM; RULES. (a) Subject to the requirements in Subsections (b) and (c), the governing body of the municipality, by a majority [~~three-fourths~~] vote of its entire membership, may adopt this subchapter by an ordinance that declares the adoption and that declares the drainage of the municipality to be a public utility.

(b) Before adopting the ordinance, the governing body must find that:

(1) the municipality will establish a schedule of drainage charges against all real property in the proposed service area [~~municipality~~] subject to charges under this subchapter;

(2) the municipality will provide drainage for all real property in the proposed service area [~~municipality~~] on payment of drainage charges, except real property exempted under this subchapter; and

(3) the municipality will offer drainage service on nondiscriminatory, reasonable, and equitable terms.

(c) Before adopting the ordinance, the governing body must publish a notice in a newspaper of general circulation in the municipality stating the time and place of a public hearing to consider the proposed ordinance. The proposed ordinance must be published in full in the notice. The governing body shall publish the notice three times before the date of the hearing. The first publication must occur on or before the 30th day before the date of the hearing. [~~After convening the hearing, the governing body may recess the hearing once for not more than the next five consecutive days before reconvening without republication of notice. If the recess is more than five days, notice of the time and place of the recessed hearing must be published before the third calendar day before the date of the hearing.~~]

(d) After passage of the ordinance adopting this subchapter, the municipality may levy a schedule of drainage charges. The municipality must hold a public hearing on the charges before levying the charges. The municipality must give notice of the hearing in the manner provided by Subsection (c). The proposed schedule of [~~ordinance to institute the~~] drainage charges, as originally adopted or as revised, must be published in the notice.

(e) [~~If, after the hearing, the proposed charges, as implemented, differ by 25 percent or less of the total amount that the original charges were projected to have generated within a year after being instituted, an additional notice or hearing is not necessary.~~

[~~(f)~~] The municipality by ordinance may adopt and enforce rules as it considers appropriate to operate the drainage utility system.

Sec. 402.046. INCORPORATION OF EXISTING FACILITIES. The municipality may incorporate existing drainage facilities, materials, and supplies into the drainage utility system.

Sec. 402.047. DRAINAGE CHARGES. (a) The governing body of the municipality may charge a lot or tract of benefitted property for drainage service on any basis other than the value of the property, but the basis must be directly related to drainage and the terms of the levy, and any classification of the benefitted properties in the municipality must be nondiscriminatory, equitable, and reasonable.

(b) In setting the schedule of charges for drainage service, the governing body must base its calculations on an inventory of the lots and tracts within the service area [~~municipal boundaries~~]. The governing body may use approved [~~municipal~~] tax plats and assessment rolls for that purpose. The governing body may also consider the land use made of the benefitted property[~~, using official zoning maps of the municipality for that purpose~~]. The governing body may consider the size, in area, and topography of a parcel of benefitted property, in assessing the drainage charge to the property.

(c) The governing body may fix rates for drainage charges in advance and may change, adjust, and readjust the rates and charges for drainages service from time to time. The rates must be equitable for similar services in all areas of the service area [~~municipality~~].

(d) Unless a person's lot or tract is exempted under this subchapter, the person may not use the drainage system for the lot or tract unless the person pays the full, established, drainage charge.

(e) Users residing within the established service area, but outside the municipality's boundaries may appeal rates established for drainage charges to the Texas Water Commission as authorized by Section 13.043 (b) of the Texas Water Code.

Sec. 402.048. BILLINGS; DEPOSIT NOT REQUIRED. (a) The municipality may bill drainage charges, identified separately, with the municipality's other public utility billings. Any delinquent billings may be collected on the benefitted property under the procedure prescribed by this subchapter. [~~If the freehold owner does not receive any other municipal public utility service at the benefitted property, the municipality may mail the billing with the municipal tax plat number or other identification of the benefitted property to the owner at the address at which the owner receives municipal billing for property that receives other municipal utility services. If the owner does not receive a municipal public utility service at any other location in the municipality, the municipality may send the bill to any known address of the owner. If there is no known address, the municipality shall forward the billing to the agency or department that handles property tax collection for the municipality, and the billing shall be collected as a lien on the benefitted property under the procedure prescribed by this subchapter.~~]

(b) The municipality may not require a deposit for drainage service as a precondition to accepting surface flow in the drainage utility system.

Sec. 402.049. SEGREGATION OF INCOME. The income of a drainage utility system must be segregated and completely identifiable in municipal accounts. If drainage charges are solely for the cost of service, the municipality may transfer the charges in whole or in part to the municipal general fund, except for any part pledged to retire any outstanding indebtedness or obligation incurred, or as a reserve for future construction, repair, or maintenance of the drainage system. If the governing body has levied, in the drainage charge, an amount in contribution to the funding of future system improvements, including replacement, new construction, or extension, that amount is not transferable to the general fund.

Sec. 402.050. DELINQUENT CHARGES. (a) Any charge due hereunder which is not paid when due may be recovered in an action at law by the municipality. In addition to any other remedies or penalties provided at law or in this subchapter, failure of a user of the municipal utilities within the service area to pay the charges promptly when due shall subject the user to discontinuance of utility services provided by the municipality, and municipalities are hereby empowered to enforce this provision against delinquent users. The employees of the utility established in accordance with this subchapter shall have access, at all reasonable times, to any benefitted properties served by the drainage utility for inspection or repair or for the enforcement of the provisions of this subchapter. [~~The municipality shall periodically compile lists of delinquent drainage charges as of January 1 against benefitted property within its municipal boundaries. The list must include the names of the record freehold owners, if known, and their addresses, the dollar amounts owed, and the penalties and interest prescribed by general ordinance. The municipality shall send the information to each owner with, or as a part of, the owner's property tax statement or shall send the information, as notice, to any known address of the owner by certified mail, properly stamped, and return receipt requested. After the municipality has delivered notice of the delinquency to the address of the owner, the municipality may fix a lien for the charges, penalties, and interest against the benefitted property by publishing the list once in a newspaper of general circulation in the municipality, together with a list of the unknown owners and the owners with unknown addresses. The chief executive officer of the municipality may then execute a certificate to the county clerk attesting that the lists are correct, that notices and publications required under this subchapter have been accomplished, and that the delinquencies are unpaid. Certified copies of the lists and the publisher's affidavits for the notices shall be attached to the certificate, with a separately reproduced certificate for each benefitted property executed by the municipal officer charged with administration of the drainage utility system.~~

[~~(b) Instead of a separate delinquency certificate for each benefitted property, the municipality may enter, on computer property tax lien filings made by the municipal tax collection officer or agency, a separate line item on the filings designated "Drn. Chg." that shows the tax plat or other identifying number for the benefitted property, the names of the record owners, if known, the notation "owners unknown" for unknown record owners, the year in which due, and the total amount of money owed and delinquent. The tax lien filing shall be considered the filing of the drainage charge lien.~~

[~~(c) For each separate delinquency certificate filed for a benefitted property, the county clerk shall charge the applicable fee for filing and recording a document that is not listed in Chapter 118. The county clerk shall maintain a "Drainage Lien Index" for the certificates.~~

[~~(d) A petition in a suit to foreclose a drainage lien must be filed in a civil court-at-law that has jurisdiction of the amount in controversy. The court may~~

~~assess reasonable attorney's fees and other costs of collection, but the costs must be set at least at the cost of the suit, penalties, and simple interest not exceeding 10 percent:~~]

Sec. 402.051. DRAINAGE REVENUE BONDS. By majority vote of the governing body, the municipality may issue drainage revenue bonds. The municipality may use the Bond Procedures Act of 1981 (Article 717K-6, Vernon's Texas Civil Statutes). In addition, the municipality may pledge income received by contracts for the provision of drainage to other governments or governmental subdivisions located inside or outside the service area [~~municipal boundaries~~].

Sec. 402.052. DISCONTINUATION OF DRAINAGE SYSTEM. (a) If, after at least five years of substantially continuous operation of a municipal drainage system, the governing body of the municipality determines that the system should be discontinued, that the powers under this subchapter should be revoked, and that provision for municipal drainage should be made by other revenues, the governing body may adopt an ordinance to that effect after providing notice and a public hearing as provided by Section 402.045.

(b) If the municipality discontinues a system under Subsection (a), it may not adopt a system under this subchapter for at least five years after the discontinuation.

(c) A discontinuation does not affect a written obligation incurred by the municipality for funding or for the purchase of equipment, materials, or labor for the drainage system that is not then fully paid or otherwise discharged.

(d) A claim for damages based on an alleged failure of the drainage system that is filed with the municipality before the adoption of the ordinance discontinuing the drainage system is not abated by the discontinuation.

Sec. 402.053. EXEMPTIONS. (a) A governmental entity or person described by Subsection (b) and a lot or tract in which the governmental entity or person holds a freehold interest may be exempt from this subchapter and all ordinances, resolutions, and rules adopted under this subchapter.

(b) The following may be exempt:

(1) this state;

(2) a county;

(3) a municipality;

(4) a school district;

(c) The following shall be exempt from the provisions of any rules or ordinances adopted by a municipality pursuant to this Act:

(1) property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;

(2) property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the municipality for maintenance; and

(3) a subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the municipality having jurisdiction to adopt this subchapter and declare the drainage of the municipality to be a public utility.

Sec. 402.054. EFFECT OF SUBCHAPTER. This subchapter does not:

(1) enhance or diminish the authority of a home-rule municipality to establish a drainage utility under Article XI, Section 5, of the Texas Constitution;

(2) preclude a municipality from utilizing revenues, other than drainage utility revenues, for drainage purposes; or

(3) preclude a municipality from imposing impact fees or other charges for drainage authorized by law.

SECTION 2. Section 13.043 (b), Texas Water Code, is amended to read as follows:

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the Commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes);

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality; and

(4) a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

SECTION 3. VALIDATION. The governmental acts and proceedings of a municipality taken before the effective date of this Act relating to the establishment and operation of a municipally owned drainage system may not be held invalid on the ground that the establishment and operation of a municipally owned drainage system were not performed in accordance with law. The acts and proceedings are validated as of the dates they occurred.

SECTION 4. EFFECT ON LITIGATION. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by final judgment of a court of competent jurisdiction.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Barrientos moved to concur in the House amendment to **S.B. 1409**.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1314 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on **H.B. 1314**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Barrientos, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1773 ADOPTED

Senator Armbrister called from the President's table the Conference Committee Report on **H.B. 1773**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 1514 WITH HOUSE AMENDMENT

Senator Carriker called **S.B. 1514** from the President's table for consideration of the House amendment to the bill.

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

Amendment - Stiles

Amend **S.B. 1514** to replace the phrase "wastewater treatment" wherever it appears with "wastewater collection and treatment"; and replace the phrase "water distribution" wherever it appears with "water supply and distribution".

This change shall occur on page 1 at lines 3-4, 12, 16, 20-21; page 2 at lines 7-8; and page 6, line 11.

The amendment was read.

Senator Carriker moved to concur in the House amendment to **S.B. 1514.**

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2719 ADOPTED

Senator Sims called from the President's table the Conference Committee Report on **H.B. 2719**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Sims, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 263 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **H.B. 263**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Ellis, the Conference Committee Report was adopted by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 257

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

H.C.R. 257, Directing the Enrolling and Engrossing Clerk of the House of Representatives to make corrections to **H.B. 2552.**

The resolution was read.

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

AT EASE

Senator Parker at 2:30 p.m. announced that the Senate would stand At Ease until 4:30 p.m.

IN LEGISLATIVE SESSION

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

CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 42

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.J.R. 42** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN	COLBERT
WHITMIRE	BLAIR
ZAFFIRINI	GLOSSBRENNER
HALEY	LUNA
PARKER	GRUSENDORF
On the part of the Senate	On the part of the House

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing a county education district by election to adopt certain residence homestead exemptions and to provide for the taxation of certain tangible personal property.

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

SECTION 1. Article VIII, Section 1-b(e), of the Texas Constitution is amended to read as follows:

(e) The governing body of a political subdivision, other than a county education district, may exempt from ad valorem taxation a percentage of the market value of the residence homestead of a married or unmarried adult, including one living alone. In the manner provided by law, the voters of a county education district at an election held for that purpose may exempt from ad valorem taxation a percentage of the market value of the residence homestead of a married or unmarried adult, including one living alone. The percentage may not exceed [~~forty percent (40%) for the years 1982 through 1984, thirty percent (30%) for the years 1985 through 1987, and~~] twenty percent [~~(20%) in 1988 and each subsequent year~~]. However, the amount of an exemption authorized pursuant to this subsection may not be less than Five Thousand Dollars ($5,000) unless the legislature by general law prescribes other monetary restrictions on the amount of the exemption. An eligible adult is entitled to receive other applicable exemptions provided by law. Where ad valorem tax has previously been pledged for the payment of debt, the governing body of a political subdivision may continue to levy and collect the tax against the value of the homesteads exempted under this subsection until the debt is discharged if the cessation of the levy would impair the obligation of the contract by which the debt was created. The legislature by general law may prescribe procedures for the administration of residence homestead exemptions.

SECTION 2. Article VIII, Section 1-b(b), of the Texas Constitution is amended to read as follows:

(b) The [~~From and after January 1, 1973, the~~] governing body of any county, city, town, school district, or other political subdivision of the State, other than a

county education district, may exempt by its own action not less than Three Thousand Dollars ($3,000) of the market value of residence homesteads of persons, married or unmarried, including those living alone, who are under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance or its successor or of married or unmarried persons sixty-five (65) years of age or older, including those living alone, from all ad valorem taxes thereafter levied by the political subdivision. As an alternative, upon receipt of a petition signed by twenty percent (20%) of the voters who voted in the last preceding election held by the political subdivision, the governing body of the subdivision shall call an election to determine by majority vote whether an amount not less than Three Thousand Dollars ($3,000) as provided in the petition, of the market value of residence homesteads of disabled persons or of persons sixty-five (65) years of age or over shall be exempt from ad valorem taxes thereafter levied by the political subdivision. In the manner provided by law, the voters of a county education district at an election held for that purpose may exempt an amount not less than Three Thousand Dollars ($3,000), as provided in the petition, of the market value of residence homesteads of disabled persons or of persons sixty-five (65) years of age or over from ad valorem taxes thereafter levied by the county education district. An eligible disabled person who is sixty-five (65) years of age or older may not receive both exemptions from the same political subdivision in the same year but may choose either if the subdivision has adopted both. Where any ad valorem tax has theretofore been pledged for the payment of any debt, the taxing officers of the political subdivision shall have authority to continue to levy and collect the tax against the homestead property at the same rate as the tax so pledged until the debt is discharged, if the cessation of the levy would impair the obligation of the contract by which the debt was created. An exemption adopted under this subsection based on assessed value is increased, effective January 1, 1979, to an amount that, when converted to market value, provides the same reduction in taxes, except that the market value exemption shall be rounded to the nearest $100.

SECTION 3. Article VIII, Section 1(e), of the Texas Constitution is amended to read as follows:

(e) The governing body of a political subdivision, other than a county education district, may provide for the taxation of all property exempt under a law adopted under Subdivision (2) of Subsection (d) of this section and not exempt from ad valorem taxation by any other law. In the manner provided by law, the voters of a county education district at an election held for that purpose may provide for the taxation of all property exempt under a law adopted under Subdivision (2) of Subsection (d) of this section and not exempt from ad valorem taxation by any other law.

SECTION 4. Article VIII of the Texas Constitution is amended by adding Section 1-b-1 to read as follows:

Sec. 1-b-1. The references to a county education district in Sections 1 and 1-b of this article neither validate nor invalidate county education districts.

SECTION 5. This proposed constitutional amendment shall be submitted to the voters at an election to be held August 10, 1991. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to allow the voters of a county education district to adopt certain exemptions from the district's ad valorem taxation for residence homesteads and to provide for the taxation of certain tangible personal property."

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1744

Senator Truan submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1744** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

TRUAN	R. LEWIS
BARRIENTOS	LINEBARGER
CARRIKER	WILLY
ROSSON	YOST
SIMS	
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 549

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 549** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS	M. GALLEGOS
JOHNSON	P. GALLEGO
LYON	OGDEN
MONTFORD	TALLAS
TEJEDA	
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 383

Senator Carriker submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 383** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CARRIKER	PIERCE
DICKSON	BLACK
MONCRIEF	GIBSON
BARRIENTOS	TALLAS
	SWINFORD
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to consolidating the functions of the Commission on Fire Protection Personnel Standards and Education and the Fire Department Emergency Board, together with certain new powers and duties, into a newly created Texas Commission on Fire Protection; transferring certain duties related to fire protection, including oversight of the state fire marshal, from the State Board of Insurance to the Texas Commission on Fire Protection; providing penalties.

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

SECTION 1. Subtitle B, Title 4, Government Code, is amended by adding the chapter heading and Subchapter A of Chapter 419 to read as follows:

CHAPTER 419. TEXAS COMMISSION ON FIRE PROTECTION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 419.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Fire Protection.

(2) "Volunteer fire fighter" and "volunteer fire chief" do not include a person who is also employed full-time in the fire service.

Sec. 419.002. COMMISSION. The Texas Commission on Fire Protection is an agency of the state.

Sec. 419.003. APPLICATION OF SUNSET ACT. The Texas Commission on Fire Protection is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires December 31, 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.

Sec. 419.004. COMPOSITION OF COMMISSION. (a) The commission is composed of the following 12 members:

(1) three chief officers with a minimum rank of battalion chief employed in fire departments as defined by Section 419.021 that are under the jurisdiction of the commission, at least two of whom must be the heads of their fire departments, and one of whom must be employed by a political subdivision with a population of less than 50,000, one must be employed by a political subdivision with a population of 50,000 to 200,000, and one must be employed by a political subdivision with a population of more than 200,000;

(2) three fire protection personnel as defined by Section 419.021 with the rank of captain or below employed in fire departments or other appropriate local authorities under the jurisdiction of the commission, at least one of whom must be actively involved in educating the public on fire prevention as a significant part of the person's duties, and one of whom must be employed by a political subdivision with a population of less than 50,000, one must be employed by a political subdivision with a population of 50,000 to 200,000, and one must be employed by a political subdivision with a population of more than 200,000;

(3) three persons who are volunteer fire chiefs or volunteer fire fighters;

(4) one certified fire protection engineer;

(5) one certified arson investigator; and

(6) one fire science instructor from an institution of higher education as defined by Section 61.003, Education Code.

(b) The members of the commission are appointed by the governor with the advice and consent of the senate for staggered terms of six years with four members' terms expiring February 1 of each odd-numbered year.

(c) The duties of a public officer or employee on the commission constitute additional duties of the member's office or employment.

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

Sec. 419.005. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Section 419.004;

(2) does not maintain during service on the commission the qualifications required by Section 419.004;

(3) violates a prohibition established by Section 419.006;

(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 executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Sec. 419.006. CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of fire protection may not be a member of the commission or an employee of the commission 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 fire protection may not be a commission

member and may not be a commission 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) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Sec. 419.007. OFFICERS; COMPENSATION; MEETINGS. (a) The fire science instructor appointed under Section 419.004(a)(6) serves as the presiding officer of the commission unless the governor designates another member as presiding officer. The commission shall elect from among its members an assistant presiding officer and a secretary.

(b) The commission shall meet at least quarterly.

(c) A member of the commission may not receive compensation for service on the commission. A member is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses incurred in performing services as a member of the commission.

(d) 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.

Sec. 419.008. GENERAL POWERS AND DUTIES. (a) The commission may adopt rules for its internal management and control and for the administration of its powers and duties.

(b) The commission shall perform the duties assigned to the commission under this chapter or other law.

(c) The commission shall perform duties assigned by law to the Commission on Fire Protection Personnel Standards and Education or to the Fire Department Emergency Board.

(d) The commission shall provide for the appointment and supervision of the state fire marshal in accordance with Chapter 417.

(e) The commission may accept gifts, grants, and contributions from private individuals or foundations and from the federal government.

(f) The commission shall report to the governor annually and to the legislature at each regular session on the commission's activities. The commission may make recommendations in those reports on matters under its jurisdiction. The commission may make other reports in its discretion.

(g) The commission may make or encourage studies of fire protection, including fire administration.

(h) The commission may conduct research to improve fire protection and fire administration and may stimulate research by public and private agencies for that purpose.

(i) The commission may, on the request of a public or nonprofit entity with duties related to fire protection, advise or assist the entity in relation to those duties.

(j) The commission may appoint advisory committees to assist it in the performance of its duties. A member of an advisory committee appointed by the commission or otherwise appointed under this chapter may not receive compensation for service on the advisory committee. A member appointed under

this chapter is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses incurred in performing services as a member of the advisory committee.

Sec. 419.009. PERSONNEL. (a) The commission shall employ an executive director who shall employ other personnel necessary for the performance of commission functions.

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

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

(d) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(e) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity 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 commission work force that meets federal and state guidelines;

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

(4) reasonable methods to appropriately address those areas of significant underutilization.

(g) A policy statement prepared under Subsection (f) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(h) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (g). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 419.010. FISCAL REPORT. The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 419.011. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve. If a written complaint is filed with the commission that the commission has authority to resolve, the commission, 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.

(c) The commission 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 commission's programs.

[Sections 419.012-419.020 reserved for expansion]

SECTION 2. Chapter 416, Government Code, is transferred to Subtitle B, Title 4, Government Code, redesignated as Subchapter B of Chapter 419, Government Code, and amended to read as follows:

[~~CHAPTER 416. COMMISSION ON FIRE PROTECTION PERSONNEL STANDARDS AND EDUCATION~~]

SUBCHAPTER B [~~A~~]. REGULATING AND ASSISTING FULLY PAID LOCAL FIRE PROTECTION PERSONNEL AND LOCAL FIRE DEPARTMENTS

[~~GENERAL PROVISIONS~~]

Sec. 419.021 [~~416.001~~]. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) "Aircraft crash and rescue fire protection personnel" means permanent, fully paid, full-time local governmental employees who, as a permanent duty assignment, fight aircraft fires at airports, stand by for potential crash landings, and perform aircraft crash rescue.

(2) [~~"Commission" means the Commission on Fire Protection Personnel Standards and Education.~~

[~~(3)~~] "Fire department" means a department of a local government with permanent, fully paid, full-time employees organized to prevent or suppress fires.

(3) [~~(4)~~] "Fire protection personnel" means:

(A) permanent, fully paid, full-time law enforcement officers designated as fire and arson investigators by an appropriate local authority;

(B) aircraft crash and rescue fire protection personnel; or

(C) permanent, fully paid, full-time fire department employees who are not secretaries, stenographers, clerks, budget analysts, or similar support staff persons or other administrative employees and who are assigned duties in one or more of the following categories:

(i) fire suppression;
(ii) fire inspection;
(iii) fire and arson investigation;
(iv) marine fire fighting;
(v) aircraft crash fire fighting and rescue;
(vi) fire training;
(vii) fire education;
(viii) fire administration; and
(ix) any other position necessarily or customarily related to fire prevention and suppression.

(4) [~~(5)~~] "Local government" means a municipality, a county, a special-purpose district or authority, or any other political subdivision of the state.

(5) [~~(6)~~] "Marine fire protection personnel" means permanent, fully paid, full-time local governmental employees who work aboard a fireboat and fight fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(6) [~~(7)~~] "Protective clothing" means garments, including turnout coats, bunker coats, boots, gloves, trousers, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations.

[Sec. 416.002. COMMISSION. The Commission on Fire Protection Personnel Standards and Education is an agency of the state.

[Sec. 416.003. APPLICATION OF SUNSET ACT. The Commission on Fire Protection Personnel Standards and Education is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the commission is abolished and this chapter expires September 1, 1991.

[Sec. 416.004. COMPOSITION OF COMMISSION. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate. A member must be a resident of this state and must be qualified by experience or education in the field of fire protection. Appointed members serve staggered six-year terms. The commissioner of higher education and the commissioner of education shall serve as ex officio members of the commission.

[(b) A vacancy in an office of a member of the commission shall be filled for the unexpired term.

[(c) If a public officer is appointed to the commission, service on the commission is an additional duty of the office.

[Sec. 416.005. OFFICERS; QUORUM; MEETINGS. (a) At its first meeting after appointment of members to serve regular terms, the commission shall elect from among its appointed members a chairman, vice-chairman, and secretary.

[(b) Five members constitute a quorum.

[(c) The commission may meet at times and places in the state that it considers proper. The chairman may call a meeting on the chairman's own motion and shall call a meeting on the written request of five members.

[Sec. 416.006. COMPENSATION AND EXPENSES. A member of the commission serves without compensation for service on the commission but is entitled to reimbursement for actual and necessary expenses incurred in performance of functions under this chapter.]

Sec. 419.022 [416.007]. GENERAL POWERS RELATING TO THIS SUBCHAPTER. (a) The commission may:

(1) [adopt rules for the administration of this chapter and for the commission's internal management and control;

[(2) employ an executive director and other personnel necessary in the performance of commission functions;

[(3) accept donations, contributions, grants, or gifts from private individuals or foundations or the federal government;

[(4) report to the governor annually, and to the legislature at each regular session, on its activities, with recommendations on matters under its jurisdiction, and make other reports that it considers desirable;

[(5)] require the submission of reports and information by a [state or] local governmental agency in this state that employs fire protection personnel;

(2) assist fire departments and fire protection personnel with problems related to fire-fighting techniques, clothing, and equipment;

(3) assist fire departments and local governments with the development and updating of local fire codes;

(4) recommend staffing patterns to fire departments;

[(6) make or encourage studies of fire protection, including fire administration;

[(7) conduct research to improve fire protection and fire administration and stimulate research by public and private agencies for that purpose;] and

(5) [(8)] establish minimum educational, training, physical, and mental[, and moral] standards for admission to employment as fire protection personnel in a permanent, temporary, or probationary status and for advanced or specialized fire protection personnel positions.

(b) The commission may not change a minimum standard under Subsection (a)(5) to a standard that is less stringent than the applicable standard set by the Commission on Fire Protection Personnel Standards and Education in rules that were in effect on August 31, 1991.

Sec. 419.023. FIRE PROTECTION PERSONNEL ADVISORY COMMITTEE. (a) The commission shall establish a fire protection personnel advisory committee to assist the commission in matters relating to fire protection personnel and fire departments. The committee shall be composed of nine members appointed by the commission. Six members must be fire protection personnel or retired fire protection personnel who collectively represent various areas in the field of fire protection. Three members must be instructors of fire protection personnel. A committee member serves at the will of the commission.

(b) The committee shall elect a member of the committee as the presiding officer of the committee. The committee shall meet at least twice each calendar year at the call of the presiding officer or at the call of the commission.

(c) The committee periodically shall review commission rules relating to fire protection personnel and fire departments and recommend changes in the rules to the commission. Notwithstanding Section 5(f), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commission shall submit all proposed changes and additions to the rules that relate to fire protection personnel and fire departments to the committee for development. If the commission does not approve a rule developed by the committee, the commission shall indicate to the committee the reasons that the commission did not approve the rule and return the rule to the committee for further development.

Sec. 419.024 [~~416.008~~]. LOCAL GOVERNMENT POWERS. Except as expressly provided by this chapter, this subchapter [~~chapter~~] does not limit the powers, rights, duties, or responsibilities of a local government and does not affect Chapter 143, Local Government Code.

Sec. 419.025 [~~416.009~~]. MANUAL. The commission shall set and collect a fee for a manual that states rules and minimum standards for fire protection personnel. The amount of the fee may not exceed the cost of preparing, printing, and distributing the manual.

Sec. 419.026 [~~416.010~~]. FEES FOR CERTIFICATES. (a) The commission shall set and collect a fee of not more than $35 [~~$20~~] for each certificate that the commission issues or renews under this subchapter, except that if a person holds more than one certificate the commission may collect only one fee each year for the renewal of those certificates. The employing agency or entity shall pay this fee as provided by commission rule. The certificate must be renewed annually.

(b) The commission shall set and collect a fee for each examination given to fire protection personnel for basic certification under this subchapter [~~chapter~~]. The amount of the fee may not exceed the cost of preparing, printing, administering, and grading the examination.

(c) The commission may revoke, refuse to issue, or refuse to renew the certificate of fire protection personnel for failure to pay a fee required under Subsection (a).

(d) The commission shall send the fees authorized by Subsection (a) and Section 419.033(b) to the state treasurer, who shall deposit 50 percent of the fees collected annually into the general revenue fund and 50 percent of the fees collected annually into a special account in the general revenue fund dedicated for use by the commission. Except as otherwise provided by this chapter, 50 percent of the special fund created under this subsection may be used only to defray the commission's costs in performing inspections under Section 419.027 and the other 50 percent may be used only to provide training assistance under Section 419.031.

Sec. 419.027. BIENNIAL INSPECTIONS. At least biennially, the commission shall visit and inspect each institution or facility conducting courses for training fire protection personnel and recruits, each fire department, and each local governmental agency providing fire protection to determine if the department, agency, institution, or facility is complying with this chapter and commission rules.

[~~[Sections 416.012 to 416.020 reserved for expansion]~~

[~~[SUBCHAPTER B. EDUCATION]~~

Sec. 419.028 [~~416.021~~]. TRAINING PROGRAMS AND INSTRUCTORS. (a) The commission shall establish and maintain fire protection training programs conducted by the commission staff or through agencies and institutions that the commission considers appropriate. The commission may authorize reimbursement for a local governmental [~~or state~~] agency for expenses in attending the training programs as authorized by the legislature.

(b) The commission may:

(1) through issuance or revocation of a certificate, approve or revoke the approval of an institution or facility for a school operated by or for this state or a local government specifically for training fire protection personnel or recruits;

(2) operate schools and school facilities and conduct preparatory, in-service, basic, and advanced courses in the schools and facilities, as the commission determines, for fire protection personnel or recruits;

(3) certify persons as qualified fire protection personnel instructors under conditions that the commission prescribes;

(4) [~~visit and inspect an institution or facility conducting courses for training fire protection personnel and recruits and make necessary evaluations to determine if it is complying with this chapter and commission rules;~~

[~~(5)~~] contract with persons or public or private agencies, as the commission considers necessary, for services, facilities, studies, and reports that the commission requires to cooperate with local governmental agencies in training programs and to otherwise perform its functions; and

(5) [~~(6)~~] revoke the certification of [~~fire protection personnel and~~] fire protection personnel instructors.

Sec. 419.029 [~~416.022~~]. TRAINING CURRICULUM. The commission may establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs for a school operated by or for this state or a local government specifically for training fire protection personnel or recruits.

Sec. 419.030 [~~416.023~~]. COOPERATION WITH OTHER ENTITIES FOR TRAINING PURPOSES. The commission may consult and cooperate with a local governmental agency, other governmental agency, university, college, junior college, or another institution concerning the development of training schools and programs of courses of instruction for fire protection personnel, including the preparation or implementation of continuing education or training programs.

Sec. 419.031 [~~416.024~~]. TRAINING ASSISTANCE. [~~(a) The commission shall remit the fees authorized by Section 416.010(a) to the state treasurer, who shall deposit 80 percent of the fees collected annually into the general revenue fund and 20 percent of the fees collected annually into a fund dedicated for use by the commission in providing training assistance to fire departments throughout the state as provided by Subsection (b).~~

[~~(b)~~] The commission shall adopt rules and procedures for the administration of a training assistance program under this subchapter. The training assistance provided to fire departments under this subchapter may be provided by any of the following methods:

(1) purchasing and providing training aids to fire departments on a temporary or permanent basis;

(2) financing training seminars for fire departments; or

(3) paying instructor fees to teach specialized courses for fire departments that employ fully paid fire protection personnel.

[~~[Sections 416.025 to 416.030 reserved for expansion]~~

[~~SUBCHAPTER C. STANDARDS FOR APPOINTMENT~~]

Sec. 419.032 [~~416.031~~]. APPOINTMENT OF FIRE PROTECTION PERSONNEL. (a) A fire department may not appoint a person to the fire department, except on a temporary or probationary basis, unless the person:

(1) has satisfactorily completed a preparatory program of training in fire protection at a school approved or operated by the commission; and

(2) meets the qualifications established by the commission under Subsection (b).

(b) The commission by rule may establish qualifications relating to minimum age, education, physical and mental condition, citizenship, [~~good moral character,~~] basic certification tests, continuing education or training programs, and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel. The commission shall prescribe the means of presenting evidence of fulfillment of these qualifications. This chapter does not preclude an employing agency from establishing qualifications and standards for hiring fire protection personnel that exceed the minimum qualifications set by the commission.

(c) Fire protection personnel who receive temporary or probationary appointment and who fail to satisfactorily complete a basic course in fire protection, as prescribed by the commission, before one year after the date of the original appointment forfeit, and shall be removed from, the position. A temporary or probationary appointment may not be extended beyond one year by renewal of appointment or otherwise, except that on petition of a fire department one year or more after the date of the forfeiture and removal, the commission may reinstate the person's temporary or probationary employment. Fire protection personnel must complete a commission-approved training course in fire suppression before being assigned full-time to fire suppression duties.

(d) The commission may certify persons who are qualified under this subchapter [~~chapter~~] to be fire protection personnel. The commission shall adopt rules relating to presentation of evidence of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the commission for approved fire protection education and training programs in this state and shall issue to a person meeting the rules a certificate evidencing satisfaction of Subsections (a) and (b). The commission may waive any certification requirement for an applicant with a valid license from another state having certification requirements substantially equivalent to those of this state.

(e) Fire protection personnel serving under permanent appointment before September 1, 1972, are not required to meet a requirement of Subsection (a) or (b) as a condition of tenure or continued employment or for eligibility for a promotional examination for which they are otherwise eligible. The fire protection personnel are eligible to attend training courses subject to commission rules.

Sec. 419.033. CERTIFICATE EXPIRATION. (a) The commission by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, certificate fees payable on the date set by commission rule shall be prorated on a monthly basis so that each fire department or other employing entity shall pay only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

(b) The commission shall issue to a person who has held a commission certificate but is no longer employed by an entity that is regulated by the commission a one-time certificate that states the level of certification held by the person on the date the person left the regulated entity's employment. The commission shall prescribe the procedure under which a person applies for a certificate under this subsection. The commission shall set and collect from the person a fee of not more than $35 for the certificate.

Sec. 419.034. CERTIFICATE RENEWAL. (a) A fire department or other employing entity may renew an unexpired certification by paying to the commission before the expiration date of the certificate the required renewal fee.

(b) If a person's certificate has been expired for 30 days or less, the fire department or other employing entity may renew the certificate by paying to the commission the required renewal fee and a fee that is one-half of the certification fee for the certificate.

(c) If a person's certificate has been expired for longer than 30 days but less than one year, the fire department or other employing entity may renew the certificate by paying to the commission all unpaid renewal fees and a fee that is equal to the certification fee.

(d) If a person's certificate has been expired for one year or longer, the person may not renew the certificate. The person may obtain a new certificate by submitting to the proficiency examination or repeating the requirements and procedures for obtaining an original certificate. The commission shall charge a fee to recover the cost of administering the proficiency examination. The fire department or other employing entity shall pay the certification fee.

(e) At least 30 days before the expiration of a person's certificate, the commission shall send written notice of the impending certificate expiration to the last known fire department or other employing entity employing the regulated person according to the records of the commission.

Sec. 419.035. CERTIFICATION EXAMINATIONS. (a) Not later than the 30th day after the date on which a certification examination is administered under this subchapter, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day.

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

Sec. 419.036. DISCIPLINARY ACTIONS. (a) The commission may revoke or suspend a certificate, place on probation a person whose certificate has been suspended, or reprimand a regulated person for a violation of this subchapter or a rule of the commission. If a regulated person's suspension is probated, the commission may require the practitioner:

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

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

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

(b) If the commission proposes to suspend or revoke a person's certificate, the person is entitled to a hearing before the commission or a hearings officer appointed

by the commission. The commission shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commission.

Sec. 419.037 [~~416.032~~]. APPOINTMENT AS MARINE FIRE PROTECTION PERSONNEL. (a) The commission shall adopt requirements for certification of marine fire protection personnel. A person may not be appointed to a marine fire protection personnel position, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(b) Marine fire protection personnel appointed on a probationary basis must complete the prescribed training before two years after the date of appointment.

(c) Marine fire protection personnel serving under permanent appointment with five or more years' service before September 1, 1978, have satisfied the training requirements by experience.

Sec. 419.038 [~~416.033~~]. APPOINTMENT TO AIRCRAFT CRASH AND RESCUE FIRE PROTECTION PERSONNEL POSITION. (a) The commission shall adopt requirements for certification of aircraft crash and rescue fire protection personnel. A person may not be appointed to an aircraft crash and rescue fire protection personnel position, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(b) Aircraft crash and rescue fire protection personnel appointed on a probationary basis must complete the prescribed training before two years after the date of appointment.

(c) Aircraft crash and rescue fire protection personnel serving under permanent appointment with two or more years' service before September 1, 1984, have satisfied the training requirements.

Sec. 419.039 [~~416.034~~]. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) accepts an appointment in violation of Section 419.032 [~~416.031~~] or 419.037 [~~416.032~~];

(2) knowingly accepts an appointment in violation of Section 419.038 [~~416.033~~];

(3) appoints or retains a person in violation of Section 419.032 [~~416.031~~]; or

(4) appoints a person in violation of Section 419.037 [~~416.032~~] or 419.038 [~~416.033~~].

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000.

~~[Sec. 416.035. APPEAL. (a) A person dissatisfied with an action of the commission may appeal the action in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).~~

~~[(b) The attorney general, the district or county attorney, or an assistant of one of these persons shall represent the commission in an appeal under this section.~~

~~[Sec. 416.036. ADMINISTRATIVE AND CIVIL PENALTIES; INJUNCTION. (a) In addition to other penalties imposed by law, a person who violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by the commission not to exceed $1,000 for each violation. In addition to the administrative penalty, the person must pay costs incurred by the attorney general's office under this subsection. The administrative penalty shall be assessed in a proceeding conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).~~

~~[(b) The attorney general or the commission may institute a suit for an injunction to enforce this chapter. Venue for the suit is in a district court in Travis County. The court may also award the commission a civil penalty not to exceed~~

~~$1,000 for each violation of this chapter or a rule adopted under this chapter, plus court costs, reasonable attorney's fees, and costs incurred by the commission or the attorney general's office under this subsection.~~

~~[Sections 416.037-416.040 reserved for expansion]~~

~~[SUBCHAPTER D. PROTECTIVE CLOTHING AND EQUIPMENT]~~

Sec. 419.040 ~~[416.041]~~. PROTECTIVE CLOTHING. (a) A local governmental agency providing fire protection shall provide and maintain protective clothing for all of its fire protection personnel or provide allowances to these fire protection personnel to cover the purchase and maintenance of protective clothing and require the fire protection personnel to maintain the clothing to meet minimum standards. The protective clothing must comply with minimum standards of the National Fire Protection Association or its successor.

(b) The National Fire Protection Association standard applicable to an item of clothing is the standard in effect when the agency contracts for the item. An agency may continue to use clothing in use or contracted for before a change in a standard unless the commission determines that the continued use constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard.

Sec. 419.041 ~~[416.042]~~. SELF-CONTAINED BREATHING APPARATUS. (a) Each ~~[state or]~~ local governmental agency providing fire protection shall furnish all of its fire protection personnel who engage in fire fighting with self-contained breathing apparatus that complies with a nationally recognized standard approved by the commission for ~~[the minimum approval and certification requirements of the National Institute For Occupational Safety and Health or its successor with respect to]~~ self-contained breathing apparatus for use by fire protection personnel.

(b) At least once in each 30-day period the agency shall test each self-contained breathing apparatus used in the agency according to the testing procedures included in a nationally recognized standard approved by the commission for self-contained breathing apparatus ~~[recommended by the National Institute For Occupational Safety and Health or the American National Standards Institute, Inc]~~.

(c) A fire department that uses compressed breathing air compressors or any other breathing air systems, including air purchased from private sources, to refill self-contained breathing apparatus air bottles used by fire protection personnel shall have samples of compressed air from those systems tested at least twice annually by a competent testing laboratory or facility that has equipment designed to test compressed breathing air. The tests must include a check of the percentages of oxygen, water, hydrocarbons, carbon monoxide, carbon dioxide, and gaseous hydrocarbons in the compressed breathing air. The quality of the compressed breathing air and the tests of the compressed breathing air quality must conform with the quality and testing procedures included in a nationally recognized standard approved by the commission for self-contained breathing apparatus ~~[recommended by the American National Standards Institute, Inc]~~.

Sec. 419.042 ~~[416.043]~~. COMMISSION ENFORCEMENT. The commission shall enforce Sections 419.040 and 419.041 ~~[this subchapter]~~ and may adopt minimum standards consistent with those sections ~~[this subchapter]~~ for protective clothing and self-contained breathing apparatus for fire protection personnel.

[Sections 419.043-419.050 reserved for expansion]

SECTION 3. Subchapter B, Chapter 417, Government Code, is transferred to Chapter 419, Government Code, redesignated as Subchapter C of that chapter, and amended to read as follows:

SUBCHAPTER C [B]. FIRE DEPARTMENT EMERGENCY PROGRAM [BOARD]

Sec. 419.051 [417.021]. DEFINITIONS. In this subchapter:

(1) ["Board" means the Fire Department Emergency Board.

[(2)] "Program" means the fire department emergency program.

(2) [(3)] "Eligible local fire departments and public fire-fighting organizations" means municipal fire departments, volunteer fire departments, and publicly supported organizations that provide equipment or training to fire departments.

(3) "Equipment" includes protective clothing as defined by Section 419.021 and self-contained breathing apparatus.

Sec. 419.052 [417.022]. PURPOSE. The purpose of this subchapter is to promote efficient fire protection for the residents of this state by providing to eligible local fire departments and public fire-fighting organizations:

(1) long-term or low interest loans or other financial assistance as the commission [board] considers necessary to purchase necessary fire-fighting equipment and facilities; and

(2) scholarships and grants to better educate and train their members.

[Sec. 417.023. CREATION OF BOARD. (a) The Fire Department Emergency Board is created as an adjunct to the state fire marshal's office.

[(b) The state fire marshal shall provide to the board necessary office space and equipment and shall share administrative functions to the extent possible. At the board's request, the state fire marshal may provide to the board the staff necessary to assist the board in administering this subchapter.

[Sec. 417.024. MEMBERSHIP. (a) The board is composed of seven members appointed by the governor with the advice and consent of the senate.

[(b) Five members must be involved in fire service activities. Two members must be representatives of the general public.

[(c) The governor shall appoint three fire service members from a list of eligible persons submitted by the State Firemen's and Fire Marshals' Association of Texas. The governor shall appoint two fire service members from a list of eligible persons submitted by the Texas State Association of Fire Fighters. Each list must contain the names of at least three eligible persons for each appointment that will be made from that list.

[Sec. 417.025. TERMS. Members of the board hold office for two-year terms that expire on February 1 of each odd-numbered year.

[Sec. 417.026. OFFICERS; MEETINGS. (a) The board annually shall elect a chairman and a vice-chairman.

[(b) The board shall meet at the call of the chairman or of a majority of the members, or as provided by board rules.

[Sec. 417.027. PER DIEM AND EXPENSES. Each board member is entitled to a per diem as set by legislative appropriation for each day that the member engages in board business. A member is also entitled to compensation for transportation expenses as provided by the General Appropriations Act, but may not receive any compensation for other travel expenses, such as expenses for meals and lodging.

[Sec. 417.028. APPLICATION OF SUNSET ACT. The Fire Department Emergency Board is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the board is abolished and this subchapter expires September 1, 2001.]

Sec. 419.053 [417.029]. GENERAL POWERS AND DUTIES OF COMMISSION UNDER THIS SUBCHAPTER [BOARD]. [(a)] The commission [board] shall:

(1) administer the fire department emergency program as provided by this subchapter and commission [board] rules;

(2) contract with professional experts as necessary to assist the commission [board] in carrying out its powers and duties under this subchapter;

(3) adopt rules for the administration of this subchapter;

(4) adopt and use a seal;

(5) administer oaths and take testimony on matters within the commission's [board's] jurisdiction under this subchapter;

(6) keep an accurate record of its meetings, receipts, and disbursements;

(7) submit to the presiding officers of each house of the legislature an annual report of the commission's [board's] activities under this subchapter; and

(8) consider and approve or disapprove applications for scholarships, grants, loans, and other financial assistance as provided by this subchapter.

[(b) The board may accept gifts, grants, and donations for use in carrying out the purposes of this subchapter.]

Sec. 419.054. FUNDS ALLOCATION ADVISORY COMMITTEE. (a) The funds allocation advisory committee is composed of six members. Three members are appointed by the State Firemen's and Fire Marshals' Association of Texas. Three members are appointed by the Texas State Association of Fire Fighters. A committee member serves at the will of the authority that appointed the member.

(b) The committee shall elect a member of the committee as presiding officer of the committee. The committee shall meet at least twice each calendar year at the call of the presiding officer or at the call of the commission.

(c) The committee shall assist the commission in matters relating to the administration of this subchapter. The committee periodically shall review commission rules relating to the program and recommend changes in the rules to the commission. Notwithstanding Section 5(f), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commission shall submit all proposed changes and additions to the rules that relate to the program to the committee for development. If the commission does not approve a rule developed by the committee, the commission shall indicate to the committee the reasons that the commission did not approve the rule and return the rule to the committee for further development.

(d) The committee shall review and evaluate all applications for financial assistance under this subchapter according to the rules and procedures adopted by the commission. The committee shall recommend to the commission which applications should be approved and which applications should be disapproved. If the commission does not concur with the committee's recommendation, the commission shall indicate to the committee the reasons that the commission did not concur with the recommendation and return the applications regarding which the commission did not concur to the committee for further review and evaluation.

[Sec. 417.030. PROGRAM DIRECTOR; EMPLOYEES. (a) The board shall employ a director to be the chief administrative officer of the program. The board may delegate to the director full authority to manage and operate the program, subject only to board orders.

[(b) The director may employ persons necessary for the proper management of the program or make use of persons employed by and made available by the state fire marshal, as appropriate.

[(c) The board shall determine the terms of employment and the compensation to be paid to employees employed by the director under this section. Before adopting its annual budget, the board must submit its proposed budget to the state fire marshal for review and comment, but the state fire marshal's approval is not necessary for the board's adoption of its budget.]

Sec. 419.055 [~~417.031~~]. CREATION OF PROGRAM. The fire department emergency program is created to provide scholarships, grants, loans, and other financial assistance to eligible local fire departments and other public fire-fighting organizations.

Sec. 419.056 [~~417.032~~]. LOANS OR OTHER FINANCIAL ASSISTANCE FOR EQUIPMENT AND FACILITIES. (a) The commission [~~board~~] may make loans available or provide other financial assistance to an eligible local fire department or other public fire-fighting organization to:

(1) purchase fire-fighting equipment that is necessary for the local fire department or other public fire-fighting organization to meet its fire-fighting responsibilities; or

(2) finance equipment and facilities necessary to comply with federal and state law.

(b) The commission [~~board~~] by rule shall establish guidelines for determining eligibility for a loan or other financial assistance under this subchapter and for determining the amounts of loans or other financial assistance that the commission [~~board~~] may make available to eligible local fire departments and other public fire-fighting organizations. To be eligible for a loan or other financial assistance, a local fire department or other public fire-fighting organization must establish to the satisfaction of the commission [~~board~~] that without a loan or other financial assistance the local fire department or other public fire-fighting organization would be unable to purchase necessary fire-fighting equipment.

(c) The commission [~~board~~] by rule shall establish the types of equipment and facilities that a local fire department or other public fire-fighting organization may purchase with a loan or other financial assistance from the commission [~~board~~]. The commission may consider national standards relating to fire-fighting equipment and facilities when adopting rules under this subsection.

(d) Out of money appropriated for the implementation of this subchapter, the commission may pay the certification fees of volunteer fire fighters who choose to be certified by the commission under Subchapter D.

(e) Except for money that is spent for administrative costs under this subchapter, the commission each fiscal year shall direct one-half of the money it spends that is appropriated for the implementation of this subchapter to municipal fire departments and one-half of that money to fire-fighting entities located in rural and unincorporated areas.

Sec. 419.057 [~~417.033~~]. REVOLVING FUND. The comptroller shall establish in the state treasury the Fire Department Emergency Program [~~Board~~] revolving fund account. All money collected by the commission [~~board~~] as loan payments and as payments on defaulted loans shall be deposited to the credit of the fund. Money deposited in the fund shall be used to make other loans under the program created by this subchapter.

Sec. 419.058 [~~417.034~~]. SCHOLARSHIPS AND GRANTS FOR EDUCATION AND TRAINING. (a) The commission [~~board~~] may award scholarships and grants to an eligible local fire department or other public fire-fighting organization. A local fire department or other public fire-fighting organization may use a scholarship or grant awarded under this subchapter only to educate and train its members to more effectively meet the members' fire-fighting responsibilities.

(b) The commission [~~board~~] by rule shall establish guidelines for determining eligibility for a grant or scholarship under this subchapter and for determining the amount that the commission [~~board~~] may award to an eligible local fire department or other public fire-fighting organization. To be eligible for a scholarship or grant, a local fire department or other public fire-fighting organization must establish to the satisfaction of the commission [~~board~~] that without a scholarship or grant the

local fire department or other public fire-fighting organization would be unable to adequately train and educate its members.

(c) The commission [board] by rule shall determine the types of educational and training programs for which the commission [board] may award a scholarship or grant under this subchapter.

Sec. 419.059 [~~417.035~~]. APPLICATION FOR SCHOLARSHIP, GRANT, LOAN, OR OTHER FINANCIAL ASSISTANCE. (a) A local fire department or other public fire-fighting organization may apply in writing to the commission [board] for a scholarship, grant, loan, or other financial assistance.

(b) The application must include the following information:

(1) the official name and address of the applicant;

(2) the purposes for which the local fire department or other public fire-fighting organization would use the requested scholarship, grant, loan, or other financial assistance;

(3) the amount of the scholarship, grant, loan, or other financial assistance requested;

(4) if a loan, the proposed plan for repayment;

(5) financial information relating to the applicant as requested by the commission [board]; and

(6) any other information the commission [board] requires in order to make a decision on the application.

(c) The commission [board] by rule shall prescribe the form of the application and the procedure for submitting and processing the application.

Sec. 419.060 [~~417.036~~]. REVIEW OF APPLICATION. In addition to the criteria established by commission [board] rules, the commission [board], in reviewing an application, shall consider:

(1) the purpose or purposes for which the applicant would use the scholarship, grant, loan, or other financial assistance;

(2) the needs of that applicant as compared to the needs of other eligible applicants;

(3) the financial need of the applicant for the money;

(4) the availability of other money to the applicant; and

(5) the ability of the applicant to finance its activities without a state scholarship, grant, loan, or other financial assistance.

Sec. 419.061 [~~417.037~~]. APPROVAL OR REJECTION OF APPLICATION. The commission [board] by rule shall establish procedures for accepting or rejecting applications.

Sec. 419.062 [~~417.038~~]. CONTRACTS, AGREEMENTS, AND OTHER DOCUMENTS. (a) If the commission [board] approves a loan application, the commission [board] shall contract with the applicant to provide the funds under this subchapter. The commission [board] shall provide the funds in accordance with the terms and conditions provided by this subchapter and commission [board] rules.

(b) The commission [board] may execute any other documents necessary to make a legally binding agreement as to the transfer and expenditure of the amount to be loaned or awarded and the repayment of any amount loaned.

Sec. 419.063 [~~417.039~~]. LIMITATION ON SCHOLARSHIPS, GRANTS, LOANS, AND OTHER FINANCIAL ASSISTANCE. (a) The commission [board] may not make awards or loans under this subchapter to any one applicant in a total amount that is greater than an amount equal to five percent of the total amount of money appropriated to the program for the fiscal year during which the award or loan is made.

(b) The commission [board] may not approve an application if the current appropriations for the program are insufficient to pay the total amount requested under the application.

Sec. 419.064 [~~417.040~~]. DEFAULT ON LOAN. (a) If a local fire department or other public fire-fighting organization cannot make payments on a loan made under this subchapter, the commission [~~board~~] shall attempt to collect from the borrower as provided by this subchapter, the terms of the loan contract, and other agreements.

(b) The attorney general, at the request of the commission [~~board~~], shall take all necessary legal action to assist the commission [~~board~~] in recovering amounts of a defaulted loan.

[Sections 419.065-419.070 reserved for expansion]

SECTION 4. Subtitle B, Title 4, Government Code, is amended by adding Subchapters D, E, and Z of Chapter 419 to read as follows:

SUBCHAPTER D. VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS

Sec. 419.071. VOLUNTARY CERTIFICATION AND REGULATION PROGRAM FOR VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS. (a) The commission shall develop a voluntary certification and regulation program for volunteer fire fighters and volunteer fire departments. Components of the program developed by the commission shall include certification and regulation of volunteer fire fighters, certification and regulation of facilities that train volunteer fire fighters, and the regulation of protective clothing and self-contained breathing apparatus.

(b) The commission shall contract with a statewide organization whose members include both volunteer and paid fire fighters to administer and implement the program. The commission in the contract shall reserve the right to evaluate the administration and implementation of the program under the contract and the right to observe and to require information from the other party to the contract so that the commission may perform a meaningful evaluation.

(c) A volunteer fire fighter, volunteer fire department, or facility that provides training to volunteer fire fighters is not required to participate in any component of the commission's program under this chapter. A volunteer fire fighter, volunteer fire department, or facility that provides training to volunteer fire fighters may on request participate in one or more components of the program under this subchapter as appropriate.

(d) The program shall make available to volunteer fire fighters the same level of training that is made available to paid fire protection personnel and recruits through the commission's basic certification program under Subchapter B, but in a way that takes into account the circumstances of volunteer fire fighters.

(e) The commission by rule may:

(1) establish qualifications relating to minimum age, education, and physical and mental condition required for certification under this subchapter;

(2) establish standards relating to training programs and to continuing education under this subchapter;

(3) establish the training components required for certification under this subchapter;

(4) establish testing procedures for certification candidates and procedures to test the satisfactory completion of training components; and

(5) recognize other training for credit towards certification under this chapter.

(f) Qualifications established for persons under this section may only be qualifications for certification and may not be qualifications for entering a certification program.

Sec. 419.072. VOLUNTEER FIRE FIGHTER ADVISORY COMMITTEE. (a) The commission shall establish a volunteer fire fighter advisory committee to assist the commission in matters relating to volunteer fire fighters and

volunteer fire departments. The committee shall be composed of nine members appointed by the commission. Six members must be volunteer fire fighters who collectively represent various areas in the field of fire protection. Three members must be instructors of volunteer fire fighters. Six of the nine members must be appointed from a list submitted to the commission by the State Firemen's and Fire Marshals' Association of Texas. A committee member serves at the will of the commission.

(b) The committee shall elect a member of the committee as presiding officer of the committee. The committee shall meet at least twice each calendar year at the call of the presiding officer or at the call of the commission.

(c) The committee shall develop and recommend to the commission for approval the rules of the program under this subchapter. The committee periodically shall review commission rules relating to the commission's program under this subchapter and recommend changes in the rules to the commission. Notwithstanding Section 5(f), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commission shall submit all proposed rules and all proposed changes and additions to the rules that relate to the program under this subchapter to the committee for development. If the commission does not approve a rule developed by the committee, the commission shall indicate to the committee the reasons that the commission did not approve the rule and return the rule to the committee for further development.

Sec. 419.073. CERTIFICATION FEE. The commission shall set and collect a fee of not more than $10 for each certificate issued under this subchapter designed to recover the commission's costs under this subchapter. The commission may choose to pay the fee out of money appropriated for the implementation of Subchapter C.

Sec. 419.074. RECOGNITION OF CERTAIN PRIOR CERTIFICATIONS. The commission shall, on application, certify a person under the commission's program under this subchapter if the person received an advanced certificate from the State Firemen's and Fire Marshals' Association of Texas before September 1, 1993.

Sec. 419.075. BECOMING CERTIFIED UNDER SUBCHAPTER B. A volunteer fire fighter who held an active State Firemen's and Fire Marshals' Association of Texas advanced certification on May 1, 1991, or who has completed the training required for a State Firemen's and Fire Marshals' Association of Texas advanced certification not later than December 31, 1992, is eligible to be certified to be fire protection personnel under Subchapter B after successful completion of the fire protection personnel examination administered under Subchapter B. A volunteer fire fighter who did not hold an active State Firemen's and Fire Marshals' Association of Texas advanced certification on May 1, 1991, or who does not complete the required training for a State Firemen's and Fire Marshals' Association of Texas advanced certification by December 31, 1992, is eligible to be certified to be fire protection personnel under Subchapter B only after completing a commission-approved certification program and successful completion of the fire protection personnel examination administered under Subchapter B.

[Sections 419.076-419.080 reserved for expansion]

SUBCHAPTER E. PAID FIRE FIGHTERS AND FIRE DEPARTMENTS NOT CONNECTED WITH A LOCAL GOVERNMENT

Sec. 419.081. MANDATORY INSPECTION AND REGULATION OF CERTAIN STATE AGENCIES. (a) Each state agency providing fire protection shall furnish all of its employees who engage in fire fighting with self-contained breathing apparatus as provided by Section 419.041 for local fire departments.

(b) At least biennially, the commission shall visit and inspect each state agency providing fire protection to determine if the agency is complying with applicable portions of this chapter and commission rules.

Sec. 419.082. TRAINING FOR STATE AGENCY FIRE FIGHTERS. The commission may allow a state agency employee who provides fire protection to attend fire protection training programs conducted under Subchapter B, including an employee who is not regulated under Section 419.083. The commission may authorize reimbursement for a state agency's costs under this section as authorized by the legislature, whether or not the agency is regulated under Section 419.083.

Sec. 419.083. VOLUNTARY REGULATION OF CERTAIN STATE AGENCIES AND STATE AGENCY EMPLOYEES. (a) Certain state agencies and state agency employees may apply to the commission for regulation under one or more discrete components of the commission's regulatory authority under Subchapter B. The commission shall define the components by rule.

(b) A state agency employee who would be fire protection personnel under Section 419.021 if the person were employed by a local government may apply to the commission for regulation under this section. The fact that a state agency employee becomes regulated by the commission under this section does not make the employing agency subject to commission regulation under this section, except that the commission may require reports from the agency that relate to the employee. A state agency may pay an employee's fees under this subsection.

(c) A state agency may apply to the commission for regulation under this section if the agency is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021.

(d) The commission shall prescribe the procedures under which a state agency or agency employee may apply for regulation under this section and the means by which the state agency or agency employee may present evidence that the agency or employee is eligible for regulation under this section.

(e) The commission shall determine whether a state agency or agency employee that has applied for regulation is eligible for regulation under this section. The commission shall approve a request for regulation if the agency or employee meets the requirements of Subsection (b) or (c), and the commission shall notify the applying agency or employee of its decision.

(f) A state agency or agency employee regulated under this section is subject to the appropriate component or components of Subchapter B and applicable rules adopted under this chapter to the same extent as a local government, a fire department, or fire protection personnel employed by a local government.

(g) A state agency or agency employee that is subject to regulation under this section is entitled to a reasonable period in which to comply with applicable requirements. The commission by rule shall determine the time period in which a state agency or agency employee must come into compliance with each requirement.

Sec. 419.084. VOLUNTARY REGULATION OF CERTAIN FEDERAL AGENCIES AND FEDERAL EMPLOYEES. (a) Certain federal agencies and federal employees may apply to the commission for regulation under one or more discrete components of the commission's regulatory authority under Subchapter B. The commission shall define the components by rule.

(b) A federal employee who would be fire protection personnel under Section 419.021 if the person were employed by a local government may apply to the commission for regulation under this section. The fact that a federal employee becomes regulated by the commission under this section does not make the employing agency subject to commission regulation under this section.

(c) A federal agency may apply to the commission for regulation under this section if the agency is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021.

(d) The commission shall prescribe the procedures under which a federal agency or federal employee may apply for regulation under this section and the

means by which a federal agency or federal employee may present evidence that the agency or employee is eligible for regulation under this section.

(e) The commission shall determine whether a federal agency or federal employee that has applied for regulation is eligible for regulation under this section. The commission shall approve a request for regulation if the agency or employee meets the requirements of Subsection (b) or (c), and the commission shall notify the applying agency or employee of its decision.

(f) A federal agency or federal employee regulated under this section is subject, to the extent allowed by federal law, to the appropriate component or components of Subchapter B and applicable rules adopted under this chapter to the same extent as a local government, a fire department, or fire protection personnel employed by a local government.

(g) A federal agency or federal employee that is subject to regulation under this section is entitled to a reasonable period in which to comply with applicable requirements. The commission by rule shall determine the time period in which a federal agency or federal employee must come into compliance with each requirement.

Sec. 419.085. VOLUNTARY REGULATION OF CERTAIN NONGOVERNMENTAL DEPARTMENTS. (a) A nongovernmental entity may apply to the commission for regulation under Subchapter B if:

(1) the entity is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021; and

(2) at the time of application, those fire protection employees are employed to provide fire protection for an unincorporated area that:

(A) constitutes a rating territory established by the State Board of Insurance with a protected key rate assigned by the board; and

(B) has a population of more than 25,000.

(b) The commission shall prescribe the procedures under which a nongovernmental entity may apply for regulation under this section and the means by which it may present evidence that it is eligible for regulation under Subsection (a).

(c) The commission shall determine whether an entity that has applied for regulation under this section is eligible for regulation under Subsection (a). The commission shall approve a request for regulation if the entity meets the requirements of Subsection (a), and the commission shall notify the applying entity and the affected fire protection employees of its decision.

(d) A nongovernmental entity, department, and fire protection employee regulated under this section are subject to Subchapter B and applicable commission rules to the same extent that Subchapter B and applicable commission rules apply to a local government, a fire department, or fire protection personnel employed by a local government.

(e) A person, department, or other entity that is subject to regulation under this section is entitled to a reasonable period in which to comply with the requirements of Subchapter B and applicable commission rules. The commission by rule shall determine the time period in which a person, department, or other entity must come into compliance with each requirement.

Sec. 419.086. ELIGIBILITY FOR CERTAIN TRAINING ASSISTANCE. If an entity or the employees of an entity are regulated under this subchapter so that as a consequence of the regulation a certification fee is paid to the commission on behalf of each employee of the entity who would be fire protection personnel under Section 419.021 if the employee were employed by a local government, the commission shall use the special account in the general revenue fund created under Section 419.026(d) to provide training assistance to the entity to the same extent

that the commission provides training assistance to a fire department under Section 419.031.

[Sections 419.087-419.900 reserved for expansion]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 419.901. KEY RATE SCHEDULE. (a) The commission shall review the key rate schedule of the State Board of Insurance at least once every four years. The commission shall recommend changes that the commission believes should be made in the schedule to the board.

(b) The commission shall inspect municipalities, using the key rate schedule, recommend the key rate to the State Board of Insurance for its approval, and report information obtained as a result of the inspection to the board. If the board does not approve a rate recommended by the commission, the board shall inform the commission of the reason and the commission shall recommend another rate.

(c) The commission and the State Board of Insurance shall adopt a memorandum of understanding that coordinates their respective duties relating to the key rate schedule.

Sec. 419.902. COORDINATION WITH FIREMEN'S TRAINING SCHOOL. The commission and the director of the Texas Engineering Extension Service of The Texas A&M University System shall enter into a memorandum of understanding to coordinate the responsibilities of the commission with the training provided by the firemen's training school operated under Section 86.16, Education Code. The commission and the director shall review and update the memorandum of understanding not later than the last month of each state fiscal year.

Sec. 419.903. COORDINATION WITH TEXAS FOREST SERVICE. The commission and the director of the Texas Forest Service shall enter into a memorandum of understanding to coordinate the provision of training assistance and other assistance to fire-fighting entities. The commission and the director shall review and update the memorandum of understanding not later than the last month of each state fiscal year.

Sec. 419.904. TECHNICAL ASSISTANCE TO RURAL FIRE PREVENTION DISTRICTS. The commission may on request provide technical assistance to rural fire prevention districts, including advice on the efficient and effective provision of fire protection within a district.

Sec. 419.905. APPEAL OF COMMISSION DECISIONS. (a) A person dissatisfied with an action of the commission may appeal the action in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The attorney general, the district or county attorney, or an assistant of one of these persons shall represent the commission in an appeal under this section.

Sec. 419.906. ADMINISTRATIVE AND CIVIL PENALTIES; INJUNCTION. (a) In addition to other penalties imposed by law, a person who violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by the commission not to exceed $1,000 for each violation. In addition to the administrative penalty, the person must pay costs incurred by the attorney general's office under this subsection. The administrative penalty shall be assessed in a proceeding conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The attorney general or the commission may institute a suit for an injunction to enforce this chapter. Venue for the suit is in a district court in Travis County. The court may also award the commission a civil penalty not to exceed $1,000 for each violation of this chapter or a rule adopted under this chapter, plus court costs, reasonable attorney fees, and costs incurred by the commission or the attorney general's office under this subsection.

SECTION 5. Subchapter A, Chapter 417, Government Code, is amended to read as follows:

[~~SUBCHAPTER A. OFFICE OF STATE FIRE MARSHAL~~]

Sec. 417.001. DEFINITION. In this chapter [~~subchapter~~], "commission" [~~"board"~~] means the Texas Commission on Fire Protection [~~State Board of Insurance~~].

Sec. 417.002. APPOINTMENT AND TENURE. The state fire marshal is appointed by the executive director of the commission subject to approval by the commission [~~chairman of the board~~]. The state fire marshal serves at the pleasure of the commission [board] and may be discharged at any time. The commission shall require the state fire marshal to report to the commission through the executive director.

Sec. 417.003. STATUS AS STATE-COMMISSIONED OFFICER. The state fire marshal is a state-commissioned officer and functions in that capacity subject to rules of the commission [board].

Sec. 417.004. GENERAL POWERS AND DUTIES. (a) The state fire marshal, under the supervision of the commission [board], shall administer and enforce applicable provisions of the Insurance Code and other law relating to the state fire marshal. The commission shall perform the supervisory and rule-making functions previously performed by the State Board of Insurance under this subsection. The commission and the board shall transfer information between the two agencies as necessary to allow the agencies to perform their statutory duties. The commission and the board may make and adopt by rule memoranda of understanding as necessary to coordinate their respective duties.

(b) The state fire marshal is the chief investigator in charge of the investigation of arson and suspected arson in the state.

Sec. 417.0041. PARTICIPATION OF CERTAIN ADVISORY COUNCILS IN RULE MAKING. (a) This section applies to rules adopted under Articles 5.43-1 through 5.43-4, Insurance Code, and to the advisory councils established under these articles.

(b) Each council periodically shall review commission rules implementing the article under which the council was established and recommend changes in the rules to the commission. Notwithstanding Section 5(f), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commission shall submit all changes and additions to rules that implement the article under which an advisory council was established to that council for development. If the commission does not approve a rule developed by the council, the commission shall indicate to the council the reasons that the commission did not approve the rule and return the rule to the council for further development.

Sec. 417.005. ADOPTION OF RULES. The commission [board], after consulting with the state fire marshal, shall adopt necessary rules to guide the state fire marshal and investigators commissioned by the state fire marshal in the investigation of arson and suspected arson.

Sec. 417.0051. FIRE PREVENTION AND SAFETY EDUCATION. The commission [board], through the state fire marshal, may use pertinent and timely facts relating to fires to develop educational programs and disseminate materials necessary to educate the public effectively regarding methods of fire prevention and safety.

Sec. 417.006. ARSON INVESTIGATORS. The state fire marshal may commission arson investigators to act under his supervision and may revoke an investigator's commission for just cause.

Sec. 417.007. INVESTIGATION OF FIRE. (a) The state fire marshal shall immediately investigate a fire occurring in this state in which property is destroyed if the commission [board] directs the investigation or, in the discretion of the commission [board], if the investigation is requested by:

(1) the mayor, fire chief, fire marshal, or police chief of a municipality in which a fire occurs;

(2) a county or district judge, sheriff, county fire marshal, chief or fire marshal of a fire department in an unincorporated area, or county attorney of a county in which a fire occurs;

(3) a fire insurance company interested in a loss or the company's general, state, or special agent;

(4) an insurance policyholder, property owner, or lessee sustaining a fire loss;

(5) a justice of the peace or a constable of a precinct in which a fire occurs; or

(6) officials of a state or federal law enforcement agency or local or special governmental district involved or interested in a fire loss that occurred in this state.

(b) The state fire marshal at any time may enter a building or premises at which a fire is in progress or has occurred and is under control of law enforcement or fire service officials to investigate the cause, origin, and circumstances of the fire. If control of the building or premises has been relinquished, entry must be in compliance with search and seizure law and applicable federal law.

(c) The state fire marshal shall conduct the investigation at the place of the fire and before an insured loss may be paid. The state fire marshal shall ascertain, if possible, whether the fire was caused intentionally, carelessly, or accidentally. The state fire marshal shall make a written report of the investigation to the commission ~~[board]~~.

(d) If the state fire marshal believes that further investigation is necessary, the state fire marshal shall take sworn statements from persons who in his opinion can supply relevant information and shall have the statements put in writing. The state fire marshal may administer oaths and compel the attendance of witnesses and the production of documents.

(e) If the state fire marshal believes that there is sufficient evidence to charge a person with arson, attempted arson, conspiracy to commit fraud, or another offense related to the matter under investigation, the state fire marshal shall give to the appropriate prosecuting attorney all evidence and relevant information that has been obtained, including the names of witnesses. The state fire marshal shall arrest the person if the person has not been arrested by some other authority. The state fire marshal shall assist in the prosecution of any complaint he files.

(f) The state fire marshal may, in his discretion, conduct or direct the conduct of an investigation in private and may exclude from the place of the investigation persons not needed for the investigation. Witnesses may be separated from each other and not be allowed to communicate with other witnesses until after they have testified.

(g) The state fire marshal may elect to withhold from the public any testimony taken in an investigation under this section.

Sec. 417.008. RIGHT OF ENTRY; EXAMINATION AND CORRECTION OF DANGEROUS CONDITIONS. (a) On the complaint of any person, the state fire marshal, at any reasonable time, is entitled to enter any building or premises in the state.

(b) The state fire marshal shall enter and is entitled, at any time, to enter any mercantile, manufacturing, or public building, place of amusement, or place where public gatherings are held, or any premises belonging to such a building or place, and make a thorough examination.

(c) The state fire marshal shall order the removal of a building or structure or other remedial action if he finds that:

(1) the building or other structure, because of lack of repair, age, dilapidated condition, or other reason, is susceptible to fire and is so located or occupied that fire would endanger persons or property in the building or structure;

(2) a dangerous condition is created by:

(A) an improper arrangement of stoves, ranges, furnaces, or other heating appliances, including chimneys, flues, and pipes with which they are connected, or by their lighting systems or devices; or

(B) the manner of storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, or combustible, flammable, or refuse materials; or

(3) any other condition exists that is dangerous or is liable to cause or promote fire or create danger for fire fighters, occupants, or other buildings or structures.

(d) The occupant or owner of the building or premises shall immediately comply with an order made by the state fire marshal under this section. The state fire marshal may, if necessary, apply to a court of competent jurisdiction for writs or orders necessary to enforce this section, and the court may grant appropriate relief. The state fire marshal is not required to give a bond.

Sec. 417.009. DELEGATION OF AUTHORITY. (a) If for any reason the state fire marshal is unable to make a required investigation in person, the marshal may designate the fire marshal of the city or town where the investigation is to be made or another suitable person to act for the state fire marshal.

(b) The designated person has the same authority with respect to the investigation as is provided by this chapter for the state fire marshal. The designated person is entitled to compensation as provided by action of the commission [~~board~~].

SECTION 6. Section 86.16, Education Code, is amended to read as follows:

Sec. 86.16. FIREMEN'S TRAINING SCHOOL. (a) The Texas A&M University System [~~university~~] shall conduct and maintain a firemen's training school through the Texas Engineering Extension Service as a unit of the university system in the manner deemed expedient and advisable by the system's board of regents.

(b) The firemen's training school advisory board is composed of:

(1) three members of the [~~teaching~~] staff of the system [~~university~~] appointed by [~~the chairman of~~] the system's board of regents, one of whom shall be the director of the engineering extension service who serves ex officio as the chairman of the advisory board [~~directors~~]; [~~and~~]

(2) four members or representatives of the State Firemen's and Fire Marshals' Association of Texas or its successor, appointed by the president or other managing officer of that association;

(3) one person who is fire protection personnel as defined by Section 419.021, Government Code, and who is the head of a training division for the fire department of a political subdivision, appointed by the Texas Commission on Fire Protection; and

(4) one fire chief appointed by the president or other managing officer of the Texas Fire Chiefs Association or its successor.

(c) The advisory board shall confer with and advise the engineering extension service [~~board of directors~~] with reference to the organization of the school, the purchasing of equipment, the curriculum and program, and the conduct and management of the school.

(d) Expenditures for the per diem expenses of members of the advisory board and all other necessary expenses of the school shall be made only on the order of the system's board of regents [~~directors~~], and no warrants shall be paid unless also approved in writing by the director of the engineering extension service [~~president of the university, who shall be advised with respect to the conduct of the school~~].

SECTION 7. Chapter 753, Health and Safety Code, is amended by adding Section 753.0011 to read as follows:

Sec. 753.0011. TRANSFER OF POWERS AND DUTIES; REFERENCES IN CHAPTER. The powers and duties assigned to the State Board of Insurance under this chapter are transferred to the Texas Commission on Fire Protection. All references in this chapter to the State Board of Insurance mean the Texas Commission on Fire Protection.

SECTION 8. Subsection (a), Section 755.033, Health and Safety Code, as added by **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) The commissioner shall enter into interagency agreements with the Texas Department of Health, the Texas Commission on Fire Protection, and the State Board of Insurance under which inspectors, marshals, or investigators from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the commissioner.

SECTION 9. Subsection (b), Section 792.003, Health and Safety Code, is amended to read as follows:

(b) In lieu of or in addition to the list made under Subsection (a), the state fire marshal may substitute or use a list of devices that comply with standards of manufacture and installation adopted [~~by the State Board of Insurance~~] under Article 5.43-2, Insurance Code.

SECTION 10. Article 5.25, Insurance Code, is amended to read as follows:

Art. 5.25. BOARD SHALL FIX RATES. The State Board of Insurance shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. Said Board shall also have authority to alter or amend any and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same, or any part thereof, as herein provided. Said Board shall have authority to employ clerical help, inspectors, experts and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law. Said Board shall ascertain as soon as practicable the annual fire loss in this State; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable said Board to classify the fire losses of this State, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates of the State, or subdivisions of the State. The Board may designate one or more rating organizations, advisory organizations, or other agencies to gather, audit, and compile such experience of insurers, and the cost thereof shall be borne by such insurers.

SECTION 11. Article 5.43-1, Insurance Code, is amended by adding Section 2A to read as follows:

Sec. 2A. TRANSFER OF POWERS AND DUTIES. The powers and duties assigned to the State Board of Insurance under this article are transferred to the Texas Commission on Fire Protection. The commission and the board by rule may make and adopt memoranda of understanding under which the board will exercise certain powers and duties under this article if it is more appropriate for the board to do so.

SECTION 12. Section 9, Article 5.43-1, Insurance Code, is amended to read as follows:

Sec. 9. DELEGATION OF POWER BY STATE BOARD OF INSURANCE. The State Board of Insurance may delegate the exercise of all or part of its functions, powers, and duties under this article, except for the issuance of licenses, certificates, and permits, [~~and the formulation of rules and regulations;~~] to a Fire Extinguisher Advisory Council whose members shall be appointed by the State Board of Insurance. The council shall assist in the review and formulation of rules adopted under this article in accordance with Section 417.0041, Government Code. The members shall be experienced and knowledgeable in one or more of the following areas: fire services, fire extinguisher manufacturing, fire insurance inspection or underwriting, fire extinguisher servicing, or be a member of a fire protection association or industrial safety association.

SECTION 13. Article 5.43-2, Insurance Code, is amended by adding Section 4A to read as follows:

Sec. 4A. TRANSFER OF POWERS AND DUTIES. The powers and duties assigned to the State Board of Insurance under this article are transferred to the Texas Commission on Fire Protection. The commission and the board by rule may make and adopt memoranda of understanding under which the board will exercise certain powers and duties under this article if it is more appropriate for the board to do so.

SECTION 14. Subsection (a), Section 6, Article 5.43-2, Insurance Code, is amended to read as follows:

(a) The board shall delegate authority to exercise all or part of its functions, powers, and duties under this article, including the issuance of certificates and licenses, to the state fire marshal, and the state fire marshal along with assistance of an [~~a nonbinding~~] advisory council to be appointed by the board shall implement such rules as may be determined by the board in accordance with Section 417.0041, Government Code to be essentially necessary for the protection and preservation of life and property in controlling:

(1) the registration of persons and organizations engaging in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems; and

(2) the requirements for the planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining of fire alarm or fire detection devices or systems by:

(A) conducting examinations and evaluating the qualifications of applicants for a certificate of registration to engage in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems;

(B) conducting examinations and evaluating the qualifications of applicants for fire alarm technician or fire alarm planning superintendent licenses;

(C) evaluating and determining which organizations shall be approved as testing laboratories for the purpose of this article; and

(D) evaluating and approving required training programs for all persons who engage in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems.

SECTION 15. Article 5.43-3, Insurance Code, is amended by adding Section 3A to read as follows:

Sec. 3A. TRANSFER OF POWERS AND DUTIES. The powers and duties assigned to the State Board of Insurance under this article are transferred to the Texas Commission on Fire Protection. The commission and the board by rule may make and adopt memoranda of understanding under which the board will exercise certain powers and duties under this article if it is more appropriate for the board to do so.

SECTION 16. Subsection (b), Section 6, Article 5.43-3, Insurance Code, is amended to read as follows:

(b) The advisory council, in addition to other duties delegated by the board, shall in accordance with Section 417.0041, Government Code [~~may~~]:

(1) advise the State Fire Marshal concerning practices in the fire protection sprinkler system industry and the rules necessary to implement and administer this article;

(2) make recommendations to the State Fire Marshal regarding forms and procedures for certificates of registration and licenses.

SECTION 17. Section 5, Article 5.43-4, Insurance Code, is amended to read as follows:

Sec. 5. ADMINISTRATION. The board shall administer this article through the state fire marshal and may issue rules for [~~it considers necessary to~~] its administration in accordance with Section 417.0041, Government Code. The board, in promulgating [necessary] rules, may use standards recognized by federal law or regulation, and those published by a nationally recognized standards-making organization. Rules may not be adopted under this article that are more restrictive than the rules in effect on January 1, 1991, without specific statutory authority.

SECTION 18. Article 5.43-4, Insurance Code, is amended by adding Sections 5A and 5B to read as follows:

Sec. 5A. TRANSFER OF POWERS AND DUTIES. The powers and duties assigned to the State Board of Insurance under this article are transferred to the Texas Commission on Fire Protection. The commission and the board by rule may make and adopt memoranda of understanding under which the board will exercise certain powers and duties under this article if it is more appropriate for the board to do so.

Sec. 5B. ADVISORY COUNCIL. The commission shall establish an advisory council to assist the commission in the administration of this article. The council is composed of five members who must be representatives from the fireworks industry, three of whom must be appointed from a list submitted to the commission by the Texas Pyrotechnic Association. A council member serves at the will of the commission. The council shall assist the commission in the review and adoption of rules under this article as provided by Section 417.0041, Government Code.

SECTION 19. As soon as possible after the effective date of this Act, the governor shall appoint the initial members of the Texas Commission on Fire Protection in accordance with Chapter 419, Government Code, as added by this Act. The governor shall appoint four members to a term expiring February 1, 1993, four members to a term expiring February 1, 1995, and four members to a term expiring February 1, 1997. The commission may not take action until all 12 appointees have taken office.

SECTION 20. (a) On the date that the last appointee to the initial governing body of the Texas Commission on Fire Protection takes office, the Fire Department Emergency Board is abolished. On that date, the powers, duties, obligations, rights, contracts, records, personnel, property, and unspent appropriations of the board are transferred to the commission, and the Fire Department Emergency Board revolving fund is renamed the Fire Department Emergency Program revolving fund and transferred from the board to the commission.

(b) All rules of the Fire Department Emergency Board are continued in effect as rules of the Texas Commission on Fire Protection until superseded by a rule of the commission.

(c) Notwithstanding the changes in law made by this Act, until the date that the Fire Department Emergency Board is abolished as provided by this section the members of the board on the effective date of this Act may continue in office and

exercise the powers and duties of the board under the law that governed the board before the effective date of this Act, and the prior law is continued in effect for this purpose.

SECTION 21. (a) On the date that the last appointee to the initial governing body of the Texas Commission on Fire Protection takes office, the Commission on Fire Protection Personnel Standards and Education is abolished. On that date, the powers, duties, obligations, rights, contracts, records, personnel, property, and unspent appropriations and other funds of the Commission on Fire Protection Personnel Standards and Education are transferred to the Texas Commission on Fire Protection.

(b) All rules of the Commission on Fire Protection Personnel Standards and Education are continued in effect as rules of the Texas Commission on Fire Protection until superseded by a rule of the new commission.

(c) All complaints, proceedings, and investigations before the Commission on Fire Protection Personnel Standards and Education are transferred without change in status to the Texas Commission on Fire Protection. The validity of a certificate issued by the Commission on Fire Protection Personnel Standards and Education is not affected by the abolition of the commission.

(d) Notwithstanding the changes in law made by this Act, until the date that the Commission on Fire Protection Personnel Standards and Education is abolished as provided by this section the members of the commission on the effective date of this Act may continue in office and exercise the powers and duties of the commission under the law that governed the commission before the effective date of this Act, and the prior law is continued in effect for this purpose.

SECTION 22. (a) On the date that the last appointee to the initial governing body of the Texas Commission on Fire Protection takes office, the powers and duties relating to the State Board of Insurance's key rate schedule that are assigned to the commission by Chapter 419, Government Code, as added by this Act, are transferred from the board to the commission. On that date, both all unspent appropriations to the board and all board employees that are required for the performance of those duties are transferred from the board to the commission. The board shall provide the commission with access to or copies of records that the commission requires to carry out the transferred duties. Until the date of transfer under this section, the board shall continue to exercise the powers and duties that will be transferred.

(b) The state fire marshal who is in office on the date of transfer under this section continues in office unless replaced by the Texas Commission on Fire Protection. Until the date of transfer under Subsection (a) of this section, the State Board of Insurance continues to exercise all powers and duties it exercised under prior law relating to the state fire marshal, the duties of the state fire marshal, and laws administered chiefly through the state fire marshal, and the prior law is continued in effect for this purpose. On the date of transfer under this section, all powers, duties, obligations, rights, contracts, records, personnel, property, and unspent appropriations and other funds of the state fire marshal's office or of the State Board of Insurance that relate to the state fire marshal are transferred to the Texas Commission on Fire Protection. The status of a complaint, proceeding, or investigation in which the state fire marshal is involved is not affected by the transfer of the state fire marshal under this Act.

(c) After the date of transfer under this section, the Texas Commission on Fire Protection shall maintain the current field offices of the state fire marshal as field offices of the commission.

(d) All rules of the State Board of Insurance that relate to transferred duties regarding the key rate schedule or the state fire marshal and associated powers and duties are continued in effect as rules of the Texas Commission on Fire Protection unless superseded by proper authority of the commission.

SECTION 23. (a) Not later than September 1, 1993, the Texas Commission on Fire Protection shall adopt its program for the voluntary regulation of volunteer fire fighters and volunteer fire departments under Chapter 419, Government Code, as added by this Act.

(b) The commission shall perform its initial review of the State Board of Insurance's key rate schedule as required by Chapter 419, Government Code, as added by this Act, not later than August 31, 1995.

(c) The commission and the director of the Texas Engineering Extension Service shall enter into the memorandum of understanding relating to the firemen's training school required by Chapter 419, Government Code, as added by this Act, not later than August 31, 1992.

(d) The commission and the director of the Texas Forest Service shall enter into the memorandum of understanding required by Chapter 419, Government Code, as added by this Act, not later than August 31, 1992.

(e) The first policy statement required to be filed under Subsection (g), Section 419.009, Government Code, as added by this Act, must be filed before November 1, 1991.

SECTION 24. This Act takes effect September 1, 1991.

SECTION 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 858 ADOPTED

Senator Harris of Dallas called from the President's table the Conference Committee Report on **S.B. 858**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Harris of Dallas, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 1070 WITH HOUSE AMENDMENTS

Senator Dickson called **S.B. 1070** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment - Junell

Amend **S.B. 1070** as follows:

On page 4, beginning on line 21, strike subsection (f) and insert the following:

"(f) The Texas Economic Development Foundation, the Texas Economic Development Corporation, and any other corporation whose charter specifically dedicates the corporation's activities to the benefit of the Texas Department of Commerce shall file an annual report of the financial activity of the corporation. The annual report shall be filed prior to the 90th day after the last day for the corporation's fiscal year and shall be prepared in accordance with generally accepted accounting principles. The report must include a statement of support, revenue, and expenses and change in fund balances, a statement of functional expenses, and balance sheets for all funds."

Committee Amendment - Junell

Amend **S.B. 1070** as follows:

On page 7, line 22, change "(b)" to "(d)" and underline all of the language in the subsection.

On page 8, line 1, change "(c)" to "(e)" and underline all of the language in the subsection.

On page 9, line 2, amend Sec. 481.084 (a) by striking "or make loans for" and inserting "or to make loans" after the word "lender" on line 3.

Committee Amendment - Junell

Amend **S.B. 1070** as follows:

On page 17, beginning on line 7, strike subsection (2) and insert the following:

"(2) establish and operate a statewide toll-free telephone service to provide Texans, especially those in rural areas, with a single point of access to economic development information specifically related to industrial expansion and recruitment, small business assistance, community economic development assistance, travel and tourism, education and training, leadership development, and grant and loan information."

On page 21, line 7, strike "committee" and insert "advisory board".

On page 21, line 11, strike "committee" and insert "advisory board".

On page 34, line 16, strike "committee" and insert "advisory board".

Committee Amendment - Junell

Amend **S.B. 1070** as follows:

On page 45, line 10, strike "On the effective date of this act, the" and insert "The".

On page 45, line 13, after the word "board" insert "on January 1, 1992"

On page 45, line 20 after the word "board" insert "on or before January 1, 1992. Fees earned by the Texas Department of Commerce for duties performed prior to January 1, 1992 remain in the custody of the department."

Amendment - McCollough

Amend **S.B. 1070** as follows:

Add new language in Section 481.083, subsection (4): "Private lender" means a bank, savings bank, savings and loan association, trust company, municipal corporation, or insurance company, or an individual that the department determines is an experienced and sophisticated investor.

Amendment - Dalton

Amend **S.B. 1070** as follows:

(1) On page 14, insert the following new section, and renumber the following sections appropriately:

"SECTION 12. Section 481.103, Government Code is amended to read as follows:

(a) Amend subsection (A)(1) through (22), (24) and (25) by inserting "and disadvantaged" between the words "small" and "businesses".

The amendments were read.

Senator Dickson moved to concur in the House amendments to **S.B. 1070**.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 582 ADOPTED

Senator Turner called from the President's table the Conference Committee Report on **S.B. 582**. (The Conference Committee Report having been filed with the Senate and read on Sunday, May 26, 1991.)

On motion of Senator Turner, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

BILLS AND RESOLUTION SIGNED

The Presiding Officer announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolution:

S.C.R. 160
S.B. 181
S.B. 277
S.B. 518
S.B. 532
S.B. 830
S.B. 837
S.B. 865
S.B. 1217
S.B. 1267
S.B. 1314
S.B. 1341
S.B. 1357
S.B. 1375
S.B. 1445
S.B. 1459
S.B. 1462

(President in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1135 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **S.B. 1135**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 942 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **S.B. 942**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 873

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 873** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ARMBRISTER	SAUNDERS
BROOKS	HARRIS
MONTFORD	CRADDICK
HALEY	PRICE
	SCHOOLCRAFT
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of the manufacture and sale of foods, drugs, and devices.

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

SECTION 1. Subdivisions (14) and (22), Section 431.002, Health and Safety Code, as amended by Section 149, **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, are amended to read as follows:

(14) "Drug" means articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure or [of] any function of the body of man or other animals, and articles intended for use as a component of any article specified in this subdivision. The term does not include devices or their components, parts, or accessories.

(22) "Labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article [~~that is on an article or any of the containers or wrappers that accompany the article~~].

SECTION 2. Section 431.021, Health and Safety Code, as amended by Section 151, **S.B. 404** Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042-431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the removal or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs in this state without filing a licensing [~~registration~~] statement with the commissioner as required by Section 431.202;

(y) engaging in the manufacture of food in this state without first registering with the department as required by Section 431.222; or

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition.

SECTION 3. Section 431.047, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The commissioner and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses. The expenses recovered by the commissioner are hereby appropriated to the department for the administration and enforcement of this chapter. The expenses recovered by the attorney general are hereby appropriated to the attorney general.

SECTION 4. Subsection (b), Section 431.054, Health and Safety Code, is amended to read as follows:

(b) In determining the amount of the penalty, the commissioner shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public; [~~and~~]

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

SECTION 5. Section 431.202, Health and Safety Code, as amended by Section 161, **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 431.202. LICENSE [~~REGISTRATION~~] STATEMENT REQUIRED. (a) A person may not engage in wholesale distribution of drugs in this state unless the person has filed with the commissioner a signed and verified license [~~registration~~] statement on a form furnished by the commissioner.

(b) The license [~~registration~~] statement must be filed annually.

SECTION 6. Chapter 431, Health and Safety Code, is amended by adding Section 431.2021 to read as follows:

Sec. 431.2021. EXEMPTION FROM LICENSING. (a) Persons who engage only in the following types of wholesale drug distribution are exempt from the licensing requirements of this subchapter:

(1) intracompany sales;

(2) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for the purpose of this section, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;

(5) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section,

"emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(7) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(8) the sale, purchase, or trade of blood and blood components intended for transfusion.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this Act or the rules adopted by the board to administer and enforce this Act.

SECTION 7. Section 431.203, Health and Safety Code, is amended to read as follows:

Sec. 431.203. CONTENTS OF LICENSE [~~REGISTRATION~~] STATEMENT. The license [~~registration~~] statement must contain:

(1) the name under which the business is conducted;

(2) the address of each place of business [~~in this state~~] that is licensed [~~registered~~];

(3) the name and residence address of:

(A) the proprietor, if the business is a proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) the date and place of incorporation, if the business is a corporation;

(5) the names and residence addresses of the individuals in an administrative capacity showing:

(A) the managing proprietor, if the business is a proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of an individual in charge of each place of business [~~in this state~~].

SECTION 8. Chapter 431, Health and Safety Code, is amended by adding Section 431.2031 to read as follows:

Sec. 431.2031. EFFECT OF OPERATION IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of drugs outside this state may engage in the wholesale distribution of drugs in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with this chapter and the minimum standards adopted under this chapter.

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state, if after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and the board's rules.

(d) The department shall consider each licensing statement filed by a person who wishes to engage in wholesale distribution of drugs in this state on an individual basis.

SECTION 9. Sections 431.204, 431.205, 431.206, and 431.207, Health and Safety Code, are amended to read as follows:

Sec. 431.204. FEES. (a) The board shall collect fees for:

(1) a license [~~registration~~] that is filed or renewed;

(2) a license [~~registration~~] that is amended, including a notification of a change in the location of a licensed [~~registered~~] place of business required under Section 431.206; and

(3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The board may charge annual fees.

(c) The board by rule shall set the fees in amounts that allow the department to recover at least 50 percent of the annual expenditures of state funds by the department in:

(1) reviewing and acting on a license [~~registration~~];

(2) amending and renewing a license [~~registration~~];

(3) inspecting a licensed [~~registered~~] facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license [~~registration~~] issued under this subchapter.

(d) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and may be appropriated to the department only to carry out this chapter.

Sec. 431.205. EXPIRATION DATE. (a) The board by rule may provide that licenses [~~registrations~~] expire on different dates during the year.

(b) If the board changes a license [~~registration~~] expiration date, the board shall prorate the license [~~registration~~] fee payable on or before September 1 so that the licensee [~~registrant~~] is required to pay only that portion of the fee that is allocable to the number of months during which the license [~~registration~~] is valid.

(c) The total renewal license [~~registration~~] fee is payable when the license [~~registration~~] is renewed on the new expiration date.

Sec. 431.206. CHANGE OF LOCATION OF PLACE OF BUSINESS. Not fewer than 30 days in advance of the change, the licensee [~~The registrant~~] shall notify the commissioner or the commissioner's designee in writing of the licensee's intent to [a] change [in] the location of a licensed [~~registered~~] place of business. The notice shall include[~~, including~~] the address of the new location, and the name and residence address of the individual in charge of the business at the new location. Not more than 10 days after the completion of the change of location, the licensee shall notify the commissioner or the commissioner's designee in writing to verify the change of location, the address of the new location, and the name and residence address of the individual in charge of the business at the new address. Notice will be deemed adequate if the licensee provides the intent and verification notices to the commissioner or the commissioner's designee by certified mail, return receipt requested, mailed to the central office of the department.

Sec. 431.207. REFUSAL TO LICENSE [~~REGISTER~~]; SUSPENSION OR REVOCATION OF LICENSE [~~REGISTRATION~~]. (a) The commissioner may refuse an application for a license [~~to register,~~] or may suspend or revoke a license [~~registration~~] if the applicant or licensee [~~registrant~~]:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs; or

(5) has not complied with this chapter or the board's rules implementing this chapter.

(b) The commissioner may refuse an application for a license [~~to register,~~] or may suspend or revoke a license [~~registration~~] if the commissioner determines from evidence presented during a hearing that the applicant or licensee [~~registrant~~]:

(1) has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug [~~sold counterfeit drugs and medicines~~];

(2) has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Dangerous Drugs); or

(3) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee [~~registrant~~] to maintain.

(c) The refusal to license [~~register~~] an applicant or the suspension or revocation of a license [~~registration~~] by the commissioner and the appeal from that action are governed by the board's formal hearing procedures and the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 10. Chapter 431, Health and Safety Code, is amended by adding Section 431.208 to read as follows:

Sec. 431.208. ADVISORY COMMITTEE. (a) The board shall appoint a committee to:

(1) advise the board in the development of standards and procedures relating to the licensing of wholesale drug distributors;

(2) make recommendations to the board relating to the content of the rules adopted to implement this subchapter; and

(3) perform any other functions requested by the board in implementing and administering this subchapter.

(b) The advisory committee is composed of:

(1) three persons representing an association of wholesale drug distributors;

(2) one person who is a representative of a pharmaceutical manufacturer; and

(3) two public members.

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

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

(2) is employed by a pharmaceutical manufacturer, a wholesale drug distributor, or a health care facility, corporation, or agency or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a pharmaceutical manufacturer, wholesale drug distributor, or health care facility, corporation, or agency;

(4) has a financial interest, other than a consumer's interest, in a pharmaceutical manufacturer, a wholesale drug distributor, or a health care facility, corporation, or agency; or

(5) would qualify for appointment under Subsections (b)(1) through (3) of this section.

(d) An advisory committee member serves for a six-year term, with the terms of two members expiring on August 31 of each odd-numbered year.

(e) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(f) A member of the advisory committee is entitled to reimbursement for expenses incurred in performing duties under this chapter. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for a state employee.

(g) The advisory committee may elect a chair, vice-chair, and secretary from among its members and may adopt rules for the conduct of its own activities.

(h) The advisory committee will have an opportunity to review and comment on the board's rules to carry out this subchapter before the rules are proposed.

SECTION 11. Section 431.241, Health and Safety Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) The enumeration of specific federal laws and regulations in Sections 431.244 and 431.245 does not limit the general authority granted to the board in Subsection (b) to conform its rules to those adopted under the federal Act.

(d) The board may adopt the federal regulations issued by the secretary pursuant to the Prescription Drug Marketing Act of 1987 (21 U.S.C. Sections 331, 333, 353, and 381), as necessary or desirable so that the state wholesale drug distributor licensing program in Subchapter I of this chapter may achieve compliance with that Act.

(e) The board and the Texas Department of Human Services shall not establish a drug formulary that restricts by any prior or retroactive approval process a physician's ability to treat a patient with a prescription drug that has been approved and designated as safe and effective by the United States Food and Drug Administration, in compliance with federal law and subject to review by the Texas Department of Human Services, Vendor Drug Advisory Subcommittee.

(f) Nothing in this section shall effect a prior approval program in operation on the effective date of this section nor shall any portion of this chapter prohibit a prior approval process on any federally exempted products.

SECTION 12. Subsection (a), Section 431.244, Health and Safety Code, is amended to read as follows:

(a) A regulation adopted by the secretary under the federal Act concerning pesticide chemicals, food additives, color additives, special dietary use, processed low acid food, acidified food, infant formula, bottled water, or vended bottled water is a rule for the purposes of this chapter, unless the board modifies or rejects the rule.

SECTION 13. In appointing the initial members of the advisory committee, the board shall designate two members to serve terms expiring August 31, 1993, two members to serve terms expiring August 31, 1995, and two members to serve terms expiring August 31, 1997.

SECTION 14. All registration fees collected by the Texas Department of Health under Subchapters I and J, Chapter 431, Health and Safety Code, shall be deposited in the state treasury to the credit of the food and drug and registration fee fund and are hereby appropriated to the Texas Department of Health for the administration and enforcement of this Act.

SECTION 15. Section 438.042, Health and Safety Code, is amended to read as follows:

Sec. 438.042. DUTIES OF BOARD. (a) The Texas Board of Health shall adopt standards and procedures for the accreditation of education and training programs for persons employed in the food service industry.

(b) The Texas Board of Health shall adopt standards and procedures for the accreditation of education and training programs for recertification of persons employed in the food service industry who have previously completed a program accredited in accordance with this subchapter or have been certified by a local health jurisdiction and have completed training and testing requirements substantially

similar to those required by this subchapter for program accreditation. The requirements for accreditation in Section 438.043 need not be met by an education or training program for recertification.

SECTION 16. Section 438.046, Health and Safety Code, is amended to read as follows:

Sec. 438.046. LIST OF ACCREDITED PROGRAMS. (a) The department shall maintain a registry of course programs accredited under this subchapter.

(b) A local health jurisdiction that requires training for a food service worker shall accept as sufficient to meet the jurisdiction's training and testing requirements a training course that is accredited by the department and listed with the registry.

(c) Any fee charged by a local health jurisdiction for a certificate issued to a food service worker trained by an accredited course listed in the registry may not exceed the lesser of:

(1) the reasonable cost incurred by the jurisdiction in issuing the certificate; or

(2) the fee charged by the jurisdiction to issue a certificate to a food service worker certified by the jurisdiction as having met the training and testing requirements by any other means.

SECTION 17. This Act takes effect September 1, 1991.

SECTION 18. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 2265

Senator Carriker submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2265** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARRIKER	BERLANGA
GLASGOW	HORN
DICKSON	JUNELL
TURNER	FRASER
On the part of the Senate	On the part of the House

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

(Senator Harris of Dallas in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 314

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 314** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROWN	VON DOHLEN
ARMBRISTER	TALLAS
SIBLEY	RUSSELL
SIMS	OGDEN
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the penalty groups of and prescriptions for controlled substances, offenses, and civil penalties under the Texas Controlled Substances Act.

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

SECTION 1. Section 481.102, Health and Safety Code, is amended to read as follows:

Sec. 481.102. PENALTY GROUP 1. Penalty Group 1 consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil;
Allylprodine;
Benzethidine;
Betaprodine;
Clonitazene;
Diampromide;
Diethylthiambutene;
Difenoxin;
Dimenoxadol;
Dimethylthiambutene;
Dioxaphetyl butyrate;
Dipipanone;
Ethylmethylthiambutene;
Etonitazene;
Etoxeridine;
Furethidine;
Hydroxypethidine;
Ketobemidone;

Levophenacylmorphan;
Meprodine;
Methadol;
Moramide;
Morpheridine;
Noracymethadol;
Norlevorphanol;
Normethadone;
Norpipanone;
Phenadoxone;
Phenampromide;
Phenomorphan;
Phenoperidine;
Piritramide;
Proheptazine;
Properidine;
Propiram;
Sufentanil;
Tilidine; and
Trimeperidine;

(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine;
Acetyldihydrocodeine;
Benzylmorphine;
Codeine methylbromide;
Codeine-N-Oxide;
Cyprenorphine;
Desomorphine;
Dihydromorphine;
Drotebanol;
Etorphine, except hydrochloride salt;
Heroin;
Hydromorphinol;
Methyldesorphine;
Methyldihydromorphine;
Monoacetylmorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Pholcodine; and
Thebacon;

(3) the following substances, however produced, except those narcotic drugs listed in another group:

(A) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than nalmefene, naloxone and its salts, and naltrexone and its salts, but including:

Codeine;
Ethylmorphine;

Granulated opium;
Hydrocodone;
Hydromorphone;
Metopon;
Morphine;
Opium extracts;
Opium fluid extracts;
Oxycodone;
Oxymorphone;
Powdered opium;
Raw opium;
Thebaine; and
Tincture of opium;

(B) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (A), other than the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including:

(i) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves;

(iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

(E) concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrine alkaloids of the opium poppy; and

(F) temporary listing of substances subject to emergency scheduling by the Federal Drug Enforcement Administration [~~and any material, compound, mixture, or preparation that contains any quantity of the following substances: N;N-dimethylamphetamine (some trade or other names: N;N;alpha-trimethylbenzeneethanamine; N;N;alpha-trimethylphenethyamine), its salts, optical isomers, and salts of optical isomers~~];

(4) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetyl-alpha-methylfentanyl(N-[1-(1-methyl-2-phenethyl)-4- piperidinyl]-N-phenylacetamide) [~~(N-[1-1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide)~~];

Alpha-methylthiofentanyl(N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

Alphaprodine;

Anileridine;

Beta-hydroxyfentanyl(N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

Beta-hydroxy-3-methylfentanyl;

Bezitramide;

Carfentanil;

Dihydrocodeine;

Diphenoxylate;

Fentanyl or alpha-methylfentanyl, or any other derivative of Fentanyl;

Isomethadone;

Levomethorphan;

Levorphanol;

Metazocine;

Methadone;

Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

3-methylfentanyl(N-[3-methyl-1- (2-phenylethyl) -4-piperidyl]-N-phenylpropanamide);

3-methylthiofentanyl(N-[3-methyl-1- (2-thienyl) ethyl-4-piperidyl]-N-phenylpropanamide);

Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

Para-fluorofentanyl(N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]propanamide);

PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

Pethidine;

Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4 carboxylate;

Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

Phenazocine;

Piminodine;

Racemethorphan;

Racemorphan;

Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(5) Lysergic acid diethylamide, including its salts, isomers, and salts of isomers;

(6) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(7) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine; and

(8) Phencyclidine, including its salts.

SECTION 2. Subsection (a), Section 481.103, Health and Safety Code, is amended to read as follows:

(a) Penalty Group 2 consists of:

(1) any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

4-bromo-2, 5-dimethoxyamphetamine (some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5- indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names: N, N-Diethyltryptamine, DET);

2, 5-dimethoxyamphetamine (some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

Dimethyltryptamine (some trade and other names: DMT);

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U. S. Food and Drug Administration approved drug product (some trade or other ~~[other]~~ names for Dronabinol: (a6aR-trans)-6a,7,8,10a-tetrahydro- 6,6,9-trimethyl-3-pentyl-6H- dibenzo [b,d]pyran-1-ol ~~[(a6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-01,]~~ or (-)-delta-9-(trans)-tetrahydrocannabinol);

Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

Ibogaine (some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

Mescaline;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP, PPMP) ~~[1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);~~

~~[1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP, PPMP)]~~;

4-methyl-2, 5-dimethoxyamphetamine (some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP");

3,4-methylenedioxy methamphetamine (MDMA, MDM) ~~[3,4-methylene-dioxy methamphetamine (MDMA, MDM)]~~;

3,4-methylenedioxy amphetamine;

3,4-methylenedioxy N-ethylamphetamine (Also known as N-ethyl MDA);

Nabilone (Another name for nabilone: ($CF2+$CF1)-trans-3-(1,1-dimethylheptyl)- 6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one;

N-ethyl-3-piperidyl benzilate;

N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

4-methylaminorex;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexanecarbonitrile (PCC) ~~[1-Piperidinocyclohexane-Carbonitrile (PCC)]~~;

Psilocin;

Psilocybin;

Pyrrolidine Analog of Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous

extractives of Cannabis, or [and] synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized;

Thiophene Analog of Phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP);

1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy); and

3,4,5-trimethoxy amphetamine;

(2) Phenylacetone (some trade or other names: Phenyl-2-propanone; P-2-P, Benzymethyl ketone, methyl benzyl ketone); and

(3) unless specifically excepted or unless listed in another Penalty Group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant or stimulant effect on the central nervous system:

Amphetamine, its salts, optical isomers, and salts of optical isomers;

Etorphine Hydrochloride;

Fenethylline and its salts;

Mecloqualone and its salts;

Methaqualone and its salts; [and]

N-Ethylamphetamine, its salts, optical isomers, and salts of optical isomers; and

N,N-dimethylamphetamine (some trade or other names: N,N,alpha-trimethylbenzeneethaneamine; N,N,alpha-trimethylphenethylamine), its salts, optical isomers, and salts of optical isomers.

SECTION 3. Subsection (a), Section 481.104, Health and Safety Code, is amended to read as follows:

(a) Penalty Group 3 consists of:

(1) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Methylphenidate and its salts; and

Phenmetrazine and its salts;

(2) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise covered by this subsection;

a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients that are not listed in any penalty group [~~schedule~~];

a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

Alprazolam;
Amobarbital;
Bromazepam;
Camazepam;
Chlordiazepoxide;
Chlorhexadol;
Clobazam;
Clonazepam;
Clorazepate;
Clotiazepam;
Cloxazolam;
Delorazepam;
Diazepam;
Estazolam;
Ethyl loflazepate;
Fludiazepam;
Flunitrazepam;
Flurazepam;
Glutethimide;
Halazepam;
Haloxzolam;
Ketazolam;
Loprazolam;
Lorazepam;
Lormetazepam;
Lysergic acid, including its salts, isomers, and salts of isomers;
Lysergic acid amide, including its salts, isomers, and salts of isomers;
Mebutamate;
Medazepam;
[~~Midazolam;~~]
Methyprylon;
Midazolam;
Nimetazepam;
Nitrazepam;
Nordiazepam;
Oxazepam;
Oxazolam;
Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
Pentobarbital [~~Pentobarbitol~~];
Pinazepam;
Prazepam;
Quazepam;
Secobarbital [~~Secobarbitol~~];
Sulfondiethylmethane;
Sulfonethylmethane;
Sulfonmethane;
Temazepam;

Tetrazepam; ~~[and]~~

Tiletamine and zolazepam in combination, and its salts. (some trade or other names for a tiletamine-zolazepam combination product: Telazol, for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, and for zolazepam: 4-(2-fluorophenyl)-6, 8-dihydro-1,3,8,-trimethylpyrazolo- [3,4-e](1,4)-d diazepin-7(1H)-one, flupyrazapon); and

Triazolam;

(3) Nalorphine;

(4) a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any of their salts:

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) a material, compound, mixture, or preparation that contains any quantity of the following substances:

Barbital;
Chloral betaine;
Chloral hydrate;
Ethchlorvynol;
Ethinamate;
~~[Methohexital;]~~
Meprobamate;
Methohexital;
Methylphenobarbital (Mephobarbital);
Paraldehyde;
Petrichloral; and
Phenobarbital;

(6) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as Lophophora, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every

compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(7) unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine;
Cathine [(+)-norpseudoephedrine];
Chlorphentermine;
Clortermine;
Diethylpropion;
Fencamfamin [~~Femcamfamin~~];
Fenfluramine;
Fenproporex [~~Femproporex~~];
Mazindol;
Mefenorex;
Pemoline (including organometallic complexes and their chelates);
Phendimetrazine;
Phentermine;
Pipradrol; and
SPA [(-)-1-dimethylamino-1,2-diphenylethane]; [~~and~~]

(8) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts:

Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane); and

(9) any human growth hormone or any of the following anabolic steroids, or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

Boldenone;
Chlorotestosterone;
Clostebol;
Dehydrochlormethyltestosterone;
Dihydrotestosterone;
Drostanolone;
Ethylestrenol;
Fluoxymesterone;
Formebulone;
Mesterolone;
Methandienone;
Methandranone;
Methandriol;
Methandrostenolone;
Methenolone;
Methyltestosterone;
Mibolerone;
Nandrolone;
Norethandrolone;
Oxandrolone;
Oxymesterone;

Oxymetholone;
Stanolone;
Stanozolol;
Testolactone;
Testosterone; and
Trenbolone.

SECTION 4. Section 481.105, Health and Safety Code, is amended to read as follows:

Sec. 481.105. PENALTY GROUP 4. Penalty Group 4 consists of:

(1) a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation containing the narcotic drug Buprenorphine or its salts; and

(3) [~~any human growth hormone or any of the following anabolic steroids, or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:~~

[~~Clostebol;~~
[~~Dehydrochlormethyltestosterone;~~
[~~Ethylestrenol;~~
[~~Fluoxymesterone;~~
[~~Mesterolone;~~
[~~Methandienone;~~
[~~Methandrostenolone;~~
[~~Methenolone;~~
[~~Methyltestosterone;~~
[~~Nandrolone;~~
[~~Norethandrolone;~~
[~~Oxandrolone;~~
[~~Oxymesterone;~~
[~~Oxymetholone;~~
[~~Stanozolol; and~~
[~~Testosterone; and~~

[~~(4)~~] unless specifically exempted or excluded or unless listed in another penalty group, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

Propylhexedrine; and
Pyrovalerone.

SECTION 5. Section 481.128, Health and Safety Code, is amended to read as follows:

Sec. 481.128. OFFENSE AND CIVIL PENALTY: COMMERCIAL MATTERS. (a) A registrant or dispenser commits an offense if the registrant or dispenser knowingly or intentionally:

(1) distributes, delivers, administers, or dispenses a controlled substance in violation of Sections 481.070-481.074;

(2) manufactures a controlled substance not authorized by the person's registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

(3) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by this chapter [~~or required by rules adopted by the director~~];

(4) prints, manufactures, possesses, or produces a triplicate prescription form without the approval of the Department of Public Safety;

(5) delivers or possesses a counterfeit triplicate prescription;

(6) refuses an entry into a premise for an inspection authorized by this chapter; [~~or~~]

(7) refuses or fails to return a triplicate prescription form as required by Section 481.075(h); or

(8) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule adopted before June 1, 1991, by the director.

(b) If the registrant or dispenser knowingly or intentionally refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule or a rule amendment adopted on or after June 1, 1991, by the director, the registrant or dispenser is liable to the state for a civil penalty of not more than $5,000 for each act.

(c) If the registrant or dispenser negligently fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule or a rule amendment adopted on or after June 1, 1991, by the director, the registrant or dispenser is liable to the state for a civil penalty of not more than $1,000 for each act.

(d) An offense under Subsection (a) [~~this section~~] is a felony of the second degree, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (a) [~~this section~~], in which event the offense is a felony of the first degree.

(e) [~~(c)~~] If a person negligently commits an act that would otherwise be an offense under Subsection (a) [~~this section~~], the person is liable to the state for a civil penalty of not less than $5,000 or more than $10,000 for each act.

(f) A [~~The~~] district attorney of the county where the act occurred may file suit in district court in that county to collect a civil penalty under this section, [~~of Travis County~~] or the district attorney of Travis County or the attorney general may file suit in district court in Travis County to collect the penalty.

SECTION 6. Subsection (i), Section 481.074, Health and Safety Code, is amended to read as follows:

(i) A prescription for a controlled substance must show:

(1) the quantity of the substance prescribed:

(A) [~~numerically followed by the number~~] written as a word if the prescription is written; or

(B) [~~(2)~~] if the prescription is communicated orally or telephonically, [~~the quantity of the substance prescribed numerically~~] as transcribed by the receiving pharmacist;

(2) the date of issue;

(3) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(4) the name and strength of the controlled substance prescribed;

(5) the directions for use of the controlled substance; and

(6) the name, address, and Federal Drug Enforcement Administration registration number of the practitioner.

SECTION 7. (a) The change in law made to Section 481.128, Health and Safety Code, by Section 5 of this Act applies only to an act committed on or after the effective date of Section 5 of this Act. For purposes of this section, an act is committed before the effective date of Section 5 of this Act if any element of the act is committed before that date.

(b) An act committed before the effective date of Section 5 of this Act is covered by the law in effect when the act was committed, and the former law is continued in effect for this purpose.

SECTION 8. This Act takes effect immediately, except that Sections 1, 2, 3, 4, and 6 take effect September 1, 1991.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 314 ADOPTED

Senator Brown called from the President's table the Conference Committee Report on **S.B. 314**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Brown, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 887

Senator Montford submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 887** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONTFORD
HALEY

WATKINS
B. HUNTER

ARMBRISTER	KUBIAK
BARRIENTOS	CAVAZOS
SIMS	SEIDLITS
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to certain student rentals, fees, and other charges collected by public institutions of higher education.

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

SECTION 1. Subsection (a), Section 55.16, Education Code, is amended to read as follows:

(a) Each board shall be authorized to fix and collect rentals, rates, charges, and/or fees from students and others for the occupancy, services, use, and/or availability of all or any of its property, buildings, structures, activities, operations, or other facilities, in such amounts and in such manner as may be determined by the board; provided, however, that all student use fees shall be fixed and collected in proportion to the number of semester credit hours for which a student registers, and shall not exceed $12 [$6] per semester hour, except that those schools charging more than $6 per semester hour as of May 1, 1975, shall not exceed the amount being charged as of that date, and except as provided by Subsection (b) of this section. The board may waive all or any part of any such student use fees in the case of any student for whom the payment of such student use fee would cause an undue economic hardship, except that the number of such students for whom such waivers are granted shall not exceed 5% of the total enrollment; and further provided that nothing in this section shall affect, limit, or impair any pledge, covenant, or option made or reserved by the board with respect to any revenue bonds outstanding as of the 1975 amendment to this section, issued by the board pursuant to this chapter; and provided that hereafter if bonds are issued pursuant to Section 55.17 of this code, to be secured by a pledge of a limited or unlimited use fee, and if, at the time of authorizing the issuance of the bonds, (1) the estimated maximum amount per semester hour of such pledged use fee (based on then current enrollment and conditions) during any future semester necessary to provide for the payment of the principal of and interest on the bonds when due, together with (2) the aggregate amount of all use fees which were levied on a semester hour basis for the then current semester to pay the principal of and interest on all previously issued bonds, do not exceed $12 [$6] per semester hour, except as provided by Subsection (b) of this section, then such limited or unlimited use fee shall be levied and collected when and to the extent required by the resolution authorizing the issuance of the bonds in any amount required to provide for the payment of the principal of and interest on the bonds, regardless of any other provision of this section or the limitations contained herein.

SECTION 2. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.537 to read as follows:

Sec. 54.537. FEES FOR STUDENT SERVICES BUILDING; THE UNIVERSITY OF TEXAS AT AUSTIN. (a) The board of regents of The University of Texas System may charge each student enrolled at The University of Texas at Austin a fee not to exceed $1.10 per registered semester hour. The fee may be used only for financing the construction, repair, maintenance, renovation, improvement, or replacement of a student services building at the university.

(b) The university shall collect the student services building fee imposed under this section and deposit the money collected into an account to be known as the student services building account. The money collected and placed in the account shall be used only for the purpose of financing the construction, repair,

maintenance, renovation, improvement, or replacement of a student services building and may be pledged for the payment of obligations issued for those purposes.

(c) A fee may not be imposed under this section until the semester in which a student services building will be available for use.

(d) The student services building fee imposed under this section shall not be counted in determining the maximum student services fee which may be charged to the students of The University of Texas at Austin under this subchapter.

(e) The powers granted to the board of regents under this section are cumulative of all other powers granted to that board.

SECTION 3. Subsection (a), Section 55.16, Education Code, as amended by this Act, applies only to rentals, rates, charges, and fees that become due beginning with the fall semester in 1991. Rentals, rates, charges, and fees that became due before that semester are governed by the law in effect at the time those assessments became due.

SECTION 4. Notwithstanding the increase in student use fees authorized in Section 1 of this Act, no board may increase the student use fees charged at any institution more than $2 per semester hour for the academic year beginning in fall, 1991, or more than $2 per semester hour in each of the immediately succeeding academic years.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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

CONFERENCE COMMITTEE REPORT
ON SENATE BILL 1000

Senator Montford submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1000** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONTFORD	WATKINS
HALEY	B. HUNTER
ARMBRISTER	LANEY
BARRIENTOS	SEIDLITS
SIMS	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to student services fees at public institutions of higher education.

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

SECTION 1. Section 54.503, Education Code, is amended by amending Subsections (a), (b), and (f) and adding Subsection (i) to read as follows:

(a) For the purposes of this section:

(1) "Student services" means activities which are separate and apart from the regularly scheduled academic functions of the institution and directly involve or benefit students, including textbook rentals, recreational activities, health and hospital services, medical services, intramural and intercollegiate athletics, artists and lecture series, cultural entertainment series, debating and oratorical activities, student publications, student government, the student fee advisory committee, student transportation services other than services under Sections 54.504, 54.511, 54.512, and 54.513 of this code, and any other student activities and services specifically authorized and approved by the governing board of the institution of higher education. The term does not include services for which a fee is charged under another section of this code.

(2) "Compulsory fee" means a fee that is charged to all students enrolled at the institution.

(3) "Voluntary fee" means a fee that is charged only to those students who make use of the student service for which the fee is established.

(b) The governing board of an institution of higher education may charge and collect from students registered at the institution fees to cover the cost of student services. The fee or fees may be either voluntary or compulsory as determined by the governing board. The total of all compulsory student services fees collected from a student at an institution of higher education other than the University of Texas at Austin for any one semester or summer session shall not exceed $150 [~~$90~~]. All compulsory student services fees charged and collected under this section by the governing board of an institution of higher education, other than a public junior college, shall be assessed in proportion to the number of semester credit hours for which a student registers. No portion of the compulsory fees collected may be expended for parking facilities or services, except as related to providing shuttle bus services.

(f) If, in an academic year, the total compulsory fee charged under this section is more than 10 percent higher than the compulsory fee charged for the previous academic year, the increase does not take effect unless the increase is approved by a majority vote of the students voting in an election held for that purpose or by a majority vote of the student government at the institution [~~Prior to recommending the student fee budget to the governing board, the president of each institution shall duly consider the recommendations of a student fee advisory committee. A majority of the committee's members shall be students enrolled in the institution and appointed by the student governing body of the institution or elected by a majority of students enrolled in the institution voting in an election held for that purpose. Other committee members from the staff and faculty may be included and selected as the president sees fit. The regents may duly consider the matter of raising student fees in open meeting. Along with his own recommendations, the president may make known to the Board of Regents the student fee committee's recommendations. If the president's recommendations to the board are substantially different from the student fees advisory committee's recommendations to the institution's administration, the administration shall notify the student fees advisory committee. The notice shall be given as soon as practicable, to provide the committee sufficient time to request that the committee be included on the agenda of the board's meeting at which the president's recommendations are to be~~

~~considered and be permitted to comment on the committee's recommendations to the administration. If the decision of the board differs from that of the student fee committee, the president shall deliver to the student fee committee a written explanation of the board's decision within 30 days of that decision~~].

(i) General revenue appropriations, other educational and general income, and funds appropriated under Article VII, Section 17 or 18, of the Texas Constitution may be expended on a proportional use basis to support the services, activities, and facilities provided for in this section to the extent that the use of such funds is not otherwise restricted by the Texas Constitution or general law.

SECTION 2. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5031 to read as follows:

Sec. 54.5031. STUDENT FEE ADVISORY COMMITTEE. (a) A student fee advisory committee is established at each institution of higher education except The University of Texas at Austin to advise the governing board and administration of the institution on the type, amount, and expenditure of compulsory fees for student services under Section 54.503 of this code.

(b) Each committee is composed of the following nine members:

(1) five student members who are enrolled for not less than six semester credit hours at the institution and who are representative of all students enrolled at the institution, selected under Subsection (c) of this section; and

(2) four members who are representative of the entire institution, appointed by the president of the institution.

(c) If the institution has a student government, the student government shall appoint three students to serve two-year terms on the committee and two students to serve one-year terms on the committee. If the institution does not have a student government, the students enrolled at the institution shall elect three students to serve two-year terms on the committee and two students to serve one-year terms on the committee. A candidate for a position on the committee must designate whether the position is for a one-year or two-year term.

(d) A student member of the committee who withdraws from the institution must resign from the committee.

(e) A vacancy in an appointive position on the committee shall be filled for the unexpired portion of the term in the same manner as the original appointment. A vacancy in an elective position on the committee shall be filled for the unexpired portion of the term by appointment by the president of the institution.

(f) The committee shall:

(1) study the type, amount, and expenditure of a compulsory fee under Section 54.503 of this code; and

(2) meet with appropriate administrators of the institution, submit a written report on the study under Subdivision (1) of this subsection, and recommend the type, amount, and expenditure of a compulsory fee to be charged for the next academic year.

(g) Before recommending the student fee budget to the governing board of the institution, the president of the institution shall consider the report and recommendations of the committee. If the president's recommendations to the governing board are substantially different from the committee's recommendations to the president, the administration of the institution shall notify the committee not later than the last date on which the committee may request an appearance at the board meeting. On request of a member of the committee, the administration of the institution shall provide the member with a written report of the president's recommendations to the board.

SECTION 3. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5085 to read as follows:

Sec. 54.5085. MEDICAL SERVICES FEE; TEXAS WOMAN'S UNIVERSITY. (a) The board of regents of Texas Woman's University may charge

each student registered at the university a medical services fee not to exceed $30 for each semester of the regular term or 12-week summer session and not to exceed $15 for each six-week or shorter term of the summer session.

(b) Before the board imposes a fee under this section, the board shall consider the recommendations of a student fee advisory committee established by the president of the university. A majority of the members of the advisory committee must be students appointed by the presiding officer of the student governing body and the remainder of the members must be appointed by the president of the university.

(c) A medical services fee charged under this section may be used only to provide medical services to students registered at the university.

(d) A medical services fee charged under this section is in addition to any other fee the board is authorized by law to charge.

SECTION 4. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5132 to read as follows:

Sec. 54.5132. INTERNATIONAL EDUCATION FEE. (a) The governing board of an institution of higher education, other than The University of Texas at Austin, may charge and collect from students registered at the institution a fee of $1 for each semester or summer session.

(b) Fees collected under this section shall be deposited in the institution's international education financial aid fund, a fund outside the state treasury. Money in the fund may be used only to assist students participating in international student exchange or study programs.

(c) The international education financial aid fund shall be used in accordance with guidelines jointly developed by the student governing body of the institution and the administration of the institution. If an institution does not have a student governing body, the president may appoint a committee of students to assist with the development of the guidelines.

(d) The fee imposed under this section may not be considered in determining the maximum student services fee that may be charged students enrolled at the institution under Section 54.503(b) of this code.

SECTION 5. This Act applies beginning with the fall semester in 1991.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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

CONFERENCE COMMITTEE REPORT
ON SENATE BILL 1480

Senator Glasgow submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1480** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GLASGOW	HORN
PARKER	B. HUNTER
BARRIENTOS	F. HILL
HALEY	UHER
JOHNSON	CLEMONS
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to a medical services fee at the University of North Texas.

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

SECTION 1. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5081 to read as follows:

Sec. 54.5081. MEDICAL SERVICES FEE; UNIVERSITY OF NORTH TEXAS. (a) The governing board of the University of North Texas may charge each student registered at the university a medical services fee not to exceed $25 for each semester of the regular term or 12-week summer session and not to exceed $12.50 for each six-week or shorter term of the summer session.

(b) Before charging a medical services fee, the board must give students and administrators an opportunity to offer recommendations to the board as to the type and scope of medical services that should be provided.

(c) A medical services fee charged under this section may be used only to provide medical services to students registered at the university.

(d) The fee imposed under this section may not be considered in determining the maximum student services fee that may be charged students enrolled at the university under Section 54.503(b) of this code.

SECTION 2. Section 54.5081, Education Code, as added by this Act, applies beginning with the fall semester in 1991.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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

CONFERENCE COMMITTEE ON HOUSE BILL 1020

Senator Brooks 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. 1020** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 1020** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brooks, Chair; Dickson, Carriker, Parker, Whitmire.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 549 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **H.B. 549**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Ellis, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 383 ADOPTED

Senator Carriker called from the President's table the Conference Committee Report on **S.B. 383**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Carriker, the Conference Committee Report was adopted by a viva voce vote.

(Senator Haley in Chair)

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 9

Senator Lyon submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 9** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LYON	McCOLLOUGH
ELLIS	RUSSELL
HARRIS OF TARRANT	HIGHTOWER
PARKER	OVARD
	PLACE
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 806

Senator Dickson submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 806** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

DICKSON	STILES
ARMBRISTER	OVARD
BROOKS	TALLAS
SIMS	COOK
On the part of the Senate	On the part of the House

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

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House discharged the conferees on **H.B. 864** and concurred in Senate amendments to **H.B. 864** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2** by a record vote of 142 Ayes, 4 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 201** by a non-record vote.

The House has refused to concur in Senate amendments to **H.B. 1838** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Russell, Chair; P. Gallego, Cook, Place, Tallas.

The House has adopted the Conference Committee Report on **H.B. 263** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1314** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1679** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1704** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2140** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2277** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 1135** by a non-record vote.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1566**: T. Hunter, Chair; Cavazos, Berlanga, Earley, Gutierrez.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1436**: Luna, Chair; Schechter, Fleuriet, Van de Putte, Ovard.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1129**: Schoolcraft, Chair; Glaze, Stiles, Rabuck, Harris.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 887**: Watkins, Chair; B. Hunter, Kubiak, Cavazos, Seidlits.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1480**: Horn, Chair; B. Hunter, F. Hill, Uher, Clemons.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1412**: Schoolcraft, Chair; G. Thompson, Harris, Saunders, Clemons.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1000**: Watkins, Chair; B. Hunter, Moreno, Laney, Seidlits.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 873**: Saunders, Chair; Harris, Craddick, Madla, Schoolcraft.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 907

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 907** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS	GRUSENDORF
ARMBRISTER	ROBNETT
PARKER	KUEMPEL
RATLIFF	S. THOMPSON
BROOKS	EDWARDS
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1566

Senator Truan submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1566** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

TRUAN	T. HUNTER
MONTFORD	BERLANGA
ARMBRISTER	CAVAZOS
BROOKS	EARLEY
BARRIENTOS	GUTIERREZ
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to purposes for which money in the Texas home port trust fund may be used.

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

SECTION 1. Sections 1 and 6, Article 9, National Defense Impacted Region Assistance Act of 1985 (Article 689a-4d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. TEXAS HOME PORT TRUST FUND. The Texas home port trust fund is created. The fund shall be administered by the state treasurer, but the fund may be paid only on written authorization of the governor and may be paid to a navigation district or to any other political subdivision of the state as determined by the governor to be appropriate to be used only for the purposes [~~purpose~~] of making public works improvements, including docks, dredging, bulkheads, and utilities, related to the naval facility or to providing a permanent berthing location for a United States Navy aircraft carrier. Before authorizing the use of money under this section, the governor shall notify the speaker of the house, the lieutenant governor, and the comptroller of public accounts of the proposed authorizations and shall consider their recommendations and requests. The improvements must be of a nature that would benefit the state if the facility were not [~~no longer~~] used as a military installation. Interest earned by the fund shall be deposited to the credit of the general revenue fund.

Sec. 6. LIMITATION ON FUND. Improvements made with the use of funds appropriated by this article may be leased to the United States government, but ownership of the improvements shall remain in the state, the navigation district, or the political subdivision. [~~If the United States Navy does not receive congressional approval for construction of the base or the activation of ships, additional money may not be used from the fund.~~]

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1566 ADOPTED

Senator Truan called from the President's table the Conference Committee Report on **S.B. 1566**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Truan, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1480 ADOPTED

Senator Glasgow called from the President's table the Conference Committee Report on **S.B. 1480**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Glasgow, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 887 ADOPTED

Senator Montford called from the President's table the Conference Committee Report on **S.B. 887**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Montford, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1000 ADOPTED

Senator Montford called from the President's table the Conference Committee Report on **S.B. 1000**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Montford, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 873 ADOPTED

Senator Armbrister called from the President's table the Conference Committee Report on **S.B. 873**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1436

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1436** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SIBLEY	LUNA
BIVINS	SCHECHTER
SIMS	FLEURIET
TEJEDA	VAN DE PUTTE
ARMBRISTER	OVARD
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to conduct causing injury to a child, elderly individual, or invalid.

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

SECTION 1. Subsections (a) and (k), Section 22.04, Penal Code, are amended to read as follows:

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, [~~engages in conduct that~~] causes to a child, elderly individual, or invalid individual:

(1) serious bodily injury;

(2) serious physical or mental deficiency or impairment;

(3) disfigurement or deformity; or

(4) bodily injury.

(k)(1) It is a defense to prosecution under this section that the [~~conduct engaged in by~~] act or omission consisted of:

(A) reasonable medical care occurring under the direction of or by a licensed physician; or

(B) emergency medical care administered in good faith and with reasonable care by a person not licensed in the healing arts.

(2) It is an affirmative defense to prosecution under this section that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy.

SECTION 2. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

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

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1492

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1492** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO	DE LA GARZA
LYON	RUSSELL
TEJEDA	P. GALLEGO
MONTFORD	COOK
GLASGOW	PLACE
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1744 ADOPTED

Senator Truan called from the President's table the Conference Committee Report on **H.B. 1744**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Truan, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTE

Senator Zaffirini asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report on **H.B. 1744**.

CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 42 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **S.J.R. 42**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON SENATE BILL 764 DISCHARGED

On motion of Senator Lucio and by unanimous consent, the Senate conferees on **S.B. 764** were discharged.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2054 ADOPTED

Senator Harris of Tarrant called from the President's table the Conference Committee Report on **H.B. 2054**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Harris of Tarrant, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1436 ADOPTED

Senator Bivins called from the President's table the Conference Committee Report on **S.B. 1436**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Bivins, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2265 ADOPTED

Senator Carriker called from the President's table the Conference Committee Report on **H.B. 2265**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Carriker, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 614 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 614** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment - Luna

Amend **S.B. 614** by adding the following to Section 2 subsection C:

S.B. 614 will not require an appropriation in excess of the C.I.S. program's current level of General Revenue funding unless new revenue measures are implemented to provide a state budget surplus sufficient to fund the expansion of C.I.S. If no surplus General Revenue is available, funding for expansion of C.I.S. programs as provided in **S.B. 614** shall be accomplished by setting aside $4.9 million per annum from funds allocated under Section 16.152 of the Texas Education Code.

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to **S.B. 614** by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 806 ADOPTED

Senator Dickson called from the President's table the Conference Committee Report on **H.B. 806**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Dickson, the Conference Committee Report was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

S.J.R. 8, Proposing a constitutional amendment to establish the Texas Elections and Ethics Commission to administer laws regulating elections and ethics and to prescribe the compensation of legislators, the lieutenant governor, and the speaker of the house of representatives. (As amended)

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 9 ADOPTED

Senator Lyon called from the President's table the Conference Committee Report on **H.B. 9**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Lyon, the Conference Committee Report was adopted by a viva voce vote.

SENATE RULE 7.23(b) SUSPENDED

On motion of Senator Glasgow and by unanimous consent, Senate Rule 7.23(b) was suspended as it relates to the House amendment to **S.J.R. 8**.

SENATE JOINT RESOLUTION 8 WITH HOUSE AMENDMENT

Senator Glasgow called **S.J.R. 8** from the President's table for consideration of the House amendment to the resolution.

The Presiding Officer laid the resolution and the House amendment before the Senate.

Amendment - Crawford

Amend **S.J.R. 8** by striking all below the resolving clause and substituting the following:

SECTION 1. Article III of the Texas Constitution, is amended by adding Section 24a to read as follows:

Sec. 24a. (a) The Texas Ethics Commission is a state agency consisting of the following eight members:

(1) two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the house of representatives from each political party required by law to hold a primary;

(2) two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary;

(3) two members of different political parties appointed by the speaker of the house of representatives from a list of at least 10 names submitted by the members of the house from each political party required by law to hold a primary; and

(4) two members of different political parties appointed by the lieutenant governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary.

(b) The members of the commission shall elect annually the chairman of the commission.

(c) With the exception of the initial appointees, commission members serve for four-year terms. Each appointing official will make one initial appointment for a two-year term and one initial appointment for a four-year term. A vacancy on the commission shall be filled for the unexpired portion of the term in the same manner as the original appointment. A member who has served for one term and any part of a second term is not eligible for reappointment.

(d) The commission has the powers and duties provided by law.

(e) The commission may recommend the salary of the members of the legislature and may recommend that the salary of the speaker of the house of representatives and the lieutenant governor be set at an amount higher than that of other members. The commission shall set the per diem of members of the legislature and the lieutenant governor, and the per diem shall reflect reasonable estimates of costs and may be raised or lowered biennially as necessary to pay those costs, but the per diem may not exceed during a calendar year the amount allowed as of January 1 of that year for federal income tax purposes as a deduction for living expenses incurred in a legislative day by a state legislator in connection with the legislator's business as a legislator, disregarding any exception in federal law for legislators residing near the Capitol.

(f) At each general election for state and county officers following a proposed change in salary, the voters shall approve or disapprove the salary recommended by the commission if the commission recommends a change in salary. If the voters disapprove the salary, the salary continues at the amount paid immediately before disapproval until another amount is recommended by the commission and approved by the voters. If the voters approve the salary, the approved salary takes effect January 1 of the next odd-numbered year.

SECTION 2. Article III, Section 24, of the Texas Constitution is amended to read as follows:

Sec. 24. (a) Members of the Legislature shall receive from the Public Treasury a salary of Six Hundred Dollars ($600) per month, unless a greater amount is recommended by the Texas Ethics Commission and approved by the voters of this State in which case the salary is that amount. Each member shall also receive a per diem set by the Texas Ethics Commission [~~of Thirty Dollars ($30)~~] for each day during each Regular and Special Session of the Legislature.

(b) No Regular Session shall be of longer duration than one hundred and forty (140) days.

(c) In addition to the per diem the Members of each House shall be entitled to mileage at the same rate as prescribed by law for employees of the State of Texas. [~~This amendment takes effect on April 22, 1975.~~]

SECTION 3. Article IV, Section 17, of the Texas Constitution is amended to read as follows:

Sec. 17. (a) If, during the vacancy in the office of Governor, the Lieutenant Governor should die, resign, refuse to serve, or be removed from office, or be unable to serve; or if he shall be impeached or absent from the State, the President of the Senate, for the time being, shall, in like manner, administer the Government until he shall be superseded by a Governor or Lieutenant Governor.

(b) The Lieutenant Governor shall, while he acts as President of the Senate, receive for his services the same compensation and mileage which shall be allowed to the members of the Senate, and no more unless the Texas Ethics Commission recommends and the voters approve a higher salary in which case the salary is that amount; and during the time he administers the Government, as Governor, he shall receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. An increase in the emoluments of the office of Lieutenant Governor does not make a member of the Legislature ineligible to serve in the office of Lieutenant Governor.

(c) The President, for the time being, of the Senate, shall, during the time he administers the Government, receive in like manner the same compensation, which the Governor would have received had he been employed in the duties of his office.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 1991. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment creating the Texas Ethics Commission and authorizing the commission to recommend the salary for members of the legislature and the lieutenant governor, subject to voter approval, and to set the per diem for those officials, subject to a limit."

The amendment was read.

Senator Glasgow moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **S.J.R. 8** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Glasgow, Chair; Ratliff, Carriker, Moncrief, Turner.

BILLS SIGNED

The Presiding Officer announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills:

S.B. 26	**S.B. 333**	**S.B. 692**	**S.B. 1092**
S.B. 33	**S.B. 334**	**S.B. 747**	**S.B. 1095**
S.B. 75	**S.B. 378**	**S.B. 770**	**S.B. 1097**
S.B. 112	**S.B. 380**	**S.B. 818**	**S.B. 1123**
S.B. 123	**S.B. 428**	**S.B. 856**	**S.B. 1245**
S.B. 140	**S.B. 429**	**S.B. 884**	**S.B. 1273**
S.B. 259	**S.B. 470**	**S.B. 885**	**S.B. 1333**
S.B. 270	**S.B. 545**	**S.B. 923**	**S.B. 1340**
S.B. 284	**S.B. 546**	**S.B. 981**	**S.B. 1490**
S.B. 307	**S.B. 587**	**S.B. 1033**	**S.B. 1520**
S.B. 311	**S.B. 610**	**S.B. 1035**	**S.B. 1538**

S.B. 323 **S.B. 637** **S.B. 1048** **S.B. 1543**
S.B. 219 (Signed subject to Art. III, Sec. 49a of the Constitution)

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 430**: Black, Chair; Hartnett, A. Hill, Smithee, Naishtat.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1034**: Berlanga, Chair; Conley, Schechter, Delisi, Greenberg.

The House has adopted the Conference Committee Report on **S.B. 858** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2719** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 582** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2054** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RESOLUTION 896

Senator Leedom offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 72nd Legislature, Regular Session, 1991, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **H.B. 2657** to consider and take action on the following specific matters:

1. Senate Rule 12.03(4) is suspended to permit the committee to add two sections to read as follows:

SECTION _____. Section 216.0035, Local Government Code, is amended to read as follows:

Sec. 216.0035. REGULATORY AUTHORITY NOT APPLICABLE TO ON-PREMISES SIGNS UNDER CERTAIN CIRCUMSTANCES. The authority granted to a municipality by this subchapter to require the relocation, reconstruction, or removal of signs does not apply to:

(1) on-premises signs in the extraterritorial jurisdiction of municipalities in a county [~~counties~~] described by Section 17, Article 2, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985 (Article 6674v-3, Vernon's Texas Civil Statutes), if the circumstances described by that section occur; and

(2) on-premises signs in a municipality's extraterritorial jurisdiction in a county that borders a county described by that law.

SECTION _____. Section 216.902(c), Local Government Code, is amended to read as follows:

(c) The authority granted to a municipality by this section to extend its outdoor sign ordinance does not apply to:

(1) on-premises signs in the extraterritorial jurisdiction of municipalities in a county [~~counties~~] described by Section 17, Article 2, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985 (Article 6674v-3, Vernon's Texas Civil Statutes), if the circumstances described by that section occur; and

(2) on-premises signs in a municipality's extraterritorial jurisdiction in a county that borders a county described by that law.

Explanation: This change is necessary to restrict municipal regulation of on-premises signs in certain municipal extraterritorial jurisdiction.

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

SECTION _____. Sections 17(a), (c), and (d), Article 2, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985 (Article 6674v-3, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The commissioners court of a county with a population of more than 2.4 million or the commissioners court of a county with a population of more than 125,000 that borders a county with a population of more than 2.4 million[~~; according to the most recent federal census;~~] may regulate, in the unincorporated area of [~~municipal extraterritorial jurisdiction in~~] the county, the location, height, size, and anchoring of on-premise signs. Under this subsection, a county's population is determined according to the most recent federal census.

(c) If the county adopts under this section any regulation of on-premise signs, the on-premise sign regulations imposed by this article, adopted by the commission under this article, or adopted by a municipality do not apply in the unincorporated area of [~~municipal extraterritorial jurisdiction in~~] the county.

(d) In lieu of exercising any regulatory powers under this section in the unincorporated area of [~~municipal extraterritorial jurisdiction in~~] the county, the commissioners court of the county, by order, may allow the State Highway and Public Transportation Commission to regulate on-premise signs in the unincorporated area [~~extraterritorial jurisdiction~~] in accordance with a [~~the~~] municipal or county regulation regarding on-premise signage in the unincorporated area. On adoption of the order, any [~~the~~] municipal authority in the unincorporated area [~~extraterritorial jurisdiction~~] is withdrawn.

Explanation: This change is necessary to authorize certain counties to regulate on-premise signs in unincorporated areas.

3. Senate Rule 12.03(4) is suspended to permit the committee to add a section to read as follows:

SECTION_____. Section 44.161(c), Government Code, is amended to read as follows:

(c) The criminal district attorney shall represent Denton County in any court in which the county has pending business. This subsection does not prevent the county from retaining other legal counsel, including staff counsel, in a civil matter as it considers appropriate.

Explanation: This change is necessary to authorize Denton County to be represented by staff counsel in a civil matter.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2657

Senator Leedom submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2657** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LEEDOM	ECKELS
ARMBRISTER	MARTIN
LUCIO	CAMPBELL
SIMS	RABUCK
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 935

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 935** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN	LINEBARGER
WHITMIRE	COUNTS
HALEY	JUNELL
LYON	
HENDERSON	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to provisions making certain construction contracts subject to the laws of another state, to litigation in the courts of another state, or to arbitration in another state.

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

SECTION 1. Section 35.53, Business & Commerce Code, is amended to read as follows:

Sec. 35.53. NOTICE OF LAW; DISPUTE RESOLUTION FORUM APPLICABLE TO CONTRACT. (a) This section applies to a contract, other than a contract for the construction or repair of improvements to real property located in this state, only if:

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

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

(A) an individual resident of this state; or

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

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

(c) If a contract which provides for the construction or repair of improvements to real property located in this state contains a provision making the contract or any conflict arising under the contract subject to the laws of another state, to litigation in the courts of another state, or to arbitration in another state, that provision is voidable by a party against whom it is sought to be enforced.

SECTION 2. Section 16.070, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 16.070. CONTRACTUAL LIMITATIONS PERIOD. (a) Except as provided by Subsection (b), a [~~A~~] person may not enter a stipulation, contract, or agreement that purports to limit the time in which to bring suit on the stipulation, contract, or agreement to a period shorter than two years. A stipulation, contract, or agreement that establishes a limitations period that is shorter than two years is void in this state.

(b) This section does not apply to a stipulation, contract, or agreement relating to the sale or purchase of a business entity if a party to the stipulation, contract, or agreement pays or receives or is obligated to pay or entitled to receive consideration under the stipulation, contract, or agreement having an aggregate value of not less than $500,000.

SECTION 3. Section 16.071, Civil Practice and Remedies Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not apply to a contract relating to the sale or purchase of a business entity if a party to the contract pays or receives or is obligated to pay or receive consideration under the contract having an aggregate value of not less than $500,000.

SECTION 4. The change in law made by Section 1 of this Act applies only to a contract for the construction or repair of improvements to real property located in this state that is executed on or after the effective date of this Act.

SECTION 5. Sections 2 and 3 of this Act apply to a stipulation, contract, or agreement entered into before, on, or after the effective date of this Act.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT
ON SENATE BILL 1034

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1034** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BIVINS	BERLANGA
KRIER	SCHECHTER
HARRIS OF DALLAS	DELISI
HARRIS OF TARRANT	GREENBERG
LEEDOM	CONLEY
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to immunity from liability for school district volunteers.

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

SECTION 1. Subchapter Z, Chapter 21, Education Code, is amended by adding Section 21.934 to read as follows:

Sec. 21.934. SCHOOL DISTRICT VOLUNTEERS. (a) A volunteer who is serving as a direct service volunteer of a public school district is immune from civil liability to the same extent as a school district employee under Section 21.912 of this code.

(b) "Volunteer" means a person rendering services for or on behalf of a public school district on the premises of the district who does not receive compensation in excess of reimbursement for expenses.

(c) This section does not limit the liability of a person for intentional misconduct or gross negligence.

SECTION 2. This Act applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued for that purpose only.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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

CONFERENCE COMMITTEE REPORT
ON SENATE BILL 1412

Senator Tejeda submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1412** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

TEJEDA	SCHOOLCRAFT
BROOKS	S. THOMPSON
MONCRIEF	HARRIS
ZAFFIRINI	CLEMONS
LYON	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to emergency medical care and services and certain hospital district personnel, including peace officers.

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

SECTION 1. Section 281.057, Health and Safety Code, is amended to read as follows:

Sec. 281.057. EMPLOYMENT OF DISTRICT PEACE OFFICERS [~~IN DALLAS COUNTY~~]. (a) The board of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District may employ and commission peace officers for the district.

(b) A district peace officer may make an arrest if:

(1) the arrest is necessary to prevent or abate the commission of a criminal offense and the offense or threatened offense occurs on any land, easement, right-of-way, or other property owned and controlled by the district; or

(2) the offense involves injury or harm to any property owned or controlled by the district.

SECTION 2. Article 2.12, Code of Criminal Procedure, as amended by Chapters 277, 794, and 1104, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

(1) sheriffs and their deputies;

(2) constables and deputy constables;

(3) marshals or police officers of an incorporated city, town, or village;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Alcoholic Beverage Commission;

(7) each member of an arson investigating unit of a city, county or the state;

(8) any private person specially appointed to execute criminal process;

(9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute;

(10) officers commissioned by the State Purchasing and General Services Commission;

(11) law enforcement officers commissioned by the Parks and Wildlife Commission;

(12) airport police officers commissioned by a city with a population of more than 900,000, according to the most recent federal census, that operates an airport that serves commercial air carriers;

(13) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (12), that operates an airport that serves commercial air carriers;

(14) municipal park and recreational patrolmen and security officers;

(15) security officers commissioned as peace officers by the State Treasurer;

(16) officers commissioned by a water control and improvement district under Section 51.132, Water Code;

(17) officers commissioned by a board of trustees under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes);

(18) investigators commissioned by the Texas State Board of Medical Examiners;

(19) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code [~~16, Chapter 266, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4494n, Vernon's Texas Civil Statutes)~~];

(20) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(21) stewards and judges employed by the Texas Racing Commission;

(22) officers commissioned by the Texas State Board of Pharmacy; [and]

(23) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 13, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), or by a regional transportation authority under Section 10, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes); and [:]

(24) [~~(23)~~] officers commissioned by the Texas High-Speed Rail Authority.

SECTION 3. Section 773.003, Health and Safety Code, as amended by **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Subdivision (19) to read as follows:

(19) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting

itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

SECTION 4. Subsection (b), Section 773.006, Health and Safety Code, as amended by **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(b) The members must include:

(1) three licensed physicians, [~~one of whom must be a board-certified emergency physician;~~] appointed from nominations received from a statewide professional association of physicians, one of whom must be a board-certified emergency physician appointed from nominations received from a statewide professional association of emergency physicians, and one of whom must be a physician experienced in emergency medicine appointed from nominations received from a statewide professional association of emergency physicians;

(2) two members of governing bodies of municipalities, appointed from nominations received from a statewide association of municipalities;

(3) two elected members of commissioners courts, appointed from nominations received from a statewide association of county judges or commissioners courts;

(4) a representative of hospitals, appointed from a statewide association of hospitals;

(5) a private provider of emergency medical services, appointed from nominations received from a statewide association of private providers of emergency medical services;

(6) an emergency medical services provider who is exempt from the payment of fees under Section 773.0581;

(7) a local governmental provider of emergency medical services;

(8) an emergency medical services educator;

(9) an emergency medical technician-paramedic, appointed from nominations received from a statewide association of emergency medical technicians;

(10) an emergency medical technician, appointed from nominations received from a statewide association of emergency medical technicians;

(11) an emergency nurse, appointed from nominations received from a statewide association of licensed professional nurses;

(12) a representative of a fire department that provides emergency medical services, appointed from nominations received from a statewide association of fire fighters; and

(13) two consumer members.

SECTION 5. This Act takes effect September 1, 1991, provided, however, that Section 4 of this Act applies only to vacancies occurring after the effective date of this Act.

SECTION 6. This Act does not affect the status as peace officers of officers commissioned before the effective date of this Act by the board of the Dallas County Hospital District under Section 281.057, Health and Safety Code, as that section existed before amendment by this Act, and is intended only to extend the authority to employ and commission peace officers to the Tarrant County Hospital District and the Bexar County Hospital District.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT
ON SENATE BILL 1099

Senator Carriker submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1099** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CARRIKER	SAUNDERS
DICKSON	KUEMPEL
BARRIENTOS	CRADDICK
ROSSON	ALEXANDER
	R. LEWIS
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to permits for certain facilities regulated by the Texas Air Control Board, the Texas Water Commission, or the Texas Department of Health, to pollution prevention, and to the disposal of certain solid waste; providing a penalty.

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

ARTICLE 1

SECTION 1.01. Section 361.003, Health and Safety Code, is amended to read as follows:

Sec. 361.003. DEFINITIONS. Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Board of health" means the Texas Board of Health.

(3) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(4) "Class I nonhazardous industrial solid waste" means any Class I industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(5) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(6) "Commission" means the Texas Water Commission.

(7) [~~(6)~~] "Commissioner" means the commissioner of health.

(8) [~~(7)~~] "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(9) [~~(8)~~] "Department" means the Texas Department of Health.

(10) [~~(9)~~] "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(11) [~~(10)~~] "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(12) [~~(11)~~] "Executive director" means the executive director of the commission.

(13) [~~(12)~~] "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(14) [~~(13)~~] "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

(B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(15) [~~(14)~~] "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(16) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(17) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(18) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(19) [~~(15)~~] "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(20) [~~(16)~~] "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(21) [~~(17)~~] "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(22) [~~(18)~~] "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(23) [~~(19)~~] "Notice of intent to file an application" means the notice filed under Section 361.063.

(24) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(25) [~~(20)~~] "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(26) [~~(21)~~] "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(27) [~~(22)~~] "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission or department determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(28) [~~(23)~~] "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the board of health under that law.

(29) [~~(24)~~] "Recycling" means the legitimate use, reuse, or reclamation of solid waste.

(30) [~~(25)~~] "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(31) [~~(26)~~] "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated

materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(32) [~~(27)~~] "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(33) [~~(28)~~] "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(34) [~~(29)~~] "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the commission.

(35) [~~(30)~~] "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(36) [~~(31)~~] This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. "Solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(37) [~~(32)~~] This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. "Solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(38) [~~(33)~~] "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(39) [~~(34)~~] "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the board of health or commission.

(40) [~~(35)~~] "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

SECTION 1.02. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Sections 361.0232, 361.0233, and 361.0234 to read as follows:

Sec. 361.0232. ASSESSMENT OF COMMERCIAL HAZARDOUS WASTE MANAGEMENT CAPACITY. (a) Not later than January 1, 1992, the commission shall assess the need for commercial hazardous waste management capacity. In making the assessment, the commission shall consider the need for various technologies for commercial waste disposal and shall evaluate the need for disposal capacity on a technology-by-technology basis. At a minimum, the commission shall assess separately the need for metals recovery, solvent recovery, other recovery such as nonsolvent organic recovery and acid regeneration, incineration of liquids, incineration of sludge or solids, energy recovery, aqueous inorganic treatment, aqueous organic treatment, other treatment such as neutralization and gas incineration, sludge treatment, stabilization, land treatment, landfill, deep well injection, and other disposal such as ocean dumping and depositing wastes in salt mines. The commission shall adopt rules based on the assessment.

(b) In evaluating need and drafting rules under this section, the commission shall consider:

(1) demand for commercial hazardous waste capacity in the state;

(2) availability of commercial hazardous waste capacity to small quantity generators;

(3) demand for noncommercial hazardous waste capacity in the state;

(4) demand for nonhazardous waste capacity in the state;

(5) permitted commercial hazardous waste capacity in the state;

(6) permitted commercial nonhazardous waste capacity in the state;

(7) anticipated waste reduction capability;

(8) potential increases in substances defined as hazardous waste;

(9) the preferences established by Section 361.023;

(10) the effect of any rules adopted under this section on the status of federal funds and any federally delegable programs;

(11) the risks associated with the transportation of hazardous waste to the facility;

(12) research on new technology; and

(13) any other relevant information.

(c) In developing this assessment, the commission shall consider the need to maintain an appropriate reserve capacity in the state to assure continuity of hazardous waste management and an effective enforcement program while encouraging waste reduction and recycling and recovery.

Sec. 361.0233. ASSESSMENT OF COMMERCIAL NONHAZARDOUS SOLID WASTE DISPOSAL CAPACITY. (a) Not later than March 1, 1996, the commission in consultation with the department shall assess the need for commercial nonhazardous solid waste disposal capacity in the state. In making the assessment, the commission and department shall consider the need for various technologies for commercial nonhazardous waste disposal and shall evaluate the need for disposal capacity on a technology-by-technology basis. The commission and the department shall adopt rules based on the assessment.

(b) In evaluating need and drafting rules under this section, the commission and department shall consider:

(1) demand for nonhazardous waste capacity in the state;

(2) permitted commercial hazardous waste capacity in the state;

(3) permitted commercial nonhazardous waste capacity in the state;

(4) anticipated waste reduction capability;

(5) potential increases in substances defined as hazardous waste;

(6) the preferences established by Section 361.022;

(7) the effect of any rules adopted under this section on the status of federal funds and any federally delegable programs;

(8) research on new technology; and

(9) any other relevant information.

(c) The commission and department shall also consider:

(1) the continued viability of industrial solid waste management in municipal solid waste facilities, under Section 361.019;

(2) the geographic location of all commercial disposal facilities relative to the location of industrial solid waste generators; and

(3) the risks associated with the transportation of industrial solid waste to the facility.

Sec. 361.0234. RULES; UPDATE OF RULES AND ASSESSMENTS. (a) To expedite the consideration of permits for technologies that an assessment prepared under Section 361.0232 or 361.0233 determines to be most needed, the rules adopted by the commission or department shall provide for a permitting process that encourages the development of new and innovative disposal technologies, grants preferences considering the hierarchies established by Sections 361.022 and 361.023, emphasizes waste reduction efforts, and encourages applicants for permits for hazardous waste management facilities to include recycling and recovery components where appropriate.

(b) The commission and department, as appropriate, shall update the assessments and related rules at least every two years. In preparing an update of the assessment, the commission and department shall consider source reduction and waste minimization plans and reports submitted under Subchapter N.

SECTION 1.03. Subsection (a), Section 361.079, Health and Safety Code, is amended to read as follows:

(a) Except as provided by Sections 361.080(b) and 361.081(c), the [~~The~~] board of health and the commission by rule shall establish procedures for public notice and a public hearing under Section 361.080 or 361.081.

SECTION 1.04. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0791 to read as follows:

Sec. 361.0791. PUBLIC MEETING AND NOTICE REQUIREMENT. (a) Notwithstanding other law, the commission shall hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission, on request of a person affected or as otherwise required by commission rule, shall hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) if notice is provided as required by this section.

(c) A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission, department, or Texas Air Control Board, as appropriate, an affidavit certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(e) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

(1) the permit application number;

(2) the applicant's name;

(3) the proposed location of the facility; and

(4) the location and availability of copies of the permit application.

(f) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

SECTION 1.05. Section 361.080, Health and Safety Code, is amended to read as follows:

Sec. 361.080. HEARING CONCERNING PERMIT APPLICATION FOR HAZARDOUS INDUSTRIAL SOLID WASTE FACILITY. (a) A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located.

(b) Notice for a hearing session held under this section shall be provided in accordance with Section 361.0791.

SECTION 1.06. Section 361.081, Health and Safety Code, is amended to read as follows:

Sec. 361.081. NOTICE OF HEARING CONCERNING APPLICATION FOR A SOLID WASTE FACILITY [~~LANDFILL PERMIT~~]. (a) The department or the commission, whichever is appropriate, shall require the applicant to mail notice to each residential or [~~residence,~~] business address located within one-half mile of a new solid waste management facility[;] and to each owner of real property located within one-half [~~three-fourths of one~~] mile of a new solid waste management facility [~~proposed landfill~~] listed in the real property appraisal records of the appraisal district in which the solid waste management facility [~~landfill~~] is sought to be permitted as of the date the department or commission, whichever is appropriate, determines the permit application is administratively complete. The notice must be sent by [~~certified or registered~~] mail[~~, return receipt requested,~~] and must be deposited with the United States postal service not more than 45 days or less than 30 days before the date of the hearing.

(b) The applicant must certify [~~department shall presume that the notice requirements under Subsection (a) have been complied with on the applicant's verification~~] to the department or commission that the mailings were deposited as required by Subsection (a) [~~that subsection unless it is demonstrated by at least 35 percent of the affected parties that the applicant did not comply with that subsection~~]. Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section.

(c) In addition to the requirements of Subsection (a), the department or commission, whichever is appropriate, shall hold a public meeting and the applicant shall give notice concerning the application for a permit for a new hazardous waste management facility as provided by Section 361.0791.

SECTION 1.07. Section 361.082, Health and Safety Code, is amended to read as follows:

Sec. 361.082. APPLICATION FOR HAZARDOUS WASTE PERMIT; NOTICE AND HEARING. (a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing. At a minimum, the rules shall include the public notice requirements set forth in Section 361.081.

(d) In addition to the hearing held under this section, the commission shall hold a public meeting and the applicant shall give notice as provided by Section 361.0791.

(e) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(f) An owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit [~~(e) A person who, on or before November 19, 1980, began on-site processing, storing, or disposing of hazardous waste under this section and~~] who has filed a hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110 or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by United States Environmental Protection Agency or commission rules relative to termination of interim status.

(g) On request under Section 361.082 by a person affected for a hearing on the permit application, the applicant for a permit for a new hazardous waste management facility shall furnish a bond or other financial assurance authorized by the commission to guarantee payment of the costs of a person affected who provides information to the commission on the question of the issuance of the permit and who is entitled to those costs under an order made as provided by Section 361.0833. For applications involving commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of $100,000. For applications that do not involve commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of $20,000.

SECTION 1.08. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Sections 361.0831 and 361.0832 to read as follows:

Sec. 361.0831. EX PARTE CONTACTS PROHIBITED. (a) Unless required for the disposition of ex parte matters authorized by law, a hearings examiner of the commission may not communicate, directly or indirectly, with any employee of the commission, any commissioner, or any party to a hearing conducted by the commission in connection with any issue of fact or law pertaining to a contested case in which the commission or party is involved.

(b) An employee of the commission, a commissioner, or a party to a hearing conducted by the commission may not attempt to influence the finding of facts or the application of law or rules by a hearings examiner of the commission except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate.

(c) If a prohibited contact is made, the hearings examiner shall notify all parties with a summary of that contact and notice of their opportunity to participate and shall give all parties an opportunity to respond.

Sec. 361.0832. PROPOSAL FOR DECISION; CERTIFIED ISSUES; REVERSAL BY COMMISSION. (a) After hearing evidence and receiving legal arguments, a hearings examiner of the commission shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The hearings examiner shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. The commission shall consider and act on the proposal for decision.

(b) If a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, a hearings examiner, on joint motion of all parties or sua sponte, may certify those policy issues to the

commission. A certification request must contain a statement of the policy issue to be determined and a statement of all relevant facts sufficient to show fully the nature of the controversy. The commission may receive written or oral statements from parties to the hearing or the hearings examiner on the policy issue certified. The commission must answer policy issues not later than the 60th day after the date of certification or, in its discretion, may decline to answer. If the commission fails to answer a policy issue within that period, the commission shall be deemed to have declined to answer. The hearings examiner shall proceed with the contested case and make a proposal for decision as required by Subsection (a).

(c) The commission may overturn an underlying finding of fact that serves as the basis for a decision in a contested case only if the commission finds that the finding was not supported by the great weight of the evidence.

(d) The commission may overturn a conclusion of law in a contested case only on the grounds that the conclusion was clearly erroneous in light of precedent and applicable rules.

(e) If a decision in a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, the commission may reject a proposal for decision as to the ultimate finding for reasons of policy only.

(f) The commission shall issue written rulings, orders, or decisions in all contested cases and shall fully explain in a ruling, order, or decision the reasoning and grounds for overturning each finding of fact or conclusion of law or for rejecting any proposal for decision on an ultimate finding.

SECTION 1.09. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0833 to read as follows:

Sec. 361.0833. COSTS FOR INFORMATION PROVIDED BY A PERSON AFFECTED REGARDING HAZARDOUS WASTE PERMIT. (a) After considering the factors in Subsection (e), the commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected in presenting information set out in Subsection (b) to the commission on the question of the issuance of the permit.

(b) Information for which an award of costs under Subsection (a) may be made includes:

(1) technical studies of the area in which the new hazardous waste facility is proposed to be located;

(2) expert testimony given at a hearing on the permit application; and

(3) surveys of land use and potential use in the hazardous waste facility area.

(c) The commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected who presented information to the commission at a hearing showing that the applicant:

(1) knowingly made false or misleading statements in the application;

(2) knowingly made false or misleading statements during the hearing; or

(3) failed to present information that the applicant had in its possession that would have materially affected the issues of fact and law on which the decision of the commission was based.

(d) The total costs awarded to all persons affected under Subsection (a) may not exceed $100,000 for a new commercial hazardous waste management facility or $20,000 for a new noncommercial hazardous waste management facility. The total costs awarded to all persons affected under Subsection (c) may not exceed $150,000 for a new commercial hazardous waste management facility or $30,000 for a new noncommercial hazardous waste management facility.

(e) In determining the appropriateness of an award under Subsection (a) or (c), the commission shall consider:

(1) whether the information provided is material to the commission's determination to deny the permit or to require the applicant to make significant changes in the facility's design or operation; and

(2) whether the information would otherwise not have been presented to the commission while the commission is considering its decision.

(f) If the applicant fails or refuses to pay the amount of costs ordered not later than the 30th day after the date of entry of the final order granting payment of costs, the commission shall order the applicant's bond or other financial assurance forfeited in the amount of the costs ordered reimbursed under Subsection (a) or (c) up to and including the full amount of the bond or other financial assurance. The commission shall forward the forfeited amount to the person affected.

(g) If no request is made for an award of costs under this section or if a person affected is determined by the commission not to be entitled to an award of costs, the commission shall release the bond or other financial assurance of the applicant subject to an appeal of the denial of costs under this section. The commission shall also release the bond or other financial assurance on presentation of proof that the costs awarded have been paid.

(h) An order issued under this section is enforceable as a debt.

SECTION 1.10. Section 361.084, Health and Safety Code, is amended to read as follows:

Sec. 361.084. COMPLIANCE SUMMARIES. (a) The board of health and the commission each by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities under each agency's jurisdiction.

(b) The compliance summaries shall be made available to the applicant and any interested person after the lead agency has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, [or] other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state in the preceding five years concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

(d) The agency shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit.

SECTION 1.11. Section 361.089, Health and Safety Code, is amended to read as follows:

Sec. 361.089. PERMIT DENIAL, AMENDMENT, SUSPENSION, OR REVOCATION; NOTICE AND HEARING. (a) The department or commission may, for good cause, deny, amend, or revoke a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste.

(b) Except as provided by Section 361.110, the department or commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder or applicant and persons affected. The department or commission may also hold a hearing on its own motion.

(c) The board of health and the commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the department or commission and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) The department or commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if it is found, after notice and hearing, that:

(1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;

(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant;

(3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the agency, its officers, or its employees;

(4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the agency; or

(5) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the agency.

(f) Before denying, suspending, or revoking a permit under this section, the department or commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the agency.

(g) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20 percent of the permit holder or applicant and at least 20 percent of another business which operates a solid waste management facility.

SECTION 1.12. Chapter 361.085, Health and Safety Code, is amended to read as follows:

Sec. 361.085. FINANCIAL ASSURANCE AND DISCLOSURE BY PERMIT APPLICANT. (a) Before a permit may be issued, amended, transferred, extended, or renewed for a hazardous waste management facility, the commission shall require as a part of each application information it deems necessary to demonstrate that an applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including how an applicant intends to obtain financing for construction of the facility, and to close the facility in accordance with applicable rules. That information may include balance sheets, financial statements, and disclosure of relevant information regarding investors and stockholders, or information required by Title 40, Code of Federal Regulations, Part 264, Subpart H. If the information would be considered confidential under applicable law, the commission shall protect the information accordingly. During hearings on contested applications, the commission may allow disclosure of confidential information only under an appropriate protective order.

(b) The commission may order a party in a contested case permit hearing to provide:

(1) the identity of any known competitor of the applicant that has provided funding to the party for its participation in the hearing; and

(2) the amount of that funding.

(c) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(d) [~~(b)~~] Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(e) [~~(c)~~] An agency may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(f) [~~(d)~~] The agency to which the application is submitted shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(g) [~~(e)~~] Financial requirements established by the agency must at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(h) [~~(f)~~] The department and the commission may each:

(1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and

(2) spend the funds from the financial assurance arrangement to close the facility.

(i) [~~(g)~~] If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the department or commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(j) [~~(h)~~] In addition to other forms of financial assurance authorized by rules of the board of health or commission, the agency may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

(1) a bank chartered by the state or the federal government; and

(2) federally insured and its financial practices are regulated by the state or the federal government.

SECTION 1.13. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0871 to read as follows:

Sec. 361.0871. EVALUATION OF WASTE STREAM; LAND USE AND NEED. (a) Before a permit may be issued for a new hazardous waste management facility or amended to provide for capacity expansion, the applicant shall identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the commission may require.

(b) In evaluating a permit for a new hazardous waste management facility, the commission shall assess the impact of the proposed facility on local land use in the area, including any relevant land use plans in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed. In determining whether a new hazardous waste management facility is compatible with local land use, the commission shall consider, at a minimum, the location of industrial and other waste-generating facilities in the area, the amounts of hazardous waste generated by those facilities, and the risks associated with the transportation of hazardous waste to the facility. If the commission determines that a proposed application is not

compatible with local land use, it may deny the permit. The commission shall adopt rules to implement this subsection.

(c) In accordance with Section 361.0232, in evaluating an application for a new commercial hazardous waste management facility, the commission shall determine the need for the specific technology proposed in the facility to manage new or increased volumes of waste generated in the state. The commission rules adopted under Section 361.0232 shall identify the types of technology for which a commercial waste management need exists and shall provide for priority consideration in permit processing for those applications that address the highest priority need as identified by the commission.

SECTION 1.14. Section 361.088, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to providing an opportunity for a hearing held under this section, the department or the commission shall hold a public meeting and give notice as provided by Section 361.0791.

SECTION 1.15. Section 361.098, Health and Safety Code, is amended to read as follows:

Sec. 361.098. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE LANDFILL IN 100-YEAR FLOODPLAIN. (a) Except as provided by Subsections (b) and (c), the [~~The~~] commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet.

(b) The commission by rule may allow an areal expansion of a landfill in a 100-year floodplain if it can be demonstrated to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(c) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste land disposal unit if the unit is to be located in a 100-year floodplain, unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(d) The commission by rule shall require an applicant to provide sufficient information to assure that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

SECTION 1.16. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1011 to read as follows:

Sec. 361.1011. PROHIBITION ON PERMIT FOR FACILITY AFFECTED BY FAULT. If a fault exists within two and one-half miles from the proposed or existing wellbore of a Class I injection well or the area within the cone of influence, whichever is greater, or if a fault exists within 3,000 feet of a proposed hazardous waste management facility other than a Class I injection well or of a capacity expansion of an existing hazardous waste management facility, the burden is on the applicant, unless previously demonstrated to the commission or to the United States Environmental Protection Agency, to show:

(1) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(2) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(A) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(B) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

SECTION 1.17. Section 361.102, Health and Safety Code, is amended to read as follows:

Sec. 361.102. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITIES WITHIN A CERTAIN DISTANCE [~~FACILITY WITHIN 1,000 FEET~~] OF RESIDENCE, CHURCH, SCHOOL, DAY CARE CENTER, [~~OR~~] PARK, OR PUBLIC DRINKING WATER SUPPLY. (a) Except as provided by Subsections (b) and (c), the [~~The~~] commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park [~~that is in use:~~

[~~(1) when the notice of intent to file a permit application is filed with the commission; or~~

[~~(2) if no notice of intent is filed, when the permit application is filed with the commission~~].

(b) The commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(c) For a subsequent areal expansion of a new commercial hazardous waste management facility that was required to comply with Subsection (b), distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(d) The commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries, consistent with the purposes of this chapter.

(e) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by Subsections (a), (b), (c), and (d) do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated park located within the boundaries

of a commercial hazardous waste management facility, or property owned by the permit applicant.

(f) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

SECTION 1.18. Chapter 361.109, Health and Safety Code, is amended to read as follows:

Sec. 361.109. GRANT OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. (a) The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

(1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;

(2) the applicant for a proposed hazardous waste management facility [~~not located in an area of industrial land use~~] has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be [**reasonably**] minimized or mitigated; and

(3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed.

(b) If the commission determines that a burden on public roadways will be imposed by a new commercial hazardous waste management facility, the commission shall require the applicant to pay the cost of the improvements necessary to minimize or mitigate the burden. The applicant shall bear the costs associated with any required roadway improvements. The failure of a county or municipality to accept the funds and make the improvements shall not be the basis for denial or suspension of a permit.

(c) The commission shall not process an application for a permit for a new commercial hazardous waste management facility unless the applicant:

(1) has provided sufficient evidence that emergency response capabilities are available or will be available before the facility first receives waste in the area in which the facility is located or proposed to be located to manage a reasonable worst-case emergency condition associated with the operation of the facility; or

(2) has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the commission to manage a reasonable worst-case emergency condition associated with the facility.

(d) If the applicant intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located to satisfy the requirements of Subsection (c), the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. If financial assurance is required, the financial assurance must be for the benefit of the county government or municipal government in the county in which the facility is located or proposed to be located, or both, and must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment. The commission shall adopt rules to ensure that the county or municipal government or other entity has sufficient emergency response capabilities before the facility first receives waste.

(c) A permit for a new commercial hazardous waste management facility shall not be granted unless the applicant provides a summary of its experience in hazardous waste management and in the particular hazardous waste management technology proposed for the application location. Any applicant without experience in the particular hazardous waste management technology shall conspicuously state that lack of experience in the application or a permit shall not be granted pursuant to the application. A permit may not be denied solely on the basis of lack of experience of the applicant.

SECTION 1.19. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.113 to read as follows:

Sec. 361.113. PERMIT CONDITIONS FOR THE OPERATION OF HAZARDOUS WASTE MANAGEMENT FACILITIES. (a) The commission by rule shall establish requirements for commercial hazardous waste management facilities that will provide the opportunity for periodic monitoring of the operation of those facilities in order to assure that the facilities are in compliance with the terms of their respective permits.

(b) In proposing and adopting rules to implement this section, the commission shall consider, at a minimum, a requirement that the facility owner or operator fund an independent inspector for the facility, a requirement for an independent annual environmental audit of the facility, a procedure for considering comments from affected parties on the selection of the independent inspector, a requirement that operational personnel at the permitted facility be certified by the state as competent to operate the size and type of hazardous waste management facility for which the permit has been issued, and a requirement that the facility provide for fence line and ambient air quality monitoring.

(c) A requirement that is established by commission rule to implement this section shall be incorporated as appropriate into the conditions of a permit for a new hazardous waste management facility when the permit is issued and shall be incorporated into the conditions of a permit for an existing hazardous waste management facility when the permit is renewed.

SECTION 1.20. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.114 to read as follows:

Sec. 361.114. GRANT OF PERMIT FOR DISPOSAL OF HAZARDOUS WASTE INTO SALT DOMES. (a) The commission may not issue a permit for a hazardous waste injection well in a solution-mined salt dome cavern unless the United States Environmental Protection Agency and the commission determine that sufficient rules are in place to regulate that activity.

(b) Before issuing a permit for a hazardous waste injection well in a solution-mined salt dome cavern, the commission by order must find that there is an urgent public necessity for the hazardous waste injection well. The commission, in determining whether an urgent public necessity exists for the permitting of the hazardous waste injection well in a solution-mined salt dome cavern, must find that:

(1) the injection well will be designed, constructed, and operated in a manner that provides at least the same degree of safety as required of other currently operating hazardous waste disposal technologies;

(2) consistent with the need and desire to manage within the state hazardous wastes generated in the state, there is a substantial or obvious public need for additional hazardous waste disposal capacity and the hazardous waste injection well will contribute additional capacity toward servicing that need;

(3) the injection well will be constructed and operated in a manner so as to safeguard public health and welfare and protect physical property and the environment;

(4) the applicant has demonstrated that groundwater and surface waters, including public water supplies, will be protected from the release of hazardous waste from the salt-dome waste containment cavern; and

(5) any other criteria required by the commission to satisfy that the test of urgency has been met.

SECTION 1.21. Subdivision (3), Section 361.401, Health and Safety Code, is amended to read as follows:

(3) "Petroleum" means crude oil or any fraction of crude oil that is not otherwise listed or designated as a hazardous substance under Section 361.003[~~(13)(A)~~].

SECTION 1.22. Subsection (d), Section 27.018, Water Code, is amended to read as follows:

(d) An application for an injection well to dispose of hazardous waste shall be subject to the pre-application local review process established by Section 361.063, Health and Safety Code, and to the requirements of Section 361.0791, Health and Safety Code [~~4(e)(12), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)~~].

SECTION 1.23. Section 27.051, Water Code, is amended by adding Subsection (g) to read as follows:

(g)(1) The commission may not issue a permit for a hazardous waste injection well in a solution-mined salt dome cavern unless the United States Environmental Protection Agency and the commission determine that sufficient rules are in place to regulate that activity.

(2) Before issuing a permit for a hazardous waste injection well in a solution-mined salt dome cavern, the commission by order must find that there is an urgent public necessity for the hazardous waste injection well. The commission, in determining whether an urgent public necessity exists for the permitting of the hazardous waste injection well in a solution-mined salt dome cavern, must find that:

(A) the injection well will be designed, constructed, and operated in a manner that provides at least the same degree of safety as required of other currently operating hazardous waste disposal technologies;

(B) consistent with the need and desire to manage within the state hazardous wastes generated in the state, there is a substantial or obvious public need for additional hazardous waste disposal capacity and the hazardous waste injection well will contribute additional capacity toward servicing that need;

(C) the injection well will be constructed and operated in a manner so as to safeguard public health and welfare and protect physical property and the environment;

(D) the applicant has demonstrated that groundwater and surface waters, including public water supplies, will be protected from the release of hazardous waste from the salt-dome waste containment cavern; and

(E) any other criteria required by the commission to satisfy that the test of urgency has been met.

SECTION 1.24. The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commerical hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt all rules, except rules required under Section 1.02 or 1.26 of this article, necessary to carry out the provisions of this article. The Texas Water Commission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.02 or 1.26 of this article, as expeditiously as possible, but no later than 120 days after the effective date of this Act. Pending adoption of all such rules, the commission and the board may not conduct any public hearing on a permit. The commission and the board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. Permits

granted after the effective date of this article must comply fully with all rules adopted by the commission and the board pursuant to this article. For purposes of this section, "commercial hazardous waste management facility" does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratorium does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity.

SECTION 1.25. (a) This article applies to any permit application, including permit applications for facilities operating under interim status, covered by the terms of this article that is pending approval on the effective date of this article. Any application for renewal of or amendment to a permit for an existing facility that includes a request for authorization to increase capacity at the facility shall comply with the terms of this article; provided, however, that the provisions of Sections 1.16 and 1.17 of this article do not apply to an application for renewal of or amendment to a permit for an existing facility or to an existing facility burning waste-derived fuels under a Texas Water Commission or Texas Air Control Board permit on the effective date of this article.

(b) The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d), Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article.

(c) The provisions of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to applications already submitted to the permitting agency on the effective date of this article.

(d) The provisions of this article do not apply to applications that are on file on the effective date of this article and that are only for permits for the disposal of treatment residues and other nonincinerable wastes generated at the same facility or at facilities wholly owned by the applicant.

(e) The provisions of this article apply to any application to amend a nonhazardous waste facility permit to accept hazardous waste that is pending approval on the effective date of this article and to all existing nonhazardous waste permits. If a nonhazardous waste facility has become a hazardous waste facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. The provisions of this article and this subsection do not apply to a noncommercial facility that is required to obtain a hazardous waste permit under the federal toxicity characteristic rule.

(f) To enable the Texas Water Commission to meet the deadlines imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, and imposed by Section 1.25 of this article, rules required to be adopted under those provisions are not subject to Texas Employment Commission review.

(g) To enable the Texas Water Commission to meet the deadline imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, a purchase by the commission of services necessary to prepare the assessment and rules required by that section is exempt from the purchasing requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 1.26. (a) To provide accountability and predictability in the processing of permit applications, the Texas Water Commission shall review its

permit application processing procedures to determine the causes of delay, if any, in those activities. After identifying any obstacles to timely determination on permit applications, the commission shall adopt reasonable permit processing and hearing timetables for permits that are determined to be administratively complete, with specific deadlines for each major step in the processing under the control of the commission and hearing procedures. Deadlines under the control of the commission do not include time the commission waits for the receipt of information from an applicant in order to properly review the application. Those deadlines under the control of the commission shall be met unless the executive director finds that the delay is necessary and lists the reasons that the deadlines cannot be met. It is the legislature's intent that permit applicants whose applications address technologies that are most needed as determined under Section 361.0234, Health and Safety Code, as added by this article, receive an ultimate determination on an administratively complete application, favorable or unfavorable, within two years of the date the application is determined to be administratively complete, excluding time not under the control of the commission.

(b) As part of this study, the Texas Water Commission shall consider mechanisms for encouraging applicants and local communities to cooperate with each other in the siting of new hazardous waste management facilities. The commission shall, at a minimum, consider the creation of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant provides opportunities for citizens to ask questions about the permit application or the draft permit, and any necessary revisions to the local review process provided by Section 361.063, Health and Safety Code. The commission shall report its findings, recommendations, and a summary of the rules adopted under Subsection (a) of this section to the legislature before January 1, 1993.

SECTION 1.27. If necessary, the Texas Water Commission, the Texas Air Control Board, and the Texas Department of Health shall enter into memoranda of understanding to establish procedures and carry out this article.

SECTION 1.28. If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in implementing the application procedures required under this article, the appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency.

SECTION 1.29. If either **S.B. 35** or **H.B. 2000**, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and is approved by the governor, the duties, powers, and responsibilities conferred by this article on the Texas Water Commission, the Texas Department of Health, or the Texas Air Control Board are transferred to the Texas Department of Natural Resources.

ARTICLE 2

SECTION 2.01. Chapter 361, Health and Safety Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. POLLUTION PREVENTION

Sec. 361.431. DEFINITIONS. In this subchapter:

(1) "Acute hazardous waste" means hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 C.F.R. Section 261.11(a)(2).

(2) "Board" means the Texas Air Control Board.

(3) "Conditionally exempt small-quantity generator" means a generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(4) "Committee" means the waste reduction advisory committee established by Section 361.0215.

(5) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(6) "Facility" means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

(7) "Generator" and "generator of hazardous waste" have the meaning assigned by Section 361.131.

(8) "Large-quantity generator" means a generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

(9) "Media" and "medium" mean air, water, and land into which waste is emitted, released, discharged, or disposed.

(10) "Pollutant" or "contaminant" includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Sections 101(14)(A) through (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) "Source reduction" has the meaning assigned by the federal Pollution Prevention Act of 1990, Pub.L. 101-508, Section 6603, 104 Stat. 1388.

(12) "Waste minimization" means a practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

Sec. 361.432. POLICY AND GOALS FOR SOURCE REDUCTION AND WASTE MINIMIZATION. (a) It is the policy of the state to reduce pollution at its source and to minimize the impact of pollution in order to reduce risk to public health and the environment and continue to enhance the quality of air, land, and waters of the state where feasible.

(b) Source reduction is the primary goal of the state in implementing this policy because hazardous wastes, pollutants, and contaminants that are not generated or produced pose no threat to the environment and eliminate societal management and disposal costs.

(c) To further promote this policy, hazardous wastes, pollutants, and contaminants that cannot be reduced at the source should be minimized wherever possible. Waste minimization, while secondary in preference to source reduction, is an important means for achieving more effective protection of public health and the environment while moving toward source reduction.

Sec. 361.433. AGENCY PLANS. (a)Consistent with state and federal regulations, to achieve the policies stated in Section 361.432, the board by rule shall,

to the maximum extent that is technologically and economically feasible, develop plans to reduce the release of pollutants or contaminants into the air.

(b) Consistent with state and federal regulations, to achieve the policies stated in Section 361.432, to the maximum extent that is technologically and economically feasible, the commission shall:

(1) develop plans to reduce the release of pollutants or contaminants into water; and

(2) establish reasonable goals for the reduction of the volume of hazardous waste generated in the state and the amount of pollutants and contaminants using source reduction and waste minimization.

(c) In order to effectively use resources and avoid duplication of effort, the commission and board by joint rule shall develop a common list of pollutants or contaminants and the level of releases of those pollutants or contaminants subject to source reduction and waste minimization planning.

Sec. 361.434. APPLICATION. (a) Except as provided by Subsection (b), this subchapter applies to the following persons:

(1) all large-quantity generators of hazardous waste;

(2) all generators other than large-quantity generators and conditionally exempt small-quantity generators; and

(3) persons subject to Section 313, Title III, Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 11023) whose releases exceed the levels established under Section 361.433(c).

(b) The commission and the board through joint rule making shall establish one or more schedules for the application of the requirements of this subchapter to designated classes of persons described by Subsection (a). The schedule shall provide for the inclusion of all persons described by Subsection (a) on a date to be determined by the commission and board, and until that date this subchapter applies only to those persons designated by rule of the commission or board.

(c) This subchapter does not apply to a facility regulated by the Railroad Commission of Texas under Section 91.101 or 141.012, Natural Resources Code.

Sec. 361.435. SOURCE REDUCTION AND WASTE MINIMIZATION PLANS. (a) Persons identified under Section 361.434(a)(1) or (a)(3) shall prepare a source reduction and waste minimization plan. Plans developed under this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities. The plan shall include, at a minimum:

(1) an initial survey that identifies:

(A) for facilities subject to Section 361.434(a)(1), activities that generate hazardous waste; and

(B) for facilities subject to Section 361.434(a)(3), activities that result in the release of pollutants or contaminants designated under Section 361.433(c);

(2) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(3) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(4) an estimate of the type and amount of reduction anticipated;

(5) a schedule for the implementation of each source reduction and waste minimization project;

(6) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(7) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(8) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;

(9) an executive summary of the plan; and

(10) identification of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium.

(b) The source reduction and waste minimization plan may include:

(1) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(4) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(5) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(c) The commission shall adopt rules for the development of simplified, as appropriate, source reduction and waste minimization plans and reports for persons identified under Section 361.434(a)(2).

(d) The commission and the board shall provide information to aid in the preparation of source reduction and waste minimization plans to be prepared by a person under this section.

(e) The commission and board shall enter into memoranda of understanding as necessary to ensure that a person may meet both agencies' requirements in a single plan.

Sec. 361.436. SOURCE REDUCTION AND WASTE MINIMIZATION ANNUAL REPORT. (a) A person required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission and the board an annual report and a current executive summary according to any schedule developed under Section 361.434.

(b) The annual report shall comply with rules adopted by the commission and the board through joint rule making. The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(1) an assessment of the progress toward the achievement of the facility source reduction goal and the facility waste minimization goal;

(2) a statement to include, for facilities subject to Section 361.434(a)(1), the amount of hazardous waste generated and, for facilities subject to Section 361.434(a)(3), the amount of the release of pollutants or contaminants designated under Section 361.433(c) in the year preceding the report, and a comparison of those amounts with the amounts generated or released in a base year selected by agreement of the commission and the board; and

(3) any modification to the plan.

(c) The annual report may include:

(1) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(4) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(d) The annual report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

Sec. 361.437. ADMINISTRATIVE COMPLETENESS. (a) The commission or the board may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter and rules adopted under Section 361.434, 361.435, or 361.436, as appropriate.

(b) Failure to have a source reduction and waste minimization plan in accordance with Sections 361.434 and 361.435 or failure to submit a source reduction and waste minimization annual report in accordance with Section 361.436 is a violation of this chapter.

Sec. 361.438. CONFIDENTIALITY. (a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person who is subject to this subchapter and shall be available to commission or board personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) The executive summary and the annual report are public records. On request, the person shall make available to the public a copy of the executive summary or annual report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the commission or board that an executive summary, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the commission or board shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the commission or board or an employee of the commission or board does not affect its status as a trade secret.

(e) Information classified by the commission or board as confidential under this section is not a public record for purposes of the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be used in a public hearing or disclosed to a person outside the commission or board unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

Sec. 361.439. SOURCE REDUCTION AND WASTE MINIMIZATION ASSISTANCE. (a) The office of pollution prevention established under Section 361.0216 shall assist generators of hazardous waste and owners or operators of facilities that release pollutants or contaminants in reducing the volume, toxicity, and adverse public health and environmental effects of hazardous waste generated or pollutants or contaminants released in the state. To provide the assistance, the office may:

(1) compile, organize, and make available for distribution information on source reduction and waste minimization technologies and procedures;

(2) compile and make available for distribution to business and industry a list of consultants on source reduction and waste minimization

technologies and procedures and a list of researchers at state universities who can assist in source reduction and waste minimization activities;

(3) sponsor and conduct conferences and individualized workshops on source reduction and waste minimization for specific classes of business or industry;

(4) facilitate and promote the transfer of source reduction and waste minimization technologies and procedures among businesses and industries;

(5) if appropriate, develop and distribute model source reduction and waste minimization plans for the major classes of business or industry, as identified by the office, that generate and subsequently treat, store, or dispose of hazardous waste or that release a pollutant or contaminant in the state;

(6) develop and make available for distribution recommended source reduction and waste minimization audit procedures for use by business or industry in conducting internal source reduction and waste minimization audits;

(7) provide to business and industry, as resources allow, on-site assistance in identifying potential source reduction and waste minimization techniques and practices and in conducting internal source reduction and waste minimization audits;

(8) compile and make available for distribution information on tax benefits available to business or industry for implementing source reduction and waste minimization technologies and practices;

(9) establish procedures for setting priorities among key industries and businesses for receiving assistance from the office;

(10) develop the information base and data collection programs necessary to set program priorities and to evaluate progress in source reduction and waste minimization;

(11) develop training programs and materials for state and local regulatory personnel and private business and industry regarding the nature and applicability of source reduction and waste minimization practices;

(12) produce a biennial report on source reduction and waste minimization activities, achievements, problems, and goals, including a biennial work plan;

(13) participate in existing state, federal, and industrial networks of individuals and groups involved in source reduction and waste minimization; and

(14) publicize to business and industry, and participate in and support, waste exchange programs.

(b) The commission, the department, and the board shall provide education and training to river authorities, municipalities, and public groups on source reduction and waste minimization technologies and practices.

(c) The commission and the board shall develop incentives to promote the implementation of source reduction and waste minimization, including:

(1) board and commission recommendations to the governor for awards in recognition of source reduction and waste minimization efforts;

(2) an opportunity by joint rules of the commission and the board for an owner or operator of a facility to be exempted from the requirements of this subchapter on meeting appropriate criteria for practical economic and technical completion of the source reduction and waste minimization plan for the facility; and

(3) expedited review of a permit amendment application if the amendment is necessary to implement a source reduction and waste minimization project, considering only the directly affected parts of the permit.

(d) The commission and the board shall work closely with the Gulf Coast Hazardous Substance Research Center to identify areas in which the center could

perform research in the development of alternative technologies or conduct related projects to promote source reduction and waste minimization.

Sec. 361.440. REPORT TO LEGISLATURE. Notwithstanding any other reporting requirement, the commission and the board shall jointly prepare a biennial report to the presiding officers of the legislature and the governor concerning the implementation of this subchapter. The report must include:

(1) the status of the technical assistance program;

(2) a description of progress toward reducing the volume of hazardous waste generated and the amount of pollutants and contaminants in the state;

(3) an analysis of and recommendations for changes to source reduction and waste minimization programs, including consideration of additional enforcement provisions; and

(4) an identification of any other needed pollution prevention activities.

SECTION 2.02. Section 361.021, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) The council shall consult with and advise the pollution prevention council on all matters relating to pollution prevention.

SECTION 2.03. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0211 to read as follows:

Sec. 361.0211. POLLUTION PREVENTION COUNCIL. (a) The commission, the department, the Texas Air Control Board, and the Railroad Commission of Texas shall each designate an individual to coordinate source reduction and waste minimization efforts and programs in the appointing agency and represent the agency on the pollution prevention council. The individual designated shall report to that individual's executive director or assistant or deputy director.

(b) The pollution prevention council shall coordinate the activities of its represented agencies that concern source reduction and waste minimization to ensure the consistency of and to avoid duplication or conflict in programs.

SECTION 2.04. Subsection (b), Section 361.0215, Health and Safety Code, is amended to read as follows:

(b) The committee shall advise the commission, pollution prevention council, and interagency coordination council on:

(1) matters the council is required to consider under Section 361.021(d);

(2) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;

(3) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;

(4) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and

(5) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

SECTION 2.05. Section 361.0216, Health and Safety Code, is amended to read as follows:

Sec. 361.0216. OFFICE OF POLLUTION PREVENTION. The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction and waste minimization activities of the commission [~~WASTE MINIMIZATION AND REDUCTION GROUP. The~~

~~commission shall establish a waste minimization and reduction group to assist in developing waste minimization and reduction programs and to provide incentives for the use of the programs so as to make the programs economically and technologically feasible~~].

SECTION 2.06. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Section 91.110 to read as follows:

Sec. 91.110. OIL AND GAS WASTE REDUCTION AND MINIMIZATION. To encourage the reduction and minimization of oil and gas waste, the commission shall implement a program to:

(1) provide operators with training and technical assistance on oil and gas waste reduction and minimization;

(2) assist operators in developing oil and gas waste reduction and minimization plans; and

(3) by rule establish incentives for oil and gas waste reduction and minimization.

SECTION 2.07. Not later than January 1, 1992, the Texas Water Commission and the Texas Air Control Board by joint rule shall adopt requirements for source reduction and waste minimization plans required by Section 361.435, Health and Safety Code, as added by this article, and shall adopt the schedules under Subsection (b), Section 361.434, Health and Safety Code, as added by this article.

SECTION 2.08. Rules adopted by the Texas Water Commission or the Texas Air Control Board shall provide that the initial source reduction and waste minimization annual report required to be submitted by an identified class of persons under Section 361.436, Health and Safety Code, as added by this article, shall be submitted not later than a date certain, which may not be earlier than 18 months from the date a schedule is adopted under Subsection (b), Section 361.434, Health and Safety Code, as added by this article, that identifies the class of persons as subject to the requirements of Subchapter N, Chapter 361, Health and Safety Code, as added by this article.

SECTION 2.09. If either **S.B. 35** or **H.B. 2000**, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and is approved by the governor, the duties, powers, and responsibilities conferred by this article on the Texas Water Commission or the Texas Air Control Board are transferred to the Texas Department of Natural Resources.

SECTION 2.10. If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in implementing the application procedures required under this article, the appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency.

ARTICLE 3

SECTION 3.01. This Act may be referred to as the Waste Reduction Policy Act of 1991.

SECTION 3.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2657 ADOPTED

Senator Leedom called from the President's table the Conference Committee Report on **H.B. 2657**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Leedom, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2004

Senator Carriker submitted the following Conference Committee Report:

Austin, Texas
May 24, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2004** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI	GLAZE
CARRIKER	HARRIS
BROOKS	HIRSCHI
TRUAN	RODRIGUEZ
MONCRIEF	RABUCK
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1034 ADOPTED

Senator Bivins called from the President's table the Conference Committee Report on **S.B. 1034**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Bivins, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2004 ADOPTED

Senator Carriker called from the President's table the Conference Committee Report on **H.B. 2004**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Carriker, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1099 ADOPTED

Senator Carriker called from the President's table the Conference Committee Report on **S.B. 1099**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Carriker, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 888
(Caucus Report)

Senator Brooks offered the following resolution:

Honorable Bob Bullock
President of the Senate
Austin, Texas

Sir:

At a caucus held on May 27, 1991, and attended by 29 Members of the Senate, the following recommendations were made, to wit:

BE IT RESOLVED by the Senate, That:

The Lieutenant Governor may employ such employees as are necessary for the operation of his office from the closing of this session and until the convening of the next session, and in addition thereto, he and the Secretary of the Senate shall be furnished postage, telegraph, telephone, express, and all other expenses incident to their respective offices.

The Secretary of the Senate shall be retained during the interval between adjournment of this session and the convening of the next session of the Legislature. The Secretary of the Senate may employ such employees as are necessary for the operation of her office and to perform duties as may be required in connection with the business of the state from the closing of this session and until the convening of the next session. All employees and elected officers of the Senate shall operate under the direct supervision of the Secretary of the Senate during the interim.

The Administration Chairman is authorized to retain a sufficient number of staff employees to conclude the work of the Enrolling Clerk, Calendar Clerk, Journal Clerk, and Sergeant-at-Arms. The Committee on Administration shall establish the salaries to be paid the Senate staff.

The Chairman of the Senate Committee on Administration is hereby authorized and directed to cause the Senate Chamber to be placed in order and to purchase such supplies and to make all such repairs and improvement as are necessary between the adjournment of this session and the convening of the next session of the Legislature and make an inventory of all furniture and fixtures in the Senate Chamber and in the private offices of the Members, as well as of the supplies and equipment on hand in the Purchasing and Supply Department and close his books for the Regular Session of the 72nd Legislature. No equipment shall be acquired on a rental/purchase plan unless such equipment be placed on the Senate inventory at the termination of such plan. He shall also examine records and accounts payable out of the Contingent Expense Fund as shall be necessary properly to approve all claims and accounts against the Senate, and no claim or account shall be paid without his consent and approval, and he and any member of the Administration Committee shall be entitled to receive his actual and necessary expenses incurred during the interim; and, be it further

RESOLVED, That there shall be printed 325 volumes of the Senate Journal of the Regular Session of the 72nd Legislature; when complete 250 copies shall be

bound in buckram and delivered to the Secretary of the Senate; one volume thus bound shall be forwarded by the Secretary of the Senate to each Member of the Senate, the Lieutenant Governor, and to each Member of the House of Representatives on request. The printing of such journals shall be done in accordance with the provisions of this Resolution under the supervision of the Chairman of the Committee on Administration; provided, further, that it shall be the duty of said chairman to refuse to receive or receipt for said Senate Journals until corrected and published in accordance with the preexisting law as finally approved by the Chairman of the Committee on Administration of the Senate. When the accounts have been certified by the Chairman of the Committee on Administration of the Senate, said accounts shall be paid out of the Contingent Expense Fund of the 72nd Legislature; and, be it further

RESOLVED, That all salaries and expenses herein authorized to be incurred and paid for shall be paid out of the per diem and Contingent Expense Fund of the 72nd Legislature as follows: The Senate shall request the State Comptroller of Public Accounts to issue general revenue warrants for payment of the employees of the Lieutenant Governor's office, the Lieutenant Governor, Members of the Senate, employees of the Senate committees, and employees of the Senate, except as provided in Section 20 of the Legislative Reorganization Act (Article 5429f, Vernon's Texas Civil Statutes), upon presentation of the payroll account signed by the Chairman of the Administration Committee and the Secretary of the Senate; and for the payment of materials, supplies, and expenses of the Senate, including travel expenses for Members and employees, upon vouchers signed by the Chairman of the Senate Committee on Administration and the Secretary of the Senate; and, be it further

RESOLVED, That in furtherance of the legislative duties and responsibilities of the Senate, the Administration Committee is hereby authorized and directed to charge to the individual Member's office budget as hereinafter authorized: (1) reimbursement of all actual expenses incurred by the Members when traveling in performance of such duties and responsibilities or incident thereto, and (2) payment of all other reasonable and necessary expenses for the operation of the office of the individual Senator during any period the Legislature is not in session. Expenditures for these services by the Administration Committee as hereby authorized as an expense of the Senate shall not be restricted to Austin but may be incurred in individual senatorial districts. Such expenses shall be paid from funds appropriated for the use of the Senate on vouchers approved by the Chairman of the Administration Committee and the Secretary of the Senate in accordance with regulations governing such expenditures; and, be it further

RESOLVED, That for the time period from the end of the 72nd Legislature, Regular Session, through May 31, 1991, the $18,000 payroll/travel allotment shall remain in effect. Effective June 1 thorugh August 31, 1991, each Senator shall be permitted to employ secretarial and other office staff and for intrastate travel expenses for staff employees a payroll of $20,000 per month. Any unexpended portion of this amount may be carried forward from month to month until the end of the fiscal year. Other expenses, including travel expenses or other reasonable and necessary expenses incurred in the furtherance and performance of legislative duties or in operation of his office or incident thereto, shall be provided in addition to the maximum salary authorized; and, be it further

RESOLVED, That in order to accrue vacation leave, compensatory/overtime leave, or sick leave, employees of Members must file monthly time sheets with the Senate Personnel Office by the 10th of the month following the month in which work was performed. Employees of members and committees must use compensatory/overtime accrued in a given month by the end of the same month of the following year. Compensatory/overtime accrued prior to January 1, 1991,

will not be carried forward after January 1, 1992. No compensatory overtime will be paid at either the end of the fiscal year or at an employee's termination; and, be it further

RESOLVED, That the Lieutenant Governor shall have the authority to appoint any Member of the Senate, the Secretary of the Senate, or other Senate employee to attend meetings of the National Conference of State Legislatures and other similar meetings. Necessary and actual expenses are hereby authorized upon the approval of the Chairman of the Administration Committee and the Secretary of the Senate. The Lieutenant Governor shall have the authority to designate a Member of the Senate to represent the Senate at ceremonies and ceremonial functions. Necessary expenses for performance of these duties and for necessary staff are hereby authorized to be paid pursuant to a budget approved by the Administration Committee; and, be it further

RESOLVED, That each of the standing committees and subcommittees of the Senate of the 72nd Legislature be authorized to continue to meet at such times and places during the interim as determined by such committees and subcommittees and to hold hearings, recommend legislation, and perform research on matters directed either by Resolution, the Lieutenant Governor, or as a determined by majority vote of each committee. Each continuing committee and subcommittee shall continue to function under the rules adopted during the legislative session where applicable. Expenses for the operation of these committees and subcommittees are hereby authorized to be paid pursuant to a budget prepared by each committee and approved by the Administration Committee; and, be it further

RESOLVED, That the operating expenses of this committee shall be paid from the Contingent Expense Fund of the Senate, and the committee members shall be reimbursed for their actual expenses incurred in carrying out the duties of the committee; and, be it further

RESOLVED, That any Members not returning for the 73rd Legislature will vacate their Senate offices by December 15, 1992; and, be it further

RESOLVED, That no employee of the Senate shall during the time he or she is employed furnish to any person, firm, or corporation any information other than general information furnished the public pertaining to the Senate, and they shall not without permission receive any compensation from any person, firm, or corporation during their employment by the Senate, and any employee found guilty of violating this provision shall be immediately discharged; and, be it further

RESOLVED, That the Secretary of the Senate is specifically directed not to permit the removal of any of the property of the Senate from the Senate Chamber or the rooms of the Senate except as authorized by the Chairman of the Administration Committee.

Respectfully submitted,

BROOKS
Chairman of the Caucus

HARRIS OF DALLAS
Secretary of the Caucus

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

BILLS AND RESOLUTION SIGNED

The Presiding Officer announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolution:

S.C.R. 152
S.B. 293

S.B. 355
S.B. 379
S.B. 691
S.B. 828
S.B. 978
S.B. 1004
S.B. 1070
S.B. 1103
S.B. 1106
S.B. 1230
S.B. 1331
S.B. 1409
S.B. 1514
S.B. 1539

ELECTION OF PRESIDENT PRO TEMPORE AD INTERIM SEVENTY-SECOND LEGISLATURE

The Presiding Officer (Senator Haley in Chair) announced the election of the President Pro Tempore Ad Interim as the next order of business.

Senator Harris of Dallas nominated Senator Don Henderson of Houston as President Pro Tempore Ad Interim of the Seventy-Second Legislature.

Senators Parker, Brown, Brooks, Green, Lucio, Barrientos, Leedom, Ellis, Bivins, Johnson, Truan, Turner, Sims, Sibley, Lyon, Dickson, Montford, Krier and Whitmire seconded the nomination.

The Presiding Officer declared Senator Henderson elected as President Pro Tempore Ad Interim of the Seventy-Second Legislature.

OATH OF OFFICE ADMINISTERED TO PRESIDENT PRO TEMPORE AD INTERIM

The Presiding Officer announced that administering the Oath of Office to the President Pro Tempore Ad Interim was the next order of business.

The Presiding Officer appointed Senators Brown, Brooks, Green, Whitmire and Ellis to escort Senator Henderson to the President's Rostrum.

The Oath of Office was administered by Senator Harris of Dallas to Senator Henderson, who addressed the Senate thanking the Senators for their kind remarks, confidence and friendship, and expressing his appreciation for the honor of serving the Senate as the President Pro Tempore Ad Interim for the Seventy-Second Legislature.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House discharged the conferees on **H.B. 1258** and concurred in Senate amendments to **H.B. 1258** by a non-record vote.

The House has adopted the Conference Committee Report on **S.J.R. 42** by a record vote of 135 Ayes, 6 Noes, 1 Present-not voting.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

GUEST PRESENTED

The Presiding Officer acknowledged the presence of State Treasurer Kay Bailey Hutchison.

The Senate welcomed the State Treasurer.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1129

Senator Tejeda submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1129** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

TEJEDA	SCHOOLCRAFT
BROOKS	GLAZE
MONCRIEF	RABUCK
ZAFFIRINI	HARRIS
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the provision of emergency medical services; providing a criminal penalty.

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

SECTION 1. Section 773.003, Health and Safety Code, as amended by **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 773.003. DEFINITIONS. In this chapter:

(1) "Advanced life support" means emergency prehospital care that uses invasive medical acts.

(2) "Basic life support" means emergency prehospital care that uses noninvasive medical acts.

(3) "Board" means the Texas Board of Health.

(4) "Bureau" means the department's bureau of emergency management.

(5) "Bureau chief" means the chief of the bureau of emergency management.

(6) "Commissioner" means the commissioner of health.

(7) "Department" means the Texas Department of Health.

(8) [~~(7)~~] "Emergency medical services" means services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(9) [~~(8)~~] "Emergency medical services and trauma care system" means an arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.

(10) [~~(9)~~] "Emergency medical services personnel" means:

(A) emergency care attendant;

(B) emergency medical technicians;

(C) emergency medical technicians-intermediate; or

(D) emergency medical technicians-paramedic.

(11) [~~(10)~~] "Emergency medical services provider" means a person who uses or maintains emergency medical services vehicles and emergency medical services personnel to provide emergency medical services.

(12) [~~(11)~~] "Emergency medical services vehicle" means:

(A) a basic life-support emergency medical services vehicle;

(B) an advanced life-support emergency medical services vehicle;

(C) a mobile intensive-care unit; or

(D) a specialized emergency medical services vehicle.

(13) [~~(12)~~] "Emergency medical services volunteer" means emergency medical services personnel who provide emergency prehospital care without remuneration, except reimbursement for expenses.

(14) [~~(13)~~] "Emergency medical services volunteer provider" means an emergency medical services provider that has at least 75 percent of its total personnel as volunteers and is recognized as a Section 501(c)(3) nonprofit corporation by the Internal Revenue Service.

(15) [~~(14)~~] "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, and includes any necessary stabilization of the sick or injured in connection with that transportation.

(16) "First responder organization" means a group or association of certified emergency medical services personnel that, working in cooperation with a licensed emergency medical services provider, provides immediate on-scene care to ill or injured persons but does not transport those persons.

(17) [~~(15)~~] "Governmental entity" means a county, municipality, school district, or special district or authority created in accordance with the Texas Constitution.

(18) [~~(16)~~] "Medical supervision" means direction given to emergency medical services personnel by a licensed physician under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) and the rules adopted under that Act by the Texas State Board of Medical Examiners.

(19) [~~(17)~~] "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and is a part of an emergency medical services and trauma care system.

(20) [~~(18)~~] "Trauma patient" means a critically injured person who has been:

(A) evaluated by a physician, a registered nurse, or emergency medical services personnel; and

(B) found to require medical care in a trauma facility.

SECTION 2. Subsection (a), Section 773.004, Health and Safety Code, as amended by Section 240, **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) This chapter does not apply to:

(1) a ground or air transfer vehicle and staff used to transport a patient who is under a physician's care between medical facilities or between a medical facility and a private residence;

(2) ground or air transfer that does not advertise as an ambulance service and that is not licensed by the department;

(3) the use of ground or air transfer vehicles to transport sick or injured persons in a casualty situation that exceeds the basic vehicular capacity or capability of emergency medical services providers in the area;

(4) [~~(3)~~] an industrial ambulance; or

(5) [~~(4)~~] a physician, registered nurse, or other health care practitioner licensed by this state unless the health care practitioner staffs an emergency medical services vehicle regularly.

SECTION 3. Section 773.050, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The board shall adopt minimum standards for recognition of first responder organizations.

SECTION 4. Subsection (c), Section 773.052, Health and Safety Code, as amended by **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(c) The bureau chief shall grant to a sole provider for a service area a variance from the minimum standards for staffing and equipment for the provision of basic life-support emergency medical services if the provider is[~~:~~

[~~(1)~~] an emergency medical services provider exempt from the payment of fees under Section 773.0581[~~; or~~

[~~(2) a municipally operated emergency medical service that existed on January 1, 1983, and that provides emergency prehospital care with the same personnel who provide fire or police services~~].

SECTION 5. Section 773.058, Health and Safety Code, as amended by **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 773.058. VOLUNTEERS EXEMPT FROM FEES. An individual who is an emergency medical services volunteer is exempt from the payment of fees under Section [~~Sections 773.054,~~] 773.055[~~, and 773.057~~] if the individual does not receive compensation for providing emergency medical services. If an individual accepts compensation during the certification period, the individual shall pay to the department a prorated application fee for the duration of the certification period. In this section, "compensation" does not include reimbursement for actual expenses for medical supplies, gasoline, clothing, meals, and insurance incurred in providing emergency medical services.

SECTION 6. Section 773.059, Health and Safety Code, as amended by **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 773.059. LATE RECERTIFICATION. (a) Except as provided by Subsection (b), a [~~A~~] person applying for recertification whose application is received after the expiration date of the person's certificate must pay a late fee of $25 in addition to the examination fee.

(b) A person certified by the department who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by the president of the United States, or a declaration of war by the United States Congress is eligible for recertification under Section 773.050

on the person's demobilization for one calendar year after the date of demobilization.

SECTION 7. Subchapter C, Chapter 773, Health and Safety Code, is amended by adding Sections 773.065 through 773.070 to read as follows:

Sec. 773.065. ADMINISTRATIVE PENALTY. (a) The commissioner of health may assess an administrative penalty against an emergency medical services provider who violates this chapter or a rule adopted or an order issued under this chapter.

(b) In determining the amount of the penalty, the commissioner shall consider:

(1) the emergency medical services provider's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the emergency medical services provider's demonstrated good faith; and

(5) any other matter as justice may require.

(c) The penalty may not exceed $250 for each violation.

(d) Each day a violation continues may be considered a separate violation.

Sec. 773.066. ASSESSMENT OF ADMINISTRATIVE PENALTY. (a) An administrative penalty may be assessed only after an emergency medical services provider charged with a violation is provided notice and given an opportunity to request a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding whether the emergency medical services provider committed a violation and the amount of any penalty to be assessed.

(c) If the emergency medical services provider charged with the violation does not request a hearing, the commissioner shall determine whether the provider committed a violation and the amount of any penalty to be assessed.

(d) After making a determination under Subsection (b) or (c) that a penalty is to be assessed against an emergency medical services provider, the commissioner shall issue an order requiring that the emergency medical services provider pay the penalty.

(e) Not later than the 30th day after the date an order is issued under Subsection (d), the commissioner shall give written notice of the order to the emergency medical services provider.

(f) The commissioner may consolidate a hearing held under this section with another proceeding.

Sec. 773.067. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date on which an order charging the emergency medical services provider with a penalty is mailed or otherwise transmitted to the provider, the provider shall:

(1) pay the penalty in full; or

(2) if the provider seeks judicial review of the amount of the penalty, the fact of the violation, or both:

(A) send the amount of the penalty to the commissioner for placement in an escrow account; or

(B) post with the commissioner a bond for the amount of the penalty.

(b) A bond posted under this section must be in a form approved by the commissioner and must be effective until judicial review of the order is final.

(c) An emergency medical services provider who does not send the amount of the penalty to the commissioner or post the bond within the period prescribed by Subsection (a) may not contest the violation or the amount of the penalty.

Sec. 773.068. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative

penalty against an emergency medical services provider should be reduced or not assessed, the commissioner shall:

(1) remit to the provider the appropriate portion of any penalty payment plus accrued interest; or

(2) execute a release of any bond posted by the provider.

Sec. 773.069. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the commissioner may bring a civil action to recover an administrative penalty assessed under this subchapter.

Sec. 773.070. ACCESS TO CERTAIN CRIMINAL HISTORY RECORD INFORMATION. (a) The department is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency to investigate an applicant for an emergency medical services provider license, including information relating to owners and managers of the provider, and applicants for emergency medical services personnel certification.

(b) The board shall adopt rules governing the custody and use of information obtained under this section.

(c) The department may use information obtained under this section only to ascertain the eligibility of an investigated entity to be licensed or certified or to continue to be licensed or certified.

(d) The board shall adopt a uniform method of obtaining criminal history record information. The uniform method may require the department to submit to the Department of Public Safety or to another law enforcement agency a complete set of fingerprints of persons being investigated. The department may also submit the fingerprints to the Federal Bureau of Investigation identification division.

(e) The board may deny licensure or certification to an applicant who does not provide a complete set of the required fingerprints.

(f) All information received by the department under this section is privileged and confidential and is for the exclusive use of the department. Except on court order or with the written consent of the entity being investigated, the information may not be released or otherwise disclosed to any other person or agency. This subsection does not apply to information released under the provisions of Subsection (i).

(g) After an entity is licensed or certified, the department shall destroy the criminal history record information regarding the entity. The board shall destroy the criminal history record information of an applicant who is not certified.

(h) A person commits an offense if the person releases or discloses any information received under this section except as provided by Subsection (f) or (i). An offense under this subsection is a Class B misdemeanor. An offense under this subsection is an offense involving official misconduct.

(i) The criminal history record information received by the department from any law enforcement agency that requires the information to be kept confidential as a condition of release of the information is for the exclusive use of the department and is privileged and confidential. The criminal history record information obtained by the department from any law enforcement agency requiring the information to be kept confidential as a condition of release of the information may not be released or otherwise disclosed to any person or agency except in a criminal proceeding, in a hearing conducted by the department, on court order, or with the consent of the applicant. Information that is in a form available to the public is not privileged or confidential under this subsection and is subject to public disclosure.

SECTION 8. Chapter 773, Health and Safety Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D.CONFIDENTIAL COMMUNICATIONS

Sec. 773.091.CONFIDENTIAL COMMUNICATIONS. (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(d) This subchapter governs confidential communications or records concerning a patient regardless of when the patient received the services of emergency medical services personnel or a physician providing medical supervision.

(e) Notwithstanding Rule 501, Texas Rules of Criminal Evidence, and Rule 501, Texas Rules of Civil Evidence, the privilege of confidentiality may be claimed in any criminal, civil, or administrative proceeding and may be claimed by the patient or the emergency medical services personnel or physician acting on the patient's behalf.

(f) If the emergency medical services personnel or physician claims the privilege of confidentiality on behalf of the patient, the authority to do so is presumed in the absence of evidence to the contrary.

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. Nothing in this subsection shall be construed as requiring or permitting emergency services personnel to make a diagnosis.

Sec. 773.092. EXCEPTIONS. (a) Exceptions to the confidentiality or privilege in court or administrative proceedings exist:

(1) when proceedings are brought by the patient against emergency medical services personnel, a physician providing medical supervision, or an emergency medical services provider, and in any criminal proceeding or certification revocation or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of emergency medical services personnel, a physician providing medical supervision, or an emergency medical services provider;

(2) when the patient or someone authorized to act on behalf of the patient submits a written consent to release any of the confidential information as provided by Section 773.093;

(3) when the purpose of the proceedings is to substantiate and collect on a claim for emergency medical services rendered to the patient;

(4) in any civil litigation or administrative proceeding, if relevant, brought by the patient or someone on the patient's behalf, if the patient is attempting to recover monetary damages for any physical or mental condition, including death of the patient;

(5) when the proceeding is a disciplinary investigation or proceeding against emergency medical services personnel conducted under this chapter, provided that the department shall protect the identity of any patient whose medical records are examined, unless the patient is covered under Subdivision (1) or has

submitted written consent to the release of the patient's emergency medical services records under Section 773.093; or

(6) when the proceeding is a criminal prosecution in which the patient is a victim, witness, or defendant.

(b) Information under Subdivision (4) is discoverable in any court or administrative proceeding in this state if the court or administrative body has jurisdiction of the subject matter, pursuant to rules of procedure specified for the matter.

(c) Subdivision (5) does not authorize the release of confidential information to instigate or substantiate criminal charges against a patient.

(d) Confidential records or communications are not discoverable in a criminal proceeding until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or any portion of the records or communications. A determination that confidential records or communications are discoverable is not a determination as to the admissibility of the records or communications.

(e) Communications and records that are confidential under this section may be disclosed to:

(1) medical or law enforcement personnel if the emergency medical services personnel, the physician providing medical supervision, or the emergency medical services provider determines that there is a probability of imminent physical danger to any person or if there is a probability of immediate mental or emotional injury to the patient;

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

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

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093;

(5) the department for data collection or complaint investigation;

(6) other emergency medical services personnel, other physicians, and other personnel under the direction of a physician who are participating in the diagnosis, evaluation, or treatment of a patient; or

(7) individuals, corporations, or governmental agencies involved in the payment or collection of fees for emergency medical services rendered by emergency medical services personnel.

Sec. 773.093.CONSENT. (a) Consent for the release of confidential information must be in writing and signed by the patient, a parent or legal guardian if the patient is a minor, a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs, an attorney ad litem appointed for the patient, or a personal representative if the patient is deceased. The written consent must specify:

(1) the information or records to be covered by the release;

(2) the reasons or purpose for the release; and

(3) the person to whom the information is to be released.

(b) The patient or other person authorized to consent may withdraw consent to the release of any information by submitting a written notice of withdrawal to the person or program to which consent was provided. Withdrawal of consent does not affect any information disclosed before the date on which written notice of the withdrawal was received.

(c) A person who receives information made confidential by this chapter may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

Sec. 773.094. INJUNCTION; DAMAGES. A person aggrieved by an unauthorized disclosure of communications or records that are confidential under this subchapter may petition the district court of the county in which the person resides or, in the case of a nonresident of the state, a district court of Travis County for appropriate injunctive relief. The petition takes precedence over all civil matters on the docketed court except those matters to which equal precedence on the docket is granted by law. A person injured by an unauthorized disclosure of communications or records that are confidential under this subchapter may bring an action for damages.

Sec. 773.095. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical services providers, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, or emergency medical services personnel are confidential and not subject to disclosure by court subpoena or otherwise.

(b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(c) This section does not apply to records made or maintained in the regular course of business by an emergency medical services provider, a first responder organization, or emergency medical services personnel.

Sec. 773.096. IMMUNITY FOR COMMITTEE MEMBERS. A member of an organized committee under Section 773.095 is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.

SECTION 9. Subchapters D and E, Chapter 773, Health and Safety Code, as added by **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, are redesignated as Subchapters E and F to read as follows:

SUBCHAPTER E [~~D~~]. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 773.111 [~~773.081~~]. LEGISLATIVE FINDINGS. (a) The legislature finds that death caused by injury is the leading cause of death for persons one through 44 years of age, and the third overall cause of death for all ages. Effective emergency medical services response and resuscitation systems, medical care systems, and medical facilities reduce the occurrence of unnecessary mortality.

(b) It is estimated that trauma costs more than $63 million a day nationally, which includes lost wages, medical expenses, and indirect costs. Proportionately, this cost to Texas would be more than $4 million a day. Many hospitals provide emergency medical care to patients who are unable to pay for catastrophic injuries directly or through an insurance or entitlement program.

(c) In order to improve the health of the people of the state, it is necessary to improve the quality of emergency and medical care to the people of Texas who are victims of unintentional, life-threatening injuries by encouraging hospitals to provide trauma care and increasing the availability of emergency medical services.

Sec. 773.112 [~~773.082~~]. DUTIES OF BOARD; RULES. (a) The board by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The board by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies that reflect the recommendations of the technical advisory committee. The board and the technical advisory committee shall consider guidelines adopted by the American College of Surgeons and the American College of Emergency Physicians in adopting rules under this section.

(b) The rules must provide specific requirements for the care of trauma patients, must ensure that the trauma care is fully coordinated with all hospitals and

emergency medical services in the delivery area, and must reflect the geographic areas of the state, considering time and distance.

(c) The rules must include:

(1) prehospital care management guidelines for triage and transportation of trauma patients;

(2) flow patterns of trauma patients and geographic boundaries regarding trauma patients;

(3) assurances that trauma facilities will provide quality care to trauma patients referred to the facilities;

(4) minimum requirements for resources and equipment needed by a trauma facility to treat trauma patients;

(5) standards for the availability and qualifications of the health care personnel, including physicians and surgeons, treating trauma patients within a facility;

(6) requirements for data collection, including trauma incidence reporting, system operation, and patient outcome;

(7) requirements for periodic performance evaluation of the system and its components; and

(8) assurances that designated trauma facilities will not refuse to accept the transfer of a trauma patient from another facility solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

Sec. 773.113 [~~773.083~~]. DUTIES OF BUREAU. (a) The bureau shall:

(1) develop and monitor a statewide emergency medical services and trauma care system;

(2) designate trauma facilities;

(3) develop and maintain a trauma reporting and analysis system to:

(A) identify severely injured trauma patients at each health care facility in this state;

(B) identify the total amount of uncompensated trauma care expenditures made each fiscal year by each health care facility in this state; and

(C) monitor trauma patient care in each health care facility, including each designated trauma center, in emergency medical services and trauma care systems in this state; and

(4) provide for coordination and cooperation between this state and any other state with which this state shares a standard metropolitan statistical area.

(b) The bureau may grant an exception to a rule adopted under Section 773.112 [~~773.082~~] if it finds that compliance with the rule would not be in the best interests of the persons served in the affected local emergency medical services and trauma care delivery area.

Sec. 773.114 [~~773.084~~]. SYSTEM REQUIREMENTS. (a) Each emergency medical services and trauma care system must have:

(1) local or regional medical control for all field care and transportation, consistent with geographic and current communications capability;

(2) triage, transport, and transfer protocols; and

(3) one or more hospitals categorized according to trauma care capabilities using standards adopted by board rule.

(b) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Sec. 773.115 [~~773.085~~]. TRAUMA FACILITIES. (a) The bureau may designate trauma facilities that are a part of an emergency medical services and trauma care system. A trauma facility shall be designated by the level of trauma care and services provided in accordance with the American College of Surgeons

guidelines for level I, II, and III trauma centers and rules adopted by the board for level IV trauma centers. In adopting rules under this section, the board may consider trauma caseloads, geographic boundaries, or minimum population requirements, but the bureau may not deny designation solely on these criteria. The board may not set an arbitrary limit on the number of facilities designated as trauma facilities.

(b) A health care facility may apply to the bureau for designation as a trauma facility, and the bureau shall grant the designation if the facility meets the requirements for designation prescribed by board rules.

(c) After September 1, 1993, a health care facility may not use the terms "trauma facility," "trauma hospital," "trauma center," or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the facility has been designated as a trauma facility under this subchapter.

Sec. 773.116 [~~773.086~~]. FEES. (a) The bureau shall charge a fee to a health care facility that applies for initial or continuing designation as a trauma facility.

(b) The board by rule shall set the amount of the fee schedule for initial or continuing designation as a trauma facility according to the number of beds in the health care facility.

(c) The board shall set the fee for the highest level designation at not more than $3 a bed, but the total fee for the facility may not be less than $100 or more than $3,000. The fee for an intermediate level designation shall be set at not more than $2 a bed, but the total fee for the facility may not be less than $100 or more than $2,000. The fee for the lowest level designation shall be set at not more than $1 a bed, but the total fee for the facility may not be less than $100 or more than $1,000.

(d) A fee under Subsection (c) may not exceed the cost directly related to designating trauma facilities under this subchapter.

(e) This section does not restrict the authority of a health care facility to provide a service for which it has received a license under other state law.

Sec. 773.117 [~~773.087~~]. DENIAL, SUSPENSION, OR REVOCATION OF DESIGNATION. (a) The department may deny, suspend, or revoke a health care facility's designation as a trauma facility if the facility fails to comply with the rules adopted under this subchapter.

(b) The denial, suspension, or revocation of a designation by the department and the appeal from that action are governed by the department's rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 773.118 [~~773.088~~]. ADVISORY COMMITTEE. (a) The board shall appoint a 12-member technical advisory committee to advise the bureau in areas requiring professional medical expertise and to review and comment on hospital administrative and operational considerations relating to rules adopted under this subchapter.

(b) Appointees to the technical advisory committee must include:

(1) hospital administrators who represent both urban and rural facilities, chosen from a list of nominees submitted by statewide associations of hospitals;

(2) representatives appointed from statewide associations of emergency nurses;

(3) practicing physicians who are board-certified in emergency medicine, neurosurgery, surgery, and anesthesiology;

(4) two family practice physicians, at least one of whom has been in active practice in a rural area for at least five years preceding appointment; and

(5) at least one member who usually represents claimants, chosen from a list of nominees submitted by the statewide association of trial lawyers.

(c) A member of the technical advisory serves a six-year term, with the terms of one-third of the members expiring on August 31 of each odd-numbered year.

(d) A member of the technical advisory committee is entitled to the per diem and travel allowance authorized by the General Appropriations Act for state employees.

Sec. 773.119 [~~773.089~~]. GRANT PROGRAM. (a) The department shall establish a program to award grants to initiate, expand, maintain, and improve emergency medical services and to support medical systems and facilities that provide trauma care.

(b) The board by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area for the provision of emergency medical services or trauma care and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the use or acquisition of helicopters for emergency medical evacuation; and

(6) the development or existence of an emergency medical services system.

(c) The department may approve grants according to the rules adopted by the board. A grant awarded under this section is governed by the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and by the rules adopted under that Act.

(d) The department may require a grantee to provide matching funds equal to not more than 75 percent of the amount of the grant.

Sec. 773.120 [~~773.090~~]. ACCEPTANCE OF GIFTS. A trauma facility or an emergency medical services and trauma care system may accept gifts or other contributions for the purposes of this subchapter.

SUBCHAPTER F [E]. POISON CONTROL CENTERS

Sec. 773.141 [~~773.101~~].COORDINATION AND SUPPORT. The department shall provide coordination and support for a statewide system of poison and drug information services.

Sec. 773.142 [~~773.102~~]. FUNDING. The department may allocate funds to regional centers for poison control throughout the state. The department shall give priority to stabilizing regional poison control centers that are in existence on September 1, 1989, publicly funded, and operated by The University of Texas Medical Branch at Galveston or the Dallas County Hospital District. The department shall identify and may contract with public agencies that have the capability and commitment to operate a regional poison control center in regions not served by a center.

Sec. 773.143 [~~773.103~~]. PUBLIC AGENCY SERVICES. A public agency that contracts with the department under this subchapter shall provide:

(1) a 24-hour toll-free telephone referral and information service for the public and health care professionals that is supervised by a physician in the field of clinical toxicology and is staffed by licensed professionals according to the requirements of the American Association of Poison Control Centers;

(2) information and education to health professionals involved in the management of poisoning and overdose victims;

(3) community education programs designed to inform the public of poison prevention methods;

(4) information to health professionals regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions; and

(5) professional and technical assistance to state agencies requesting toxicologic assistance.

Sec. 773.144 [~~773.104~~]. POISON CONTROL CENTER SERVICES. A poison control center shall answer requests by telephone for poison information, recommend appropriate emergency management, and provide treatment referrals for poisoning exposure and overdose victims. A center shall provide the services at all times of the day or night. The services must include:

(1) determining whether treatment can be accomplished at the scene of the incident or whether transport to an emergency treatment facility is required;

(2) recommending treatment measures to appropriate personnel; and

(3) ensuring that adequate care is provided after an emergency incident in which the poison control center provided services.

Sec. 773.145 [~~773.105~~]. POISON CONTROL CENTER PERSONNEL. (a) A poison control center shall use physicians, pharmacists, nurses, and support personnel trained in various aspects of toxicology, poison control and prevention, and drug information retrieval and analysis.

(b) Poison control center personnel shall:

(1) provide education after an emergency incident in which the poison control center provided services to prevent similar incidents for poison or overdose victims;

(2) provide community education programs designed to improve public awareness of poisoning and overdose problems and to educate the public regarding prevention of those problems; and

(3) answer drug information questions from health professionals by providing current, accurate, and unbiased information regarding drugs and their therapeutic uses.

Sec. 773.146 [~~773.106~~]. COORDINATING COMMITTEE. (a) The coordinating committee on poison control is a committee in the department. The committee shall advise the department on the implementation of this subchapter.

(b) The committee is composed of 10 members, with the chief executive officers of each of the following entities appointing one member:

(1) The University of Texas Medical Branch at Galveston;

(2) the Dallas County Hospital District;

(3) the Amarillo Hospital District;

(4) the El Paso County Hospital District;

(5) the Texas Tech University Health Sciences Center;

(6) The University of Texas Health Science Center at San Antonio;

(7) The University of Texas Southwest Medical Center at Dallas;

(8) the Texas Veterinary Medical Diagnostic Laboratory;

(9) the Texas Department of Agriculture; and

(10) the department.

Sec. 773.147 [~~773.107~~]. TERM OF COMMITTEE MEMBERS. A member of the committee serves for a term of two years or until the person terminates employment with the agency the person represents, whichever occurs first.

Sec. 773.148 [~~773.108~~]. COMMITTEE OPERATIONS. (a) The members of the committee shall:

(1) annually elect one member to serve as chairperson;

(2) meet at least quarterly;

(3) adopt rules for the conduct of committee meetings; and

(4) establish a policy for carrying out the committee's duties.

(b) An action taken by the committee must be approved by a majority vote of the members present.

SECTION 10. Members serving on the technical advisory committee established in Section 773.118, Health and Safety Code, on the effective date of this

Act may continue to serve on the technical advisory committee. The members who wish to continue to serve shall draw lots to determine each member's initial term. The board shall fill any resulting vacancies on the committee in such a manner that the terms of four members shall expire August 31, 1993; the terms of four members shall expire August 31, 1995; and the terms of four members shall expire August 31, 1997.

SECTION 11. This Act prevails over **S.B. 404**, Acts of the 72nd Legislature, Regular Session, 1991, to the extent of any conflict.

SECTION 12. This Act takes effect September 1, 1991.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT
ON SENATE BILL 772

Senator Henderson submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 772** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HENDERSON	STILES
ARMBRISTER	HURY
HARRIS OF DALLAS	OLIVEIRA
TURNER	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the appraisal and assessment of property for property taxes and to property that is omitted from a property tax appraisal roll, valuation notification, and appraisal district and appraisal review board hearings; to property tax liens, interest, and exemptions; and regarding tax appeal attorney's fees.

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

ARTICLE 1

SECTION 1.1. Subsection (a), Section 22.27, Tax Code, is amended to read as follows:

(a) Rendition statements, ~~[and]~~ real and personal property reports, and income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the State Property Tax Board about real or personal property sales prices after a promise it will be held confidential are confidential and not open to public inspection. The statements and

reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

SECTION 1.2. Section 25.21, Tax Code, is amended to read as follows:

Sec. 25.21. OMITTED PROPERTY. (a) If the chief appraiser discovers that real property was omitted from an appraisal roll [~~not taxed~~] in any one of the 10 preceding years or that personal property was omitted from an appraisal roll [~~not taxed~~] in one of the two preceding years, he shall appraise the property as of January 1 of each year that it was omitted [~~escaped taxation~~] and enter the property and its appraised value in the appraisal records.

(b) The entry shall show that the appraisal is for property that was omitted from an appraisal roll [~~escaped taxation~~] in a prior year and shall indicate the year and the appraised value for each year.

SECTION 1.3. Subsections (a) and (d), Section 25.23, Tax Code, are amended to read as follows:

(a) After submission of appraisal records, the chief appraiser shall prepare supplemental appraisal records listing each taxable property he discovers that is not included in the records already submitted, including property that was omitted from an appraisal roll [~~escaped taxation~~] in a prior tax year, and listing property on which the appraisal review board has not determined a protest at the time of its approval of the appraisal records.

(d) Supplemental appraisal records are subject to review, [~~and~~] protest, and appeal as provided by Chapters 41 and 42 of this code. However, a property owner must file a notice of protest within 30 [~~10~~] days after the date notice is delivered as required by Section 25.19 [~~the records are submitted for review, and the appraisal review board shall complete its review within 30 days after the date the records are submitted or as soon thereafter as practicable~~]. If a property owner files a notice of protest, the appraisal review board shall hear and determine the protest within 30 days after the filing of the protest or as soon thereafter as practicable. If a property owner does not file a protest within the protest deadline, the appraisal review board shall complete its review of the supplemental appraisal records within 30 days after the protest deadline or as soon thereafter as practicable.

SECTION 1.4. Subsection (a), Section 41.44, Tax Code, is amended to read as follows:

(a) Except as provided by Subsections (b) and (c), to be entitled to a hearing and determination of a protest, the property owner initiating the protest must file a written notice of the protest with the appraisal review board having authority to hear the matter protested:

(1) before June 1 or not later than the 30th day after the date that notice was delivered to the property owner as provided by Section 25.19, whichever is later;

(2) in the case of a protest of a change in the appraisal records ordered as provided by Subchapter A of this chapter or by Chapter 25, not later than the 30th day[~~, within 10 days~~] after the date notice of the change is delivered to the property owner; or

(3) in the case of a determination that a change in the use of land appraised under Subchapter C, D, or E, Chapter 23, has occurred, not later than the 30th day after the date the notice of the determination is delivered to the property owner.

SECTION 1.5. This article takes effect September 1, 1991.

ARTICLE 2

SECTION 2.1. Subsection (i), Section 25.19, Tax Code, is amended to read as follows:

(i) By May 15 or as soon thereafter as practicable, the chief appraiser shall deliver a written notice to the owner of each property not included in a notice required to be delivered under Subsection (a), if the property was reappraised in the current tax year, [or] if the ownership of the property changed during the preceding year, or if the property owner or the agent of a property owner authorized under Section 1.111 makes a written request for the notice. The chief appraiser shall separate real from personal property and include in the notice for each property:

(1) the appraised value of the property in the preceding year;

(2) the appraised value of the property for the current year and the kind of each partial exemption, if any, approved for the current year;

(3) a brief explanation of the time and procedure for protesting the value; and

(4) the date and place the appraisal review board will begin hearing protests.

SECTION 2.2. This article takes effect January 1, 1992.

ARTICLE 3

SECTION 3.1. Section 41.45, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) A property owner who has been denied a hearing to which the property owner is entitled under this chapter may bring suit against the appraisal review board by filing a petition or application in district court to compel the board to provide the hearing. If the property owner is entitled to the hearing, the court shall order the hearing to be held and may award court costs and reasonable attorney fees to the property owner.

SECTION 3.2. Section 41.66, Tax Code, is amended by amending Subsections (a), (b), and (f) and adding Subsection (g) to read as follows:

(a) The appraisal review board shall establish by rule the procedures for hearings it conducts as provided by Subchapters A and C of this chapter. On request made by a property owner in the owner's notice of protest or in a separate writing delivered to the appraisal review board on or before the date the notice of protest is filed, the property owner is entitled to a copy of the hearing procedures. The copy of the hearing procedures shall be delivered to the property owner not later than the 10th day before the date the hearing on the protest begins and may be delivered with the notice of the protest hearing required under Section 41.46(a). The notice of protest form prescribed by the State Property Tax Board under Section 41.44(d) or any other notice of protest form made available to a property owner by the appraisal review board or the appraisal office shall provide the property owner an opportunity to make or decline to make a request under this subsection. The appraisal review board shall post a copy of the hearing procedures in a prominent place in the room in which the hearing is held.

(b)Hearing procedures to the greatest extent practicable shall be informal. Each party to a hearing is entitled to offer evidence, examine or cross-examine witnesses or other parties, and present argument on the matters subject to the hearing.

(f) A member of the appraisal review board may not communicate with another person concerning:

(1) the evidence, argument, facts, merits, or any other matters related to an owner's protest, except during the hearing on the protest; or

(2) a property that is the subject of the protest, except during a hearing on another protest or other proceeding before the board at which the property is compared to other property or used in a sample of properties [~~An employee of the appraisal district or a property owner or the owner's agent may not communicate~~

~~with or present information to the appraisal review board relating to property that is the subject of a protest except during the appraisal review board hearing on the protest or at a hearing on another protest or other proceeding before the appraisal review board at which the property is compared to other property or used in a sample group of properties. At a hearing on a protest, the chief appraiser and the property owner or the owner's agent shall sign an affidavit stating that they have not, in violation of this subsection, communicated with or presented any information to the appraisal review board on the property that is the subject of the hearing before the protest hearing~~].

(g) At the beginning of a hearing on a protest, each member of the appraisal review board hearing the protest must sign an affidavit stating that the board member has not communicated with another person in violation of Subsection (f). If a board member has communicated with another person in violation of Subsection (f), the member must be recused from the proceeding and may not hear, deliberate on, or vote on the determination of the protest. The board of directors of the appraisal district shall adopt and implement a policy concerning the temporary replacement of an appraisal review board member who has communicated with another person in violation of Subsection (f).

SECTION 3.3. This article takes effect September 1, 1991.

ARTICLE 4

SECTION 4.1. Section 42.29, Tax Code, is amended to read as follows:

Sec. 42.29. ATTORNEY'S FEES. A property owner [~~taxpayer~~] who prevails in an appeal to the court under Section 42.25 or Section 42.26 of this code may be awarded reasonable attorney's fees not to exceed the greater of $15,000 [~~$5,000~~] or 20 percent of the total amount by which the property owner's tax liability is reduced as a result of the appeal [~~of taxes in dispute~~]. The award of attorney's fees, however, may not exceed the total amount by which the property owner's tax liability is reduced as a result of the appeal.

SECTION 4.2. The change in law made by this article applies only to an appeal for which a lawsuit is filed under Section 42.21, Tax Code, on or after the effective date of this article. An appeal in which a lawsuit is filed before the effective date of this article is covered by the law in effect when the lawsuit was filed, and the former law is continued in effect for that purpose.

SECTION 4.3. This article takes effect September 1, 1991.

ARTICLE 5

SECTION 5.1. Section 33.011, Tax Code, is amended to read as follows:

Sec. 33.011. WAIVER OF PENALTIES AND INTEREST. The governing body of a taxing unit shall waive penalties and may provide for the waiver of [~~penalties and~~] interest on a delinquent tax if an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before delinquency and if the tax is paid within 21 days after the taxpayer knows or should know of the delinquency. A request for a waiver of penalties under this section must be made within six months of the delinquency date.

SECTION 5.2. Section 32.03, Tax Code, is amended to read as follows:

Sec. 32.03. RESTRICTIONS ON PERSONAL PROPERTY TAX LIEN. A tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201(9) of the Business & Commerce Code [~~bona fide purchaser~~] for value who does not have actual notice of the existence of the lien or, if the property is a manufactured home, who does not have constructive notice of the existence of the lien.

SECTION 5.3. Subsection (c), Section 33.01, Tax Code, is amended to read as follows:

(c) A delinquent tax accrues interest at a rate of one percent for each month or portion of a month the tax remains unpaid. Interest payable under this section is to compensate the taxing unit for revenue lost because of the delinquency.

SECTION 5.4. Section 33.05, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) The collector for a taxing unit shall cancel and remove from the delinquent tax roll a tax on real property that has been delinquent for more than 20 years or a tax on personal property that has been delinquent for more than 10 years if there is no pending litigation concerning the delinquent taxes at the time of the cancellation and removal.

SECTION 5.5. Section 31.075, Tax Code, is amended to read as follows:

Sec. 31.075. TAX RECEIPT. (a) At the request of a property owner or a property owner's agent, the collector for a taxing unit shall issue a receipt showing the taxable value and the amount of tax imposed by the unit on the property in one or more tax years for which the information is requested, the tax rate for each of those tax years, and the amount of tax paid in each of those years. The receipt must describe the property in the manner prescribed by the State Property Tax Board.

(b) In any judicial proceeding, including a suit to collect delinquent taxes under Chapter 33 of this code, a tax receipt issued under this section that states that a tax has been paid constitutes prima facie evidence that the tax has been paid as stated by the receipt.

SECTION 5.6. This article takes effect on the earliest date that it may take effect under Article III, Section 39, of the Texas Constitution.

ARTICLE 6

SECTION 6.1. Subsection (a), Section 11.42, Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (b) of this section and by Sections [~~Section~~] 11.421, 11.422, 11.434, and 11.435 of this code, eligibility for and amount of an exemption authorized by this chapter for any tax year are determined by a claimant's qualifications on January 1. A person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year.

SECTION 6.2. Subchapter C, Chapter 11, Tax Code, is amended by adding Section 11.422 to read as follows:

Sec. 11.422. QUALIFICATION OF A SCHOOL. (a) If the chief appraiser denies a timely filed application for an exemption under Section 11.21 of this code for a school that otherwise qualified for the exemption on January 1 of the year but that did not satisfy the requirements of Subsection (d)(3) of that section on that date, the school is eligible for the exemption for the tax year if the school:

(1) satisfies the requirements of Section 11.21(d)(3) of this code before the later of the following dates:

(A) July 1 of the year for which the exemption applies; or

(B) the 30th day after the date the chief appraiser notifies the school of its failure to comply with those requirements; and

(2) within the time provided by Subdivision (1) of this subsection, files with the chief appraiser a new completed application for the exemption together with an affidavit stating that the school has complied with the requirements of Section 11.21(d)(3) of this code.

(b) If the chief appraiser cancels an exemption for a school under Section 11.21 of this code that was erroneously allowed in a tax year because the appraiser determines that the school did not satisfy the requirements of Section 11.21(d)(3) of this code on January 1 of that year, the school is eligible for the exemption for that tax year if the school:

(1) was otherwise qualified for the exemption;

(2) satisfies the requirements of Section 11.21(d)(3) of this code on or before the 30th day after the date the chief appraiser notifies the school of the cancellation; and

(3) in the time provided in Subdivision (2) of this subsection files with the chief appraiser a new completed application stating that the school has complied with the requirements of Section 11.21(d)(3) of this code.

SECTION 6.3. Subchapter C, Chapter 11, Tax Code, is amended by adding Section 11.434 to read as follows:

Sec. 11.434. LATE APPLICATION FOR A SCHOOL EXEMPTION. (a) The chief appraiser shall accept or deny an application for an exemption under Section 11.21 of this code after the filing deadline provided by Section 11.43 of this code if the application is filed not later than December 31 of the sixth year after the year in which the taxes for which the exemption is claimed were imposed.

(b) The chief appraiser may not approve a late application for an exemption filed under this section if the taxes imposed on the property for the year for which the exemption is claimed are paid before the application is filed.

(c) If a late application is approved after approval of the appraisal records for the year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in the year for which the exemption is granted. The collector shall deduct from the school's tax bill the amount of tax imposed on the property for that year if the tax has not been paid and any unpaid penalties and accrued interest relating to that tax. The collector may not refund taxes, penalties, or interest paid on the property for which an exemption is granted under this section.

(d) An application may not be filed under this section after December 31, 1992.

SECTION 6.4. Subchapter C, Chapter 11, Tax Code, is amended by adding Section 11.435 to read as follows:

Sec. 11.435. LATE APPLICATION FOR CHARITABLE ORGANIZATION EXEMPTION. (a) The chief appraiser shall accept and approve or deny an application for an exemption under Section 11.18(d)(2) of this code after the filing deadline provided by Section 11.43 of this code if the application is filed not later than December 31 of the second year after the year in which the taxes for which the exemption is claimed were imposed.

(b) The chief appraiser may not approve a late application for an exemption filed under this section if the taxes imposed on the property for the year for which the exemption is claimed are paid before the application is filed.

(c) If a late application is approved after approval of the appraisal records for the year for which the exemption is granted, the chief appraiser shall notify the collector for each taxing unit in which the property was taxable in the year for which the exemption is granted. The collector shall deduct from the organization's tax bill the amount of tax imposed on the property for that year if the tax has not been paid and any unpaid penalties and accrued interest relating to that tax. The collector may not refund taxes, penalties, or interest paid on the property for which an exemption is granted under this section.

(d) The chief appraiser may grant an exemption for property pursuant to an application filed under this section only if the property otherwise qualified for the exemption under the law in effect on January 1 of the tax year for which the exemption is claimed.

(e) An application may not be filed under this section after December 31, 1991.

SECTION 6.5. Subsection (e), Section 11.43, Tax Code, is amended to read as follows:

(e) Except as provided by Section 11.422, 11.431, [or] 11.433, 11.434, or 11.435 of this code, if a person required to apply for an exemption in a given year

fails to file timely a completed application form, the person [he] may not receive the exemption for that year.

SECTION 6.6. This article takes effect September 1, 1991.

ARTICLE 7

SECTION 7.1. Section 6.42, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) An office of an appraisal review board or of a member of an appraisal review board may not be located in the same building in which an office of an appraisal district is located without specific authorization from each taxing unit that is entitled to vote on the appointment of appraisal district board members. This subsection applies to an appraisal district serving an area with a population of at least one million and in which the most populous city has a population of less than 450,000.

SECTION 7.2. This article applies only to a lease or other acquisition of office space made or renewed on or after the effective date of this article.

SECTION 7.3. This article takes affect January 1, 1992.

ARTICLE 8

SECTION 8.1. Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.30 to read as follows:

Sec. 11.30. PROPERTY IN ENTERPRISE ZONE. (a) In this section, "enterprise zone goods" means property that under Article VIII, Section 1-k, of the Texas Constitution is exempted from ad valorem taxation by a county, junior college district, or municipality, including a home-rule municipality, and that is:

(1) transported from outside the state into the state in an enterprise zone or acquired by the property owner in the state in an enterprise zone to be transported outside the state, whether the intention to transport the property outside the state is formed or the destination to which the property is transported is specified when the property is acquired or the transportation into the state in an enterprise zone begins;

(2) detained in the state in an enterprise zone for assembling, storing, manufacturing, repair, maintenance, processing, or fabricating purposes;

(3) not located or retained in the state in an enterprise zone for longer than 175 days; and

(4) under the continuous ownership of the person who transports the property out of the state from the time the property is acquired by that person for transportation out of the enterprise zone.

(b) A person is entitled to an exemption from taxation of the appraised value of that portion of the person's inventory or property consisting of enterprise zone goods.

(c) The exemption provided by Subsection (b) of this section is subtracted from the market value of the inventory or property determined under Section 23.12 of this code to determine the taxable value of the inventory or property.

(d) Except as provided by Subsections (f) and (g) of this section, the chief appraiser shall determine the appraised value of enterprise zone goods under this subsection. The chief appraiser shall determine the percentage of the market value of inventory or property owned by the property owner in the preceding calendar year in the area constituting the enterprise zone that was contributed by enterprise zone goods. The chief appraiser shall apply that percentage to the market value of the property owner's inventory or property for the current year in the enterprise zone to determine the appraised value of enterprise zone goods for the current year.

(e) In determining the market value of enterprise zone goods that in the preceding year were assembled, manufactured, repaired, maintained, processed, or fabricated in the enterprise zone, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the enterprise zone goods but were not themselves enterprise zone goods or that

were not transported outside the zone before the expiration of 175 days after they were brought into the zone by the property owner or acquired by the property owner in the zone. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held in the zone by the property owner during the preceding year in determining whether the component parts were transported out of the zone before the expiration of 175 days.

(f) If the property owner was not engaged in transporting enterprise zone goods out of the zone for the entire preceding year, the chief appraiser shall calculate the percentage of cost described in Subsection (d) of this section for the portion of the year in which the property owner was engaged in transporting enterprise zone goods out of the zone.

(g) If the property owner or the chief appraiser demonstrates that the method provided by Subsection (d) of this section significantly understates or overstates the market value of the property qualified for an exemption under Subsection (b) of this section in the current year, the chief appraiser shall determine the market value of the enterprise zone goods to be exempt by determining, according to the property owner's records and any other available information, the market value of those enterprise zone goods owned by the property owner on January 1 of the current year, excluding the cost of equipment, machinery, or materials that entered into and became component parts of the enterprise zone goods but were not themselves enterprise zone goods or that were not transported outside the enterprise zone before the expiration of 175 days after they were brought into the enterprise zone by the property owner or acquired by the property owner in the enterprise zone.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of inventory or property records in order to determine the amount and value of enterprise zone goods. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(i) The exemption provided by Subsection (b) of this section does not apply to a taxing unit that does not take action to exempt the property under Article VIII, Section 1-k, Subsection (b), of the Texas Constitution.

SECTION 8.2. (a) Except as provided by Subsection (b) of this section, Section 8.1 takes effect on January 1, 1992, and applies to ad valorem taxes levied for the 1992 tax year.

(b) This article takes effect only if the constitutional amendment authorizing the exemption from ad valorem taxes of personal property that is assembled, stored, repaired, maintained, manufactured, processed, or fabricated in an enterprise zone and subsequently transported outside the zone is approved by the voters at an election held on November 5, 1991; otherwise, this article has no effect.

ARTICLE 9

SECTION 9.1. Section 31.01, Tax Code, is amended by adding Subsection (j) to read as follows:

(j) If a tax bill is mailed under Subsection (a) of this section to a mortgagee of a property, the mortgagee shall mail a copy of the bill to the owner of the property not more than 30 days following the mortgagee's receipt of the bill.

SECTION 9.2. Section 312.002, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) A tax abatement agreement entered into by a school district prior to September 1, 1991, applies to taxes collected by both the school district and the county education district.

ARTICLE 10

SECTION 10.1. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative

public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

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

SENATE RESOLUTION 897

Senator Montford offered the following resolution:

BE IT RESOLVED by the Senate and House of Representatives of the State of Texas, that Senate Rule 12.04 and House Rule 14, Chapter C, Section 9(b) be suspended in part as provided by Senate Rule 12.08 and House Rule 14, Chapter C, Section 9(f) to enable consideration of, and action on, the following specific matters which may be contained in the Conference Committee Report on **H.B. 2110**.

That Section (5) Senate Rule 12.04, and House Rule 14, Chapter C, Section 9(b), Subsection (5) be suspended to allow the following:

To allow the addition of an item not included in either House or Senate versions of the bill as follows:

On page 6 of the House version and page 22 of the Senate version, add a new item to read as follows:

In addition to amounts previously appropriated for the current fiscal biennium, there is hereby appropriated to the Department of Information Resources, $450,000 from the general revenue fund for the fiscal year ending August 31, 1991, for the installation of a Fiber Distributed Data Interface ring, and for emergency automated information system support services to the Texas Department of Agriculture and the General Land Office. Installation of these services shall be implemented in an expeditious manner and within a time frame not longer than would be required by the individual agencies.

This change would allow the Conference Committee to include an appropriation to provide disaster recovery support system components and emergency replacement services disrupted by fire damages to the Stephen F. Austin state office building.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2110

Senator Montford submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2110** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONTFORD	RUDD
BROOKS	WILLIAMSON
PARKER	McDONALD
HALEY	MADLA
	WATKINS
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1020

Senator Brooks submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1020** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BROOKS	BARTON
DICKSON	VAN DE PUTTE
CARRIKER	MADLA
PARKER	WENTWORTH
WHITMIRE	G. THOMPSON
On the part of the Senate	On the part of the House

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

SENATE RESOLUTION 898

Senator Rosson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 72nd Legislature, be suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of **H.B. 546**, relating to certain employer security requirements to ensure the payment of wages, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matters:

(1) Rule 12.03(2) is suspended to allow the committee to change a section of the bill that adds Section 5A to Article 5155, Revised Statutes, by striking the following:

(b) An employer commits an offense if the employer has the ability to pay but wilfully refuses to pay wages the employer knows to be due and payable after demand has been made, or falsely denies the amount of wages owed or that indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud the person to whom the wages are owed.

Explanation: This change is necessary to establish the mental state of the employer as required to bring a criminal action.

(2) Rule 12.03(1) is suspended to allow the committee to change a section of the bill that adds Section 5A(a) to Article 5155, Revised Statutes, to read as follows:

(a) An employer commits an offense if, at the time of hiring an employee, the employer intends to avoid payment of wages owed to the employee and if the employer fails, after a demand, to pay those wages.

Explanation: This change is necessary to change the elements of the offense.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 546

Senator Rosson submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 546** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ROSSON	MORENO
DICKSON	McDONALD
PARKER	SCHOOLCRAFT
ELLIS	BRIMER
ARMBRISTER	SAUNDERS
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 359

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 359** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN	GIBSON
HARRIS OF TARRANT	NAISHTAT
ARMBRISTER	HARTNETT
DICKSON	FINNELL
WHITMIRE	ROBNETT
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and operation of the Board of Law Examiners and to the functions of the board and the state supreme court concerning the licensing of attorneys.

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

SECTION 1. Subsection (b), Section 82.001, Government Code, is amended to read as follows:

(b) The supreme court biennially shall appoint the members of the board for two-year terms that expire August 31 [~~September 30~~] of each odd-numbered year. A member is subject to removal by the supreme court as provided by Section 82.0021 [~~for incompetency or inattention to duty~~].

SECTION 2. Subchapter A, Chapter 82, Government Code, is amended by adding Section 82.0021 to read as follows:

Sec. 82.0021. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the Board of Law Examiners if a member:

(1) does not have, at the time of appointment, the qualifications required by Section 82.001;

(2) does not maintain during service on the board the qualifications required by Section 82.001;

(3) violates a prohibition established by Section 82.002;

(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;

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

(6) is incompetent; or

(7) is inattentive to the member's duties.

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

(c) If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the supreme court that a potential ground for removal exists.

SECTION 3. Section 82.004, Government Code, is amended by adding Subsection (e) to read as follows:

(e) In each city in which an examination is administered, the board shall provide facilities that enable persons having physical, mental, or developmental disabilities to take the examination.

SECTION 4. Section 82.006, Government Code, is amended to read as follows:

Sec. 82.006. SUNSET PROVISION. The Board of Law Examiners is subject to [~~the Texas Sunset Act~~]Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished December 31 [~~September 1~~], 1991. The abolition date prescribed by this subsection 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.

SECTION 5. Subchapter A, Chapter 82, Government Code, is amended by adding Sections 82.007, 82.008, and 82.009 to read as follows:

Sec. 82.007. PERSONNEL. (a) The executive director of the Board of Law Examiners or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

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

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

(e) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity 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 board's work force that meets federal and state guidelines;

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

(4) reasonable methods to appropriately address those areas of significant underutilization.

(f) A policy statement prepared under Subsection (e) must cover an annual period, be updated at least annually, and be filed with the supreme court and the governor's office.

(g) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 82.008. PUBLIC INFORMATION. (a) The Board of Law Examiners shall prepare information of public interest describing the functions of the board. The board shall make the information available to the public and appropriate agencies.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board. However, the board may prohibit public testimony that would reveal the examination questions described by Section 82.003(b) or would relate to the moral character or fitness of an applicant for a license.

Sec. 82.009. PROGRAM ACCESSIBILITY. The Board of Law Examiners shall prepare and maintain a written plan that describes how a person who has a physical, mental, or developmental disability can be provided reasonable access to the board's programs.

SECTION 6. Section 82.023, Government Code, is amended by amending Subsection (d) and adding Subsections (e), (f), and (g) to read as follows:

(d) If the board determines that an applicant does not have acceptable character and fitness, the notice of the decision must be accompanied by an analysis of the character investigation that specifies in detail the results of the investigation. The

analysis must include an objective list of actions the applicant may take to become qualified for a license to practice law.

(e) If the board determines that an applicant may suffer from chemical dependency, the board shall require the applicant to meet with representatives of the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar and may require the applicant to submit to a treatment facility for evaluation.

(f) If the board determines that an applicant suffers from chemical dependency, the board shall assist the applicant in working with the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar.

(g) In this section:

(1) "Chemical dependency" has the meaning assigned by Section 82.038.

(2) "Treatment facility" has the meaning assigned by Section 462.001, Health and Safety Code.

SECTION 7. Section 82.024, Government Code, is amended to read as follows:

Sec. 82.024. LAW STUDY REQUIREMENTS; ELIGIBILITY FOR EXAMINATION. A person who has completed the prescribed study in an approved law school has satisfied the law study requirements for taking the examination for a license to practice law and is eligible to take the bar examination. An approved law school is one that is approved by the supreme court for the time period designated by the court as maintaining the additional standards to retain approval.

SECTION 8. Subchapter B, Chapter 82, Government Code, is amended by adding Section 82.0271 to read as follows:

Sec. 82.0271. RESIDENCY OR CITIZENSHIP STATUS OF APPLICANT. A person who has applied to take the bar examination may not be denied admission to the bar examination based on the applicant's lack of:

(1) permanent residency in the United States; or

(2) United States citizenship.

SECTION 9. Section 82.030, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) If the board determines that the applicant does not have the requisite good moral character and fitness, the board, not later than the 150th day after the day on which the application is filed, shall furnish the applicant an analysis of the character investigation that specifies in detail the results of the investigation. The analysis must include an objective list of actions the applicant may take to become qualified for a license to practice law.

(c) If the board determines that an applicant may suffer from chemical dependency, the board shall require the applicant to submit to a treatment facility for evaluation.

(d) If the board determines that an applicant suffers from chemical dependency, the board shall assist the applicant in working with the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar.

(e) The board may not deny an applicant the opportunity to take the bar examination solely because the applicant:

(1) suffers or appears to suffer from chemical dependency; or

(2) has been convicted of or is on probation for a first offense of driving while intoxicated under Article 67011-1, Revised Statutes.

(f) In this section:

(1) "Chemical dependency" has the meaning assigned by Section 82.038.

(2) "Treatment facility" has the meaning assigned by Section 462.001, Health and Safety Code.

SECTION 10. Subsection (a), Section 82.031, Government Code, is amended to read as follows:

(a) The supreme court shall appoint a district committee on admissions in each of the state bar districts to investigate qualifications for admission to the bar. A district committee must be composed of at least 15 members. In making the appointments, the supreme court shall attempt to ensure full and fair representation of the general public, including women, minorities, and retired persons who are at least 55 years of age. Each appointment must be made without regard to race, creed, sex, religion, or national origin.

SECTION 11. Section 82.035, Government Code, is amended to read as follows:

Sec. 82.035. AUDIT; FINANCIAL REPORT. (a) The financial transactions of the Board of Law Examiners are subject to audit by the state auditor in accordance with Chapter 321[~~, Government Code~~].

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

SECTION 12. Section 82.036, Government Code, is amended to read as follows:

Sec. 82.036. FOREIGN ATTORNEYS. [~~(a)~~] The supreme court shall make such rules and regulations as to admitting attorneys from other jurisdictions to practice law in this state as it shall deem proper and just. All such attorneys shall be required to furnish satisfactory proof as to good moral character [~~Board of Law Examiners shall recommend to the supreme court that it license and the supreme court shall issue a license to an applicant who:~~

[~~(1) has practiced law for at least three years, and~~

[~~(2) has a license to practice law issued by another state whose licensing standards are at least equivalent to the licensing standards of this state.~~

[~~(b) If an applicant is from another state whose licensing standards are not equivalent to or do not exceed those of this state but the applicant otherwise meets the requirements of Subsection (a), the board may require the applicant to take the examination for a license to practice law.~~

[~~(c) All foreign attorneys licensed as provided by this section must furnish satisfactory proof of good moral character and fitness~~].

SECTION 13. Subchapter B, Chapter 82, Government Code, is amended by adding Section 82.038 to read as follows:

Sec. 82.038. PROBATIONARY LICENSE FOR APPLICANT SUFFERING FROM CHEMICAL DEPENDENCY. (a) If, after a moral character and fitness assessment, the Board of Law Examiners determines that the applicant suffers from chemical dependency, the board shall notify the applicant of its determination and of the applicant's rights under this section.

(b) To obtain judicial review of the board's determination that the applicant suffers from chemical dependency, an applicant must file a petition in the district court of Travis County before the 60th day after the date that the board delivers notice of its determination. The petition must name the board as a defendant and be served on the executive director of the board. Before the date on which the applicant may obtain a default judgment against the board, the board shall file with the district court a certified record of the proceedings before the board.

(c) A party is not entitled to a jury in a judicial review of the board's determination that an applicant suffers from chemical dependency. The court may not substitute its judgment for that of the board as to the weight of the evidence on questions submitted to the board's discretion but shall affirm the board's decision

if the decision is reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole.

(d) The board may not deny a person who successfully takes the bar examination a probationary license to practice law solely because the person:

(1) suffers from chemical dependency; or

(2) has been convicted of or is on probation for a first offense of driving while intoxicated under Article 6701l-1, Revised Statutes.

(e) The board shall specify the conditions of a probationary license to practice law, which must be designed to protect the public from the potential harm the person might cause. Conditions of a probationary license may include one or more of the following:

(1) prohibiting the person from using alcohol or controlled substances;

(2) treatment for chemical dependency;

(3) supervision of the person's work by a licensed attorney;

(4) submission to periodic drug testing;

(5) periodic reporting by the person to the board; or

(6) suspension, for a portion of the probationary period, of an activity for which a license to practice law is required.

(f) A probationary license issued under this section expires on the second anniversary of the date on which the license is issued. A person who holds a probationary license may apply for a renewal of the probationary license or for a regular license to practice law. The board, after redetermination of the character and fitness of a person who holds a probationary license, may recommend to the supreme court that it grant the person a regular license to practice law. The redetermination must include an evaluation of the person by a treatment facility. The board may not recommend to the supreme court that the person be granted a regular license to practice law unless the board finds that the person has successfully completed treatment and has been free from chemical dependency for the preceding two years.

(g) The supreme court shall adopt rules under which the board and the State Bar of Texas jointly develop and fund a program for evaluation and referral to treatment for persons who have been issued a probationary license under this section.

(h) A probationary license may be immediately revoked if the person violates a condition of probation imposed by the board.

(i) In this section:

(1) "Chemical dependency" means:

(A) the abuse of alcohol or a controlled substance;

(B) a pathological use of alcohol or a controlled substance that chronically impairs the applicant's ability to competently provide legal advice or services; or

(C) a physiological or physical dependence on alcohol or a controlled substance.

(2) "Controlled substance," "treatment facility," and "treatment" have the meanings assigned by Section 462.001, Health and Safety Code.

SECTION 14. (a) The change made by this Act to Subsection (b), Section 82.001, Government Code, relating to the expiration date of the terms of members of the Board of Law Examiners, applies only to members' terms expiring in 1993 or a later odd-numbered year. Members' terms expiring in 1991 expire September 30, 1991.

(b) The first policy statement required to be filed under Subsection (f), Section 82.007, Government Code, as added by this Act, must be filed before November 1, 1991.

SECTION 15. Section 82.026, Government Code, is repealed.

SECTION 16. This Act takes effect September 1, 1991.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

(President in Chair)

GUEST PRESENTED

The President acknowledged the presence in the Senate of Justice Oscar Mauzy of the Supreme Court of Texas.

The Senate welcomed Justice Mauzy.

SENATE RESOLUTION 900

Senator Barrientos offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 72nd Legislature, Regular Session, 1991, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 352** to consider and take action on the following specific matters:

(1) Subdivision (4), Senate Rule 12.03, is suspended to permit the committee to add Subchapter H, Chapter 56, Education Code, by adding two sections to the bill to read as follows:

SECTION ____.Chapter 56, Education Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION CONDITIONAL GRANT PROGRAM

Sec. 56.121. DEFINITIONS. In this subchapter:

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

(2) "Institution" means an institution of higher education, as defined by Section 61.003 of this code, but does not include a medical or dental unit or other agency of higher education.

Sec. 56.122. ESTABLISHMENT; ADMINISTRATION. (a) The department shall establish and administer a conditional grant program under this subchapter to provide financial assistance to each eligible minority student who has exhibited in the student's secondary school performance an aptitude for engineering and who intends to become a civil engineer and work for the department for the two academic years immediately following the date of the student's receipt of a civil engineering degree.

(b) The department shall adopt and distribute to the governing board of each institution copies of all rules adopted under this subchapter.

Sec. 56.123. ELIGIBLE STUDENT. To be eligible for a conditional grant under this subchapter, a student must:

(1) complete and file with the department, on forms prescribed by the department, a conditional grant application and a declaration of intent to become a civil engineer and work for the department for the two academic years immediately following the date of the student's receipt of a civil engineering degree;

(2) enroll in an institution;

(3) be a Texas resident, as defined by Texas Higher Education Coordinating Board rule;

(4) be a minority, as defined by department rule;

(5) have exhibited in the student's secondary school performance an aptitude for engineering as determined by department rule; and

(6) have complied with any other requirements adopted by the department under this subchapter.

Sec. 56.124. AMOUNT AND PAYMENT OF CONDITIONAL GRANTS. (a) Each semester the department shall distribute a conditional grant to each eligible student on receipt of the student's application and declaration, an enrollment report from the institution enrolling the student, and certification from the institution of the amount of tuition and fees for the student.

(b) The amount of a conditional grant is the sum of:

(1) the certified amount of tuition and fees for the student; and

(2) a stipend for each whole calendar month in the semester in an amount determined by the department based on financial need.

(c) The total amount of all conditional grants distributed by the department may not exceed the amount appropriated for the grant program under this subchapter.

(d) The department shall proportionately reduce the amount of each unpaid conditional grant if the amount appropriated for the conditional grants is less than the estimated amount of all unpaid conditional grants.

Sec. 56.125. REPAYMENT OF CONDITIONAL GRANT. (a) A student who withdraws or drops out of the institution in which the student is enrolled during a semester must repay the conditional grant received for that semester.

(b) A student who does not become a civil engineer and work for the department for the two academic years immediately following the date of the student's receipt of a civil engineering degree must repay all conditional grants received by the student.

(c) The department shall establish a schedule for installment repayment under this section.

Sec. 56.126. ACCOUNT. (a) The State Department of Highways and Public Transportation conditional grant account is established in the general revenue fund.

(b) Each fiscal year the department shall remit to the comptroller of public accounts for deposit in the account the first $200,000 in revenues for that year that the department receives from the sale of its publications.

(c) Money in the account may be appropriated only to the department for the purposes of this subchapter.

Sec. 56.127. FUNDING. (a) The department may accept gifts and grants from any public or private source for the conditional grant program under this subchapter.

(b)Conditional grants issued under this subchapter are payable from gifts, grants, and other funds appropriated from the State Department of Highways and Public Transportation conditional grant account.

SECTION _____. (a) The State Department of Highways and Public Transportation shall adopt and distribute initial rules required by Section 56.122, Education Code, as added by this Act, not later than January 1, 1992.

(b) The department shall make conditional grants to eligible students under Subchapter H, Chapter 56, Education Code, as added by this Act, for use beginning with the fall semester in 1992.

Explanation: This change is necessary to establish a State Department of Highways and Public Transportation conditional grant program to pay a student's tuition at a public college or university if the student intends to receive a civil engineering degree and work for the department for the two academic years immediately following the student's receipt of a civil engineering degree.

(2) Subdivision (1), Senate Rule 12.03, is suspended to change a section of the bill that amends Subsection (c) of Article 6663, Revised Statutes, 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 December 31 [~~September 1~~], 1991. The abolition date prescribed by this subsection 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."

Explanation: This amendment is needed to facilitate the legislature's consideration of the recommendations resulting from the performance review of state agencies required by **S.B. 111**, 72nd Legislature, Regular Session, 1991.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 352

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 352** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BARRIENTOS	CAIN
ROSSON	EDWARDS
DICKSON	A. HILL
RATLIFF	FINNELL
TURNER	BERLANGA
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation, functions, and programs 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 December 31 [~~September 1~~], 1991. The abolition date prescribed by this subsection 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.

(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.

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. Contract goals shall approximate the federal requirement on federal money used in highway construction and maintenance, consistent with applicable state and federal laws.

(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 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.

(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 rules of the Department that may affect the environment.

(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) 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 nonasphaltic 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 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.

SECTION 21. 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.

SECTION 22. 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 23. Section 1, Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w-1, Revised 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 at 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.

SECTION 24. 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 25. 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 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.

SECTION 26. 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 27. 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 28. 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.

SECTION 29. Chapter 56, Education Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION CONDITIONAL GRANT PROGRAM

Sec. 56.121. DEFINITIONS. In this subchapter:

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

(2) "Institution" means an institution of higher education, as defined by Section 61.003 of this code, but does not include a medical or dental unit or other agency of higher education.

Sec. 56.122. ESTABLISHMENT; ADMINISTRATION. (a) The department shall establish and administer a conditional grant program under this subchapter to provide financial assistance to each eligible minority student who has exhibited in the student's secondary school performance an aptitude for engineering and who intends to become a civil engineer and work for the department for the two academic years immediately following the date of the student's receipt of a civil engineering degree.

(b) The department shall adopt and distribute to the governing board of each institution copies of all rules adopted under this subchapter.

Sec. 56.123. ELIGIBLE STUDENT. To be eligible for a conditional grant under this subchapter, a student must:

(1) complete and file with the department, on forms prescribed by the department, a conditional grant application and a declaration of intent to become a civil engineer and work for the department for the two academic years immediately following the date of the student's receipt of a civil engineering degree;

(2) enroll in an institution;

(3) be a Texas resident, as defined by Texas Higher Education Coordinating Board rule;

(4) be a minority, as defined by department rule;

(5) have exhibited in the student's secondary school performance an aptitude for engineering as determined by department rule; and

(6) have complied with any other requirements adopted by the department under this subchapter.

Sec. 56.124. AMOUNT AND PAYMENT OF CONDITIONAL GRANTS. (a) Each semester the department shall distribute a conditional grant to each eligible student on receipt of the student's application and declaration, an enrollment report from the institution enrolling the student, and certification from the institution of the amount of tuition and fees for the student.

(b) The amount of a conditional grant is the sum of:

(1) the certified amount of tuition and fees for the student; and

(2) a stipend for each whole calendar month in the semester in an amount determined by the department based on financial need.

(c) The total amount of all conditional grants distributed by the department may not exceed the amount appropriated for the grant program under this subchapter.

(d) The department shall proportionately reduce the amount of each unpaid conditional grant if the amount appropriated for the conditional grants is less than the estimated amount of all unpaid conditional grants.

Sec. 56.125. REPAYMENT OF CONDITIONAL GRANT. (a) A student who withdraws or drops out of the institution in which the student is enrolled during a semester must repay the conditional grant received for that semester.

(b) A student who does not become a civil engineer and work for the department for the two academic years immediately following the date of the student's receipt of a civil engineering degree must repay all conditional grants received by the student.

(c) The department shall establish a schedule for installment repayment under this section.

Sec. 56.126. ACCOUNT. (a) The State Department of Highways and Public Transportation conditional grant account is established in the general revenue fund.

(b) Each fiscal year the department shall remit to the comptroller of public accounts for deposit in the account the first $200,000 in revenues for that year that the department receives from the sale of its publications.

(c) Money in the account may be appropriated only to the department for the purposes of this subchapter.

Sec. 56.127. FUNDING. (a) The department may accept gifts and grants from any public or private source for the conditional grant program under this subchapter.

(b) Conditional grants issued under this subchapter are payable from gifts, grants, and other funds appropriated from the State Department of Highways and Public Transportation conditional grant account.

SECTION 30. The State Department of Highways and Public Transportation shall adopt and distribute initial rules required by Section 56.122, Education Code, as added by this Act, not later than January 1, 1992.

(b) The department shall make conditional grants to eligible students under Subchapter H, Chapter 56, Education Code, as added by this Act, for use beginning with the fall semester in 1992.

SECTION 31. 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 32. The first policy statement required to be filed under Subsection (b), Article 6668b, Revised Statutes, as added by this Act, must be filed before November 1, 1991.

SECTION 33. 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 State Department of Highways and Public Transportation and another person, partnership, corporation, or government entity on the effective date of this Act.

SECTION 34. 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 Article 6664, Revised Statutes, as amended by this Act, the governor shall appoint to the commission at the first opportunity a person residing in a rural area.

SECTION 35. Nothing in this Act shall influence or require a preference for one type of pavement design over another.

SECTION 36. This Act takes effect September 1, 1991.

SECTION 37. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

SENATE RESOLUTION 899

Senator Green offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 72nd Legislature, Regular Session, 1991, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 432** to consider and take action on the following specific matters:

Senate Rules 12.03(4) is suspended to permit the committee to modify two sections of the bill as follows:

(1) Rule 14, Section 12.03(4) is suspended to authorize the conferees to take action by modifying the section of the bill that amends Subsection (a), Section 5, Article 6573a, V.T.C.S., so that subsection (a) reads as follows:

(a) The administration of the provisions of this Act is vested in a commission, to be known as the "Texas Real Estate Commission," consisting of nine members to be appointed by the governor with the advice and consent of two-thirds of the senate present. The commissioners hold office for staggered terms of six years with the terms of three members expiring January 31 of each odd-numbered year. Each member holds office until his successor is appointed and has qualified. Within 15 days after his appointment, each member shall qualify by taking the constitutional oath of office and furnishing a bond payable to the Governor of Texas in the penal sum of $10,000, conditional on the faithful performance of his duties as prescribed by law. A vacancy for any cause shall be filled by the governor for the unexpired term. The governor shall designate as chairman of the commission one member of the commission who is a licensed real estate broker. The chairman serves in that capacity at the pleasure of the governor.

At a regular meeting in February of each year, the commission shall elect from its own membership a [~~chairman;~~] vice-chairman [;] and secretary. A quorum of the commission consists of five members.

EXPLANATION: This change is needed to require the governor to designate a licensed real estate broker as chairman of the commission.

(2) Rule 14, Section 12.03(4) is suspended to authorize the conferees to take action by modifying the section of the bill that amends subsection (a) and adds subsections (e) and (f), Section 7A, Article 6573a, V.T.C.S., so that subsections (a), (e) and (f) read as follows:

(a) To renew a real estate broker license or an active real estate salesman license that is not subject to the annual education requirements of this Act, the licensee must provide the commission proof of attendance at at least 15 classroom hours of continuing education courses approved by the commission during the term of the current license. The commission by rule may provide for the substitution of relevant educational experience or correspondence courses approved by the commission instead of classroom attendance.

In addition, supervised video instruction may be approved by the Commission as a course counting as classroom hours of mandatory continuing education. At least six hours of instruction must be devoted to the rules of the commission, fair housing laws, agency laws, antitrust laws, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), disclosures to buyers and sellers, current contract and addendum forms, the unauthorized practice of law, case studies involving violations of laws and regulations, current Federal Housing Administration and Veterans Administration regulations, tax laws, and other legal topics approved by the commission. The remaining hours may be devoted to other real estate-related topics approved by the commission. The commission may consider equivalent courses for continuing education credit. The Commission, upon the request of a provider of education, shall review a core real estate course authorized under Section 7 of this Act and may approve it as a mandatory continuing education course. Real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit shall automatically be approved as mandatory continuing education courses under this Act. The commission may not require examinations except for correspondence courses. Daily course segments must be at least three hours long but not more than 10 hours long. If the license being renewed under this section was issued for less than two years, the licensee must provide the commission proof of attendance at at least eight classroom hours of continuing education within the term of the current license, three classroom hours of which must have been devoted to the legal topics specified in this section.

(e) On or before September 25, 1991, the commission shall:

(1) identify each real estate broker that:

(A) has been licensed under this Act for at least ten years as of September 1, 1991, and holds a license as a real estate broker on that date; and

(B) on June 1, 1991, has the principal place of real estate brokerage business, as designated on the real estate broker's license pursuant to Subsection (a) of section 12 of this Act, located in a county with a population of 225,000 or less, according to the 1980 federal decennial census; and

(2) send a written notice to each real estate broker identified under Subdivision (1) of this subsection stating that the real estate broker may qualify to opt out of the mandatory continuing education requirements required by this Act in accordance with Subsection (f) of this section if the real estate broker has held a broker's license for ten years or more and holds a broker's license on September 1, 1991.

(f) Notwithstanding any other provision of this Act, a real estate broker identified and receiving a notice under Subsection (e) of this section who has held a broker's license for ten years or more and holds a broker's license on September 1, 1991, is not required to comply with the mandatory continuing education

requirements of this section to renew the real estate broker's license if after October 1, 1991, and on or before October 30, 1991, the real estate broker:

(1) notifies the commission in writing that the real estate broker is opting out of those requirements; and

(2) pays a one-time fee to the commission in the amount determined by the commission to be adequate to recover the cost to process the application not to exceed $100.

EXPLANATION: This change is needed to provide an optional exemption from continuing education requirements of the Act for licensed real estate brokers who work in less-populated counties and have at least ten years experience. The change also expands the types of continuing education that can be counted toward the requirements to include educational experience or video instruction. Also, the change establishes procedures for applying for the optional exemption and establishes a fee.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 432

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 432** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN	A. SMITH
WHITMIRE	EDWARDS
ZAFFIRINI	CRADDICK
HALEY	GIBSON
TEJEDA	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

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.

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

ARTICLE 1. TEXAS REAL ESTATE COMMISSION

SECTION 1.01. Subsection (b), Section 1, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) It is unlawful for a person to act in the capacity of, engage in the business of, or advertise or hold himself out as engaging in or conducting the business of a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the Texas Real Estate Commission. It is unlawful for a

person licensed as a real estate salesman to act or attempt to act as a real estate broker or salesman [~~agent~~] unless he is, at such time, associated with a licensed Texas real estate broker and acting for the licensed real estate broker.

SECTION 1.02. Section 3, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act:

(1) an attorney at law licensed in this state or in any other state;

(2) an attorney in fact under a duly executed power of attorney authorizing the consummation of a real estate transaction;

(3) a public official in the conduct of his official duties;

(4) a person calling the sale of real estate by [~~conducting an~~] auction under the authority of a license issued by this state provided the person does not perform any other act of a real estate broker or salesman as defined by this Act;

(5) a person acting under a court order or under the authority of a will or a written trust instrument;

(6) a salesperson employed by an owner in the sale of structures and land on which said structures are situated, provided such structures are erected by the owner in the due course of his business;

(7) an on-site manager of an apartment complex;

(8) transactions involving the sale, lease, or transfer of any mineral or mining interest in real property;

(9) an owner or his employees in renting or leasing his own real estate whether improved or unimproved;

(10) transactions involving the sale, lease, or transfer of cemetery lots; or

(11) transactions involving the renting, leasing, or management of hotels or motels.

SECTION 1.03. Section 5, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) through (f), (h), (i), (k), (m), (n), and (p) through (s) and adding Subsections (u) through (z) to read as follows:

(a) The administration of the provisions of this Act is vested in a commission, to be known as the "Texas Real Estate Commission," consisting of nine members to be appointed by the governor with the advice and consent of two-thirds of the senate present. The commissioners hold office for staggered terms of six years with the terms of three members expiring January 31 of each odd-numbered year. Each member holds office until his successor is appointed and has qualified. Within 15 days after his appointment, each member shall qualify by taking the constitutional oath of office and furnishing a bond payable to the Governor of Texas in the penal sum of $10,000, conditional on the faithful performance of his duties as prescribed by law. A vacancy for any cause shall be filled by the governor for the unexpired term. The governor shall designate as chairman of the commission one member of the commission who is a licensed real estate broker. The chairman serves in that capacity at the pleasure of the governor. At a regular meeting in February of each year, the commission shall elect from its own membership a [~~chairman,~~] vice-chairman[;] and secretary. A quorum of the commission consists of five members.

(b)(1) All members, officers, employees, and agents of the commission are subject to the code of ethics and standards of conduct imposed by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes). A state elected president, president-elect, vice-president, or secretary-treasurer, employee, or paid consultant of a Texas trade association in the

real estate industry may not be a member of the commission or an employee of the commission who is exempt from the state's position classification plan or compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the state position classification salary schedule. A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the real estate industry may not be a [~~member of the~~] commission member and may not be a commission [~~or an~~] employee who is [~~of the commission~~] 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 state position classification salary schedule. For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined statewide association of business or professional competitors in this state [~~that is~~] designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their [~~the~~] common interest [~~of its members~~].

(2) A person may not serve as a member of the commission or act as the general counsel to 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 commission.

(c) Appointments to the commission shall be made without regard to the race, color, handicap [~~creed~~], sex, religion, age, or national origin of the appointees. Each member of the commission shall be a citizen of Texas and a qualified voter. Six members shall have been engaged in the real estate brokerage business as licensed real estate brokers as their major occupations for at least five years immediately [~~next~~] preceding their appointments. Three members must be representatives of the general public. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the [~~field of~~] real estate industry [~~brokerage~~];

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

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

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

(d) 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 Subsection (c) of this section for appointment to the commission;

(2) does not maintain during [~~the member's~~] service on the commission the qualifications required by Subsection (c) of this section [~~for appointment to the commission~~];

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

(4) cannot [~~is unable to~~] discharge the member's duties for a substantial part of the term for which the member is [~~was~~] appointed because of illness or disability; or

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

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

(f) If the administrator has knowledge that a potential ground for removal exists, the administrator shall notify the chairman of the commission of the ground. The chairman [~~of the commission~~] shall then notify the governor that a potential ground for removal exists.

(h) The commission shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposes and intent of this Act or to insure compliance with the provisions of this Act. [~~If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the commission receives the committees' statements.~~] In addition to any other action, proceeding, or remedy authorized by law, the commission shall have the right to institute an action in its own name to enjoin any violation of any provision of this Act or any rule or regulation of the commission and in order for the commission to sustain such action it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The commission shall not be required to give any appeal bond in any action or proceeding to enforce the provisions of this Act.

(i) The commission is empowered to select and name an administrator[~~, who shall also act as executive secretary,~~] and to select and employ such other subordinate officers and employees as are necessary to administer this Act. The salaries of the administrator and the officers and employees shall be fixed by the commission not to exceed such amounts as are fixed by the applicable general appropriations bill. The commission may designate a subordinate officer as assistant administrator who shall be authorized to act for the administrator in his absence. The administrator or the administrator's designee shall develop a system of annual performance evaluations. [~~A person who is required to register as a lobbyist under Chapter 305, Government Code, may not act as the general counsel to the commission or serve as a member of the commission. The administrator shall develop a system under which the job performance of commission employees is evaluated annually.~~] All merit pay for commission employees must be based on the system established under this subsection. The administrator or the administrator's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(k) Except as provided in Subsections (l) and (m) of this section, all money derived from fees, assessments, or charges under this Act, shall be paid by the commission into the State Treasury for safekeeping, and shall be placed by the State Treasurer in a separate fund to be available for the use of the commission in the administration of this Act on requisition by the commission. A necessary amount of the money so paid into the State Treasury is hereby specifically appropriated to the commission for the purpose of paying the salaries and expenses necessary and proper for the administration of this Act, including equipment and maintenance of supplies for the offices or quarters occupied by the commission, and necessary travel expenses for the commission or persons authorized to act for it when performing duties under this Act. At the end of the state fiscal year, any unused portion of the

funds in the special account, except such funds as may be appropriated to administer this Act pending receipt of additional revenues available for that purpose, shall be paid into the General Revenue Fund. The comptroller shall, on requisition of the commission, draw warrants from time to time on the State Treasurer for the amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. However, all money expended in the administration of this Act shall be specified and determined by itemized appropriation in the general departmental appropriation bill for the Texas Real Estate Commission, and not otherwise. The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The [~~form of the~~] annual report must be in the form and reported in the time [~~and the reporting time are as~~] provided by [~~in~~] the General Appropriations Act.

(m) Fifteen dollars received by the commission for a renewal of a broker license before the expiration of the license or before the first anniversary of the date the license expired [~~from fees received from real estate brokers~~] and $7.50 received by the commission for a renewal of a salesman license before the expiration of the license or before the first anniversary of the date the license expired [~~from fees received from real estate salesmen for licensure status~~] shall be transmitted annually to Texas A&M University for deposit in a separate banking account. The money in the separate account shall be expended for the support and maintenance of the Texas Real Estate Research Center and for carrying out the purposes, objectives, and duties of the center. However, all money expended from the separate account shall be as determined by legislative appropriation.

(n) The Texas Real Estate Commission 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 commission is abolished and this Act expires December 31 [~~September 1~~], 1991. The abolition date prescribed by this subsection 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.

(p) The commission shall develop and implement [~~adopt~~] 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.

(q) The commission by rule shall establish methods by which consumers and [~~or~~] service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notification to be provided with the notification required by Section 8(q) of this Act or:

(1) on each registration form, application, or written contract for services of an individual or entity regulated under this Act;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or

(3) in a bill for service provided by an individual or entity regulated under this Act.

(r) The commission shall prepare information of public interest describing the functions of the commission and [~~describing~~] the procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

(s) The commission shall develop and implement [~~adopt~~] policies that clearly define the respective responsibilities of the governing body of the commission and the staff of the commission.

(u) The administrator or the administrator'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 commission work force that meets federal and state guidelines;

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

(4) reasonable methods to appropriately address those areas of significant underutilization.

(v) A policy statement prepared under Subsection (u) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(w) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (v). The report may be made separately or as a part of other biennial reports made to the legislature.

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

(y) The commission 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 commission's programs.

(z) The commission may not adopt rules restricting competitive bidding or advertising by a person regulated by the commission except to prohibit false, misleading, or deceptive practices by the person. The commission may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 1.04. Subsections (a) and (i), Section 7, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Competency as referred to in Section 6 of this Act shall be established by an examination prepared by or contracted for by the commission. The examination shall be given at such times and at such places within the state as the commission shall prescribe. The examination shall be of scope sufficient in the judgment of the commission to determine that a person is competent to act as a real estate broker or salesman in a manner to protect the interest of the public. The examination for a salesman license shall be less exacting and less stringent than the examination for a broker license. The commission shall furnish each applicant with study material and references on which his examination shall be based. When an applicant for a real estate license fails a qualifying examination, he may apply for reexamination by filing a request therefor together with the proper fee. The examination requirement must be satisfied not later than six months after the date on which the application for a license is filed. Courses of study required for a license may [~~shall~~] include but are not [be] limited to the following, which shall be considered core real estate courses for all purposes of this Act:

(1) Principles of Real Estate (or equivalent) shall include but not be limited to an overview of licensing as a real estate broker and salesman, ethics of practice, titles to and conveyancing of real estate, legal descriptions, law of agency, deeds, encumbrances and liens, distinctions between personal and real property, contracts, appraisal, finance and regulations, closing procedures, real estate mathematics, and at least three classroom hours of instruction on federal, state, and local laws relating to housing discrimination, housing credit discrimination, and community reinvestment.

(2) Real Estate Appraisal (or equivalent) shall include but not be limited to the central purposes and functions of an appraisal, social and economic determinant of value, appraisal case studies, cost, market data and income approaches to value estimates, final correlations, and reporting.

(3) Real Estate Law (or equivalent) shall include but not be limited to legal concepts of real estate, land description, real property rights and estates in land, contracts, conveyances, encumbrances, foreclosures, recording procedures, and evidence of titles.

(4) Real Estate Finance (or equivalent) shall include but not be limited to monetary systems, primary and secondary money markets, sources of mortgage loans, federal government programs, loan applications, processes and procedures, closing costs, alternative financial instruments, equal credit opportunity acts, community reinvestment act, and state housing agency.

(5) Real Estate Marketing (or equivalent) shall include but not be limited to real estate professionalism and ethics, characteristics of successful salesmen, time management, psychology of marketing, listing procedures, advertising, negotiating and closing, financing, and the Deceptive Trade Practices-Consumer Protection Act, as amended, Section 17.01 et seq., Business & Commerce Code.

(6) Real Estate Mathematics (or equivalent) shall include but not be limited to basic arithmetic skills and review of mathematical logic, percentages, interest, time-valued money, depreciation, amortization, proration, and estimation of closing statements.

(7) Real Estate Brokerage (or equivalent) shall include but not be limited to law of agency, planning and organization, operational policies and procedures, recruiting, selection and training of personnel, records and control, and real estate firm analysis and expansion criteria.

(8) Property Management (or equivalent) shall include but not be limited to role of property manager, landlord policies, operational guidelines, leases, lease negotiations, tenant relations, maintenance, reports, habitability laws, and the Fair Housing Act.

(9) Real Estate Investments (or equivalent) shall include but not be limited to real estate investment characteristics, techniques of investment analysis, time-valued money, discounted and nondiscounted investment criteria, leverage, tax shelters depreciation, and applications to property tax.

(i) Not later than the 30th day after the date on which a licensing examination is administered under this Act, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails a licensing examination administered under this Act, the commission shall furnish the person with an analysis of the person's performance on the examination

~~[Not later than the 30th day after the day on which a person completes an examination administered by the commission, the commission shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the commission shall send to the person not later than the 30th day after the day on which the request is received by the commission an analysis of the person's performance on the examination~~].

SECTION 1.041. Section 7A, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) To renew a real estate broker license or an active real estate salesman license that is not subject to the annual education requirements of this Act, the licensee must provide the commission proof of attendance at at least 15 classroom hours of continuing education courses approved by the commission during the term of the current license. The commission by rule may provide for the substitution of relevant educational experience or correspondence courses approved by the commission instead of classroom attendance. In addition, supervised video instruction may be approved by the commission as a course counting as classroom hours of mandatory continuing education. At least six hours of instruction must be devoted to the rules of the commission, fair housing laws, agency laws, antitrust laws, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), disclosures to buyers and sellers, current contract and addendum forms, the unauthorized practice of law, case studies involving violations of laws and regulations, current Federal Housing Administration and Veterans Administration regulations, tax laws, and other legal topics approved by the commission. The remaining hours may be devoted to other real estate-related topics approved by the commission. The commission may consider equivalent courses for continuing education credit. The commission, on the request of a provider of education, shall review a core real estate course authorized under Section 7 of this Act and may approve it as a mandatory continuing education course. Real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit shall automatically be approved as mandatory continuing education courses under this Act. The commission may not require examinations except for correspondence courses. Daily course segments must be at least three hours long but not more than 10 hours long. If the license being renewed under this section was issued for less than two years, the licensee must provide the commission proof of attendance at at least eight classroom hours of continuing education within the term of the current license, three classroom hours of which must have been devoted to the legal topics specified in this section.

(e) On or before September 25, 1991, the commission shall:

(1) identify each real estate broker that:

(A) has been licensed under this Act for at least 10 years as of September 1, 1991, and holds a license as a real estate broker on that date; and

(B) on June 1, 1991, has the principal place of real estate brokerage business, as designated on the real estate broker's license pursuant to Subsection (a) of Section 12 of this Act, located in a county with a population of 225,000 or less, according to the 1980 federal decennial census; and

(2) send a written notice to each real estate broker identified under Subdivision (1) of this subsection stating that the real estate broker may qualify to opt out of the mandatory continuing education requirements required by this Act in accordance with Subsection (f) of this section if the real estate broker has held a broker's license for 10 years or more and holds a broker's license on September 1, 1991.

(f) Notwithstanding any other provision of this Act, a real estate broker identified and receiving a notice under Subsection (e) of this section who has held

a broker's license for 10 years or more and holds a broker's license on September 1, 1991, is not required to comply with the mandatory continuing education requirements of this section to renew the real estate broker's license if after October 1, 1991, and on or before October 30, 1991, the real estate broker:

(1) notifies the commission in writing that the real estate broker is opting out of those requirements; and

(2) pays a one-time fee to the commission in the amount determined by the commission to be adequate to recover the cost to process the application not to exceed $100.

SECTION 1.05. Section 8, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsections (c) and (n) and adding Subsection (q) to read as follows:

(c) If on December 31 of any year the balance remaining in the real estate recovery fund is less than $1 million [~~$300,000~~], each real estate broker and each real estate salesman, on the next renewal of his license, shall pay, in addition to his license renewal fee, a fee of $10, which shall be deposited in the real estate recovery fund, or a pro rata share of the amount necessary to bring the fund to $1.7 [~~$1~~] million, whichever is less. If on December 31 of any year the balance remaining in the real estate recovery fund is more than $3.5 million or more than the total amount of claims paid from the fund during the previous four fiscal years, whichever is greater, the amount of money in excess of the greater amount shall be transferred to the general revenue fund.

(n) Notwithstanding any other provision, payments from the real estate recovery fund are subject to the following conditions and limitations:

(1) payments may be made only pursuant to an order of a court of competent jurisdiction, as provided in Subsection (e) of this section, and in the manner prescribed by this section;

(2) payments for claims, including attorneys' fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to $50,000 [~~$20,000~~] regardless of the number of claimants; and

(3) payments for claims based on judgments against any one licensed real estate broker or salesman may not exceed in the aggregate $100,000 [~~$50,000~~] until the fund has been reimbursed by the licensee for all amounts paid.

(q) A broker or salesman licensed under this Act shall notify consumers and service recipients of the availability of the real estate recovery fund established under this section for reimbursing certain aggrieved persons. The notice must include the name, mailing address, and telephone number of the commission and any other information required by commission rule. The notification may be provided with the notice required by Section 5(q) of this Act or:

(1) on a written contract for the services of a broker or salesman;

(2) on a brochure distributed by a broker or salesman;

(3) on a sign prominently displayed in the place of business of a salesman or broker; or

(4) in a bill or receipt for service provided by a broker or salesman.

SECTION 1.06. Section 9, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) The commission shall require in any application for a broker or salesman license or a renewal of a broker or salesman license the applicant to disclose whether the applicant has entered a plea of guilty or nolo contendere to, been found guilty of, or been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction or suspending the imposition of sentence.

SECTION 1.07. The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) is amended by adding Section 13A to read as follows:

Sec. 13A. (a) A real estate broker who holds a license issued under this Act and who is not acting as a broker or sponsoring a salesman may apply to the commission in writing to be placed on the inactive status list maintained by the commission. The broker must apply for inactive status before the expiration of the broker's license. The broker shall terminate the broker's association with any salesmen sponsored by the broker by giving written notice to the salesmen before the 30th day before the date the broker applies for inactive status. A person on inactive status under this section is required to pay the annual renewal fees.

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

(c) If the person has been on inactive status for 36 consecutive months or less, the commission shall remove the person from the list on application and proof of attendance of at least 15 classroom hours of continuing education as specified in Subsection (a) of Section 7A of this Act during the two-year period preceding the filing of the application. If the person has been on inactive status for more than 36 consecutive months, the commission may not remove the person from the inactive status list until the person has complied with the educational and examination requirements specified in Section 7 of this Act.

SECTION 1.08. Section 15, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The commission may, on its own motion, and shall, on the signed [~~verified~~] complaint in writing of a consumer or service recipient [~~any person~~], provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate the actions and records of a real estate broker or real estate salesman. The commission may suspend or revoke a license issued under the provisions of this Act at any time when it has been determined that:

(1) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence;

(2) the licensee has procured, or attempted to procure, a real estate license, for himself or a salesman, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license;

(3) the licensee, when selling, buying, trading, or renting real property in his own name, engaged in misrepresentation or dishonest or fraudulent action;

(4) the licensee has failed within a reasonable time to make good a check issued to the commission after the commission has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the commission's records;

(5) the licensee has disregarded or violated a provision of this Act;

(6) the licensee, while performing an act constituting an act of a broker or salesman, as defined by this Act, has been guilty of:

(A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the broker or salesman. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase;

(B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when the licensee could not or did not intend to keep such promise;

(C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salesmen, advertising, or otherwise;

(D) failing to make clear, to all parties to a transaction, which party he is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties;

(E) failing within a reasonable time properly to account for or remit money coming into his possession which belongs to others, or commingling money belonging to others with his own funds;

(F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesman in this state or in any other state for compensation for services as a real estate agent;

(G) failing to specify in a listing contract a definite termination date which is not subject to prior notice;

(H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal;

(I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice;

(J) acting in the dual capacity of broker and undisclosed principal in a transaction;

(K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property;

(L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or his authorized agent;

(M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract;

(N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner or lessor, knowing that the owner or lessor had a written outstanding contract, granting exclusive agency in connection with the property to another real estate broker;

(O) offering real property for sale or for lease without the knowledge and consent of the owner or his authorized agent, or on terms other than those authorized by the owner or his authorized agent;

(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by newspaper, radio, television, or display which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent;

(Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular;

(R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action;

(S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act;

(T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;

(U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or be furnished with or obtain a policy of title insurance;

(V) conduct which constitutes dishonest dealings, bad faith, or untrustworthiness;

(W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license;

(X) disregarding or violating a provision of this Act;

(Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state;

(Z) disbursing money deposited in a custodial, trust, or escrow account, as provided in Subsection (Y) before the transaction concerned has been consummated or finally otherwise terminated; or

(AA) discriminating against an owner, potential purchaser, lessor, or potential lessee on the basis of race, color, religion, sex, national origin, or ancestry, including directing prospective home buyers or lessees interested in equivalent properties to different areas according to the race, color, religion, sex, national origin, or ancestry of the potential owner or lessee;

(7) the licensee has failed or refused on demand to produce a document, book, or record in his possession concerning a real estate transaction conducted by him for inspection by the commission [~~Real Estate Commission~~] or its authorized personnel or representative;

(8) the licensee has failed within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of this Act; or

(9) the licensee has failed without just cause to surrender to the rightful owner, on demand, a document or instrument coming into his possession.

(d) The commission may not investigate under this section a complaint submitted more than four years after the date of the incident involving a real estate broker or salesman that is the subject of the complaint.

SECTION 1.09. Section 15B, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as amended by Chapters 169 and 615, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 15B. (a) Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of this Act unless expressly authorized by the commission after due consideration of the circumstances and determination by the commission that such measures are necessary to carry out the purposes of this Act. No investigations of licensees or any other actions against licensees shall be initiated on the basis of anonymous complaints whether in writing or otherwise but shall be initiated only upon the commission's own motion or a signed [~~verified~~] written complaint from a consumer or service recipient. Upon the adoption of such motion by the commission or upon receipt of such complaint, the licensee shall be notified promptly and in writing unless the commission itself, after due consideration, determines otherwise.

(b) In addition to any other authority granted by this Act, the commission may revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand [~~suspend or revoke a license or reprimand or place on probation~~] a licensee for a violation of this Act or a rule of the commission.

(c) [~~(b)~~] The commission may, upon majority vote, rule that an order revoking, cancelling, or suspending a license be probated upon reasonable terms and conditions determined by the commission.

(d) [~~(c)~~] If a license suspension or revocation is probated, the commission may require the licensee:

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

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

(3) to continue to renew professional education until the licensee attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

SECTION 1.10. Section 15C, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by Chapter 1171, Acts of the 71st Legislature, Regular Session, 1989, is renumbered as Section 15E and amended to read as follows:

Sec. 15E [~~15C~~]. Notwithstanding any other provision of this Act or any other law, a licensee shall have no duty to inquire about, make a disclosure related to, or release information related to whether a previous or current occupant of real property had, may have had, has, or may have AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the U. S. Public Health Service[~~, except that a person who has actual knowledge that the previous or current occupant of real property had or has AIDS, HIV-related illnesses, or HIV infection shall provide that information to a potential purchaser or lessee of the real property on receiving a specific request for the information from the potential purchaser or lessee~~].

SECTION 1.11. Subsections (b), (d), and (e), Section 16, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Notwithstanding the provisions of this Act or any other law, the completion of contract forms which bind the sale, exchange, option, lease, or rental of any interest in real property by a real estate broker or salesman incident to the performance of the acts of a broker as defined by this article does not constitute the unauthorized or illegal practice of law in this state, provided the forms have been promulgated for use by the commission [~~Texas Real Estate Commission~~] for the particular kind of transaction involved, or the forms have been prepared by an attorney at law licensed by this state and approved by said attorney for the particular kind of transaction involved, or the forms have been prepared by the property owner or prepared by an attorney and required by the property owner.

(d) The Texas Real Estate Broker-Lawyer Committee shall have 12 members including six members appointed by the commission [~~Texas Real Estate Commission~~] and six members of the State Bar of Texas appointed by the President of the State Bar of Texas. The members of the committee shall hold office for staggered terms of six years with the terms of two commission appointees and two State Bar appointees expiring every two years. Each member shall hold office until his successor is appointed. A vacancy for any cause shall be filled for the expired term by the agency making the original appointment. Appointments to the committee shall be made without regard to race, creed, sex, religion, or national origin.

(e) In the best interest of the public the commission may adopt rules and regulations requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the commission [~~Texas Real Estate Commission~~]; provided, however, that the commission [~~Texas Real Estate Commission~~] shall not prohibit a real estate broker or salesman from using a contract form or forms binding the sale, exchange, option, lease, or rental of any interest in real property which have been prepared by the property owner or prepared by an attorney and required by the property owner. For the purpose of this section, contract forms prepared by the

Texas Real Estate Broker-Lawyer Committee appointed by the commission and the State Bar of Texas and promulgated by the commission prior to the effective date of this Act shall be deemed to have been prepared by the Texas Real Estate Broker-Lawyer Committee. The commission may suspend or revoke a license issued under the provisions of this article when it has determined that the licensee failed to use a contract form as required by the commission pursuant to this section.

SECTION 1.12. Section 17, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. (a) If the commission proposes to suspend or revoke a person's license or registration, the person is entitled to a hearing before the commission or a hearings officer appointed by the commission. The commission shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commission [~~Before a license is suspended or revoked, the licensee is entitled to a public hearing~~]. The commission shall prescribe the time and place of the hearing. However, the hearing shall be held, if the licensee so desires, within the county where the licensee has his principal place of business, or if the licensee is a nonresident, the hearing may be called for and held in any county within this state. The hearing is governed by the procedures for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [~~notice calling the hearing shall recite the allegations against the licensee and the notice may be served personally or by mailing it by certified mail to the licensee's last known business address, as reflected by the commission's records, at least 10 days prior to the date set for the hearing. In the hearing, all witnesses shall be duly sworn and stenographic notes of the proceedings shall be taken and filed as a part of the records in the case. A party to the proceeding desiring it shall be furnished with a copy of the stenographic notes on the payment to the commission of a fee of $1.50 per page plus applicable sales tax and postage. After a hearing, the commission shall enter an order based on its findings of fact adduced from the evidence presented~~].

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records or documents. [~~The process issued by the commission may extend to all parts of the state, and the process may be served by any person designated by the commission. The person serving the process shall receive compensation to be allowed by the commission, not to exceed the fee prescribed by law for similar services. A witness subpoenaed who appears in a proceeding before the commission shall receive the same fees and mileage allowances as allowed by law, and the fees and allowances shall be taxed as part of the cost of the proceedings.~~

[~~(c) If, in a proceeding before the commission, a witness fails or refuses to attend on subpoena issued by the commission, or refuses to testify, or refuses to produce a record or document, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony and the production of the documents and records shall be enforced by a court of competent jurisdiction of this state in the same manner as the attendance, testimony of witnesses, and production of records are enforced in civil cases in the courts of this state.~~

[~~(d) If a hearing relating to the denial, suspension, or revocation of a license under this Act is conducted by the administrator or assistant administrator, the applicant for the license or the licensee who is adversely affected by the decision of the administrator or assistant administrator is entitled to request a rehearing by the commission itself on making a timely motion for the rehearing.~~]

SECTION 1.13. Section 18, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. [~~(a)~~] A person aggrieved by a ruling, order, or decision of the commission has the right to appeal to a district court in the county where the

hearing was held, and an appeal is governed by the procedures under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [~~within 30 days from the service of notice of the action of the commission.~~

[~~(b) The appeal having been properly filed, the court may request of the commission, and the commission on receiving the request shall within 30 days prepare and transmit to the court, a certified copy of its entire record in the matter in which the appeal has been taken. The appeal shall be tried in accordance with Texas Rules of Civil Procedure.~~

[~~(c) In the event an appeal is taken by a licensee or applicant, the appeal does not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.~~

[~~(d) If an aggrieved person fails to perfect an appeal as provided in this section, the commission's ruling becomes final~~].

SECTION 1.14. Subsections (b) and (c), Section 18B, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve.

(c) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, 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 authorized under Subsection (a) of Section 15B of this Act [~~relating to a real estate broker or salesman, the commission, at least as frequently as quarterly and until the complaint is finally resolved, shall inform the complainant and the person against whom the complaint is filed of the status of the complaint~~].

SECTION 1.15. The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) is amended by adding Section 19A to read as follows:

Sec. 19A. (a) If a person licensed under this Act violates this Act or a rule or order adopted by the commission under this Act, the commission may assess an administrative penalty against the person as provided by this section.

(b) The penalty for each violation shall be set in an amount not to exceed $1,000.

(c) In determining the amount of the penalty, the administrator named under Subsection (i) of Section 5 of this Act shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(d) If, after investigation of a possible violation and the facts surrounding that possible violation, the administrator determines that a violation has occurred, the administrator may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The administrator shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by the consideration of the factors set forth in Subsection (c) of this section.

(e) Not later than the 14th day after the date on which the report is issued, the administrator shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a

hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged may accept the determination of the administrator made under Subsection (d) of this section, including the recommended penalty, or make a written request for a hearing on the determination.

(g) If the person charged with the violation accepts the determination of the administrator, the commission shall issue an order approving the determination and ordering the payment of the recommended penalty.

(h) If the person charged requests a hearing or fails to timely respond to the notice, the administrator shall set a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the administrator. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, the commission by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The administrator shall give notice of the commission's order to the person charged. The notice shall include:

(1) the findings of fact and conclusions of law separately stated;

(2) the amount of the penalty ordered, if any;

(3) a statement of the right of the person charged to judicial review of the commission's order, if any; and

(4) other information required by law.

(j) Within the 30-day period immediately following the date on which the order becomes final as provided by Subsection (c), Section 16, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty:

(A) forward the amount to the administrator for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the administrator a supersedeas bond in a form approved by the administrator for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(k) If a person charged is financially unable either to forward the amount of the penalty for placement in an escrow account or post a supersedeas bond for the amount of the penalty, the person may satisfy the requirements of Subdivision (2) of Subsection (j) of this section by filing with the administrator an affidavit sworn by the person charged, stating that the person is financially unable either to forward the amount of the penalty or post a bond.

(l) Failure to forward the money to or to post the bond or file the affidavit with the administrator within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to pay the penalty in full as provided under Subdivision (1) of Subsection (j) of this section or forward the money, post the bond, or file the affidavit as provided by Subsection (j) or (k) of this section, the administrator may forward the matter to the attorney general for enforcement.

(m) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(n) If the penalty is reduced or not assessed by the court, the administrator shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the administrator under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the administrator under Subsection (j) of this section and ending on the date the penalty is remitted.

(o) A penalty collected under this section for a violation by a person licensed as a real estate broker or salesman shall be deposited in the real estate recovery fund. A penalty collected under this section for a violation by a person licensed or registered as a real estate inspector shall be deposited in the real estate inspection recovery fund.

ARTICLE 2. REAL ESTATE INSPECTORS

SECTION 2.01. The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) is amended by adding Section 23 to read as follows:

Sec. 23. REAL ESTATE INSPECTORS. (a) DEFINITIONS. In this section:

(1) "Apprentice inspector" means a person who is in training under the direct supervision of a real estate inspector or inspector-in-training to become qualified to perform real estate inspections.

(2) "Committee" means the Texas Real Estate Inspector Committee.

(3) "Core real estate inspection courses" means educational courses approved by the commission, including structural, electrical, mechanical, plumbing, roofing, and ethical courses of study.

(4) "Direct supervision" means the instruction and control by a real estate inspector or inspector-in-training licensed under this section who is:

(A) responsible for the actions of an individual performing a real estate inspection;

(B) available if and when needed to consult with or assist an individual performing a real estate inspection; and

(C) physically present at the time and place of the inspection.

(5) "Indirect supervision" means the instruction and control by a real estate inspector licensed under this section who is:

(A) responsible for the actions of an individual performing a real estate inspection; and

(B) available if and when needed to consult with or assist an individual performing a real estate inspection, but who is not required to be physically present at the time and place of the inspection.

(6) "Inspector-in-training" means a person who represents to the public that the person is trained and qualified to perform a real estate inspection under the indirect supervision of a real estate inspector and who accepts employment for the purpose of performing a real estate inspection for a buyer or seller of real property.

(7) "License" means a real estate inspector license or an inspector-in-training license issued under this section.

(8) "Licensee" means a person holding a real estate inspector license or inspector-in-training license issued under this section.

(9) "Real estate inspection" means a written or oral opinion as to the condition of the improvements to real property, including structural items, equipment, and systems.

(10) "Real estate inspector" means a person who represents to the public that the person is trained and qualified to perform real estate inspections and who accepts employment for the purpose of performing a real estate inspection for a buyer or seller of real property.

(11) "Registered" means a person who holds a registration as an apprentice inspector issued under this section.

(b) TEXAS REAL ESTATE INSPECTOR COMMITTEE. (1) The Texas Real Estate Inspector Committee is created. In addition to other powers and duties delegated to it by the commission, the committee shall recommend:

(A) rules for the registration and licensing of apprentice inspectors, inspectors-in-training, and real estate inspectors in this state in accordance with this section;

(B) rules relating to the education and experience requirements for registration and licensing as an apprentice inspector, inspector-in-training, and real estate inspector;

(C) rules relating to the qualifying examination required for registration or licensing as an inspector under this section;

(D) rules establishing a code of professional conduct and ethics for an apprentice inspector, inspector-in-training, and real estate inspector;

(E) reasonable fees to implement this section, including an application fee for registration or licensing, an examination fee, a renewal fee for a registration or license, and any other fee required by law;

(F) rules relating to continuing education requirements for a registered or licensed inspector;

(G) rules relating to the standards of practice for a real estate inspection;

(H) rules relating to granting or denying an application for the registration of an apprentice inspector and licensing of an inspector-in-training and real estate inspector;

(I) the form and format for any applications and forms required under this section; and

(J) any other action by the commission as may provide a high degree of service and protection to the public when dealing with registered or licensed inspectors.

(2) The committee is composed of nine members appointed by the commission. The members of the committee hold office for staggered terms of six years, with the terms of three members expiring February 1 of each odd-numbered year. Each member holds office until the member's successor is appointed. Appointments to the committee shall be made without regard to the sex, race, color, age, handicap, religion, or national origin of the appointees. In the event of a vacancy during a term, the commission shall appoint a replacement who meets the qualifications for appointment under this subdivision to fill the unexpired part of the term. A member of the committee must be a licensed real estate inspector actively engaged in the practice of real estate inspecting at the time of appointment and must have been primarily engaged in the real estate inspection business for at least five years before the member's appointment. A member of the committee may not hold a real estate broker or salesman license. Each member of the committee is entitled to a per diem allowance and to reimbursement of travel expenses necessarily incurred in performing functions as a member of the committee, subject to any applicable limitation in the General Appropriations Act. The committee shall annually elect from its members a chairman, a vice-chairman, and secretary.

(3) The commission shall adopt procedural rules to be used by the committee in implementing its powers and duties.

(4) The committee is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(5) The committee shall meet semiannually and at the call of the commission. The committee may also meet at the call of a majority of its members.

(6) The committee shall develop and recommend to the commission for approval the rules of the commission under this section. The committee periodically shall review commission rules relating to this section and recommend changes in the rules to the commission. Notwithstanding Subsection (f), Section 5, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commission shall submit all proposed rules and all proposed changes and additions to the rules that relate to the regulation and licensing of real estate inspectors under this section to the committee for development. If the commission does not approve a rule developed by the committee, the commission shall indicate to the committee the reasons that the commission did not approve the rule and return the rule to the committee for further development.

(c) LICENSE OR REGISTRATION REQUIRED. (1) A person may not act or attempt to act as a real estate inspector in this state for a buyer or seller of real property unless the person possesses a real estate inspector license issued under this section.

(2) A person may not act or attempt to act as an inspector-in-training in this state for a buyer or seller of real property unless the person possesses an inspector-in-training license issued under this section and is under the indirect supervision of a real estate inspector.

(3) A person may not act or attempt to act as an apprentice inspector in this state for a buyer or seller of real property unless the person is registered under this section and is under the direct supervision of a real estate inspector or inspector-in-training.

(d) ELIGIBILITY; APPLICATION. (1) To be eligible for registration as an apprentice inspector, an applicant must be an individual, a citizen of the United States or a lawfully admitted alien, and a resident of this state for at least 60 days immediately before the date of filing the application. The applicant must be sponsored by a real estate inspector licensed under this section. The applicant must be at least 18 years old.

(2) To be eligible for a license as an inspector-in-training, an applicant must have met the requirements and be registered as an apprentice inspector for at least three months and have performed at least 25 real estate inspections under direct supervision before filing an application. The applicant must satisfy the commission as to the applicant's honesty, trustworthiness, integrity, and competency. An applicant for an original inspector-in-training license must submit satisfactory evidence to the commission of successful completion of not less than 90 classroom hours of core real estate inspection courses. The commission shall determine the competency of an applicant on the basis of an examination required by Subsection (i) of this section. The applicant must be sponsored by a real estate inspector licensed under this section.

(3) To be eligible for a license as a real estate inspector, an applicant must have met the requirements and have been registered as an apprentice inspector for at least three months and licensed as an inspector-in-training for at least 12

months and have performed at least 175 real estate inspections under indirect supervision before filing an application. An applicant for an original real estate inspector license must submit satisfactory evidence to the commission of successful completion of not less than 30 classroom hours of core real estate inspection courses and eight classroom hours related to the study of standards of professional practice and ethics related to the profession of real estate inspections. These classroom hours are in addition to those required for registration as an apprentice inspector or licensing as an inspector-in-training. The commission shall determine the competency of an applicant on the basis of an examination required by Subsection (i) of this section.

(4) An applicant must file an application for registration or a license with the commission on forms prescribed by the commission.

(e) ISSUANCE OF REGISTRATION OR LICENSE. The commission shall issue an apprentice registration, an inspector-in-training license, or a real estate inspector license to an applicant who possesses the required qualifications, passes the appropriate examination, and pays the fee required by Subdivision (2) of Subsection (o) of this section.

(f) EXPIRATION OF REGISTRATION OR LICENSE; RENEWAL. (1) A registration or license issued under this section expires one year after the date it is issued.

(2) A person may renew an unexpired registration or license by paying to the commission before the expiration date of the registration or license the required renewal fee.

(3) If a person's registration or license has been expired for 90 days or less, the person may renew the registration or license by paying to the commission the required renewal fee and a fee that is one-half of the examination fee, if any, for the registration or license.

(4) If a person's registration or license has been expired for longer than 90 days but less than one year, the person may renew the registration or license by paying to the commission all unpaid renewal fees and a fee that is equal to the examination fee, if any, for the registration or license.

(5) If a person's registration or license has been expired for one year or longer, the person may not renew the registration or license. The person may obtain a new registration or license by submitting to reexamination, if originally required, and complying with the requirements and procedures for obtaining an original registration or license. However, the commission may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the one year preceding application. The person must pay to the commission a fee that is equal to the examination fee for the license.

(6) At least 30 days before the expiration of a person's registration or license, the commission shall send written notice of the impending registration or license expiration to the person at the person's last known address according to the records of the commission.

(g) CHANGE OF ADDRESS. A licensee or person registered under this section shall notify the commission and pay the required fee within 30 days after the date a change of place of business occurs.

(h) FEES. (1) The commission shall charge and collect reasonable and necessary fees to recover the cost of administering this section as follows:

(A) a fee not to exceed $75 for the filing of an original application for registration as an apprentice inspector;

(B) a fee not to exceed $125 for the filing of an original application for a license as an inspector-in-training;

(C) a fee not to exceed $150 for the filing of an original application for a license as a real estate inspector;

(D) a fee not to exceed $125 for the annual registration renewal of an apprentice inspector;

(E) a fee not to exceed $175 for the annual license renewal of an inspector-in-training;

(F) a fee not to exceed $200 for the annual license renewal of a real estate inspector;

(G) a fee not to exceed $100 for taking a license examination; and

(H) a fee not to exceed $20 for a request for a change of place of business or to replace a lost or destroyed license or registration.

(2) All fees may be paid by cash, check, cashier's check, or money order.

(3) The fees shall be reviewed annually and reduced to the extent that the costs of administering this section are funded by the real estate inspector regulation account established under Subdivision (4) of Subsection (o) of this section.

(i) EXAMINATION. (1) The commission shall prescribe the licensing examinations, which shall be prepared by or contracted for by the commission. A licensing examination shall evaluate competency in the subject matter of all required core real estate inspection courses. The licensing examination shall be offered not less often than once every two months in Austin. If a license applicant fails the examination, the applicant may apply for reexamination by filing a request with the commission and paying the examination fee. Each license applicant must satisfy the examination requirement not later than six months after the date on which the license application is filed. A license applicant who fails to satisfy the examination requirement within six months after the date on which the license application is filed must submit a new license application with the commission and pay the examination fee to be eligible for examination.

(2) Not later than the 30th day after the date on which a licensing examination is administered under this section, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day.

(3) If requested in writing by a person who fails a licensing examination administered under this section, the commission shall furnish the person with an analysis of the person's performance on the examination.

(j) WAIVER FOR OUT-OF-STATE APPLICANTS. The commission may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(k) CONTINUING EDUCATION PROGRAMS. The commission shall recognize, prepare, or administer continuing education programs for inspectors. Participation in the programs is mandatory. An inspector-in-training must submit satisfactory evidence to the commission of successful completion of at least four classroom hours of core real estate inspection courses annually before a license renewal is issued. A real estate inspector must submit satisfactory evidence to the commission of successful completion of at least eight classroom hours of core related real estate inspection courses annually before a license renewal is issued.

(l) PROHIBITED ACTS. A real estate inspector or inspector-in-training licensed under this section or an apprentice inspector registered under this section may not:

(1) accept an assignment for real estate inspection if the employment or fee is contingent on the reporting of a specific, predetermined condition of the improvements to real property or is contingent on the reporting of specific findings other than those known by the inspector to be facts at the time of accepting the assignment;

(2) act in a manner or engage in a practice that is dishonest or fraudulent or that involves deceit or misrepresentation;

(3) perform a real estate inspection in a negligent or incompetent manner;

(4) act in the dual capacity of real estate inspector and undisclosed principal in a transaction;

(5) act in the dual capacity of real estate inspector and real estate broker or salesman;

(6) perform or agree to perform any repairs or maintenance in connection with a real estate inspection pursuant to the provisions of any earnest money contract, lease agreement, or exchange of real estate; or

(7) violate the rules adopted by the commission or any provisions of this section.

(m) OFFENSES. (1) A person commits an offense if the person knowingly or intentionally engages in the business of real estate inspecting without a license or registration under this section or performs an inspection during a period in which the inspector's license or registration is revoked or suspended.

(2) An offense under this subsection is a Class B misdemeanor.

(3) The commission shall authorize the committee to conduct administrative hearings and recommend the entry of final orders in contested cases regarding a registered or licensed real estate inspector.

(4) The commission may investigate the actions of a registered or licensed real estate inspector and may, after notice and hearing in accordance with the provisions of Section 17 of this Act, suspend or revoke a registration or license for a violation of this Act or a rule of the commission. If the commission revokes a registration or license of a person, the person may not apply to the commission for one year after the revocation.

(n) EXEMPTIONS. This section does not apply to any electrician, plumber, carpenter, any person engaged in the business of structural pest control in compliance with the Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), or any other person who repairs, maintains, or inspects improvements to real property and who does not represent to the public through personal solicitation or public advertising that the person is in the business of inspecting such improvements. The provisions of this section shall not be construed so as to prevent any person from performing any and all acts which the person is authorized to perform pursuant to a license issued by this state or any governmental subdivision of this state.

(o) REAL ESTATE INSPECTION RECOVERY FUND. (1) The commission shall establish a real estate inspection recovery fund, which shall be set apart and maintained by the commission as provided by this subsection. The fund shall be used in the manner provided by this subsection for reimbursing aggrieved persons who suffer actual damages by reason of certain acts committed by a duly licensed or registered real estate inspector, provided the real estate inspector was licensed or registered by the State of Texas at the time the act was committed and provided recovery is ordered by a court of competent jurisdiction against the real estate inspector. The use of the fund is limited to an act that is a violation of Subsection (l) of this section.

(2) When a person receives notice that the person has successfully completed the licensing examination provided by Subsection (i) of this section, the

person shall pay, in addition to any other fees required by this section, a fee not to exceed $200, which shall be deposited in the real estate inspection recovery fund prior to the commission's issuing the person a real estate inspector license.

(3) If on December 31 of any year the balance remaining in the real estate inspection recovery fund is less than $300,000, each real estate inspector, on the next renewal of the person's license, shall pay, in addition to the license renewal fee, a fee of $75, or a pro rata share of the amount necessary to bring the fund to $450,000, whichever is less, which shall be deposited in the real estate inspection recovery fund.

(4) If on December 31 of any year the balance remaining in the real estate inspection recovery fund is greater than $600,000, the amount of money in excess of $600,000 shall be transferred to a separate account in the general revenue fund to be known as the real estate inspector regulation account. The money in the real estate inspector regulation account may be used only for the payment of costs incurred by the commission in the regulation of real estate inspectors.

(5) No action for a judgment that results in an order for collection from the real estate inspection recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment that may result in collection from the real estate inspection recovery fund, the real estate inspector shall notify the commission in writing to this effect at the time of the commencement of the action.

(6) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a real estate inspector on the grounds described in Subdivision (1) of this subsection, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commission and to the judgment debtor, may apply to the court where the judgment was rendered for an order directing payment out of the real estate inspection recovery fund of the amount unpaid on the judgment, subject to the limitations stated in Subdivision (15) of this subsection.

(7) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show:

(A) that the judgment is based on facts allowing recovery under Subdivision (1) of this subsection;

(B) that the person is not a spouse of the debtor or the personal representative of the spouse and the person is not a real estate inspector, as defined by this section;

(C) that the person has obtained a judgment under Subdivision (6) of this subsection that is not subject to a stay or discharge in bankruptcy, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(D) that based on the best information available, the judgment debtor lacks sufficient attachable assets in this state or any other state to satisfy the judgment; and

(E) the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(8) The court shall make an order directed to the commission requiring payment out of the real estate inspection recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this subdivision, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Subdivision (7) of this subsection and that the aggrieved person has satisfied all the requirements

of Subdivisions (6) and (7) of this subsection. The commission may relitigate any issue material and relevant in the hearing on the application that was determined in the underlying action on which the judgment in favor of the applicant was based. If the court finds that the aggregate of claims against a real estate inspector exceeds the limitations contained in this section, the court shall reduce proportionately the amount it finds payable on the claim.

(9) A recovery on the judgment against a single defendant made before payment from the real estate inspection recovery fund must be applied by the creditor first to actual damages.

(10) A license or registration granted under the provisions of this section may be revoked by the commission on proof that the commission has made a payment from the real estate inspection recovery fund of any amount toward satisfaction of a judgment against a licensed or registered real estate inspector. The commission may probate an order revoking a license or registration. No real estate inspector is eligible to receive a new license or registration until the person has repaid in full, plus interest at the current legal rate, the amount paid from the real estate inspection recovery fund on the person's account.

(11) The sums received by the commission for deposit in the real estate inspection recovery fund shall be held by the commission in trust for carrying out the purpose of the real estate inspection fund. These funds may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from these investments shall be deposited to the credit of the real estate inspection recovery fund. However, investments may not be made that will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this subsection.

(12) When the commission receives notice of entry of a final judgment and a hearing is conducted under Subdivision (8) of this subsection, the commission may notify the Attorney General of Texas of the commission's desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate. In taking such action, the commission and the attorney general shall act only to protect the fund from spurious or unjust claims or to ensure compliance with the requirements for recovery under this subsection.

(13) When, on the order of the court, the commission has paid from the real estate inspection recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission. The amount paid by the commission shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount in interest recovered by the commission on the judgment shall be deposited to the fund.

(14) The failure of an aggrieved person to comply with the provisions of this subsection relating to the real estate inspection recovery fund shall constitute a waiver of any rights under this subsection.

(15) Notwithstanding any other provision, payments from the real estate inspection recovery fund are subject to the following conditions and limitations:

(A) payments may be made only pursuant to an order of a court of competent jurisdiction, as provided by Subdivision (6) of this subsection, and in the manner prescribed by this subsection;

(B) payments for claims, including attorney fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to $7,500 regardless of the number of claimants; and

(C) payments for claims based on judgments against a licensed or registered real estate inspector may not exceed in the aggregate $15,000 until the fund has been reimbursed by the licensee for all amounts paid.

(16) Nothing contained in this subsection shall limit the authority of the commission to take disciplinary action against a person licensed or registered under this section for a violation of this section or the rules of the commission, nor shall the repayment in full of all obligations to the real estate inspection recovery fund by a person nullify or modify the effect of any other disciplinary proceeding brought pursuant to this section.

(17) A person receiving payment out of the real estate inspection recovery fund under Subdivision (15) of this subsection shall be entitled to receive reasonable attorney fees as determined by the court, subject to the limitations stated in that subdivision.

(18) A real estate inspector licensed or registered under this section shall notify consumers and service recipients of the availability of the real estate inspection recovery fund established under this section for reimbursing certain aggrieved persons. The notice must include the name, mailing address, and telephone number of the commission and any other information required by commission rule. The notification may be provided:

(A) on a written contract for the services of a real estate inspector;

(B) on a brochure distributed by a real estate inspector;

(C) on a sign prominently displayed in the place of business of a real estate inspector; or

(D) in a bill or receipt for service provided by a real estate inspector.

ARTICLE 3. WORKERS' COMPENSATION

SECTION 3.01. The Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 3.055 to read as follows:

Sec. 3.055. APPLICATION TO CERTAIN REAL ESTATE SALESMEN AND BROKERS LICENSED UNDER THE REAL ESTATE LICENSE ACT. Notwithstanding any other provision of this Act, an employer that elects workers' compensation coverage may, but is not required to, include in the coverage a real estate salesman or broker licensed under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) and compensated solely by commissions. If coverage is elected by the employer, the insurance contract must specifically include the salesman or broker, and the elected coverage shall continue while the policy is in effect and while the named salesman or broker is endorsed on the policy by the employer.

ARTICLE 4. REPEALER, TRANSITION, AND MISCELLANEOUS PROVISIONS

SECTION 4.01. Sections 18C and 21, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are repealed.

SECTION 4.02. (a) The change in law made by this Act in the qualifications of persons appointed to the Texas Real Estate Commission apply only to a member appointed on or after September 1, 1991.

(b) The first policy statement required to be filed under Subsection (v), Section 5, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1991.

SECTION 4.03. (a) In making the initial appointments to the Texas Real Estate Inspector Committee established under Section 23, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by this Act, the Texas Real Estate Commission shall designate three members for terms expiring in 1993,

three members for terms expiring in 1995, and three members for terms expiring in 1997.

(b) A person currently licensed as a real estate inspector on the effective date of this Act is eligible to obtain a license as a real estate inspector if the person:

(1) provides certification acceptable to the commission of having completed 75 real estate inspections in the 12 months before renewal of the real estate inspector's license;

(2) within 18 months submits satisfactory evidence to the commission of successful completion of 38 classroom hours of core real estate inspection courses in addition to those classroom hours required for an original license before the effective date of this Act; and

(3) before sponsoring an apprentice inspector or an inspector-in-training, provides certification acceptable to the commission of having performed at least 200 real estate inspections, having performed inspections as a licensed real estate inspector for at least 15 months, and having completed the requirements of Subdivision (2) of this subsection.

(c) If a person licensed as a real estate inspector on the effective date of this Act is unable to meet these requirements, a transitional license shall be issued for 12 months and may not be renewed. During the period the transitional license is effective and before issuance of a real estate inspector's license, the person must provide certification acceptable to the commission of having completed 75 real estate inspections.

(d) All qualifying inspections completed during the 12 months before renewal shall be counted toward the 75 inspections required under this section.

SECTION 4.04. This Act takes effect September 1, 1991.

SECTION 4.05. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 935 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **S.B. 935**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1664

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1664** have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass.

BIVINS	STILES
SIMS	PLACE
KRIER	TELFORD
BROWN	HIGHTOWER
LUCIO	CHISUM
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE ON HOUSE BILL 2482

Senator Parker 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. 2482** 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. 2482** 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 Parker, Chair; Montford, Haley, Green, Barrientos.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 772 ADOPTED

Senator Henderson called from the President's table the Conference Committee Report on **S.B. 772**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Henderson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1129 ADOPTED

Senator Tejeda called from the President's table the Conference Committee Report on **S.B. 1129**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Tejeda, the Conference Committee Report was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.J.R. 8**: Gibson, Chair; Hury, Laney, Wolens, Crawford.

The House has adopted the Conference Committee Report on **H.B. 549** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1664** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1744** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 383** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 873** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 1480** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2110 ADOPTED

Senator Montford called from the President's table the Conference Committee Report on **H.B. 2110**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Montford, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Ratliff.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 430

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 430** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN	BLACK
BROOKS	HARTNETT
WHITMIRE	NAISHTAT
	A. HILL
	SMITHEE
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and operation of the State Board of Barber Examiners and the regulation of the practice of barbering; providing penalties.

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

SECTION 1. Section 7, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for registration as a Class A registered barber:

(1) [~~(a)~~] being at least 16 years of age; and

(2) [~~(b)~~] successfully passing a written and practical examination demonstrating to the satisfaction of the board the applicant's fitness and competence to practice the art and science of barbering.

SECTION 2. Section 9, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (e), and (t) and adding Subsections (u), (v), (w), (x), and (y) to read as follows:

(a) Any person desiring to conduct or operate a barber school or college in this state shall first obtain a permit from the board after demonstrating that said school or college has first met the requirements of this section. Said permit shall be prominently displayed at all times at such school or college. The board shall determine that an applicant for a barber school or college permit is financially sound and capable of fulfilling its commitments for training before granting the permit. Each applicant shall furnish a surety bond in the amount of $10,000, payable to the state, and conditioned to refund unpaid tuition if the school or college closes or ceases operation before its courses of instruction have been completed.

(e) A barber school or college shall submit a monthly progress report to the board regarding each student in attendance at the school or college. The report must certify the daily attendance record of the student and the number of credit hours earned by the student during the previous month. The school or college may not increase, decrease, or withhold for any reason the number of credit hours earned by a student. On completion by a student of a prescribed course of instruction, the school or college shall certify to the board that the student has completed the required number of hours and is eligible to take the appropriate examination. Each barber school or college permittee shall furnish to the board:

(1) the current course completion rates of students who attend a course of instruction offered by the school or college; and

(2) job placement rates and employment rates of students who complete a course of instruction.

(t) The Attorney General [~~or any District or County Attorney~~] may institute any injunction proceedings or such other proceeding as to enforce the provisions of this Act, and to enjoin any barber or school or college from operating without having complied with the provisions hereof, and each shall forfeit to the State of Texas the sum of Twenty-five Dollars ($25) per day as a penalty for each day's violation, to be recovered in a suit by the [~~District or County Attorney, and/or the~~] Attorney General. An action for an injunction under this section must be brought in Travis County.

(u) A holder of a barber school or college permit shall furnish each prospective student with:

(1) a copy of the course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the refund policy imposed under Section 9A of this Act;

(4) regulations relating to absences;

(5) the grading policy;

(6) the rules of operation and conduct;

(7) regulations relating to incomplete grades;

(8) the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; and

(9) the current rates of job placement and employment of students who complete a course of training.

(v) A holder of a barber school or college permit shall publish in its catalogue and enrollment contract a description of the refund policy required under Section 9A of this Act.

(w) If the board has reasonable cause to believe that a barber school or college has violated this Act or a rule adopted under this Act, the board may order a peer review of the school or college or suspend the admission of students to the school or college. A peer review ordered under this subsection shall be conducted by a peer review team composed of knowledgeable persons selected by the board. The board shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states. The team shall provide the board with an objective assessment of the content of the curriculum and its application. The school or college under review shall pay the costs of the peer review.

(x) A barber school or college must submit to the board for approval the course lengths and curriculum content for each course offered by the school or college. The course lengths and content may not be implemented unless the board approves them. The course lengths and content shall reasonably ensure that students develop the job skills and knowledge necessary for employment. The board shall require a school or college to account fully for all curriculum contents and course lengths before issuing or renewing a permit, and a school or college that is manipulating course lengths below or above industry standards shall be placed on probation until justification for the deviation is proved or the practice ceases.

(y) A barber school or college that violates this Act or a rule adopted under this Act is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. The civil penalty may not exceed $1,000 a day for each violation. The Attorney General, at the request of the board, may bring a civil action to collect a civil penalty under this subsection. Civil penalties recovered in a suit brought under this subsection shall be deposited in the state treasury to the credit of the General Revenue Fund.

SECTION 3. Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by adding Section 9A to read as follows:

Sec. 9A. (a) Each holder of a barber school or college permit must maintain a cancellation and settlement policy that provides a full refund of all money paid by a student if:

(1) the student cancels the enrollment agreement or contract not later than midnight of the third day after the date on which the agreement or contract is signed by the prospective student, excluding Saturdays, Sundays, and legal holidays; or

(2) the enrollment of the student was procured as a result of a misrepresentation made in the advertising or promotional materials of the school or college or a representation by an owner or representative of the school or college.

(b) Each holder of a barber school or college permit must maintain a refund policy for the refund of the unused part of tuition, fees, and other charges assessed a student if the student, at the expiration of the cancellation period established

under Subsection (a) of this section, fails to enter the course of training, withdraws from the course of training, or is terminated from the course of training before completion of the course. The refund policy must provide that:

(1) a refund is based on the period of the student's enrollment, computed on the basis of course time expressed in clock hours;

(2) the effective date of the termination for refund purposes is the earliest of:

(A) the last date of attendance, if the student is terminated by the school or college;

(B) the date of receipt by the permit holder of written notice of withdrawal by the student; or

(C) 10 school days after the last date of attendance; and

(3) if tuition is collected before beginning the course of training and if, after the expiration of the cancellation period, the student does not begin the course of training, the school or college may retain not more than $100.

(c) If a student who begins a course of training that is scheduled to run not more than 12 months withdraws from the course or is terminated from the course by the school or college, the barber school or college may retain $100 in tuition and fees paid by that student and is not obligated to refund any additional outstanding tuition if the student withdraws or is terminated during the last 50 percent of the course. If the student withdraws or is terminated before the last 50 percent of the course begins, the school or college shall refund the following percentages of any outstanding tuition:

(1) for withdrawal or termination occurring during the first week or first one-tenth of the course, whichever is less, 90 percent;

(2) for withdrawal or termination occurring after the first week or first one-tenth of the course, whichever is less, but within the first three weeks of the course, 80 percent;

(3) for withdrawal or termination occurring after the first three weeks of the course but not later than the last date of the first 25 percent of the course, 75 percent; and

(4) for withdrawal or termination occurring not later than the completion of the second 25 percent of the course, 50 percent.

(d) For students withdrawing or terminating after 50 percent of the course has been completed, the school must allow that student to reenter at any time during the 48-month period following the date of withdrawal or termination.

(e) A refund owed under this section must be paid not later than the 30th day after the date on which the student becomes eligible for the refund.

(f) If a refund is not made within the period required by this section, the school or college shall pay interest on the refund for the interval beginning with the first day following the expiration of the refund period and ending with the day immediately preceding the date the refund is made. If the refund is made to a lending institution, the interest shall also be paid to that institution and applied against the student's loan. The commissioner of education annually shall establish the level of interest at a level sufficient to provide a deterrent to the retention of student funds. The board may exempt a school or college from the payment of the interest if the school or college makes a good faith effort to refund the tuition but is unable to locate the student. The school or college shall provide to the agency on request documentation of the effort to locate the student.

(g) A barber school or college shall record a grade of "incomplete" for a student who withdraws but is not entitled to a refund under Subsection (c) of this section if the student requests the grade at the time the student withdraws and the student withdraws for an appropriate reason unrelated to the student's academic status. A student who receives a grade of incomplete may reenroll in the program during the

48-month period following the date the student withdraws and may complete those incomplete subjects without payment of additional tuition.

SECTION 4. Section 10, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. (a) Each applicant for an examination shall:

(1) apply [~~(a) Make application~~] to the Board on blank forms prepared and furnished by the Board for an examination before the Board, which application shall be in such form and shall contain such matters as may be required by the Board, and shall be verified by the oath of said applicant;[:]

(2) [~~(b) Each applicant shall at the time of the presentation of the application~~] furnish to the Board at the time of application photographs of such applicant, one to accompany the application and one to be returned to the applicant to be presented to the Board when applicant appears for examination; and[:]

(3) [~~(c) Each applicant shall at the time of the presentation of the application~~] pay to the Board at the time of application the fee required under this Act.

(b) Not later than the 30th day after the date on which an examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination not later than the 14th day after the date on which the Board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the examination, the Board shall furnish the person with an analysis of the person's performance on the examination.

(c) The [~~(d) Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested in writing by a person who fails the examination, the Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.~~

[~~(e) On a reciprocal basis with other states or countries, the~~] Board may waive any license requirement for [~~issue, without examination, a certificate, license, or permit to~~] an applicant with a valid [~~who has a corresponding certificate;~~] license from[~~, or permit issued by~~] another state or country having [~~standards for the certificate;~~] license requirements[~~, or permit that are at least~~] substantially equivalent to those of this state [~~and who pays the fee prescribed by this Act~~]. The Board may not require a personal interview as part of the application process.

SECTION 5. Section 11, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The Board shall examine [~~conduct examination of~~] applicants for certificates of registration to practice as Class A registered barbers and [~~of applicants to enter~~] barber teachers [~~schools to determine their educational fitness;~~] not less than four times each year, at such times and places as the Board may determine and designate. The Board shall use a written examination, selected by the Board, to examine applicants. The examination shall include a practical examination [~~of applicants for certificates of registration as Class A registered barbers shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the Board~~]. The written examination must be validated by independent testing professionals or be purchased from a national testing service.

(c) On receipt of a written request by a student, the Board may provide for the early written examination of a Class A registered barber or barber teacher student who has completed at least 1,000 hours of instruction in a training program approved by the Board. Agency inspectors may administer an examination conducted under this subsection on-site at barber schools and colleges throughout the state.

SECTION 6. Subsections (b) and (c), Section 14, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a barber technician license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed a course of instruction through a training program approved by the Board of not less than 300 hours in a period of not less than eight weeks. The course must include the theory and practice of the following subjects:

(1) all laws governing the practice of barbering in this state;
(2) hygienic bacteriology;
(3) histology of the skin, muscles, and nerves;
(4) the structure of the head, neck, and face;
(5) elementary chemistry relating to sterilization and antiseptics;
(6) common disorders of the skin;
(7) massaging and manipulating muscles of the scalp, face, and neck;
(8) shampooing;
(9) administering facial treatments;
(10) preparing patrons and making appointments; and
(11) any other skills, techniques, services, treatments, or undertakings within the definition of the practice of barbering under Subsection (a) of this section.

(c) The application must be made on a form prescribed by the Board, accompanied by the $10 administration fee. [~~The application and fee must be filed not later than the 10th day before the date set for the examination.~~]

SECTION 7. Subsections (b) and (c), Section 15, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a manicurist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 300 hours instruction in manicuring through a training program approved by the board.

(c) The application shall be made on a form prescribed by the board and a $10 administration fee must accompany the application. [~~The application and fee shall be filed at least 10 days prior to the date set for the examination.~~]

SECTION 8. Subsections (b) and (c), Section 16, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a wig specialist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 300 hours of instruction through a training program approved by the board in the care and treatment of wigs.

(c) The application shall be made on a form prescribed by the commission and a $10 administration fee must accompany the application. [~~The application and fee must be filed at least 10 days prior to the date set for the examination.~~]

SECTION 9. Subsections (b) and (c), Section 17, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An applicant for a wig instructor license must have a valid wig specialist license and have completed 200 hours of instruction through a training program approved by the board in advanced wig courses and methods of teaching.

(c) The application shall be made on a form prescribed by the board and a $5 administration fee must accompany the application. [~~The application and fee must be filed at least 10 days prior to the date set for the examination.~~]

SECTION 10. Section 20b, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20b. The board by rule may adopt a system under which certificates or licenses expire on various dates during the year. For the year in which the expiration date is changed, certificate renewal or license fees payable on November 1 shall be prorated on a monthly basis so that each certificate or license holder shall pay only that portion of the certificate or license renewal fee which is allocable to the number of months during which the certificate or license is valid. On renewal of the certificate or license on the new expiration date, the total certificate or license renewal fee is payable.

SECTION 11. Section 21, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. (a) The board shall either refuse to issue or to renew, or shall suspend or revoke any certificate of registration or license for any one of, or a combination of the following causes:

(1) [~~(A)~~] Gross malpractice;

(2) [~~(B)~~] Continued practice by a person knowingly having an infectious or contagious disease;

(3) [~~(C)~~] Advertising by means of knowingly making false or deceptive statements;

(4) [~~(D)~~] Advertising, practicing, or attempting to practice under another's trade name or another's name; or

(5) [~~(E) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;~~

[~~(F)~~] The commission of any of the offenses described in Section 24 of this Act.[;]

(b) [~~(G)~~] No certificate or license shall be issued or renewed, unless and until each applicant shall present a health certificate from a practicing doctor of medicine or doctor of osteopathic medicine showing that the applicant is free from any kind of infectious or contagious diseases[~~, tuberculosis, communicable diseases, and free from the use of any kind of morphine, cocaine, or other habit-forming drug, or a habitual drunkard and that said applicant shall make affidavit to said doctor that all of the said facts are true~~].

SECTION 12. Section 22, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22. (a) If a barber inspector believes that any of the grounds specified in Section 21 exist, or that the holder of a certificate, license, or permit has failed to comply with any of the requirements of this Act, he shall notify the holder of the certificate, license, or permit of that fact and summons him to appear for hearing as provided in this section. The hearing shall be had not less than twenty (20) days after notification in writing to the holder of the certificate, license, or permit, specifying the violation or non-compliance alleged. For the purpose of hearing such cases concurrent jurisdiction is vested in the county court of the county where the holder of the certificate, license, or permit resides and in the county court of the county where the violation allegedly occurred. The court may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. The holder of the certificate, license, or permit shall have the right to be represented by counsel. At the hearing, the board shall be represented by the

attorney general, district attorney, or county attorney. At such a hearing the issue to be determined is whether any grounds exist under Section 21 for denial, refusal to renew, suspension, or revocation of the certificate, license, or permit. The judge who presides at the hearing shall report his finding to the board, which may, if the finding warrants, deny, suspend, revoke, or refuse to renew the certificate, license, or permit.

(b) If the board proposes to suspend, revoke, or refuse to issue or renew a license, registration, certificate, or permit, the person is entitled to a hearing before the board or a hearings officer appointed by the board. The board shall prescribe procedures by which such decisions are made by or are appealable to the board.

(c) If, after due notice and hearing, the board denies, revokes, or refuses to renew any certificate, license, or permit, the holder thereof shall have the right to appeal from the order of the board. An appeal under this subsection is subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). [~~Any appeals filed hereunder shall be filed within 20 days from the date of the order of the board in a district court of the county where the person filing such appeal has his residence, or in any of the district courts of Travis County, Texas. In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act.~~]

SECTION 13. Section 26, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. (a) The State Board of Barber Examiners is composed [~~hereby created and shall consist~~] of six members appointed by the governor with the advice and consent of the senate.

(b) Two [~~The board shall be composed of the following: two~~] members shall be Class A barbers actually and actively engaged in the practice of barbering for at least five years prior to being appointed and while serving as members of the board [~~and~~] who are not holders of [a] barber shop permits [~~permit~~] issued by the board, one of whom must be a resident of a county with a population of 25,000 or less, according to the most recent federal census,[;] one member shall be a barber shop owner holding a permit issued by the board and who is actively and actually engaged in the practice of barbering for at least five years prior to being appointed and while serving as a member of the board, and[;] one member shall be a person holding a permit from the board to conduct or operate a barber school or college. The remaining[~~; and~~] two members must [~~shall~~] be representatives of the general public [~~who are not regulated under this Act and who do not have, other than as consumers, any financial interests in barbering~~]. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of barbering;

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

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

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

(c) The terms of office shall be for six years with terms for two of the six board members expiring at the same time every two years. All members appointed by the governor to fill vacancies in the board caused by death, resignation, or removal shall serve during the unexpired term of such member's predecessor. Before entering upon the duties of office, each member of the board shall take the constitutional oath of office and file it with the secretary of state. Members of the board may be removed from office for cause in the manner provided by the statutes of this state for public officials who are not subject to impeachment. In case of death, resignation, or removal, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

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

(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section;

(2) does not maintain during service on the board the qualifications required by Subsection (b) of this section;

(3) violates a prohibition established by Section 29B or 29D of this Act;

(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 board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

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

(f) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

(g) [~~(b) A person holding office as a member of the State Board of Barber Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.~~

[~~(c) The governor shall appoint two public members to fill the offices of the two incumbent members whose terms expire on May 19, 1981. The governor shall appoint a barber shop owner and a barber school owner to fill the offices of the incumbent members whose terms expire on May 19, 1983. The governor shall appoint two Class A barbers to fill the offices of the two incumbent members whose terms expire on May 19, 1985.~~

[~~(d) The terms of office for the appointees who fill the offices of incumbent members whose terms expire May 19, 1981, May 19, 1983, and May 19, 1985, shall expire on January 31, 1987, January 31, 1989, and January 31, 1991, respectively.~~

[(e)] Appointments to the board shall be made without regard to the race, color, handicap [creed], sex, religion, age, or national origin of the appointees.

(h) The governor shall designate one member of the board as chairman of the board to serve in that capacity at the pleasure of the governor.

[~~(f) Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.~~]

SECTION 14. Section 26a, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26a. The State Board of Barber Examiners 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 board is abolished and this Act expires September 1, 2003 [~~1991~~].

SECTION 15. Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by adding Section 26b to read as follows:

Sec. 26b. (a) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

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

SECTION 16. Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by adding Section 26c to read as follows:

Sec. 26c. (a) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

(c) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity 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 related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

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

(3) procedures by which a determination can be made of significant underutilization in the board 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.

(d) A policy statement prepared under Subsection (c) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(e) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (d) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 17. Subsection (a), Section 27, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The State Board of Barber Examiners shall [~~elect one of its members as president, and shall~~] select an executive director and such other employees, as may be necessary, to carry out the provisions of this Act and provide for the compensation of the executive director and other employees. Said Board shall maintain its office in the City of Austin, Texas, and shall adopt rules and regulations

for the transaction of the business herein provided for, including a common seal for the authentication of its orders, certificates and records. The executive director shall keep a record of all proceedings of the Board and shall be the custodian of all such records and shall receive and receipt for all money collected by the Board. All money so received shall be immediately deposited with the State Treasurer, who shall credit same to a special fund to be known as "State Board of Barber Examiners Fund," which money shall be drawn from said special fund upon claims made therefor by the Board to the Comptroller; and if found correct, to be approved by him and vouchers issued therefor, and countersigned and paid by the State Treasurer, which special fund is for the purpose of carrying out all the provisions of this Act. The Board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act. [~~Annually at the close of business on August 31st of each year, a complete report of the business transaction by the Board showing all receipts and disbursements shall be made by the Board to the Governor of the State of Texas.~~] The financial transactions of the Board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

SECTION 18. Section 28, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The Texas Board of Health shall make, establish and promulgate reasonable sanitary rules and regulations for the conduct of barber shops, specialty shops, and barber schools. The State Board of Barber Examiners, by and through the Texas Department of Health, shall have authority, and it is made its duty to enter upon the premises of all barber shops, specialty shops, barber schools, or any place at which the State Board of Barber Examiners has probable cause to believe that [~~where~~] any of its certificate holders or licensees are practicing illegally [~~or performing any service, act or treatment by authority of any certificate or license issued by the board~~] and inspect same at any time during business hours. On receipt of a formal written complaint by any person that a person who holds a barber or teacher certificate or license or a barber school, barber college, or barber shop permit issued by the State Board of Barber Examiners has violated this Act, that board may inspect the premises of the licensee or certificate holder to investigate the complaint at any time during business hours. A copy of such sanitary rules and regulations adopted by the Texas Board of Health shall be furnished to the executive director of the State Board of Barber Examiners who shall in turn forward to each barber, barber school or licensee of the board a copy of such rules and regulations. A copy of the sanitary rules and regulations promulgated and adopted by the Texas Board of Health shall be posted in barber shops, specialty shops, and barber schools in this State. Subject only to the authority of the Texas Board of Health to make and promulgate reasonable rules and regulations as to sanitation, the State Board of Barber Examiners shall have full authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provisions of this Act, and to regulate the practice and teaching of barbering in all of its particulars in keeping with the purposes and intent of this Act or to insure strict compliance with and enforcement of this Act.

(d) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person. The board may not include in the rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 19. Section 29, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29. (a) The Board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of certificates of registration, licenses, or permits. This record shall also contain the name, place of business, and residence of each registered barber, licensee, or permittee, and the date and number of his certificate of registration, license, or permit. This record shall be open to public inspection at all reasonable times.

(b) The Board shall prepare information of public interest describing the functions of the Board and the procedures by which complaints are filed with and resolved by the Board. The Board shall make the information available to the public and appropriate state agencies.

(c) The Board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board. The Board may provide for that notification:

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

(2) on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or

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

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

(e) The Board 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 may be provided reasonable access to the Board's programs.

SECTION 20. Section 29A, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29A. The board shall keep an information file about each complaint filed with the board that the board has authority to resolve. If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. ~~[(a) The State Board of Barber Examiners shall keep an information file about each complaint filed with the board relating to licensees, permittees, or certificate holders under this Act.~~

~~[(b) If a written complaint is filed with the State Board of Barber Examiners relating to a licensee, permittee, or certificate holder under this Act, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.]~~

SECTION 21. Section 29B, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29B. (a) An officer, employee, or paid consultant of a Texas trade association in the field of barbering may not be a member of the board or an employee of the board 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 [~~An employee of the State Board of Barber Examiners whose duties include the administration of the board's functions under this Act may not:~~

[~~(1) have, other than as a consumer, a financial interest in barbering;~~

[~~(2) be an officer, employee, or paid consultant of a trade association in the barbering industry; or~~

[~~(3) be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the barbering industry~~].

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of barbering may not be a board member and may not be a board 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 [~~member of the State Board of Barber Examiners may not be:~~

[~~(1) an officer, employee, or paid consultant of a trade association in the barbering industry;~~

[~~(2) related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the barbering industry~~].

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest [~~An employee who violates this section is subject to dismissal. A board member who violates this section is subject to removal~~].

SECTION 22. Section 29D, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29D. A person may not serve as a member of the board or act as the general counsel to [~~employed by~~] the board if [~~or a member of the board may not lobby for the board and may not engage in conduct for which~~] 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 board.

SECTION 23. Article 8405, Revised Statutes, is amended to read as follows:

Art. 8405. CLEANLINESS. (a) Every person in charge of a barber shop, specialty shop, or barber school shall keep the shop or school and all furniture, tools, appliances and other equipment used therein at all times in a clean condition, and shall cause all combs, hair brushes, and similar articles used therein to be washed thoroughly at least once a day and to be kept clean at all times, and shall cause all mugs, shaving brushes, razors, shears, scissors, clippers and tweezers used therein to be sterilized at least once after each time used as hereinafter provided. The term "persons affected by this chapter" shall include any person working or employed in a barber shop, specialty shop, or barber school or acting as a barber, wig specialist, or manicurist. Every barber or other person affected by this chapter, immediately after using a mug, shaving brush, razor, scissors, shears, clippers, or tweezers, for the service of any person, shall sterilize the same by immersing it in boiling water for not less than a minute, or in the case of a razor, scissors, shears or tweezers, by immersing it for not less than ten minutes in a five per cent aqueous solution of carbolic acid. No barber or other person affected by this chapter shall:

1. Use for the service of any customer a comb, hair brush, or any similar article that is not thoroughly clean, nor any mug, shaving brush, razor, shears, scissors, clippers, or tweezers, that are not thoroughly clean or that have not been sterilized since last used.

2. Serve any customer unless he shall immediately before such service cleanse his hands thoroughly.

3. Use for the service of a customer any towel or wash cloth that has not been laundered since last used.

4. To stop the flow of blood use the same piece of alum or other material for more than one person.

5. Shave any person when the surface to be shaved is inflamed or broken out or contains pus.

6. Permit any person to use the head rest of any barber's chair under his control until after the head rest has been covered with a towel that has been laundered since having been used before, or by clean new paper or similar clean substance.

7. Use a powder puff or a sponge in the service of a customer unless it has been sterilized since last used.

8. Use a finger bowl unless it has been sterilized since last used and fresh water or other liquid placed therein.

9. Serve a customer without the use of a sanitized neck strip, cloth towel, or paper towel between the customer and the chair cloth.

~~[10. Use a hair duster in providing services for any customer.]~~

(b) A barber or other person affected by this article may use a neck duster in providing services for a customer.

SECTION 24. (a) The changes in law made by this Act in the qualifications of persons appointed to the State Board of Barber Examiners apply only to a member appointed on or after September 1, 1991.

(b) The first policy statement required to be filed under Subsection (d), Section 26c, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1991.

SECTION 25. This Act takes effect September 1, 1991.

SECTION 26. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE ON HOUSE BILL 1838

Senator Lyon called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1838** 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. 1838** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lyon, Chair; Parker, Ellis, Brown, Sibley.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 749

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 749** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

GREEN	CAIN
LEEDOM	BERLANGA
MONTFORD	GOOLSBY
WHITMIRE	A. HILL
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 432 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **S.B. 432**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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.C.R. 258, Corrective resolution to **H.B. 2**.

The House has adopted the Conference Committee Report on **H.B. 9** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 806** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 887** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 1000** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 1566** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON SENATE BILL 352 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on **S.B. 352**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Barrientos, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTE

Senator Truan asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

CONFERENCE COMMITTEE ON HOUSE BILL 1492

Senator Lucio called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1492** 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. 1492** 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 Lucio, Chair; Montford, Glasgow, Tejeda, Lyon.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

S.C.R. 163, Expressing appreciation to the Ben E. Keith Beers company and its associates who helped bring the Bud Light Texas Team Roping Association into existence and the North Fort Worth Historical Society for their effort to preserve an important part of our Southwestern heritage.

S.C.R. 164, Directing the Senate Enrolling Clerk to insert in Subsection (d) the omitted words "county fire marshal to charge a fee to".

The House has adopted the Conference Committee Report on **H.B. 2265** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2482

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 2482** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

PARKER	GLOSSBRENNER
MONTFORD	ROBNETT
HALEY	S. THOMPSON
GREEN	KUEMPEL
BARRIENTOS	ARNOLD
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 546 ADOPTED

Senator Rosson called from the President's table the Conference Committee Report on **H.B. 546**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Rosson, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1412 ADOPTED

Senator Tejeda called from the President's table the Conference Committee Report on **S.B. 1412**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Tejeda, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 430 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **S.B. 430**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

(Senator Brooks in Chair)

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 749 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **H.B. 749**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTES

Senators Truan and Zaffirini asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House discharged the conferees on **H.B. 2885** and concurred in Senate amendments to **H.B. 2885** by a record vote of 103 Ayes, 45 Noes, 0 Present-not voting.

S.C.R. 162, Directing the State Board of Insurance to remove pharmacies from class 8017.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON SENATE BILL 977

Senator Brooks submitted the following Conference Committee Report:

Austin, Texas
May 26, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 977** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROOKS	SAUNDERS
TRUAN	ALEXANDER
SIMS	HIGHTOWER
LUCIO	JACKSON
CARRIKER	
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the further development of the fish farming industry, including the licensing of vehicles used in fish farming operations, licenses required for selling fish, and the availability of water used in fish farming.

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

SECTION 1. Subchapter D, Section 1.201, Parks and Wildlife Code, is amended to read as follows:

Sec. 1.201. AQUACULTURE EXECUTIVE COMMITTEE. (a) The aquaculture executive committee consists of the chairman, the commissioner of agriculture, and the commissioner of the General Land Office.

(b) The aquaculture executive committee shall elect among its members a chairman.

SECTION 2. Section 1.203, Parks and Wildlife Code, is amended to read as follows:

Sec. 1.203. AGENCY REVIEW OF AQUACULTURE RULES. Each state agency that regulates persons involved with aquaculture shall review the agency's rules regarding aquaculture biennially to determine whether changes in the rules are necessary as a result of new developments in aquaculture technology. The chairman of the Parks and Wildlife Commission, the commissioner of agriculture, and the commissioner of the General Land Office shall each designate a person who shall be responsible for coordinating the aquaculture activities of that agency. These individuals shall work cooperatively to ensure that the various state agencies regulating aquaculture do so in a manner designed to benefit the industry to the greatest extent possible. [~~The aquaculture executive committee with the advice of the department shall adopt rules to ensure that fish-farming operations do not have a negative impact on the existing marine or biological ecosystem.~~]

SECTION 3. Section 1.204, Parks and Wildlife Code, is amended to read as follows:

Sec. 1.204. ADVISORY COMMITTEE [~~SUSPENSION OF LICENSE~~]. (a) An advisory committee to study the environmental and economic impact of the aquaculture industry in this state is composed of one member licensed as required by Section 134.011, Agriculture Code, appointed by each member of the aquaculture executive committee, one member appointed by the chairman of the board of the Texas Department of Commerce to represent the department, and one member appointed by the governor to represent the governor's office for economic development.

(b) Members of the advisory committee serve at the will of the appointing officer. A member of the advisory committee is not entitled to compensation for

service on the advisory committee but is entitled to reimbursement for actual expenses incurred in performing duties as a member of the advisory committee, subject to limitations provided by the General Appropriations Act. [~~If the aquaculture executive committee determines that a particular fish-farming operation has violated a rule adopted under Section 1.203 of this code, the Department of Agriculture shall suspend the license of that fish-farming operation until the committee issues a notice approving the continuation of the fish-farming operation.~~]

SECTION 4. Section 1.205, Parks and Wildlife Code, is amended to read as follows:

Sec. 1.205. GRANTS AND GIFTS TO THE AQUACULTURE INDUSTRY [~~EMPLOYMENT OF OFFICER~~]. The aquaculture executive committee may accept grants and gifts from public and private sources for purposes of state coordination of the aquaculture industry. [~~(a) The aquaculture executive committee shall employ an aquaculture liaison officer to perform the duties listed in Section 1.206 of this code.~~

[~~(b) The committee shall set the salary of the officer. The department, the Department of Agriculture, and the General Land Office shall each provide one-third of the salary of the officer.~~

[~~(c) The officer serves at the pleasure of the committee.~~]

SECTION 5. Subchapter D, Section 1.206, Parks and Wildlife Code, is amended to read as follows:

Sec. 1.206. DUTIES OF OFFICER. (a) The chairman of the aquaculture executive committee [~~aquaculture liaison officer~~] shall:

(1) coordinate activities concerning the aquaculture industry between the state agencies having regulatory authority over that industry;

(2) report to the aquaculture executive committee every six months, or more often in the discretion of the chairman [~~officer~~], and to the legislature before the beginning of each regular session, concerning the status of the aquaculture industry in the state; [~~and~~]

(3) assist the commission in drafting the rules required to be adopted under Section 134.020(a), Agriculture Code;

(4) assist applicants seeking fish farming licensing permits through the licensing process;

(5) coordinate the issuance of permits required for persons engaged in aquaculture; and

(6) biennially compile a strategic development plan for the aquaculture industry.

(b) A report under Subsection (a)(2) of this section may include recommendations to promote the state's aquaculture industry or to improve the cooperation between the state agencies having regulatory authority over the industry.

SECTION 6. Section 47.009, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c) of this section, no [~~No~~] person may engage in business as a wholesale fish dealer unless he has obtained a wholesale fish dealer's license.

(c) A person who has a fish farming license under Section 134.011, Agriculture Code, is not required to obtain or possess a wholesale fish dealer's license if the person's business activities with regard to the sale of fish involve fish raised on the person's fish farm only.

SECTION 7. Section 47.011, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c) of this section, no [~~No~~] person may engage in business as a retail fish dealer unless he has obtained a retail fish dealer's license.

(c) A person with a fish farming license under Section 134.011, Agriculture Code, is not required to obtain or possess a retail fish dealer's license if the person's business activities with regard to the sale of fish involve fish raised on the person's fish farm only.

SECTION 8. Section 47.0111, Parks and Wildlife Code, is amended to read as follows:

Sec. 47.0111. PURCHASE OF AQUATIC PRODUCTS BY RETAIL FISH DEALERS. No retail fish dealer may purchase for resale or receive for sale, barter, exchange, or any other commercial purposes any aquatic products [~~fish~~] from any person or entity in this state unless he purchases the product [~~fish~~] from the holder of:

(1) a wholesale fish dealer's license;

(2) a general commercial fisherman's license; or

(3) a fish farmer's [~~shrimp house operator's~~] license.

SECTION 9. Section 47.012, Parks and Wildlife Code, is amended to read as follows:

Sec. 47.012. PURCHASE OF AQUATIC PRODUCTS [~~FISH~~] BY RESTAURANT OWNER, OPERATOR, OR EMPLOYEE. No restaurant owner, operator, or employee may purchase for consumption by the restaurant's patrons on the restaurant's premises any aquatic product [~~fish~~] from any person or entity in this state unless the person purchases the aquatic product [~~fish~~] from the holder of:

(1) a wholesale fish dealer's license;

(2) a general commercial fisherman's license; or

(3) a fish farmer's [~~shrimp house operator's~~] license.

SECTION 10. Section 47.013, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c) of this section, a [~~A~~] person may engage in the business of selling edible aquatic products from a motor vehicle to consumers only if he obtains a retail dealer's truck license.

(c) A person who owns a vehicle licensed under Section 134.012, Agriculture Code, is not required to obtain a license for the vehicle under this section when the vehicle is used with regard to the sale or transportation of only aquatic products raised on a fish farm belonging to the owner of the vehicle.

SECTION 11. The heading and Subchapters A and B, Chapter 134, Agriculture Code, are amended to read as follows:

CHAPTER 134. REGULATION OF AQUACULTURE [~~FISH FARMS~~ AND CULTURED FISH PROCESSING PLANTS]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 134.001. DEFINITIONS. In this chapter:

(1) "Cultured species [~~fish~~]" means aquatic plants or animals raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist [~~farm-raised fish or shellfish~~].

(2) "Exotic [~~fish~~] species" means a nonindigenous plant or animal [~~fish or shellfish species that is~~] not normally found in the public waters [~~water~~] of this [~~the~~] state.

(3) "Aquaculturist or fish [~~Fish~~] farmer" means any person licensed under this chapter to engage [~~engaged~~] in aquaculture or fish farming.

(4) "Aquaculture or fish [~~Fish~~] farming" means the business of producing[~~, propagating, transporting, possessing,~~] and selling cultured species [~~fish~~] raised in private facilities [~~a private pond, but does not include the business of~~

~~producing, propagating, transporting, possessing, and selling cultured fish propagated for bait purposes~~]. Aquaculture or fish farming is an agricultural activity.

(5) "Private facility [~~pond~~]" means a pond, tank, cage [~~reservoir, vat~~], or other structure capable of holding cultured species in confinement wholly within or on private land or water or within or on permitted public land or water [~~fish in confinement wholly within or on the enclosed land of an owner, lessor, or lessee~~].

(6) "Owner" means an aquaculturist operating a facility [~~a fish farmer~~] licensed by the department.

Sec. 134.002. AQUACULTURE [~~FISH FARM~~] PROGRAM. The department shall establish an aquaculture [~~a fish farm~~] program that:

(1) develops and conducts a plan for promoting aquaculture [~~fish farm~~] products;

(2) licenses and regulates aquaculture [~~fish farming~~] operations;

(3) [~~licenses and regulates cultured fish processing plants;~~

[~~(4)~~] provides technical assistance, including demonstrations, to aquaculturists [~~fish farmers~~];

(4) [~~(5)~~] provides coordinated support through colleges and universities and other governmental entities;

(5) [~~(6)~~] solicits financial support from the federal government for the aquaculture [~~fish farm~~] industry;

(6) [~~(7)~~] develops and expands the aquaculture [~~fish farm~~] industry to:

(A) stimulate the state's economy; and

(B) offer alternative crop opportunities; and

(7) [~~(8)~~] performs other functions and activities as required by law.

Sec. 134.003. PROGRAM ADMINISTRATOR; STAFF. (a) The department shall [~~may~~] designate a person to administer the aquaculture [~~fish farm~~] program.

(b) The department or the program administrator may employ the necessary staff to carry out the functions and duties of the department under this chapter.

Sec. 134.004. CONTRACTS. The department may contract with state, federal, or private entities [~~the General Land Office, the Parks and Wildlife Department, and the Texas Agricultural Extension Service~~] for assistance in carrying out the purposes of this chapter.

Sec. 134.005. RULES. (a) The department shall adopt rules to carry out the aquaculture [~~fish farm~~] program.

(b) The rules may not conflict with rules issued under Section 134.020 of this code.

Sec. 134.006. AQUACULTURE [~~FISH FARM~~] FUND. (a) The aquaculture [~~fish farm~~] fund is established in the state treasury.

(b) The department shall deposit to the credit of the fund the fees received from licenses issued under this chapter.

(c) The aquaculture [~~fish farm~~] fund may be used only to administer this chapter.

[Sections 134.007 to 134.010 reserved for expansion]

SUBCHAPTER B. AQUACULTURE LICENSE [~~FISH FARMS~~]

Sec. 134.011. AQUACULTURE [~~FISH FARMER'S~~] LICENSE REQUIRED. A person may not operate an aquaculture facility [~~be a fish farmer~~] without first having acquired from the department an aquaculture [~~a fish farmer's~~] license.

Sec. 134.012. FISH FARM VEHICLE LICENSE REQUIRED. (a) Except as provided by Subsection (b) of this section, a vehicle used to transport fish from a fish farm for sale from the vehicle is required to have a fish farm vehicle license.

(b) A fish farm vehicle license is not required for a vehicle owned and operated by the holder of an aquaculture [~~a fish farmer's~~] license.

Sec. 134.013. BILL OF LADING REQUIRED [~~FOR CERTAIN VEHICLES~~]. A person operating a vehicle[~~, from which no fish sales are made,~~] transporting fish regulated by a bag, possession, or size limit and prohibited from sale if taken from the public waters of this state [~~cultured fish from a fish farm~~] shall carry a bill of lading that shows the number and species [~~of cultured fish~~] carried, the name of the owner and the location and license number of the aquaculture facility [~~fish farm~~] from which the species [~~fish~~] were transported, and the destination of the cargo.

Sec. 134.014. LICENSE FEES. The department shall issue an aquaculture [~~a fish farmer's~~] license or a fish farm vehicle license on the payment of a fee, in an amount set by the commissioner, not to exceed $100.

Sec. 134.015. FORM, DURATION, AND RENEWAL OF LICENSE. (a) An aquaculture [~~A fish farmer's license and a fish farm vehicle~~] license must be on a numbered form provided by the department.

(b) A license is valid for two years after the date of issuance. The department shall renew a license on submission by the licensee of a completed application and a renewal fee in an amount set by the commissioner, not to exceed $100, [~~under Subsection (c) of this section~~] unless the department determines that the licensee has violated this chapter or a rule adopted under this chapter.

(c) [~~The department shall establish by rule a graduated renewal fee schedule designed to recover an amount that, when added to the fees collected under Section 134.014 of this code, is sufficient to administer this subchapter. The fee schedule shall be based on the gross receipts from the sale of cultured fish sold by a licensee during the first 21 months of the period covered by the expiring license. The fee schedule shall require that licensees having a relatively large amount of gross receipts pay the highest fee.~~

[~~(d)~~] The department may [~~shall~~] suspend an aquaculture [a] license if it is determined that the licensee has violated this chapter or a rule adopted under this chapter [~~the aquaculture executive committee makes a determination as provided by Section 1.204, Parks and Wildlife Code~~].

Sec. 134.016. RECORDS. The holder of an aquaculture [~~a fish farmer's~~] license shall maintain a record of [~~the~~] sales [~~and shipments~~] of cultured species, regulated by a bag, possession, or size limit for a period of time of not less than one year [~~fish~~]. The record is open for inspection by designated employees of the department during normal business hours.

Sec. 134.017. CULTURE [~~HARVESTING~~] AND SALE OF CULTURED SPECIES [~~FISH~~]. Cultured species [~~fish~~] of any kind, size, or number may be raised, possessed, transported, and sold anywhere, at any time, to any person, for any purpose by the holder of an aquaculture license unless prohibited by Parks and Wildlife Code or regulation [~~size from a fish farm may be harvested and sold at any time and in any county~~].

[~~Sec. 134.018. SALES OF BASS AND CRAPPIE LIMITED. (a) Except as provided in Subsection (b) of this section, a person may not sell bass or crappie from a fish farm for consumption or for resale.~~

[~~(b) Bass and crappie may be sold for resale to a licensed fish farmer only, and to any person for stocking purposes.~~

[~~(c) Other kinds of cultured fish from a fish farm may be sold for any purpose unless prohibited by other law.~~]

Sec. 134.019. MARKETING OF CULTURED REDFISH AND CULTURED SPECKLED SEA TROUT. (a) The commissioner shall adopt rules providing for the raising, sale, transportation, and possession of cultured redfish and cultured speckled sea trout raised by an aquaculturist [~~a fish farmer~~] licensed under this chapter.

(b) The rules shall provide for and require the identification of cultured redfish and cultured speckled sea trout raised by an aquaculturist [~~a fish farmer~~] under this chapter.

Sec. 134.020. EXOTIC [~~FISH~~] SPECIES. (a) The Parks and Wildlife Commission shall adopt rules regulating the importation, possession, propagation, and sale of harmful or potentially harmful exotic [fish] species by an aquaculturist [~~a fish farmer~~].

(b) The Parks and Wildlife Commission, after consulting with the commissioner and an individual designated by the chairman of the board of regents of The Texas A&M University System, shall determine and publish a list of harmful or potentially harmful exotic [fish] species that an aquaculturist [~~a fish farmer~~] may not import, possess, or sell as part of the person's aquaculture [~~fish farming~~] activities.

(c) An aquaculturist [~~A fish farmer~~] may not release in public water harmful or potentially harmful exotic [fish] species except as provided by Section 66.007, Parks and Wildlife Code.

(d) The Parks and Wildlife Department shall enforce the rules adopted under this section.

Sec. 134.021. FEDERAL GRANTS. Federal grants for research and development of commercial fisheries may be used for individual aquaculture [~~fish farm~~] projects.

Sec. 134.022. AQUACULTURE FACILITY [~~FISH FARMS~~] PROTECTED. (a) A person, other than the owner or operator of an aquaculture facility [~~a fish farm~~], may not fish on an aquaculture facility [~~a fish farm~~] without the consent of the owner or operator.

(b) A person may not unlawfully, as defined by Section 31.03(b), Penal Code, acquire or otherwise exercise control over cultured species [~~fish~~] with intent to deprive the owner of the cultured species [~~fish~~].

Sec. 134.023. PENALTIES. (a) Except as provided by Subsection (b), (c), or (d) of this section, a person who violates any provision of this chapter or rule adopted under this chapter commits an offense that is a Class C misdemeanor.

(b) A person who violates Section 134.019 or 134.020 of this code commits an offense that is a Class B misdemeanor.

(c) A person who violates Section 134.022(b) of this code by taking cultured species [~~fish~~] of a value of $200 or more but less than $750 commits an offense that is a Class A misdemeanor.

(d) A person who violates Section 134.022(b) of this code by taking cultured species [~~fish~~] of a value of $750 or more commits an offense that is a felony of the third degree.

[Sections 134.024 to 134.030 reserved for expansion]

SECTION 12. Subchapter C, Chapter 134, Agriculture Code, and Section 12.009 and Chapter 51, Parks and Wildlife Code, are repealed.

SECTION 13. Subsection (c), Section 12.009, Agriculture Code, is amended to read as follows:

(c) The department shall encourage the raising of cultured species [~~fish~~], the development of the aquaculture [~~fish farming~~] industry, and the marketing of aquaculture [~~fish farm~~] products. In this subsection, "cultured species [~~fish~~]" and "aquaculture [~~fish farming~~]" have the meanings assigned by Section 134.001 of this code.

SECTION 14. This Act takes effect September 1, 1991.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1664 ADOPTED

Senator Bivins called from the President's table the Conference Committee Report on **H.B. 1664**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Bivins, the Conference Committee Report was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House has adopted the Conference Committee Report on **S.B. 314** by a record vote of 136 Ayes, 0 Noes, 1 Present-not voting.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 625**: Danburg, Chair; T. Hunter, Hernandez, Brady, Mowery.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON SENATE BILL 625

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 625** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN	DANBURG
CARRIKER	T. HUNTER
WHITMIRE	HERNANDEZ
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the contents of an official voter registration application form.

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

SECTION 1. Section 13.122, Election Code, is amended to read as follows:

Sec. 13.122. ADDITIONAL ELEMENTS ON OFFICIAL FORM. (a) In addition to the other statements and spaces for entering information that appear on an officially prescribed registration application form, each official form must include:

(1) the statement: "I understand that the giving of false information to procure the registration of a voter is a misdemeanor [~~felony~~]."; (2) a space for the applicant's registration number; (3) a space for the applicant's social security number or Texas driver's license number or personal identification number or certificate number [~~number of the county election precinct in which the applicant resides~~]; (4) a space for the applicant's telephone number; (5) a space for the applicant's social security number; and (6) a statement indicating that the furnishing of the applicant's election precinct number, telephone number, [~~and~~] social security number, and driver's license or personal identification card or certificate number is optional.

(b) The term "residence address" may not be modified on an official registration application form by terms other than those comprising the specific elements of a residence address.

(c) If it becomes permissible under federal law to require an applicant for registration who has a social security number to furnish the number, the secretary of state may implement that requirement.

SECTION 2. (a) The secretary of state shall prescribe an official voter registration application form that complies with Section 13.122, Election Code, as amended by this Act, and shall furnish the forms as provided by Section 13.121, Election Code, not later than December 1, 1991.

(b) The secretary of state shall omit the term "permanent" preceding the term "residence address" on an official voter registration application form that is prescribed on or after the effective date of this Act.

(c) An officially prescribed voter registration application form that complies with the law as it existed on August 31, 1991, remains valid but may not be reproduced.

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

(Senator Green in Chair)

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1020 ADOPTED

Senator Brooks called from the President's table the Conference Committee Report on **H.B. 1020**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Brooks, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(Senator Brooks in Chair)

SENATE RESOLUTION 901

Senator Barrientos offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 72nd Legislature, Regular Session, 1991, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 831** to consider and take action on the following specific matters:

(1) Rule 12.03(4) is suspended to authorize the conferees to take action by modifying the section of the bill that adds Subsection (h), Sec. 3.29, Article 601b, V.A.C.S., so that subsection (h) reads as follows:

"(h) The commission may extend the date by which a vehicle powered by a traditional gasoline or diesel engine shall be capable of using compressed natural gas or other alternative fuels as required under this section for one or more periods of 90 days, but not beyond September 1, 1992, if it finds a lack of ability to acquire such vehicles with original alternative fuels equipment, to acquire such vehicles which are able to be converted, or to convert such vehicles to use compressed natural gas or other alternative fuels."

EXPLANATION: This amendment is needed to place one additional condition on the process required for the General Services Commission to waive the requirement that state agencies have vehicles capable of using compressed natural gas or other alternative fuels. In addition to finding a lack of ability to acquire vehicles that are already capable or the lack of ability to convert vehicles, the commission must also find a lack of ability to purchase vehicles that can be converted.

(2) Rule 12.03(4) is suspended to authorize the conferees to take action by modifying the section of the bill that amends subsection (i) of Sec. 21.174, Education Code, so that subsection (i) reads as follows:

"(i) The General Services Commission may extend the date by which a vehicle powered by a traditional gasoline or diesel engine shall be capable of using compressed natural gas or other alternative fuels as required under this section for one or more periods of 90 days, but not beyond September 1, 1993, if it finds a lack of ability to acquire such vehicles with original alternative fuels equipment, to acquire such vehicles which are able to be converted, or to convert such vehicles to use compressed natural gas or other alternative fuels."

EXPLANATION: This amendment makes the same change that is made in item 1 but in a similar provision that relates to local school district buses. There is one difference. The final date for all buses to be capable is set in 1993 instead of 1992 to provide additional flexibility due to the emerging technology involved in converting diesel engines.

(3) Rule 12.03(3) is suspended to authorize the conferees to take action by modifying the section of the bill that adds Sec. 10.071, Article 601b, V.A.C.S., to read as follows:

"Sec. 10.071. USE OF SYSTEM BY CERTAIN STUDENTS. (a) Institutions of higher education under Section 61.003, Education Code, that are authorized to use the system of telecommunications services established under this article may allow students of the institution who reside in housing for which the institution provides telephone service to use the system of telecommunications services established under this article. An institution shall recover from a student who chooses to use the system the full pro rata cost attributable to that student's

use, including costs identifiable for interconnection to and use of the local publicly switched network.

(b) The commission shall adopt rules that govern student access to the system, including times of access to the system, and the full recovery of actual costs from each student who uses the system."

EXPLANATION: This amendment is needed to ensure that the full cost to the state, including cost for interconnection to the local network, is recovered by user fees paid by college students for Tex-An services.

(4) Rule 12.03(2) is suspended to authorize the conferees to take action by modifying SECTION 7.01. of the bill, to read as follows:

"SECTION 7.01. Sections 2.051 and 2.061, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, do not apply to a person who is a member of the State Purchasing and General Services Commission immediately before September 1, 1991, during the term the person is serving at that time."

EXPLANATION: This modification is needed to correct a technical error in the bill following an amendment on the House floor. The House deleted a provision in the bill that expanded the board size but did not delete an instructional provision relating to expanding the board. This change deletes the unneeded language in both versions of the bill.

(5) Rule 12.03(4) is suspended to authorize the conferees to take action by modifying Sec. 496.026(b), Government Code, to read as follows:

"(b) If the [~~State Purchasing and~~] General Services Commission determines that an article or product produced by the department under this subchapter does not meet the requirements of an agency of the state or a political subdivision, or that the institutional division of the Texas Department of Criminal Justice determines that the division [~~department~~] is unable to fill a requisition for an article or product, the agency or subdivision may purchase the article or product from another source."

EXPLANATION: This change is needed to allow the institutional division of the Texas Department of Criminal Justice (TDCJ), as well as the commission, to determine whether or not the institutional division is able to fill a requisition. Existing language did not include the TDCJ in the determination. The determination that the TDCJ is unable to fill a requisition is needed before state agencies and political subdivisions may purchase from sources other than the prison system.

(6) Rule 12.03(4) is suspended to authorize the conferees to take action by modifying Sec. 496.027, Government Code, by adding a new subsection (c) to read as follows:

"(c) If an agency or political subdivision purchasing goods under this subchapter desires to purchase goods or articles from the division, it may do so without complying with any other state law otherwise requiring the agency or political subdivision to request competitive bids for the article or product. Nothing herein shall be interpreted to require a political subdivision to purchase goods or articles from the division if the political subdivision determines that the goods or articles can be purchased elsewhere at a lower price or an agency to purchase goods or articles from the division if the agency determines, and the General Services Commission certifies, that the goods or articles can be purchased elsewhere at a lower price."

EXPLANATION: This change keeps state agencies and political subdivisions from having to follow unnecessary purchasing procedures when they purchase items from the institutional division of the Texas Department of Criminal Justice. The change also authorizes state agencies and political subdivisions to purchase products from sources other than the institutional division if the items can be purchased at a lower cost elsewhere.

(7) Rule 12.03(4) is suspended to authorize the conferees to take action by modifying the section of the bill that amends Article 6252-11c, V.A.C.S., to read as follows:

Sec. 1. In this Act:

(1) "Consulting service" means the human service of studying or advising a [~~an~~] state agency under a [~~an independent~~] contract that does not involve the traditional relationship of employer and employee. [~~The term includes routine work provided to an agency under an independent contract that is necessary to the functioning of the agency's programs. The term includes only services for which payment is made from funds:~~]

[~~(A) that are appropriated by the legislature;~~]

[~~(B) that are generated by statutory functions of the agency; or~~]

[~~(C) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program:~~]

(2) "Private consultant" means an individual or entity that performs or proposes to perform consulting services.

(3) "State agency" means a [~~any~~] state department, commission, board, office, institution, facility, or other agency[;] the jurisdiction of which is not limited to a geographical portion of the state. The term includes [~~including~~] a university system and [~~or~~] an institution of higher education as defined in Section 61.003, [~~Texas~~] Education Code[~~, as amended;~~]. The term does not include [~~other than~~] a public junior college.

Sec. 2. This Act does not apply to and is not intended to discourage the use of consulting services provided by:

(1) professions listed under the Professional Services Procurement Act (Art. 664-4, Vernon's Texas Civil Statutes) [~~employment of registered professional engineers or registered architects for architectural or engineering studies or for the design or construction of state facilities;~~]

(2) private legal counsel,

(3) investment counselors,

(4) actuaries, [~~or~~]

(5) [~~physicians, dentists, or~~] other medical or dental services providers, or

(6) other consultants whose services are determined by the governing board of a retirement system trust fund to be necessary for the performance of its fiduciary duties under the state constitution, provided however, the governing board shall comply with Section 6 of this Act. Contracts made under this subsection shall not be void for failure to comply with the requirements of the article [~~and is not intended to discourage their use~~].

Sec. 3. (a) A state agency may use a private consultant only if:

(1) there is a substantial need for the consulting services; and

(2) the state agency cannot adequately perform the consulting services with its own personnel or through a contract with another state agency.

(b) In selecting a private consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services; and

(2) when other considerations are equal, give a preference to a private consultant whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

Sec. 4. (a) Before [~~At least 30 days before~~] contracting with [~~to use~~] a private consultant whose total [~~anticipated~~] fee is reasonably foreseeable to exceed [~~exceeds~~] $10,000, a state agency shall:

(1) notify the Legislative Budget Board and the governor's [~~Governor's~~] Budget and Planning Office of the agency's intent to contract with [~~use~~] a private consultant; [~~and~~]

(2) [~~shall~~] supply the Legislative Budget Board and the governor's [~~Governor's~~] Budget and Planning Office with information demonstrating that the agency has complied or will comply with [~~the policies of~~] Section 3; [~~of this Act;~~] and[~~:~~]

(3) obtain a finding of fact from the governor's Budget and Planning Office that the consulting services are necessary.

(b) A consulting services contract that a state agency executes without first obtaining the required finding of fact from the governor's Budget and Planning Office is void.

Sec. 5. [~~(a) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the Legislative Budget Board and the Governor's Budget and Planning Office with copies of all documents, films, recordings, or reports of intangible results of the consultant service that are developed by the private consultant.~~]

[~~(b) Copies of all documents, films, recordings, or reports of intangible results shall be filed with the Texas State Library and shall be retained by the library at least five years after receipt.~~]

[~~(c) As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the Governor's Budget and Planning Office, a state agency shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency.~~]

[~~Sec. 6.~~] (a) No later than the thirtieth day before entering into a consulting services contract with a reasonably foreseeable value of more than $10,000, [~~If it is reasonably foreseeable that a proposed use of a private consultant may involve a contract with a value in excess of $10,000,~~] a state agency [~~or a regional council of government created under Chapter 570, Act of the 59th Legislature, Regular Session, 1965, as amended (Article 1011m, Vernon's Texas Civil Statutes), that proposes the use of a private consultant~~] shall file [~~file, at least 40 days before contracting with a private consultant, the following information~~] with the secretary of state [~~Secretary of State~~] for publication in the Texas Register:

(1) an [~~a notice of~~] invitation for private consultants to provide offers of consulting services;

(2) the individual [~~person~~] who should be contacted by a private consultant who intends [~~wants~~] to make an offer;

(3) the closing date for the receipt of offers [~~of consulting services~~]; and

(4) the procedure by which the state agency [~~or council of government~~] will award the [~~contract for~~] consulting services contract.

(b) If the consulting service desired by a state agency relates to a service previously performed by a private consultant, the agency shall disclose that fact in the invitation for offers filed with the secretary of state under Subsection (a) of this section. If the state agency intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted, the agency shall disclose this intention in the invitation for offers.

Sec. 6. (a) [~~(b)~~] No later than the tenth day after executing a consulting services contract, a [~~A~~] state agency [~~or regional council of government~~] that is subject to the requirements of Section 5 [~~complies with Subsection (a) of this section~~] shall file [~~within 10 days after contracting with the private consultant the following information~~] with the secretary of state [~~Secretary of State for publication in the Texas Register~~]:

(1) a description of the activities [study] that the private consultant will [is to] conduct;

(2) the name and business address of the private consultant;

(3) the total value and the beginning and ending dates of the contract; and

(4) the due dates of documents, films, recordings, or reports [of intangible results] that the private consultant is required to present to the agency [or council of government].

(b) Upon receipt of the information described in Subsection (a) of this section, the secretary of state shall publish the information in the Texas Register.

[(c) The Texas State Library shall compile a list of documents, films, recordings, and reports of intangible results submitted to it under Section 5(b) of this Act and shall file the list in each quarter of the calendar year with the Secretary of State for publication in the Texas Register.]

[(d) If the consulting service desired by a state agency is a continuation of a service previously performed by a private consultant, the agency shall state this in the invitation for offers filed with the Secretary of State under Subsection (a) of this section. If the state agency intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted, it shall state this in the invitation for offers.]

Sec. 7. (a) When a state agency intends to renew a consulting services contract, the original value of which was reasonably foreseeable to be greater than $10,000, the agency shall:

(1) file with the secretary of state for publication in the Texas Register the information required by Section 6 no later than the tenth day after the renewal is executed if the renewal will have a reasonably foreseeable value of $10,000 or less; or

(2) comply with the requirements of Sections 4 and 5 if the value of the renewal will have a reasonably foreseeable value of more than $10,000.

(b) When a state agency intends to renew a consulting services contract, the original value of which was reasonably foreseeable to be $10,000 or less, the agency shall comply with the requirements of Sections 4 and 5 if the total value of the original contract and the renewal is reasonably foreseeable to exceed $10,000.

(c) When a state agency intends to amend or extend a consulting services contract, the original value of which was reasonably foreseeable to be greater than $10,000, the agency shall:

(1) file the information required by Section 6, no later than the tenth day after the amendment or extension is executed, with the secretary of state for publication in the Texas Register if the value of the amendment or extension is reasonably foreseeable to be $10,000 or less; or

(2) comply with Sections 4 and 5 if the value of the amendment or extension is reasonably foreseeable to exceed $10,000.

(d) When a state agency intends to amend or extend a consulting services contract, the original value of which was reasonably foreseeable as $10,000 or less, the agency shall comply with the requirements of Sections 4 and 5 if the total value of the original contract and the amendment or extension is reasonably foreseeable to exceed $10,000.

Sec. 8 [6A]. (a) An officer or employee of a state agency who has a financial interest in an [a] association, partnership, firm or corporation [that is a private consultant and] that submits an offer to provide consulting services to the agency or who is related within the second degree by consanguinity or affinity to an individual [a person] having the financial interest shall report the financial interest to the executive head of the state agency not later than the tenth [10th] day after the day on which the association, partnership, firm, or corporation [private consultant] submits the [consulting services] offer.

(b) This section applies to all consulting services contracts, including renewals, amendments, and extensions of those contracts.

Sec. 9 [~~6B~~]. (a) An individual [~~A person~~] who offers to perform a consulting service for a state agency and who has been employed by that [the] agency or by another [state] agency at any time during the two years preceding the making of the offer shall disclose in the offer:

(1) the nature of the previous employment with the agency or the other [state] agency;[;]

(2) the date of termination of the employment;[;] and

(3) the annual rate of compensation for the employment at the time of its termination.

(b) A state agency that accepts an [the] offer from an individual described in Subsection (a) of this section shall include in the information filed under Section 6 [~~Subsection (b) of Section 6 of this Act~~] a statement about the individual's previous employment and the nature of that [the] employment.

Sec. 10. (a) If an unforeseen emergency causes a state agency to need the services of a private consultant in a time frame that makes compliance with all or part of this Act infeasible, then this section applies. This section applies regardless of whether the needed services necessitate a new contract or the renewal, amendment, or extension of an existing contract.

(b) The state agency shall request from the governor a limited waiver from the requirements of this Act. The governor may grant the limited waiver only after the agency has provided information concerning the nature of the emergency, the reason that the emergency was unforeseen, the identity of the private consultant with whom the agency wishes to contract, the amount of the proposed contract, and the other information the governor deems necessary.

(c) For the purpose of this section, the term "unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a private consultant. The term includes, but is not limited to, the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is unforeseen only to the extent that a state agency was not negligent in foreseeing the occurrence of the emergency.

(d) As soon as possible after the governor grants a limited waiver to a state agency, the agency shall fulfill the requirements of this Act to the extent that those requirements are not made superfluous or ineffective by the governor's limited waiver. The notice published in the Texas Register shall contain a detailed description of the emergency that necessitated the governor's temporary waiver.

(e) The governor shall adopt rules for the efficient administration of this section.

Sec. 11 [~~6C~~]. (a) If a state agency contracts for consulting services or renews, amends, or extends a consulting services contract [~~to use a private consultant~~] without complying with the requirements of Sections 5 through 7, [~~Section 6 of this Act or if a person contracts to perform a consulting service for a state agency without complying with the requirements of Section 6B of this Act;~~] then the contract, renewal, amendment, or extension is void.

(b) If a private consultant contracts with a state agency without complying with the requirements of Section 9, then the contract is void.

(c) [~~(b)~~] When [If] a contract, renewal, amendment, or extension is void under this section:[;]

(1) the comptroller of public accounts may not draw a warrant or transmit funds to satisfy an obligation under the contract, renewal, amendment, or extension; and [or]

(2) a state agency may not make any payments under the contract, renewal, amendment, or extension from any state or federal funds held in or outside the state treasury[~~; State Treasury~~].

Sec. 12. A state agency may not divide a consulting services contract or a renewal, amendment, or extension of a consulting services contract into more than one contract, renewal, amendment, or extension in order to avoid the requirements of this Act.

Sec. 13. (a) After a state agency's contract with a private consultant has ended, the state agency shall, upon request, supply the Legislative Budget Board and the governor's Budget and Planning Office with copies of all software, documents, films, recordings, or reports developed by the private consultant.

(b) Copies of all software, documents, films, recordings, or reports developed by the private consultant shall be filed with the Texas State Library and shall be retained by the library for at least five years after receipt.

(c) The Texas State Library shall compile a list of software, documents, films, recordings, and reports submitted to it under Subsection (b) and shall file the list at the end of each calendar quarter with the secretary of state for publication in the Texas Register.

Sec. 14. As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the governor's Budget and Planning Office, a state agency shall supply the Legislative Budget Board and the governor's Budget and Planning Office with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency during the previous biennium.

Sec. 15. If a contract involves both consulting services and other types of services, then this Act applies if the primary objective of the contract is the purchase of consulting services.

Sec. 16 [~~6D~~]. (a) It is the intent of the legislature that this Act be interpreted in a manner that ensures:

(1) [~~assures~~] the greatest and fairest [~~fair~~] competition in the selection by state agencies [~~and regional councils of government~~] of private consultants; [~~under contracts covered by this Act~~] and

(2) [~~that assures~~] that all potential private consultants [~~providers of consulting services~~] are afforded notice of the need for and opportunity to provide consulting [~~the~~] services.

(b) This Act is not intended to discourage [~~the use by~~] state agencies from using [~~or regional councils of government of~~] private consultants if the agencies reasonably foresee their use will [~~may reasonably be expected to~~] result in a more efficient and less costly operation or project. This Act is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this Act have been followed.

(c) This Act neither requires nor prohibits the use of competitive bidding procedures to purchase consulting services.

Sec. 17. The comptroller shall adopt rules for the efficient and effective implementation and administration of this Act. The comptroller's rules may not conflict with or cover the same subject matter concerning which this Act authorizes the governor to adopt rules."

EXPLANATION: This change is needed to modify the statute governing the purchase of consultant services. The changes include: expanding the exemptions to the Act to include all professions included in the Professional Services Procurement Act; clarifying requirements for renewing, extending, and amending existing contracts; allowing the governor to grant state agencies waivers from the procedures

for procuring consultant services in cases of emergency; defining emergency situations, and authorizing the governor to develop rules for granting emergency waivers.

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

(Senator Armbrister in Chair)

SENATE CONCURRENT RESOLUTION 164

Senator Tejeda offered the following resolution:

WHEREAS, **S.B. 1397** has passed both the Texas Senate and the Texas House of Representatives and is now in the office of the Senate Enrolling Clerk; and

WHEREAS, There is a clerical omission in the text; now, therefore, be it

RESOLVED, That the Senate Enrolling Clerk be directed to insert in Subsection (d) the omitted words "county fire marshal to charge a fee to the" between the words "authorize the" and "owner of."

The resolution was read.

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

SENATE RESOLUTION 902

Senator Green offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 72nd Legislature, is suspended, as provided by Senate Rule 12.08, to the extend described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of **S.B. 958**, relating to procedures for the establishment of a parent-child relationship, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matter:

Senate Rule 12.03(4) is suspended to permit the committee to add the following language after amended Section 12.02(d), Family Code:

(e) If the paternity of a child is established by a court decree or order, including an order of divorce or annulment in which the paternity of a child is recited in the decree or order, the man who is designated as the father of the child may bring a bill of review on the issue of the paternity of the child not later than 10 years after the date that the decree was rendered. Proof of non-parentage and all other aspects of such a proceeding shall be governed by the provisions of Section 12.06 of this code.

This addition is needed to include within the law regarding the establishment of the parent-child relationship new provisions to permit a bill of review to raise questions of paternity.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 958

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 958** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN	S. THOMPSON
HARRIS OF TARRANT	GOODMAN
DICKSON	HARTNETT
On the part of the Senate	On the part of the House

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relating to procedures for the establishment of the parent-child relationship.

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

SECTION 1. Subsections (c) and (d), Section 11.08, Family Code, are amended to read as follows:

(c) [~~The petition and other matters in a suit in which a determination of paternity is sought, if the petitioner is a person other than the alleged father of the child, are confidential, and the district clerk and employees of the clerk may not disclose to any person other than the court, the department, or a party to the suit any matter concerning the suit. This subsection does not apply if and when the suit is set for trial under Subsection (b) of Section 13.05 of this code.~~

[~~(d)~~)] A petition in any suit for adoption or any suit for appointment of a nonparent managing conservator with authority to consent to adoption of a child must include:

(1) a sworn allegation that there has been compliance with Chapter 45, Human Resources Code; or

(2) if there has not been compliance with Chapter 45, Human Resources Code, a sworn statement of the particular reasons for that noncompliance.

SECTION 2. Subsection (j), Section 11.14, Family Code, is amended to read as follows:

(j) In any suit seeking the establishment of the parent-child relationship, after a hearing the court shall grant a motion for a preferential setting for a final hearing on the merits, jury or nonjury, filed by a party to the suit or by the attorney or guardian ad litem for the child and shall give precedence to that hearing over other civil cases if discovery has been completed or sufficient time has elapsed since the filing of the suit for the completion of all necessary and reasonable discovery if diligently pursued.

SECTION 3. Section 12.02, Family Code, is amended to read as follows:

Sec. 12.02. PRESUMPTION OF PATERNITY. (a) A man is presumed to be the biological father of a child if:

(1) he and the child's biological mother are or have been married to each other and the child is born during the marriage or not more than 300 days after the date the marriage terminated by death, annulment, divorce, or by having been declared void;

(2) before the child's birth, he and the child's biological mother attempted to marry each other by a marriage in apparent compliance with law, although the attempted marriage is or could be declared void, and the child is born during the attempted marriage or not more than 300 days after the date the attempted marriage terminated by death, annulment, divorce, or by having been declared void;

(3) after the child's birth, he and the child's biological mother have married or attempted to marry each other by a marriage in apparent compliance with law, although the attempted marriage is or could be declared void or voided by annulment, and:

(A) he has filed a written acknowledgement of his paternity of the child under Chapter 13 of this code;

(B) he consents in writing to be named and is named as the child's father on the child's birth certificate; or

(C) he is obligated to support the child under a written voluntary promise or by court order;

(4) without attempting to marry the mother, he consents in writing to be named as the child's father on the child's birth certificate; or

(5) before the child reaches the age of majority, he receives the child into his home and openly holds out the child as his biological child.

(b) A presumption under Subsection (a) of this section may be rebutted only by clear and convincing evidence.

(c) In addition to the presumptions set forth in subsection (a) of this Section, a man is presumed to be the biological father of a child if:

(1) he clearly recognizes the child as his biological child in writing and he openly holds the child out as his biological child; or

(2) he was openly cohabitating with the mother throughout the entire biologically possible time of conception.

(d) A presumption under subsection (c) may be rebutted by a preponderance of the evidence.

(e) If two or more presumptions arise that conflict, the presumption that is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

(f) If the paternity of a child is established by a court decree or order, including an order of divorce or annulment in which the paternity of a child is recited in the decree or order, the man who is designated as the father of the child may bring a bill of review on the issue of the paternity of the child not later than 10 years after the date that the decree was rendered. Proof of nonparentage and all other aspects of such a proceeding shall be governed by the provisions of Section 12.06 of this code.

SECTION 4. Section 13.01, Family Code, is amended to read as follows:

Sec. 13.01. [~~PARTIES. TIME~~] LIMITATION OF ACTIONS [~~SUIT~~]. (a) [~~A suit to establish the parent-child relationship between a child who has no presumed father and the child's biological father may be brought by the mother, by a man claiming to be or possibly to be the father, or by any other person or governmental entity having standing to sue under Section 11.03 of this code.~~] A suit to establish paternity may be brought before the birth of the child, throughout the life of the alleged father, and at any time after the alleged father's death, but must be brought on or before the later of (1) the [~~second~~] fourth anniversary of the day the child becomes an adult; or (2) September 1, 1995, or the suit is barred.

SECTION 5. Section 13.05, Family Code, is amended to read as follows:

Sec. 13.05. PRETRIAL PROCEEDINGS: EFFECT OF PATERNITY [~~BLOOD~~] TESTS. (a) At the conclusion of the pretrial conference, if the court finds that the tests show by clear and convincing evidence that the alleged father is not the father of the child, the court shall dismiss the suit with prejudice.

(b) If the court finds that the paternity tests do not exclude the alleged father as the father of the child and the results of the paternity testing do not exclude at least 95 percent of the male population from the possibility of being the father of the child, then the court shall set the suit for trial.

SECTION 6. Subsection (b), Section 13.22, Family Code, is amended to read as follows:

(b) The statement of paternity must clearly state that the man signing the statement[:

[~~(1) the father~~] acknowledges the child as his biological child[;

[~~(2) he and the mother, who is named in the statement, were not married to each other at the time of conception of the child or at any subsequent time, and~~

[~~(3) the child is not the biological child of another man~~].

SECTION 7. Subsection (a), Section 13.42, Family Code, is amended to read as follows:

(a) In a suit in which a determination of paternity is sought, the court may provide for the managing and possessory conservatorship and support of and access to the child; except that no alleged father denying paternity may be required to make any payment for the support of the child until paternity is established unless the alleged father is not excluded as the biological father of the child and at least 95 percent of the male population is excluded from being the biological father of the child in which case the court may order temporary support. On a finding of paternity, the court may order support retroactive to the time of the birth [~~filing~~] of the child [~~suit~~] and, on a proper showing, may order a party to pay an equitable portion of all prenatal and postnatal related health care expenses of the mother and child. This section does not preclude the court from rendering an order pursuant to Section 14.062 of this code that requires a parent to reimburse the state for public assistance paid for the support of the child.

SECTION 8. (a) This Act takes effect September 1, 1991.

(b) Any litigation pending on or filed after the effective date of this Act that seeks to establish a parent-child relationship shall be tried in accordance with the provisions of this Act, notwithstanding that the parent or child may have died before the effective date of this Act.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 359 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **S.B. 359**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 977 ADOPTED

Senator Brooks called from the President's table the Conference Committee Report on **S.B. 977**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Brooks, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 341

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 341** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

GREEN	M. GALLEGOS
BROOKS	BAILEY
WHITMIRE	DE LA GARZA
ELLIS	PUENTE
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 341 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **H.B. 341**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 903

Senator Turner offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 72nd Legislature, is suspended, as provided by Senate Rule 12.08, to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of **S.B. 1596**, relating to reducing overcrowding in jails and promoting a more effective state criminal justice system, including provisions relating to rollback tax rate relief, the composition of the Criminal Justice Policy Council and the Board of Pardons and Paroles, performance rewards payments to certain counties, and conditions of parole; and repealing certain statutes related to criminal offenses, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matters:

(1) Senate Rule 12.03(l), is suspended to permit the committee to insert to Section 499.092(b), "to the extent ordered by the court".

This action is necessary to limit transfers as necessary to remedy constitutional problems relating to safe and suitable jails.

(2) Senate Rule 12.03(l), is suspended to permit the committee to alter the section relating to the effect on the bill of the failure of the parties to settle to read as follows:

SECTION 17. Notwithstanding any other section or provision of this Act, this Act does not take effect unless the County of Nueces et al. v. Texas Board of Corrections et al. in the 250th Judicial District Court of Travis County, Texas, Cause No. 452,071 and Harris County, Texas v. the State of Texas, et al. in the 126th District Court of Travis County, Texas, Cause No. 475,468 are settled by written agreement on or before June 16, 1991.

This action is necessary to facilitate the settlement of the lawsuits relating to jail overcrowding.

(3) Senate Rule 12.03(l), is suspended to permit the committee to change the effective date to September 1, 1991, and to provide for a short emergency clause rather than immediate effect and a long emergency clause.

This action is necessary to provide parties and agencies of the state sufficient time to prepare for implementation of the act.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1596

Senator Turner submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1596** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

TURNER	STILES
MONTFORD	HIGHTOWER
LYON	RUSSELL
BROOKS	CONLEY
KRIER	ECKELS
On the part of the Senate	On the part of the House

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relating to reducing overcrowding in jails and promoting a more effective state criminal justice system, including provisions relating to maintenance and operation tax rate, the composition of the Criminal Justice Policy Council, the creation of the Texas Sentencing and Corrections Commission, performance rewards payments to certain counties, and conditions of parole; and repealing certain statutes related to criminal offenses.

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

SECTION 1. Chapter 499, Government Code, as revised by Chapter 16, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. PROCEDURES FOR REDUCING COUNTY JAIL BACKLOG

Sec. 499.091. LEGISLATIVE DECLARATION. The legislature declares that until September 1, 1995, the institutional division shall continue to perform its duty to accept inmates only as provided by the allocation formula. On and after September 1, 1995, the institutional division has a duty to accept, not later than the 45th day after the date on which all processing required for transfer has been completed, each inmate confined in a county jail while under an order of commitment to the institutional division. The duties provided by this subchapter may be enforced by an action in mandamus.

Sec. 499.092. TRANSFER OF FELONY BACKLOG. (a) The Commission on Jail Standards shall analyze the population of each county jail monthly and determine the number of inmates confined in the jail who are awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and for whom all paperwork and processing required for transfer have been completed.

(b) If a state or federal court determines that because of inmate overcrowding a county has failed to provide a constitutionally safe and suitable jail, the commission shall furnish the sheriff with a list of qualified county jails or county detention centers, work camps, or related facilities to which inmates described by Subsection (a) may be transferred for confinement and, to the extent determined possible by the commission, shall order the county to transfer the inmates, but only to the extent ordered by the court. Immediately on issuance of the commission's order, the sheriff shall transfer to a county jail that agrees to accept the inmates the number of inmates necessary to make the transferring county jail safe and suitable, as determined by the commission. The agreement must be in writing approved by the commissioners court and signed by the sheriffs of the counties transferring and receiving the inmates.

(c) The county transferring inmates under this section is liable for payment of the costs of transportation for and maintenance of transferred inmates, except as otherwise provided by this subchapter. The costs for maintenance of an inmate are the actual costs, as determined by the agreement. The costs shall be paid into the treasury of the county operating the jail receiving the inmates.

(d) If a county ordered to transfer inmates does not execute an agreement to transfer the inmates before the 31st day after the date the transfer order is made by the commission under Subsection (b), the commission shall order the inmates transferred to a specific facility and determine the costs to be paid by the transferring county to the receiving county.

(e) After September 1, 1993, a county may not execute a contract to maintain inmates from another state or federal jurisdiction without first receiving the approval of the Commission on Jail Standards. The commission may not approve a contract unless the commission determines that the contract does not encumber space needed for the transfer of inmates described by Subsection (a).

(f) This section expires September 1, 1995.

Sec. 499.093. PAYMENT. (a) Not later than the 10th day after the effective date of this subchapter, the Commission on Jail Standards shall determine for each county jail in this state the number of inmates confined in the jail on April 1, 1991, who were awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision, and for whom paperwork and processing required for transfer had been completed on that date.

(b) A county is entitled to payment from the Commission on Jail Standards as compensation to the county for confining the number of inmates determined as ready for transfer under Subsection (a) at a daily amount per inmate equal to the

average daily cost of confining an inmate in the institutional division for the preceding fiscal year as determined by the board, except that as the institutional division accepts inmates from the county on and after April 1, 1991, the number of inmates for whom the county is entitled to payment is reduced by the number accepted by the division. On the date after April 1, 1991, that the institutional division has accepted a number of inmates from a county that is equal to the number of inmates determined as ready for transfer under Subsection (a), the county is no longer entitled to payment under this section.

(c) Not later than September 10, 1993, the Commission on Jail Standards shall determine for each county jail in this state the number of inmates confined in the jail on September 1, 1993, who were awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision, and for whom paperwork and processing required for transfer had been completed on that date.

(d) A county is entitled to payment from the Commission on Jail Standards as compensation to the county for confining the number of inmates determined as ready for transfer under Subsection (c) at an amount per inmate to be determined by dividing the total number of inmates in county jails under Subsection (c) into $11.5 million.

Sec. 499.094. EMERGENCY OVERCROWDING RELIEF. From the effective date of this subchapter until September 1, 1995, for each month in which the number of inmates confined in a county jail awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and for whom paperwork and processing required for transfer has been completed, as determined under Section 499.092, is greater than 70 percent of the number of inmates confined in the jail on April 1, 1991, as determined under Section 499.093, the Commission on Jail Standards shall pay to the county for each inmate in excess of 70 percent of the April 1, 1991, number for each day of confinement the sum of $20 unless the number of inmates is greater than 210 percent of the April 1, 1991, number, in which event the commission shall pay for each day of confinement the sum of $30.

Sec. 499.095. TRANSFERRED INMATES. A county that receives a payment from the Commission on Jail Standards for inmates being held by the county for another county shall forward the payment to the county that transferred the inmates.

SECTION 2. Section 498.002, Government Code, as revised by Chapter 16, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 498.002. CLASSIFICATION AND RECLASSIFICATION. [~~(a)~~] The institutional division shall classify each inmate as soon as practicable on the inmate's arrival at the division and, subject to the requirements of Section 498.005, shall reclassify the inmate as circumstances warrant. Each inmate must be classified according to the inmate's conduct, obedience, industry, and criminal history. The director of the institutional division shall maintain a record on each inmate showing each classification and reclassification of the inmate with the date and reason for each classification or reclassification. The institutional division may classify each inmate on the inmate's arrival at the division in a time-earning category that does not allow the inmate to earn more than 30 days' good conduct time for each 30 days actually served.

[~~(b) On the direction of the board under Section 498.005, the institutional division shall classify each inmate on the inmate's arrival at the division in a time-earning category that does not allow the inmate to earn more than 20 days' good conduct time for each 30 days actually served. The institutional division may not reclassify an inmate to a higher time-earning classification unless the inmate has served 90 or more days at the classification immediately lower than the classification~~

~~to which the inmate is to be reclassified, except that the division under rules adopted by the director of the institutional division may reclassify an inmate to trusty status before the inmate has served 90 days at the classification immediately lower than trusty status.~~]

SECTION 3. Section 498.005, Government Code, as revised by Chapter 16, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 498.005. ANNUAL REVIEW OF CLASSIFICATION; RESTORATION OF GOOD TIME; RETROACTIVE AWARD OF GOOD TIME. At least annually, the board shall review the institutional division's rules relating to restoration of good conduct time that has been forfeited, the manner in which inmates are reclassified, and the manner in which additional good conduct time is awarded retroactively to inmates who have been reclassified. The board shall consider in its review whether the inmate overcrowding in the institutional division has decreased and whether it is necessary for purposes of decreasing overcrowding to classify inmates according to Section 498.002[~~(a)~~], to restore good conduct time under Section 498.004, or to award additional good conduct time retroactively to inmates who have been reclassified. [~~If the board determines that overcrowding has decreased and it is not necessary to classify inmates according to Section 498.002(a), it shall order the institutional division to classify inmates according to Section 498.002(b).~~] If the board determines that overcrowding has decreased and it is not necessary to restore good conduct time or award additional good conduct time, it shall direct the institutional division to discontinue those practices.

SECTION 4. Subsection (a), Section 8, Article 42.09, Code of Criminal Procedure, is amended to read as follows:

(a) A county that transfers a defendant to the Department of Corrections under this Article shall deliver to the director of the department:

(1) a copy of the judgment entered pursuant to Article 42.01 of this code, completed on a standardized felony judgment form described by Section 4 of that Article;

(2) a copy of any order revoking probation and imposing sentence pursuant to Section 8 of Article 42.12 of this code, including:

(A) any amounts owed for restitution, fines, and court costs, completed on a standardized felony judgment form described by Section 4 of Article 42.01 of this code; and

(B) a copy of the client supervision plan prepared for the defendant by the adult probation department supervising the defendant, if such a plan was prepared;

(3) a written report that states the nature and the seriousness of each offense and that states the citation to the provision or provisions of the Penal Code or other law under which the defendant was convicted;

(4) a copy of the victim impact statement, if one has been prepared in the case under Article 56.03 of this code;

(5) a statement as to whether there was a change in venue in the case and, if so, the names of the county prosecuting the offense and the county in which the case was tried; and

(6) a copy of the record of arrest for each offense;

(7) information regarding the criminal history of the defendant;

(8) a copy of the indictment or information for each offense; [~~and~~]

(9) a checklist sent by the department to the county and completed by the county in a manner indicating that the documents required by this subsection and Subsection (c) of this section accompany the defendant; and

(10) a copy of the Criminal Justice Data Report, prepared under Section 413.018, Government Code.

SECTION 5. Article 42.13, Code of Criminal Procedure, is amended by adding Section 13 to read as follows:

Sec. 13. PERFORMANCE REWARDS. (a) The board shall develop, adopt, and implement a performance rewards program to reward each county served by a department that successfully diverts offenders from confinement in the institutional division. In developing the program, the board shall consider relevant factors for each county served by a department. The factors shall include but are not limited to:

(1) the personal bond utilization rate in the county;

(2) the pretrial diversion rate in the county;

(3) the deferred adjudication rate in the county;

(4) the probation rate in the county;

(5) the probation revocation rate in the county, with separate rates calculated for revocations based on technical grounds and revocations based on grounds other than technical;

(6) the utilization rate of residential and nonresidential diversion programs in the county;

(7) the institutional division commitment rate in the county;

(8) the admission per index crimes rate in the county; and

(9) the frequency with which and extent to which the county does not use all admissions to which the county is entitled under the allocation formula.

(b) On January 1 of each year, the division shall make a payment to a county served by a department on the basis of the performance record of the county during the previous state fiscal year in diverting offenders from confinement in the institutional division, as documented by information requested by the division and provided by the department serving the county. The minimum payment under this section to an eligible county that participates in the performance reward program is $50,000. Each department shall provide the information for each county served by the department in a format designed by the division and each county participating in the performance rewards program shall provide a plan, including a budget schedule, indicating to the division the manner in which the payment is to be used for each of the purposes described by Subsection (c) of this section. The division may reject the plan, accept the plan, or make acceptance of the plan conditional on modification of the plan and monitoring of the plan by the division.

(c) A county that receives a payment under this section shall use not less than 25 percent of the payment for substance abuse prevention and treatment programs for offenders and may use the remainder of the payment for:

(1) any purposes for which state aid may be used under Section 11(b) of this article;

(2) implementation of the community justice plan for that county; or

(3) any program serving the criminal justice needs in the county.

SECTION 6. Subsection (a), Section 6, Article 42.13, Code of Criminal Procedure, is amended to read as follows:

(a) Beginning on September 1, 1991 [~~1990~~], the division shall require as a condition to payment of state aid to a department under Section 11 or Section 13 of this article and eligibility for payment of costs under Section 499.094, Government Code, that a community justice plan be submitted for the department. The [~~If a~~] community justice council [~~serves the department, the council~~] shall submit the plan required by this subsection. [~~If a community justice council does not serve the department, the district judges managing the department shall submit the plan.~~] A community justice council may not submit a plan under this section unless the plan is first approved by the district judges who manage the department served by the council. The council [~~or judges~~] shall submit a revised plan to the division each year by a date designated by the division.

SECTION 7. Subsections (b) and (c), Section 3, Article 42.131, Code of Criminal Procedure, are amended to read as follows:

(b) A [~~As a prerequisite to establishing a community corrections facility under this section or a county correctional center under Subchapter H, Chapter 351, Local Government Code, a~~] community justice council must be established by the district judge or judges in each jurisdiction served by a department, unless a board or council exists in the community on September 1, 1991, [~~the effective date of this section~~] that performs duties substantially similar to those imposed on a community justice council under this section. The council shall provide continuing policy guidance and direction for the development of criminal justice plans and community corrections facilities and programs. A council should consist of the following persons or their designees:

(1) a sheriff of a county to be served by the department [~~facility~~], chosen by the sheriffs of the counties to be served by the department [~~facility~~];

(2) a county commissioner or a county judge from a county to be served by the department [~~facility~~], chosen by the county commissioners and county judges of the counties to be served by the department [~~facility~~];

(3) a city council member of the most populous municipality in a county to be served by the department [~~facility~~], chosen by the members of the city councils of cities to be served by the department [~~facility~~];

(4) not more than two state legislators elected from a county to be served by the department [~~facility~~], chosen by the state legislators elected from the counties to be served by the department [~~facility~~];

(5) the presiding judge from a judicial district to be served by the department [~~facility~~], chosen by the district judges from the judicial districts to be served by the department [~~facility~~];

(6) a judge of a statutory county court exercising criminal jurisdiction in a county to be served by the department [~~facility~~], to be chosen by the judges of statutory county courts with criminal jurisdiction in the counties to be served by the department [~~facility~~];

(7) a county attorney with criminal jurisdiction from a county to be served by the department [~~facility~~], chosen by the county attorneys with criminal jurisdiction from the counties to be served by the department [~~facility~~];

(8) a district attorney or criminal district attorney from a judicial district to be served by the department [~~facility~~], chosen by the district attorneys or criminal district attorneys from the judicial districts to be served by the department [~~facility~~]; and

(9) an elected member of the board of trustees of an independent school district in a county to be served by the department [~~facility~~], chosen by the members of the boards of trustees of independent school districts located in counties to be served by the department [~~facility~~].

(c) The community justice council shall [~~should~~] appoint a community justice task force to provide support staff for the development of a community justice plan. The task force may consist of any number of members, but should include:

(1) the county or regional director of the Texas Department of Human Services with responsibility for the area to be served by the department [~~facility~~];

(2) the chief of police of the most populous municipality to be served by the department [~~facility~~];

(3) the chief juvenile probation officer of the juvenile probation office serving the most populous area to be served by the department [~~facility~~];

(4) the superintendent of the most populous school district to be served by the department [~~facility~~];

(5) the supervisor of the Department of Public Safety region closest to the department [~~facility~~], or the supervisor's designee;

(6) the county or regional director of the Texas Department of Mental Health and Mental Retardation with responsibility for the area to be served by the department [~~facility~~];

(7) a substance abuse treatment professional appointed by the Council of Governments serving the area to be served by the department [~~facility~~];

(8) the department chief of the department to be served by the department [~~facility~~];

(9) the local or regional representative of the Board of Pardons and Paroles Division with responsibility for the area to be served by the department [~~facility~~];

(10) the representative of the Texas Employment Commission with responsibility for the area to be served by the department [~~facility~~];

(11) the representative of the Texas Rehabilitation Commission with responsibility for the area to be served by the department [~~facility~~];

(12) a licensed attorney who practices in the area to be served by the department [~~facility~~] and whose practice consists primarily of criminal law; and

(13) a court administrator, if one serves the area to be served by the department [~~facility~~].

SECTION 8. Chapter 413, Government Code, is amended to read as follows:

CHAPTER 413. CRIMINAL JUSTICE POLICY COUNCIL [~~AND COORDINATING COUNCILS~~]

Sec. 413.001. DEFINITIONS. In this chapter, "policy[~~:~~

[~~(1) "Coordinating council" means the Criminal Justice Coordinating Council.~~

[~~(2) "Policy~~] council" means the Criminal Justice Policy Council[~~:~~

[~~(3) "Council" means the Criminal Justice Coordinating Council or the Criminal Justice Policy Council~~].

Sec. 413.002. CRIMINAL JUSTICE POLICY COUNCIL. (a) The Criminal Justice Policy Council is an agency of the state.

(b) The membership of the policy council consists of:

(1) the governor, lieutenant governor, and speaker of the house of representatives;

(2) three [~~two~~] members of the senate appointed by the lieutenant governor;

(3) three [~~two~~] members of the house of representatives appointed by the speaker; and

(4) six [~~four~~] members appointed by the governor, one of whom must be a district judge, one of whom must be a district attorney or criminal district attorney, one of whom must be a county judge, one of whom must be a county sheriff, and one of whom must be a county commissioner.

Sec. 413.003. [~~CRIMINAL JUSTICE COORDINATING COUNCIL. (a) The Criminal Justice Coordinating council is an agency of the state.~~

[~~(b) The coordinating council consists of:~~

[~~(1) the director of the Texas Department of Corrections;~~

[~~(2) the executive director of the Texas Adult Probation Commission;~~

[~~(3) the executive director of the Board of Pardons and Paroles;~~

[~~(4) the executive director of the Texas Judicial Council;~~

[~~(5) the executive director of the Commission on Jail Standards;~~

[~~(6) the director of the Department of Public Safety;~~

[~~(7) the executive director of the criminal justice division of the governor's office;~~

[~~(8) the executive director of the Texas Youth Commission;~~

[~~(9) the executive director of the Texas Juvenile Probation Commission;~~

[~~(10) the executive director of the Commission on Law Enforcement Officer Standards and Education; and~~

[~~(11) three public members, one each appointed by the governor, lieutenant governor, and speaker of the house of representatives.~~

[~~Sec. 413.004.~~] APPLICATION OF SUNSET ACT. [~~(a)~~] The policy council is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the council is abolished September 1, 1993.

[~~(b) The coordinating council is subject to the Texas Sunset Act (Chapter 325). Unless continued in existence as provided by that Act, the council is abolished September 1, 1993.~~]

Sec. 413.004 [~~413.005~~]. TENURE OF APPOINTED MEMBER. An appointed member of the policy [a] council serves at the pleasure of the appointing officer.

Sec. 413.005 [~~413.006~~]. SERVICE ADDITIONAL DUTY OF OFFICE. Service on the policy [a] council of a public officer or employee is an additional duty of the office or employment.

Sec. 413.006 [~~413.007~~]. COMPENSATION AND REIMBURSEMENT. A member of the policy [a] council serves without compensation for service on the council but is entitled to reimbursement for actual and necessary expenses incurred in performing council duties.

Sec. 413.007 [~~413.008~~]. [~~ADVISORY FUNCTION OF COORDINATING COUNCIL;~~] APPOINTMENT OF OTHER ADVISORY BODIES. [~~(a) The coordinating council acts in an advisory capacity to the policy council.~~

[~~(b)~~] The policy council may establish other advisory councils, task forces, or commissions it considers necessary to accomplish the purposes of this chapter.

Sec. 413.008 [~~413.009~~]. GENERAL DUTY OF POLICY COUNCIL [~~COUNCILS~~]. The policy council [~~councils~~] shall develop means to promote a more effective and cohesive state criminal justice system.

Sec. 413.009 [~~413.010~~]. DUTIES OF POLICY COUNCIL. To accomplish its duties the policy council shall:

(1) conduct an in-depth analysis of the criminal justice system;

(2) determine the long-range needs of the criminal justice system and recommend policy priorities for the system;

(3) identify critical problems in the criminal justice system and recommend strategies to solve those problems;

(4) assess the cost-effectiveness of the use of state and local funds in the criminal justice system;

(5) recommend the goals, priorities, and standards for the allocation of criminal justice planning funds administered by the criminal justice division;

(6) recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice system;

(7) advise and assist the legislature in developing plans, programs, and proposed legislation for improving the effectiveness of the criminal justice system;

(8) [~~guide the coordinating council;~~

[~~(9)~~] make computations of daily costs and compare interagency costs on services provided by agencies that are a part of the criminal justice system;

(9) [~~(10)~~] make population computations for use in planning for the long-range needs of the criminal justice system;

(10) [~~(11)~~] determine long-range information needs of the criminal justice system and acquire that information; [~~and~~]

(11) [~~(12)~~] engage in other activities consistent with the responsibilities of the policy council; and

(12) implement the criminal justice data report.

[Sec. 413.011. DUTIES OF COORDINATING COUNCIL. To accomplish its duties the coordinating council shall:

[(1) recommend to the policy council means to improve the organization and management of the criminal justice system;

[(2) examine and evaluate information collection systems used by state criminal justice agencies and recommend means to improve the usefulness, comprehensiveness, and accuracy of information collection;

[(3) develop a statistical model of the criminal justice system that:

[(A) reflects workload demands on and the performance of state and local agency components of the system; and

[(B) has the capacity to predict the impact of changes in the system on the separate components;

[(4) assist the policy council in the performance of its duties;

[(5) implement those policy recommendations of the policy council that are administrative in nature;

[(6) coordinate those solutions to criminal justice system problems that require interagency cooperation; and

[(7) engage in other activities consistent with the responsibilities of the coordinating council.]

Sec. 413.010 [413.012]. PRESIDING OFFICERS. The governor is the chairman of the policy council. The lieutenant governor is the vice-chairman and presides at meetings in the governor's absence. The speaker of the house of representatives presides at meetings when both the governor and lieutenant governor are absent.

Sec. 413.011 [413.013]. MEETINGS. The policy [Each] council shall meet at least quarterly and at the call of its chairman.

[Sec. 413.014. SUBCOMMITTEES OF COORDINATING COUNCIL. The coordinating council may form subcommittees to accomplish specific tasks.]

Sec. 413.012 [413.015]. CONTRACTUAL AUTHORITY. (a) The policy council may contract with public or private entities in the performance of its responsibilities.

(b) The policy council may contract with the criminal justice center at Sam Houston State University to provide information important to the work of either council.

Sec. 413.013 [413.016]. GRANTS AND DONATIONS. The policy council may accept grants and donations from public and private entities in addition to legislative appropriations.

Sec. 413.014 [413.017]. EXECUTIVE DIRECTOR; STAFF. (a) The policy council may employ an executive director to perform duties necessary to the proper functioning of the policy council [both councils. The executive director is the chairman of the coordinating council].

(b) The executive director is appointed by the governor with the advice and consent of the senate. The executive director may not work for any agency or office of the state other than the policy council and may not perform duties for any other state agency or office that negatively affect the performance of the executive director's duties as executive director of the policy council.

(c) The executive director may employ personnel necessary to administer the responsibilities of the policy council [councils].

Sec. 413.015 [413.018]. CRIMINAL JUSTICE PLAN; ANNUAL REPORT. (a) The policy council annually shall submit to the legislature a plan detailing the actions necessary to promote an effective and cohesive criminal justice system.

(b) The policy council shall include in the plan a report of its activities and the recommendations it makes under Section 413.009 [413.010].

Sec. 413.016 [~~413.019~~]. STATISTICAL ANALYSIS CENTER. The policy council shall serve as the statistical analysis center for the state and as the liaison for the state to the United States Department of Justice on criminal justice issues of interest to the state and federal government relating to data, information systems, and research.

Sec. 413.017 [~~413.020~~]. SPECIAL PROJECTS [~~PRODUCTS~~]. (a) Before January 1, 1991, the policy council shall prepare and report to the legislature:

(1) a design for conducting a comprehensive study of sentencing patterns and practices in this state;

(2) an evaluation of formulas for the fair and equitable allocation of prison beds to local jurisdictions;

(3) A study that develops uniform definitions of the terms "recidivism" and "revocation rate"; and

(4) an examination of the reporting requirements imposed by the state on municipal, county, and district clerk offices and justices of the peace offices that relate to criminal justice system processing, with recommendations relating to the consolidation, simplification, or elimination of requirements where appropriate.

(b) The design prepared under Subsection (a)(1) must include:

(1) a statement of the specific objectives of the comprehensive study;

(2) methodology;

(3) schedules for the study;

(4) a description of the resources necessary for the study; and

(5) two pilot sampling programs, capable of testing the design.

(c) Before January 1, 1993, the policy council shall prepare a study on and report to the legislature about statewide sentencing dynamics. The report must include a detailed profile of felons sentenced to the institutional division and felons placed on probation. The policy council shall design the study to provide the legislature with information necessary to perform a proper revision of the Penal Code and statutes relating to sentencing in criminal cases [~~This section expires January 1, 1992~~].

Sec. 413.018. CRIMINAL JUSTICE DATA REPORT. (a) Not later than September 1, 1992, the policy council shall prepare for and distribute to each district court in this state with felony jurisdiction a data collection report form.

(b) The policy council shall design the data collection report form to collect all information relevant to a sentence in a felony case or to a pretrial diversion or grant of deferred adjudication in a felony case as well as any other information determined necessary by the policy council.

(c) The attorney representing the state shall complete the data collection report for each felony conviction in which the defendant is sentenced to the institutional division of the Texas Department of Criminal Justice and shall include a copy of the data collection report in the documents sent to the division under Article 42.09, Code of Criminal Procedure. In any disposition of a felony case that does not include confinement in the institutional division, the attorney representing the state shall send a copy of the report to the community supervision and corrections department serving the court.

(d) If a sentence in a criminal case is imposed pursuant to a plea bargain, the attorney representing the state shall include that information in the data collection report.

SECTION 9. (a) Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.012 to read as follows:

Sec. 22.012. TRAINING RELATED TO DIVERSIONS. (a) Each attorney representing the state in the prosecution of felonies and each district court judge shall, as an official duty, each year complete a course of instruction related to the diversion of offenders from confinement in the institutional division.

(b) The supreme court shall provide the training required by Subsection (a). In adopting the rules, the supreme court shall consult with the Texas Department of Criminal Justice to obtain the department's recommendations for instruction content.

(c) The instruction must include information relating to:

(1) case law, statutory law, and procedural rules relating to felony diversions; and

(2) available community and state resources for diversions.

(b) The change in law made by this section applies to training for judges and prosecutors to be completed for calendar years beginning on or after January 1, 1992.

SECTION 10. Chapter 26, Tax Code, is amended by adding Section 26.044 to read as follows:

Sec. 26.044. EFFECTIVE TAX RATE TO PAY FOR STATE CRIMINAL JUSTICE MANDATE. (a) The first time that a county adopts a tax rate after September 1, 1991, in which the state criminal justice mandate applies to the county, the effective maintenance and operation rate for the county is increased by the rate calculated according to the following formula:

(State Criminal Justice Mandate)
(Current Total Value - New Property Value)

(b) In the second and subsequent years that a county adopts a tax rate, if the amount spent by the county for the state criminal justice mandate increased over the previous year, the effective maintenance and operation rate for the county is increased by the rate calculated according to the following formula:

(This Year's State Criminal Justice Mandate - Previous Year's State Criminal Justice Mandate)
(Current Total Value - New Property Value)

(c) The county shall include a notice of the increase in the effective maintenance and operation rate provided by this section, including a description and amount of the state criminal justice mandate, in the information published under Section 26.04(e) and Section 26.06(b) of this code.

(d) In this section, "state criminal justice mandate" means the amount spent by the county in the previous 12 months providing for the maintenance and operation cost of keeping inmates in county paid facilities after they have been sentenced to the institutional division of the Texas Department of Criminal Justice as certified by the county auditor based on information provided by the county sheriff, minus the amount received from state revenue for reimbursement of such costs.

SECTION 11. Section 497.054, Government Code, as revised by Chapter 16, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 497.054. HOUSING FOR PARTICIPANTS. (a) The pardons and paroles division, as necessary, shall designate facilities in an area in which residents are to be participants in the work program plan for the housing of those residents. The pardons and paroles division may not grant a resident work privileges unless:

(1) suitable housing for the resident exists in the area in which the resident is employed or has an offer of employment; or

(2) the resident is to be placed in a work facility that combines employment facilities and living quarters for the resident [~~and is located within 100 miles of the resident's recorded place of residence~~].

(b) The pardons and paroles division may assume custody of an eligible person who has previously been denied parole or whose initial parole eligibility date is more than six months [~~one year~~] but less than two years from the projected date of transfer to a work facility and transfer the person to a work facility. The pardons and paroles

division may assume custody of a person whom the pardons and paroles division may transfer under Section 499.003(a) and transfer the person to a work facility.

SECTION 12. Subsection (b), Section 497.056, Government Code, as revised by Chapter 16, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(b) The board shall adopt rules for the administration of the conditional work program. The rules must include a work program contract that includes an agreement by the resident to:

(1) contribute to the owner, operator, or manager of the work facility, from the funds received by the resident for the resident's participation in on-site industries' training and employment, not more than 80 percent of the funds, to be used or distributed by the owner, operator, or manager of the work facility to pay all or a part of:

(A) costs of supervision;

(B) costs of being quartered in the facility;

(C) restitution to the victim or victims of the resident;

(D) savings to be retained for the resident in a designated account for the resident's benefit and receipt on release; and

(E) support of the resident's dependents, if any;

(2) serve at least six months [~~one calendar year~~] in the work facility before requesting parole review under Section 8(b), Article 42.18, Code of Criminal Procedure, and to serve at least six months [~~one calendar year~~] regardless of whether the resident becomes eligible for mandatory supervision under Section 8(c), Article 42.18, Code of Criminal Procedure, during that period [~~calendar year~~]; and

(3) participate in the employment, education, and rehabilitation programs available at the work facility to the extent that participation is recommended by the professional staff of the facility.

SECTION 13. Chapter 37, Code of Criminal Procedure, is amended by adding Article 37.15 to read as follows:

Art. 37.15. TEXAS SENTENCING AND CORRECTIONS COMMISSION

Sec. 1. CREATION. The Texas Sentencing and Corrections Commission is created.

Sec. 2. DUTIES. The commission shall study the punishments prescribed for criminal offenses in this state, sentencing practices in criminal courts, and the effect of jail and prison overcrowding and lenient parole laws on sentences actually served by defendants convicted of criminal offenses. After completing the study, the commission shall propose legislation to:

(1) revise punishments for criminal offenses, basing the revision on:

(A) a narrower range of punishment for offenses; and

(B) proportional punishment, with the harshest punishments reserved for those offenders who have caused the greatest physical harm to individuals or harm to society;

(2) adequately expand prisons, jails, and community corrections facilities to confine those convicted defendants who pose the most significant threat to society; and

(3) revise probation and parole laws to ensure that:

(A) those defendants convicted of offenses that cause the greatest harm to society or pose the greatest threat of future harm to society serve a significant portion of their sentences in actual confinement;

(B) evaluations, based on supervisory need rather than capacity limitations, are made on each defendant released on probation or parole to determine the appropriate level of supervision for the defendant or the desirability of placing the defendant in special probation or parole programs; and

(C) good time credited towards parole or early release is earned through participation in education, job training, and substance abuse treatment programs designed to provide the defendant the capability of acquiring gainful employment on release; and

(4) adequately expand the probation and parole systems, including, as appropriate, special supervision and treatment programs within those systems, to allow each defendant released on probation or parole to receive supervision or treatment based on correctional needs rather than on capacity limitations.

Sec. 3. COMPOSITION. (a) The commission is composed of 25 members, 15 of whom are appointed by the governor, five of whom are members of the senate appointed by the lieutenant governor, and five of whom are members of the house of representatives appointed by the speaker of the house of representatives. In making appointments under this section, the governor shall attempt to ensure participation by minorities on the commission, including females, African-Americans, Hispanic-Americans, Native Americans, and Asian Americans. Each member serves at the pleasure of the official by whom the member is appointed.

(b) All members of the commission shall be generally experienced in criminal justice matters. In addition, there shall be at least one member of the commission experienced in each of the following categories:

(1) as a trial judge hearing criminal cases;

(2) as a prosecutor of criminal cases;

(3) as a criminal justice defense lawyer;

(4) in the administration of a statewide correction system;

(5) in the operation of a county jail; and

(6) as an advocate of crime victims' rights.

(c) The governor shall designate one member of the commission as chairman of the commission, and the member serves as chairman at the pleasure of the governor.

Sec. 4. REIMBURSEMENT. Members of the commission are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their official duties.

Sec. 5. STAFF; CONTRACTS. The commission may employ staff as necessary for data collection, analysis, and research and other support services and may contract for those services with agencies of the state or private consultants.

Sec. 6. SUBMISSION. The commission shall submit the proposed legislation described by Section 2 of this article to the governor, the Texas Department of Criminal Justice, and the Legislative Criminal Justice Board not later than June 1, 1992.

Sec. 7. EXPIRATION. The commission is abolished and this article expires on June 1, 1993.

SECTION 14. Section 6, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) To facilitate the work of the Board of Pardons and Paroles, the governor shall appoint the chairman and two other members of the Board of Pardons and Paroles who shall serve at the pleasure of the governor as the executive committee to coordinate activities of the board and assure maximum efficiency and fair distribution of the caseload.

SECTION 15. (a) Except as provided by Subsection (b) of this section, effective September 1, 1993, the Penal Code is repealed.

(b) This section does not apply to Sections 12.31, 19.02, or 19.03, Penal Code.

SECTION 16. (a) A county that on or after the effective date of this Act is or has been a party to a suit against the state or a state agency, the subject of which is the reimbursement of the county for the confinement of inmates in the county

jail who are awaiting transfer to the institutional division of the Texas Department of Criminal Justice following conviction of a felony or revocation of probation, parole, or release on mandatory supervision, and that is not a signatory to a formal written agreement that resolves or abates the suit is:

(1) subject to the authority of the Commission on Jail Standards to order the transfer of inmates in the county jail under Subchapter E, Chapter 499, Government Code, as added by this Act, and is liable for the payment of costs under Subsection (c) of Section 499.092 of that chapter; and

(2) not entitled to any payment from the commission under Subchapter E, Chapter 499, Government Code, as added by this Act, or from the community justice assistance division of the Texas Department of Criminal Justice under Section 13, Article 42.13, Code of Criminal Procedure, as added by this Act.

(b) Nothing herein is intended to prevent any county from filing a suit to enforce the provisions of this Act.

SECTION 17. Notwithstanding any other section or provision of this Act, this Act does not take effect unless the County of Nueces et al. v. Texas Board of Corrections et al. in the 250th Judicial District Court of Travis County, Texas, Cause No. 452,071 and Harris County, Texas v. the State of Texas, et al. in the 126th District Court of Travis County, Texas, Cause No. 475,468 are settled by written agreement on or before June 16, 1991.

SECTION 18. This Act takes effect September 1, 1991.

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

HOUSE CONCURRENT RESOLUTION 258

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 258, Directing the Enrolling and Engrossing Clerk of the House of Representatives to make the necessary corrections to **H.B. 2.**

The resolution was read.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 958 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **S.B. 958**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 625 ADOPTED

Senator Green called from the President's table the Conference Committee Report on **S.B. 625**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Green, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 831

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 831** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BARRIENTOS	GIBSON
LUCIO	R. LEWIS
TEJEDA	JUNELL
ARMBRISTER	PEREZ
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation, functions, and change of the name of the State Purchasing and General Services Commission, the transfer of responsibility for architectural barrier programs from the commission to the Texas Department of Licensing and Regulation, the transfer of responsibility for the personal property accounting system from the commission to the comptroller, and the acquisition by the commission and other entities of property and services; providing penalties.

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

PART 1. ADMINISTRATION OF GENERAL SERVICES COMMISSION

SECTION 1.01. Subdivision (1), Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Commission" means the [~~State Purchasing and~~] General Services Commission.

SECTION 1.02. Section 2.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.01. COMMISSION. The [~~State Purchasing and~~] General Services Commission is an agency of the state [~~established~~].

SECTION 1.03. Section 2.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.02. MEMBERSHIP. The commission is composed of three members appointed by the governor with the advice and consent of the senate. All members must be representatives of the general public. Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees. In making appointments under this section, the governor shall attempt to appoint members of different minority groups, including females, African-Americans, Hispanic-Americans, Native-Americans, and Asian-Americans. A person is not eligible for appointment if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization that contracts with the commission;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that contracts with the state; or

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

SECTION 1.04. Section 2.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.03. TERMS. Members of the commission hold office for staggered terms of six years, with a member's term expiring on January 31 of each odd-numbered year.

SECTION 1.05. Section 2.04, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Two members of the commission constitute a quorum.

(d) 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.

SECTION 1.06. Article 2, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 2.051 to read as follows:

Sec. 2.051. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) violates a prohibition established by Section 2.061 of this Act;

(2) 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

(3) 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 executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the commission of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 1.07. Section 2.06, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsections (e) through (k) to read as follows:

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

(f) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

(g) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(h) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(i) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity 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 commission work force that meets federal and state guidelines;

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

(4) reasonable methods to address appropriately those areas of significant underutilization.

(j) A policy statement prepared under Subsection (i) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(k) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (j) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 1.08. Article 2, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 2.061 to read as follows:

Sec. 2.061. CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association of business entities that contracts with the state may not be a member of the commission or an employee of the commission 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 of business entities that contracts with the state may not be a commission member and may not be a commission 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) For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not be a member of the commission or act as the general counsel to 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 commission or a business entity that contracts with the state.

SECTION 1.09. Section 2.07, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.07. APPLICATION OF SUNSET ACT. The commission 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 commission is abolished and this Act expires December 31 [~~September 1~~], 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.

SECTION 1.10. Section 2.08, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.08. REPORTS [~~REPORT~~]. (a) Not later than the 30th day after the date on which each regular session of the legislature begins, the commission shall

report to the legislature concerning the activities of the commission during the preceding legislative interim and shall recommend any amendments to current law that would result in an increase in efficiency, economy, or productivity in the areas monitored by the commission.

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

SECTION 1.11. Article 2, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 2.10 to read as follows:

Sec. 2.10. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission by rule shall establish methods by which consumers, service recipients, and persons contracting with the state under authority of this Act are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve. If a written complaint is filed with the commission that the commission has authority to resolve, the commission, 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.

(c) The commission 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 commission's programs.

PART 2. COMMISSION FUNCTIONS UNDER THE STATE PURCHASING AND GENERAL SERVICES ACT

SECTION 2.01. Article 2, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 2.11 to read as follows:

Sec. 2.11. DISADVANTAGED BUSINESSES. (a) The commission, in cooperation with the Department of Commerce Office of Minority Business Development, shall establish a disadvantaged business program consistent with the General Appropriations Act and general law.

(b) The commission shall:

(1) set and strive to meet annual goals for the awarding of contracts to disadvantaged businesses;

(2) attempt to identify disadvantaged businesses in the state that provide or have the potential to provide supplies, materials, equipment, or services to the state;

(3) take steps to assist and encourage disadvantaged businesses located in this state to bid for contracts with the state;

(4) give disadvantaged businesses full access to the commission's bidding and proposal process;

(5) inform and offer assistance to disadvantaged businesses regarding the commission's bidding and proposal process; and

(6) identify barriers to participation by disadvantaged businesses in the commission's bidding and proposal process.

(c) The commission shall appoint an advisory committee with at least three members composed of owners of disadvantaged businesses. A committee member serves at the will of the commission. A committee member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee. The committee, in coordination with the Department of Commerce Office of Minority Business Development, shall study the commission's rules and procedures that relate to bidding, purchasing, and contracting with the state in general. The committee shall recommend changes in law to the legislature and changes in rules to the commission that are necessary to facilitate the participation of disadvantaged businesses in state contracting. The commission shall issue a report outlining such recommendations and outlining the results of efforts undertaken by the commission pursuant to Subsection (b) of this section. The report shall be submitted to the governor and to the presiding officer of each house of the legislature prior to January 1, 1993.

(d) This section does not exempt the commission from competitive procurement requirements provided by law.

SECTION 2.011. Section 3.01(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) "Services," as used in this article, means the furnishing of skilled or unskilled labor or professional work but does not include:

(1) professional services covered by the Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes);

(2) services of an employee of a state agency;

(3) consulting services or services of a private consultant as defined by Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes); [~~or~~]

(4) services of public utilities; or

(5) services to which Article 601i, Revised Statutes, applies.

SECTION 2.012. Section 3.022(f) State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) The commission shall make a written award of a purchase or lease to the offeror whose proposal is the most advantageous to the state, considering price and the evaluation factors in the request for proposals, except that if the commission finds that none of the offers is acceptable, it shall refuse all offers. In determining which proposal is most advantageous to the state, the commission shall consider factors such as installation costs, the overall life of the system or equipment, the cost of acquisition, operation, and maintenance of hardware included with, associated with, or required for the system or equipment during the state's ownership or lease, and the cost of acquisition, operation, and maintenance of software included with, associated with, or required for the system or equipment during the state's ownership or lease. [~~The commission may not use any other factors or criteria in its evaluation.~~] The contract file must state in writing the basis on which the award is made.

SECTION 2.02. Subsections (a), (c), (e), and (f), Section 3.08, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) State agencies are delegated the authority to purchase supplies, materials, and equipment if the purchase does not exceed $5,000 [~~$500~~]. The commission by rule shall prescribe procedures for these purchases, and by rule may delegate to state agencies the authority to purchase supplies, materials, or equipment if the purchase exceeds $5,000 [~~$500~~].

(c) Competitive bidding, whether formal or informal, is not required for a purchase by a state agency if the purchase does not exceed $1,000 [~~$100~~], or a greater amount prescribed by rule of the commission.

(e) Large purchases may not be divided into small lot purchases in order to meet the specified dollar limits. The commission may not require that unrelated purchases be combined into one purchase order in order to exceed the specified dollar limits.

(f) Agencies making purchases under this section for which competitive bidding is required must attempt to obtain at least three competitive bids from sources which normally offer for sale the merchandise being purchased and must comply with Section 3.101 of this article.

SECTION 2.03. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.101 to read as follows:

Sec. 3.101. BIDDERS LISTS. (a) This section:

(1) applies to all purchases under this article for which competitive bidding or competitive sealed proposals are required;

(2) applies to all state agencies that make purchases under this article, including the commission and agencies that make purchases under Section 3.06 of this article; and

(3) does not apply to purchases made by the commission under Section 3.11 of this article.

(b) The commission shall develop a uniform registration form for application to do business with the commission or with any state agency. The registration forms shall constitute a valid application for a bidders list by all state agencies. Nothing in this subsection shall be construed as preventing any state agency from developing and using its own registration form, but such forms shall not be required in addition to or in lieu of the uniform registration form developed by the commission.

(c) Each state agency shall maintain a bidders list and annually register on the list the name and address of each vendor that applies for registration in accordance with rules adopted under this section. An agency may include other relevant vendor information on the list. Each agency shall solicit bids or proposals from all eligible vendors on the list, as provided by this section, when the agency proposes to make a purchase that will cost more than $5,000.

(d) A state agency may charge applicants for registration a fee and may charge registrants an annual renewal fee in an amount designed to recover the agency's costs in developing and maintaining its bidders list and in soliciting bids or proposals under this section. An agency shall set the amount of the fees by rule.

(e) Each state agency shall adopt procedures for developing and maintaining its bidders list and procedures for removing inactive vendors from the list.

(f) Each state agency shall establish by rule a vendor classification process under which only vendors that may be able to make a bid or proposal on a particular purchase are solicited under this section.

(g) The commission may establish by rule a process under which the requirement for soliciting bids or proposals from eligible vendors on the bidders list may be waived for appropriate state agencies or appropriate purchases in circumstances in which the requirement is not warranted. The commission also may assist state agencies regarding issues that arise under this section.

SECTION 2.031. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.102 to read as follows:

Sec. 3.102. CERTAIN BIDS AND CONTRACTS PROHIBITED. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in the preparation of the specifications or request for proposals on which the bid or contract is based. A bidder or contract participant may provide free technical assistance to an agency under this section.

SECTION 2.04. Subsection (b), Section 3.11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Bidders List. The commission shall maintain a bidders list and shall add or delete names from the list by the application and utilization of applicable standards set forth in Subsection (e) of this section. Bid invitations shall be sent only to those who have expressed a desire to bid on the particular types of items which are the subject of the bid invitation. Use of the bidders list shall not be confined to contract purchases but it may be used by the commission [~~as it may find desirable~~] in making any purchase.

SECTION 2.05. Section 3.17, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.17. SPECIFICATIONS AND STANDARDS PROGRAM; TEST AND INSPECTION PROGRAM. (a) The commission shall have the authority to establish and maintain a specifications and standards program to coordinate the establishment and maintenance of uniform standards and specifications for materials, supplies, and equipment purchased by the commission. The commission shall enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of materials, supplies, and equipment may be continuously accomplished.

(b) The commission shall [~~may also~~] establish and maintain a program of testing and inspecting to ensure that materials, supplies, services, and equipment meet specifications, and may make contracts for testing. If any state agency determines that any supplies, materials, services, or equipment received do not meet specifications, it shall promptly notify the commission in writing detailing the reasons why the supplies, materials, services, or equipment do not meet the specifications of the contract. The commission shall immediately determine whether or not the reported supplies, materials, services, or equipment meet specifications. The sole power to determine whether materials, supplies, services, and equipment meet specifications shall rest with the commission. The commission shall adopt rules that provide for the inspecting and testing of costly purchases that the commission determines should be inspected and tested. When the commission finds that contract specifications or conditions have not been complied with, it shall take action, with the assistance of the attorney general, if necessary, against the defaulting contractor.

SECTION 2.06. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.181 to read as follows:

Sec. 3.181. STATEWIDE OR REGIONAL SERVICES CONTRACTS; COMMISSION STUDIES. (a) The commission annually shall select for study at least one service that is purchased by one or more state agencies. The commission shall study a selected service to determine whether the state would benefit if the service were provided to appropriate state agencies under a regional or statewide contract. The commission shall give priority to studying services for which the commission has delegated the purchasing function to many state agencies.

(b) The commission is not required to enter into a statewide or regional contract for the provision of a service to state agencies if more than five bidders are willing to provide the service to the state under a statewide or regional contract.

SECTION 2.061. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.201 to read as follows:

Sec. 3.201. PREFERENCE FOR PRODUCTS MADE FROM RECYCLED MATERIALS. The commission shall give preference to products made of recycled materials in purchases made under this Act if:

(1) the products meet state specifications as to quantity and quality; and

(2) the cost of the product is equal to or less than the cost of other similar products that are not made of recycled materials.

SECTION 2.07. Section 3.23, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.23. CONTRACTS WITH DEPARTMENT OF CRIMINAL JUSTICE [~~CORRECTIONS~~]. The commission is [~~hereby~~] authorized to make contracts with the Texas Department of Criminal Justice [~~Corrections~~] for the purchase of supplies, equipment, services, and materials for use by other state agencies.

SECTION 2.071. Section 3.29, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsections (g) and (h) to read as follows:

(a) A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of persons, including a station wagon, that has a wheel base longer than 113 inches or that has more than 160 [~~145~~] SAE net horsepower. This provision does not apply to the purchase or lease of a vehicle to be used primarily for criminal law enforcement or a bus, motorcycle, pickup, van, truck, three-wheel vehicle, tractor, or ambulance.

(g) In this section, a vehicle is considered to be capable of using compressed natural gas or other alternative fuels if the vehicle is capable of using compressed natural gas or other alternative fuels either in its original equipment engine or in an engine that has been converted to use compressed natural gas or other alternative fuels after September 1, 1991, unless the time for compliance is extended pursuant to Subsection (h) of this section.

(h) The commission may extend the date by which a vehicle powered by a traditional gasoline or diesel engine shall be capable of using compressed natural gas or other alternative fuels as required under this section for one or more periods of 90 days, but not beyond September 1, 1992, if it finds a lack of ability to acquire such vehicles with original alternative fuels equipment, to acquire such vehicles which are able to be converted, or to convert such vehicles to use compressed natural gas or other alternative fuels.

SECTION 2.075. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.32 to read as follows:

Sec. 3.32. SAFETY STANDARDS FOR ELECTRICAL ITEMS. The commission or another state agency may not purchase an electrical item unless the item meets applicable safety standards of the federal Occupational Safety and Health Administration (OSHA).

SECTION 2.08. Subsections (g) and (m), Section 4.12, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(g)(1) The commission shall carry out the provisions of this section through a chief of Capitol security, selected by the executive director of the commission in accordance with Section 2.06 of this Act. The chief of Capitol security may be a commissioned peace officer and shall hold the position of a division director of the commission, exempt from the state employees classification system, reporting directly to the executive director of the commission. The chief shall develop and submit to the executive director for approval a plan that clearly sets forth the mission of the security function under this section. The chief shall also develop and

submit to the executive director for approval personnel policies and procedures that relate to the security function under this section. Direct supervisory responsibility for commissioned peace officers shall entitle the executive director to benefits under Section 814.107, Government Code, considering years of service as a member of the Employees Retirement System of Texas to constitute years of service credit for the purpose of that section.

(2) The commission is authorized to employ other security officers for the purpose of assisting the chief in carrying out the provisions of this section and may commission such security officers as it deems necessary as peace officers. When so commissioned, said officers are [~~hereby~~] vested with all the powers, privileges, and immunities of peace officers; provided, that the chief and each security officer shall take and file the oath required of peace officers and shall execute and file with the commission a good and sufficient bond in the sum of $1,000 payable to the governor of this state and his successors in office with two or more good and sufficient sureties conditioned that he will fairly and faithfully perform all of the duties as may be required of him by law, and that he will fairly and impartially enforce the law of this state and that he will pay over any and all money, or turn over any and all property, to the proper person legally entitled to the same, that may come into his possession by virtue of such office. Said bond shall not be void for the first recovery but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. It shall be unlawful and constitute a misdemeanor punishable as provided in this section for any person or persons to impersonate the chief or any of said officers.

(m) Nothing herein contained shall be construed to abridge the authority of the commission to grant permission to use [~~the capitol grounds and~~] any grounds adjacent to any state building for such use as may be provided by preexisting law.

SECTION 2.09. Subsection (l), Section 4.15, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 1244, Acts of the 71st Legislature, Regular Session, 1989, is redesignated as Subsection (m) and amended to read as follows:

(m) [~~(l)~~] If the commission determines under Section 5.34 of this Act that the purchase of an existing building is more advantageous to the state than the construction of a new building but a purchase of the building would be subject to existing leases that exceed 15 percent of the total space in the building, the commission may purchase the building subject to existing leases notwithstanding Subsection (c) of this section. When an existing lease expires, the commission may renew the lease subject to this section, including Subsection (c).

SECTION 2.10. Subsection (a), Section 5.01A, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In acquiring real property, each using agency of the state, other than those specifically excluded by Sections 5.13 and 5.14 of this article, shall give first consideration to a building that is a historic structure under Section 442.001, Government Code [~~8, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957 as amended (Article 6145, Vernon's Texas Civil Statutes)~~], or to a building that has been designated a landmark by the local governing authority, if the building meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications.

SECTION 2.11. Section 5.12, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.12. DEFINITIONS. The following terms whenever used or referred to in this article shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "Using agency" means any instrumentality of the state which shall occupy and make use of a state-owned or state-leased building, and for the purpose

of this article the commission shall be considered as the using agency for [~~the state capitol, the governor's mansion and for all other~~] state-owned buildings maintained by the commission.

(2) [~~"Commission" means the State Purchasing and General Services Commission.~~

[~~(3)~~] "Project" means any building construction project, other than those specifically excluded by Sections 5.13 and 5.14 of this article, which shall be financed in whole or in part by specific appropriation, bond issue or federal funds. The term "project" shall include the construction of any building or any structure or any facility or utility appurtenant thereto, including original equipment and original furnishings thereof, and of any addition to, alteration, rehabilitation, or repair of any existing building or any structure, or any facility or utility appurtenant thereto.

(3) [~~(4)~~] "Project analysis" refers to work done prior to legislative appropriation for a project for the purpose of developing a reliable estimate of the cost of a project to be requested of the legislature.

(4) [~~(5)~~] "Cost of a project" includes, but shall not be limited to, the cost of all real estate, properties, rights and easements acquired, utility services, site development, the cost of construction and the initial furnishing and equipment thereof, all architectural and engineering and legal expenses, the cost of surveys and plans and specifications, and such other expenses, including those incurred by the commission, as are necessary or incident to determining the feasibility or practicability of any project.

(5) [~~(6)~~] "Construction" means and includes acquisition, construction, and reconstruction.

(6) [~~(7)~~] "Rehabilitation" means and includes renewal, restoration, extension, enlargement, and improvement.

(7) [~~(8)~~] "Equipment" and "furnishings" mean and include any equipment and furnishings whatsoever as may be necessary and required for the use of a project.

(8) [~~(9)~~] "Architect/engineer" means a person registered as an architect pursuant to Chapter 478, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 249a of Vernon's Texas Civil Statutes), and/or a person registered as a professional engineer pursuant to Chapter 404, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 3271a of Vernon's Texas Civil Statutes), employed to provide professional architectural or engineering services and having overall responsibility for the design of a project. The term "architect/engineer" standing by itself may, unless the context clearly indicates otherwise, mean either an architect/engineer employed by the commission on a salary basis or an architect/engineer in private practice retained for a specific project under a contractual agreement with the commission. The term "private architect/engineer" shall specifically and exclusively refer to a registered architect or a registered engineer in private practice retained for a specific project under a contractual agreement with the commission.

(9) [~~(10)~~] "Stage construction" means the construction of a project in phases, each phase resulting in one or more buildings or structures which individually or together shall be capable of use regardless of whether subsequent phases of the project are authorized or not.

SECTION 2.12. Subsection (d), Section 5.13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) Sections 5.16, 5.17, 5.21, and 5.25 of this article apply to construction projects undertaken by or for the institutional division of the Texas Department of Criminal Justice [~~Corrections~~]. No other provisions of this article apply to

construction projects undertaken by or for the institutional division of the Texas Department of Criminal Justice [~~Corrections~~].

SECTION 2.13. Subsection (c), Section 5.16, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Section 4 of Chapter 362 and Section 4 of Chapter 571, Acts of the 68th Legislature, Regular Session, 1983, is amended to read as follows:

(c) A project analysis shall consist of (1) a complete description of the facility or project together with a justification of such facility or project prepared by the using agency, (2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic future growth, (3) a description of the proposed facility prepared by an architect/engineer and including schematic plans and outline specifications describing the type of construction and probable materials to be used, sufficient to establish the general scope and quality of construction, (4) an estimate of the probable cost of construction, (5) a description of the proposed site of the project and an estimate of the cost of site preparation, [~~and~~] (6) an overall estimate of the cost of the project, (7) the information about historic structures considered instead of new construction that was prepared as required by Section 5.01A of this article, and (8) other information as required by the commission. A project analysis may include two or more alternative proposals for meeting the space needs of the using agency by (1) new construction, (2) acquisition and rehabilitation of an existing or historic structure, or (3) a combination of the above. If any part of the project involves the construction or rehabilitation of a building that is to be used primarily as a parking garage or for office space for the state government, the project analysis also shall include a description of the amount and location of space in the building that can be made available for lease, under Section 4.15 of this Act, to private tenants or shall include a statement of the reason that the lease of space in the building to private tenants is not feasible. All estimates involved in the preparation of a project analysis shall be carefully and fully documented and incorporated into the project analysis.

Throughout the preparation of the project analysis, the commission and any private architect/engineer employed by the commission shall work closely and cooperatively with the using agency to the end that the project analysis shall fully reflect the needs of the using agency.

The using agency shall use the cost of the project as determined by such project analysis as the basis of its request to the budget offices of this state.

SECTION 2.14. Subsection (b), Section 5.18, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If the expenditures for fine arts are authorized and appropriated by the legislature, the commission shall consult and cooperate with the Texas Commission on the Arts [~~and Humanities~~] for advice in determining how to utilize the portion of the appropriation to be used for fine arts projects.

SECTION 2.15. Subsections (b) and (c), Section 5.19, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The agency or the governing body of a political subdivision may consult and cooperate with the Texas Commission on the Arts [~~and Humanities~~] for advice in determining how to utilize the portion of the cost set aside for fine arts purposes.

(c) The Texas Commission on the Arts [~~and Humanities~~] shall place emphasis on works by living Texas artists whenever feasible, and when consulting with the governing body of a political subdivision, shall place emphasis on works by artists who reside in or near the political subdivision. Consideration shall be given to artists of all ethnic origins.

SECTION 2.16. Subsection (c), Section 5.20, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Following final approval of the working plans and specifications and their acceptance by the using agency, the commission shall cause to be advertised in not less than two newspapers of general circulation for bids or proposals for performance of the construction and related work on the project. The commission shall allow bidders at least 30 days after the date that the commission issues the bid documents to respond to an invitation to bid, but the commission may shorten the period to prevent undue additional costs to a state agency or for emergency projects to prevent or remove a hazard to life or property. Subject to the applicable provisions of other law respecting the award of state contracts, the contract or contracts shall be awarded to the qualified bidder making the lowest and best bid; but no contract shall be awarded for a sum in excess of the amount which the comptroller shall certify to be available for such project. The commission shall have the right to reject any and all bids.

SECTION 2.17. Section 5.22, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Responsibility for the selection of a private architect/engineer employed for any project covered by the provisions of this article shall be vested in the commission. The commission shall adopt rules that state the criteria the commission uses to evaluate the competence and qualifications of private architects/engineers. The commission shall develop the rules in consultation with the Texas Board of Architectural Examiners and the State Board of Registration for Professional Engineers. The commission shall allow each private architect/engineer selected for an interview at least 30 days after the date the commission notifies the architect/engineer to prepare for the interview.

(c) In recognition of the close working relationship which must exist between the architect/engineer and the using agency, the commission shall request the using agency to make recommendations regarding private architects/engineers and shall consider any such recommendation in making its selection of a private architect/engineer to be employed for a particular project. The commission shall make its selection in accordance with the rules adopted under Subsection (b) of this section [~~generally accepted standards for such selection~~] and [~~in conformity with~~] the ethical standards of the professional societies of such architects/engineers.

SECTION 2.18. Subsection (b), Section 5.26, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commission shall cause the uniform general conditions of state building construction contracts to be reviewed whenever in its opinion such review is desirable, but in no event less frequently than once every five years. The review shall be made by a committee appointed by the commission consisting of the director of facilities construction and space management, who shall serve ex officio as chairman of the committee and who shall vote only in the event of a tie; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Architects; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Professional Engineers; [~~and~~] two persons appointed by the commission from a list of nominees submitted to it by the Chairman of the Executive Council of the Texas Associated General Contractors Chapters; and two persons appointed by the commission from the list of nominees submitted to it by the Executive Secretary of the Mechanical Contractors Associations of Texas, Incorporated. Members of any review committee appointed pursuant to this subsection shall serve

without compensation but may be reimbursed for their necessary and actual expenses.

SECTION 2.19. Subsection (a), Section 5.35, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission shall prepare a long-range plan regarding the needs of state agencies in Travis County which obtain or occupy space under provisions of this [~~the State Purchasing and General Services~~] Act [~~(Article 601b, Vernon's Texas Civil Statutes)~~].

SECTION 2.191. Section 6.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.01. DEFINITION [~~DEFINITIONS~~]. In this article, "space" means office space, warehouse space, laboratory space, storage space exceeding 1,000 gross square feet, or any combination thereof, but does not include aircraft hangar space, radio antenna space, boat storage space, vehicle parking space, residential space for a Texas Department of Mental Health and Mental Retardation program, or space to be utilized for less than one month for meetings, conferences, seminars, conventions, displays, examinations, auctions, or other similar purposes.

SECTION 2.20. Subsection (b), Section 6.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Section 3 of Chapter 779 and Section 5 of Chapter 1244, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) The space may be leased from another state agency through an interagency contract, or from the federal government[~~, a commercial building which is 100 percent owned, either directly or indirectly, by a statewide Texas public retirement system~~] or a political subdivision, including a county, a municipality, a school district, a water or irrigation district, a hospital district, a council of government, or a regional planning council, [~~or from a statewide Texas public retirement system in a commercial building that is 100 percent directly or indirectly owned by the retirement system;~~] through a negotiated contract. The space may also be leased, through a negotiated contract, from a statewide Texas public retirement system in a commercial building that is 100 percent directly or indirectly owned by the retirement system.

SECTION 2.21. Subsection (j), Section 6.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(j) In leasing space for the use of state agencies, the commission shall give first consideration to a building that is a historic structure under Section 442.001, Government Code [~~8, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes)~~], or to a building that has been designated a landmark by the local governing authority, if the building meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications. Upon consideration of the leasing of space for the use of a state agency, the commission shall notify all individuals and organizations that are within the county where the leasing is under consideration and that are on a list furnished to the commission by the Texas Historical Commission as required by Section 442.005, Government Code [~~8C of Chapter 500, Acts of the 55th Legislature, Regular Session, 1957 (Article 6145, Vernon's Texas Civil Statutes)~~]. At the end of a biennium, the commission shall report to the legislature the commission's reasons for rejecting during the biennium the lease of any historic structure whose owner bid to lease space to the state.

SECTION 2.22. Section 6.06, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.06. ELIMINATION OF BARRIERS TO HANDICAPPED PERSONS IN STATE BUILDINGS. The commission may not enter a lease contract under this article unless it complies with the provisions of Article 9101, Revised Statutes [~~7 of this Act~~].

SECTION 2.23. Section 6.111, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.111. DELEGATION OF AUTHORITY TO INSTITUTIONS OF HIGHER EDUCATION. The commission may delegate to an institution of higher education the authority to enter into space lease contracts financed from sources other than funds appropriated from general revenue, provided that an institution of higher education may not enter a lease contract under this section unless it complies with the provisions of Article 9101, Revised Statutes [~~7 of this Act~~] concerning architectural barriers.

SECTION 2.231. Chapter 403, Government Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. PROPERTY ACCOUNTING

Sec. 403.271. PROPERTY ACCOUNTING SYSTEM. (a) This subchapter applies to all personal property belonging to the state.

(b) The comptroller shall administer the property accounting system and maintain centralized records based on information supplied by state agencies and the uniform statewide accounting system. The comptroller shall adopt necessary rules for the implementation of the property accounting system, including setting the dollar value amount for capital assets and authorizing exemptions from reporting.

(c) The property accounting system shall constitute, to the extent possible, the fixed asset component of the uniform statewide accounting system.

(d) The comptroller may authorize a state agency to keep property accounting records at the agency's principal office if the agency maintains complete, accurate, and detailed records. When the comptroller makes such a finding, it shall keep summary records of the property held by that agency. The agency shall maintain detailed records in the manner prescribed by the comptroller and shall furnish reports at the time and in the form directed by the comptroller.

(e) A state agency shall mark and identify state property in its possession. The agency shall follow the rules issued by the comptroller in marking state property.

Sec. 403.272. RESPONSIBILITY FOR PROPERTY ACCOUNTING. (a) A state agency must comply with this subchapter and maintain the property records required.

(b) All personal property owned by the state shall be accounted for by the agency that possesses the property. The comptroller shall define personal property by rule for the purposes of this subchapter. In adopting rules, the comptroller shall consider the value of the property, its expected useful life, and the cost of recordkeeping. The comptroller shall consult with the state auditor in drafting rules. The state auditor shall cooperate with the comptroller by giving technical assistance and advice.

Sec. 403.273. PROPERTY MANAGER; PROPERTY INVENTORY. (a) The head of each state agency is responsible for the custody and care of state property in the agency's possession.

(b) The head of each state agency shall designate a property manager and inform the comptroller of the designation. Subject to comptroller approval, more than one property manager may be appointed by the agency head.

(c) The property manager shall maintain the records required and be the custodian of all property possessed by the agency.

(d) State property may be used only for state purposes.

(e) When an agency's property is entrusted to a person other than the property manager, the property manager shall require a written receipt from the person receiving custody of the property. When the property of one agency is lent to another agency, the lending must be authorized in writing by the head of the agency that is lending the property. A written receipt must be executed by the head of the agency that is receiving the property.

(f) On the date prescribed by the comptroller, a state agency shall make a complete physical inventory of all property in its possession. The inventory must be completed once each year.

(g) Within 45 days after the inventory date prescribed by the comptroller, the head of each state agency shall forward to the comptroller a signed statement describing the method used to verify the inventory and a copy of the inventory.

(h) The property records prepared by each state agency must accurately reflect the property currently possessed by the agency. The agency must use the methods prescribed by the comptroller to delete property from the agency's property records. Property that has become surplus or obsolete and no longer serviceable may be deleted from the agency's records only upon authorization by the comptroller. Property that is missing or that is disposed of directly by the agency shall be deleted from the comptroller's records on approval by the state auditor.

Sec. 403.274. CHANGE OF AGENCY HEAD OR PROPERTY MANAGER. When the head or property manager of an agency changes, the new head or property manager of the agency shall execute a receipt for all agency property accounted for to the outgoing agency head or property manager. A copy of the receipt shall be delivered to the comptroller, the state auditor, and the outgoing agency head or property manager.

Sec. 403.275. LIABILITY FOR PROPERTY LOSS. The liability prescribed by this section may attach on a joint and several basis to more than one person in a particular instance. A person is pecuniarily liable for the loss sustained by the state if:

(1) agency property disappears, as a result of the failure of the head of an agency, property manager, or agency employee entrusted with the property to exercise reasonable care for its safekeeping;

(2) agency property deteriorates as a result of the failure of the head of an agency, property manager, or agency employee entrusted with the property to exercise reasonable care to maintain and service the property; or

(3) agency property is damaged or destroyed as a result of an intentional wrongful act or of a negligent act of any state official or employee.

Sec. 403.276. REPORTING TO STATE AUDITOR AND ATTORNEY GENERAL. (a) If a head of an agency has reasonable cause to believe that any state property in the agency's possession has been lost, destroyed, or damaged through the negligence or fault of any state official or employee, the agency head responsible shall immediately report the loss, destruction, or damage to the state auditor and to the attorney general.

(b) The attorney general shall investigate a report of loss, destruction, or damage to state property.

(c) If the investigation discloses that a property loss has been sustained by the state through the fault of a state official or employee, the attorney general shall make written demand on the state official or employee for reimbursement to the state for the loss sustained.

(d) If the demand made by the attorney general for reimbursement for property loss, destruction, or damage is refused or disregarded by the state official or employee on whom such demand is made, the attorney general may take legal action to recover the value of the state property as the attorney general deems necessary.

(e) Venue for all suits instituted under this section against a state official or employee is in a court of appropriate jurisdiction of Travis County.

Sec. 403.277. FAILURE TO KEEP RECORDS. If a state agency fails to keep the records or fails to take the annual physical inventory required by this subchapter, the comptroller may refuse to draw warrants or initiate electronic funds transfers on behalf of the agency.

Sec. 403.278. TRANSFER OF PERSONAL PROPERTY. (a) A state agency may transfer any personal property of the state in its possession to another state agency with or without reimbursement between the agencies.

(b) When personal property in the possession of one state agency is transferred to the possession of another state agency, the transfers must be reported immediately to the comptroller by the transferor and the transferee on the forms prescribed.

SECTION 2.24. Subsection (a), Section 8.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This article applies to personal property belonging to the state. [~~All personal property belonging to the state shall be accounted for by the head of the agency that has possession of the property.~~]

SECTION 2.25. Subsection (b), Section 8.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Section 97 of Chapter 584 and Section 3 of Chapter 781, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) The commission shall administer the property accounting system and maintain a complete and accurate set of centralized records of state property based on information supplied by state agencies or the uniform statewide accounting system. The property accounting system shall, to the extent possible, constitute the fixed asset component of the uniform statewide accounting system. The commission shall coordinate with the comptroller in issuing rules, instructions, and necessary requirements for the property accounting system. The rules, instructions, and requirements must be consistent with the requirements of the uniform statewide accounting system. [~~The commission shall issue rules and regulations and a manual of instruction and prescribe such records, reports, and forms necessary to accomplish the objects of this article subject to review and comment by the state auditor. The state auditor is directed to cooperate with the commission in the exercise of the commission's rulemaking powers herein granted by giving technical assistance and advice.~~]

SECTION 2.26. Subsection (b), Section 8.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) All personal property owned by the state shall be accounted for by the head of the agency that has possession of [~~possesses~~] the property. The commission shall by rule [~~regulation~~] define what is meant by personal property for the purposes of this article, but such definition shall not include nonconsumable personal property having a value of $500 or less per unit. In promulgating such rules [~~regulations~~], the commission shall take into account the value of the property, its expected useful life, and if the cost of record keeping bears a reasonable relationship to the cost of the property on which records are kept. The commission shall consult with the state auditor in making such rules [~~regulations~~] and the auditor shall cooperate with the commission in the exercise of this rulemaking power by giving technical assistance and advice.

SECTION 2.27. Section 9.11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.11. PURCHASE OF LEGISLATIVE CHAIRS. Notwithstanding any provision of law to the contrary, upon the vacation of an office or the termination of employment, an elected officer, an appointed officer, or an executive head of a state agency within the legislative, executive, and judicial departments of state government may purchase the chair used by the officer or employee during his or her tenure of service for its fair market value. A determination of the fair market value of the chair shall be made by the commission for executive and legislative agencies other than the legislature, by the chief justice for judicial agencies, by the speaker of the house of representatives for the house of representatives, and by the lieutenant governor for the senate [~~A legislator may purchase the executive chair used by the legislator on the floor of the legislature if:~~

[~~(1) the legislator has not been reelected; and~~

[~~(2) the legislator pays into the state treasury the commission's estimate of the fair market value of replacement equipment.~~

[~~This section does not limit a legislator's right to purchase state-owned equipment in any other manner~~].

SECTION 2.271. Article 10, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 10.071 to read as follows:

Sec. 10.071. USE OF SYSTEM BY CERTAIN STUDENTS. (a) Institutions of higher education under Section 61.003, Education Code, that are authorized to use the system of telecommunications services established under this article may allow students of the institution who reside in housing for which the institution provides telephone service to use the system of telecommunications services established under this article. An institution shall recover from a student who chooses to use the system the full pro rata cost attributable to that student's use, including costs identifiable for interconnection to and use of the local publicly switched network.

(b) The commission shall adopt rules that govern student access to the system, including times of access to the system, and the full recovery of actual costs from each student who uses the system.

SECTION 2.28. Subsection (b), Section 11.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Any reference in the statutes to the State Board of Control or [~~means~~] the State Purchasing and General Services Commission means the General Services Commission.

SECTION 2.29. Section 11.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by Chapters 778 and 791, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 11.02. DELIVERY OF CERTAIN INTERAGENCY MAIL. (a) The commission shall operate a messenger service for handling the delivery of unstamped written communications and packages between state agencies, including the legislature and legislative agencies, located in Travis County. All such agencies shall utilize the service.

(b) Unless use of the United States Postal Service is required by state or federal law, a state agency subject to Subsection (a) of this section may not use the United States Postal Service for delivery of interagency mail to another state agency in Travis County, provided, however, state agencies subject to Subsection (a) are not prohibited from using an alternate delivery method.

(c) State warrants may be delivered upon agreement between the state comptroller, the commission, and the agency concerned.

(d) United States mail may be delivered to and from the post office located in the capitol complex on agreement of the commission and the agency concerned.

[~~(d)~~] It is the intent of the legislature that mail be processed for delivery as expeditiously as its priority dictates and that mail not be unduly delayed solely for the purpose of achieving a lower rate of postage.

(e) In order to improve state agency management of mail operations and to reduce the state's mail costs, this Act requires that state agencies of the executive branch of state government established by the constitution or statutes of this state:

(1) evaluate their mail operations to identify and eliminate practices resulting in excessive mailing costs; and

(2) develop and implement plans and programs for making the necessary improvements in such operations.

(f) Not later than January 1, 1990, the commission [~~State Purchasing and General Services Commission~~] shall:

(1) evaluate the mail operations of agencies located in Travis County to make recommendations to identify and eliminate practices resulting in excessive mailing costs; and

(2) establish minimum mail-management objectives and responsibilities to be carried out by offices and units of these agencies.

(g) Not later than April 1, 1990, the commission [~~State Purchasing and General Services Commission~~] shall develop and submit to the governor and the legislative budget office a mail-management plan which provides for:

(1) improving the measurement of agency mail costs, in conjunction with the United States Postal Service, including considering the use of postage meters or stamps;

(2) determining the advantages to agencies of using mail presorting programs;

(3) determining the lowest cost class of mail necessary to effectively accomplish individual agency functions;

(4) evaluating the cost-effectiveness of using alternatives to the United States Postal Service for the delivery of agency mail; and

(5) training agency personnel regarding cost-effective mailing practices.

(h) The commission [~~State Purchasing and General Services Commission~~] shall:

(1) establish programs to implement the plan prepared under Subsection (g) of this section, including standards for receipt, delivery, collection, and dispatch of mail; and

(2) publish and disseminate mail-management standards, guides, and instructions and establish and implement procedures for monitoring compliance with such standards, guides, and instructions.

(i) State agencies in Travis County shall:

(1) periodically submit to the governor and the legislative budget office reports of their progress in achieving the objectives and other revisions of the plan required by Subsection (g) of this section, including an analysis of savings projected from the improvements in mail management provided for in such revised plan;

(2) designate a person to be responsible for the development and implementation of mail-management programs for all offices and units of the agency; and

(3) review and consolidate mailing lists used by the agency to distribute publications and other materials issued by the agency.

(j) When two or more state agencies are providing common services for mail management, those agencies may designate a single agency to report on behalf of all agencies participating under the contract.

SECTION 2.30. Subsections (a) through (d), Section 13.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Each biennium a state agency subject to this article shall conduct competitive cost reviews of the functions performed by that agency as provided by this article and shall adopt rules to implement this article. If the agency has an internal auditor, the internal auditor shall coordinate the activities of the agency that are required under this article. The agency shall conduct management studies, develop agency in-house cost estimates, and conduct other activities as necessary to implement this article.

(b) In conducting a competitive cost review of the functions performed by a state agency, the agency shall analyze all agency activities, shall identify by November 1 of each year all commercial activities performed by the agency, and shall develop a schedule for the analysis of the commercial activities identified. For each commercial activity identified, the agency shall also at that time quantify in measurable units the amount of the activity performed by the agency and identify the amount of money budgeted for the activity by the agency. The administrative head of the agency shall promptly submit the agency's inventory of commercial activities, including the workload and budget information, together with its analysis schedule to the State Auditor, Legislative Budget Board, Governor's Office of Budget and Planning, Senate Finance Committee, House Appropriations Committee, and commission for review and comment. The agency shall then report its determinations to its governing body and shall submit the schedule to its governing body [~~for approval~~] by December 1 of each year for approval.

(c) After approval of the schedule by the governing body, the state agency shall conduct a management study of the agency functions specified in the schedule. The agency shall conduct the study in accordance with instructions issued by the commission. At the minimum, a management study must contain:

(1) a description of the agency function;

(2) an analysis of the quality and quantity of the work of the agency in relation to that function; and

(3) a description of any efficiency initiatives that the agency could implement to perform the function more efficiently.

(d) The agency shall submit the completed management study to the commission for approval. After the commission has approved the study, the agency shall estimate the total cost to perform the function and submit each agency in-house cost estimate to the State Auditor for approval. If the agency has an internal auditor, the agency shall submit its cost estimate to its internal auditor for review before forwarding the cost estimate to the State Auditor.

SECTION 2.301. Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 13.031 to read as follows:

Sec. 13.031. COMPLAINT FROM PRIVATE ENTERPRISE. (a) In this section, "state agency" has the meaning assigned by Section 1.02 of this Act.

(b) A person, including a corporation, that manufactures, processes, sells, leases, distributes, provides, or advertises goods or services for profit, or a duly chartered nonprofit corporation engaged in such activities, may file a written complaint with the executive director of the commission and with the administrative head of a state agency alleging that the state agency has engaged in unfair competition with the person or corporation. The agency shall respond to the complaint and shall furnish the complainant and the commission with a copy of its response not later than the 90th day after the date that the agency receives the complaint.

(c) The commission shall keep a copy of each written complaint and response received under this section on file and available for public inspection for at least two years after the date that it received the complaint or response.

SECTION 2.31. Section 13.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.05. DUTIES OF [~~STATE PURCHASING AND~~] GENERAL SERVICES COMMISSION. (a) The commission by rule shall issue instructions that govern the conduct of state agency management studies under Section 13.03 of this article.

(b) The commission shall conduct a cost comparison review. In conducting the cost comparison review, the commission shall:

(1) estimate the cost to purchase the service from the private sector. In developing the estimate, the commission may use specific area surveys, state average costs or current bid data;

(2) determine if the quality and quantity of service that could be provided through purchase is at least equal to the quality and quantity of service proposed in the agency management study and in-house cost estimate;

(3) determine the total state cost incurred in providing the service based on the approved agency in-house cost estimate; and

(4) based on estimates of the total cost, compare the total cost to the state to purchase the services with the total state cost of providing the service.

(c) [~~(b)~~] After consultation with the agency and State Auditor, the commission shall determine if the total state cost of providing the service exceeds the cost of purchasing the service. If the commission finds that at least the same quality and quantity of service can be purchased at a savings of more than 10 percent, the commission shall notify the chairman of the governing body of the agency of the amount by which the agency's costs exceed the costs of purchasing the service. The commission may request any information from a state agency necessary to accomplish the purpose of this subsection.

(d) The commission shall establish internal controls, when the commission conducts competitive cost reviews of its own commercial activity functions, to separate internally the duties performed by the commission as a state agency subject to this article and the duties performed by the commission for all state agencies subject to this article.

SECTION 2.32. Section 13.07, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.07. SAVINGS FROM EFFICIENCY INITIATIVE. Except for savings allocated to the productivity bonus program [~~(Article 6252-29, Vernon's Texas Civil Statutes);~~] and the state employee incentive program (Article 6252-29a [~~6252-28~~], Vernon's Texas Civil Statutes), all savings that result from reduced costs under the efficiency initiative shall be used by the agency for treatment, rehabilitation, or other direct services the agency provides to persons it serves or, when savings result to the commission, for direct services the commission provides to state government.

SECTION 2.33. 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 Criminal Justice (institutional division) [~~Corrections~~]; [~~and~~]

(4) the Department of Agriculture;[:]

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

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

(7) the commission.

SECTION 2.34. Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 13.10 to read as follows:

Sec. 13.10. SUNSET REVIEW OF PROGRAM. (a) The competitive cost review program is subject to Chapter 325, Government Code (Texas Sunset Act), as if the program were a state agency subject to review under that chapter. Unless continued in existence as provided by that chapter, the program is abolished and this article of this Act expires September 1, 1995.

(b) To the extent Chapter 325, Government Code (Texas Sunset Act), imposes a duty on a state agency under review, the commission shall perform the duty as it applies to the competitive cost review program.

SECTION 2.35. Section 14.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14.01. DIVISION. The travel division of the commission is composed of the central travel office and the office of vehicle fleet maintenance. The commission shall adopt rules to implement this article, including rules related to:

(1) the structure of travel agency contracts that the commission makes;

(2) the procedures the commission uses in requesting and evaluating bids or proposals for travel agency contracts from providers; and

(3) the use of negotiated contract rates for travel services by state agencies.

SECTION 2.36. Section 14.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The central travel office shall initially provide services to designated agencies located in Travis County and shall extend its services to all state agencies as it develops the capability to do so. The office may negotiate contracts with private travel agents, with travel and transportation providers, and with credit card companies that provide travel services and other benefits to the state. The commission shall make contracts with more than one provider of travel agency services. Contracts entered into under this section are not subject to the competitive bidding requirements imposed under Article 3 of this Act. The comptroller of public accounts shall audit for compliance of rules adopted to enforce the provisions of this section.

(c) State agencies in the executive branch of state government shall participate in accordance with commission rules in the commission's contracts for travel services, provided that institutions of higher education as defined by Section 61.003, Education Code, shall not be required to participate in the commission's contracts for travel agency services. The commission may provide by rule for exemptions from required participation. Agencies of the state that are not required to participate in commission contracts for travel services may participate as provided by Subsection (a) of this section.

SECTION 2.37. Section 14.04, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14.04. FEES. Fees collected by the travel division under this article shall be deposited in the State Treasury to the credit of the General Revenue Fund unless a different disposition of the funds is required under federal law.

SECTION 2.38. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.202 to read as follows:

Sec. 3.202. PREFERENCE FOR ENERGY EFFICIENT PRODUCTS. The commission shall give preference to energy efficient products in purchases made under this Act if:

(1) the products meet state specifications as to quantity and quality; and

(2) the cost of the product is equal to or less than the cost of other similar products that are not energy efficient.

SECTION 2.39. Article 4, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 4.081 to read as follows:

Sec. 4.081. NAMING OF PUBLIC BUILDINGS. Buildings owned by the state, including buildings financed under the Texas Public Finance Authority Act (Article 601d, Texas Vernon's Civil Statutes), shall be named in accordance with the following procedure:

(1) The Purchasing and General Services Commission, or its successor, shall submit names proposed for new state buildings, or proposals to re-name existing state buildings, to the presiding officers of the house and senate.

(2) Approval of names to be placed on new state buildings, or the re-naming of existing buildings, proposed by the General Services Commission, shall only be authorized by concurrent resolution passed in a regular or special session of the legislature and signed by the governor.

PART 3. SCHOOL BUSES

SECTION 3.01. Section 21.165, Education Code, is amended to read as follows:

Sec. 21.165. PURCHASE THROUGH GENERAL SERVICES COMMISSION [~~BOARD OF CONTROL~~]. (a) The purchase of motor vehicles (including buses, bus chassis, bus bodies, tires, and tubes) by the General Services Commission [~~Board of Control~~] shall be made in compliance with the provisions of this section.

(b) Whenever possible, the [~~The~~] purchase must be made on the basis of competitive bids submitted under [~~such~~] rules [~~and regulations as may be~~] made by the General Services Commission [~~Board of Control~~].

(c) The purchase must be authorized by a requisition, which may be submitted by either a board of county school trustees or the board of trustees of a school district. The requisition must include a general description of the article or articles desired, as well as any other applicable matter specified in this section.

(d) If the requisition is for the purchase of a motor vehicle, bus, bus body, or bus chassis, it must be approved by either the county school board when funded under law or the board of trustees of a school district and by the commissioner of education.

(e) If the requisition is for the purchase of tires and tubes, it must be approved by the county superintendent or the chief administrative officer of a school district.

(f) If the requisition is for the purchase of special equipment required, because of climatic or road conditions, to guarantee adequate safety and comfort of school children, the requisition must describe the special conditions and requirements so that the General Services Commission [~~Board of Control~~] may purchase equipment which it determines to be adapted or designed for the conditions or requirements.

(g) The board of county school trustees or board of trustees of a school district shall [~~requisition must contain a certification as to the funds that will be available to~~] pay for the article or articles requisitioned as directed by the General Services Commission.

SECTION 3.011. Section 21.174, Education Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) In this section, a vehicle is considered to be capable of using compressed natural gas or other alternative fuels if the vehicle is capable of using compressed natural gas or other alternative fuels either in its original equipment engine or in an engine that has been converted to use compressed natural gas or other alternative fuels after September 1, 1991, unless the time for compliance is extended pursuant to Subsection (i) of this section.

(i) The General Services Commission may extend the date by which a vehicle powered by a traditional gasoline or diesel engine shall be capable of using compressed natural gas or other alternative fuels as required under this section for one or more periods of 90 days, but not beyond September 1, 1993, if it finds a lack of ability to acquire such vehicles with original alternative fuels equipment, to acquire such vehicles which are able to be converted, or to convert such vehicles to use compressed natural gas or other alternative fuels.

SECTION 3.02. Section 21.180, Education Code, is amended to read as follows:

Sec. 21.180. PURCHASE OF VEHICLES. [~~(a) Motor vehicles used for the purpose of transporting school children, including school buses, their chassis and/or bodies purchased through the state board of control, shall be paid for by the state board of control as set out in applicable laws. The legislature may appropriate out of any money in the state treasury not otherwise appropriated a sum not exceeding $250,000, or as much thereof as necessary, for the state board of control to be used for such purposes.~~

[~~(b) Any sum appropriated shall be known as the school bus revolving fund. When motor vehicles and school buses are delivered to the various schools coming within the provisions of this subchapter, the governing bodies of those schools shall reimburse the state board of control for the money expended for such school buses including their chassis and/or bodies and the money shall be deposited by the state board of control in the school bus revolving fund.~~

[~~(c)~~] All purchases of motor vehicles must comply with the alternative fuels use requirements of Section 21.174.

SECTION 3.03. Subsections (a), (d), and (h), Section 21.182, Education Code, are amended to read as follows:

(a) As an alternative to purchasing school buses, a county or local district school board may contract with any person for use, acquisition, or lease with option or options to purchase any school bus or buses if, at the discretion of the school board, such a contract is determined to be economically advantageous to the school district and complies with the alternative fuels requirements of Section 21.174. Contracts may be in the form of a lease or a lease with option or options to purchase. A contract is in the form of a lease if it is a contract for the use and possession of one or more school buses for consideration. Ownership of a bus acquired through a lease or a lease with an option to purchase remains with the lessor unless the lessee exercises an option to purchase and purchases the bus under the option. A school bus that is leased or leased with an option to purchase under this section must meet or exceed the requirements related to safety that apply to purchased or privately operated school buses under Section 11.12. Contracts in the form of an installment purchase or any form other than a lease or a lease with option or options to purchase shall be subject to the provisions of Section 21.165, as well as rules [~~and regulations~~] of the [~~State Purchasing and~~] General Services Commission.

(d) The competitive bidding requirements of Section 21.901 apply to each contract in the form of a lease or lease with an option to purchase under this section [~~Each county or district school board shall comply with the terms of the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes) in entering into contracts, including the requirement that certain contracts be awarded pursuant to public bids, except that it is not necessary for a school district to submit the question of entering into a contract to a referendum~~].

(h) A contract under this section may have any lawful term of not less than two or more than[~~, not to exceed~~] 10 years. A county or local district school board that contracts under this section shall report the existence of the contract and the number of buses under the contract to the General Services Commission within 45 days after the date the contract was made. A county or local district school board that terminates a contract under this section before the two-year minimum term has expired shall report the termination and the reason for the termination to the General Services Commission within 45 days after the date the contract was terminated.

SECTION 3.04. Section 21.901, Education Code, is amended amending subsections (a) and (b) and adding subsections (h) and (i) to read as follows:

(a) Except as provided in this section, all contracts proposed to be made by any Texas public school board for the purchase of any personal property except for produce or vehicle fuel, shall be submitted to competitive bidding for each of the six month periods beginning September 1 and March 1 when said property is valued at $15,000 [~~$10,000~~] or more.

(b) Except as provided in Subsection (c) of this section, all contracts proposed to be made by any Texas public school board for the construction, maintenance, repair or renovation of any building or for materials used in said construction, maintenance, repair or renovation, shall be submitted to competitive bidding when said contracts are valued at $15,000 [~~$10,000~~] or more. In this section, maintenance includes supervision of custodial, plant operations, maintenance, and ground services personnel.

(h) Whenever possible, each contract proposed to be made by any Texas public school board for the lease of one or more school buses, including a lease with an option to purchase, shall be submitted to competitive bidding when the contract is valued at $10,000 or more.

(i) The board of trustees of a school district that determines it to be in the best interest of the district may delegate to a profes[illegible]al food services management company the authority to purchase the food [illegible]d supplies required in the performance of a food service management contract between the school district and the professional food services management company if:

(1) The professional food services management company is selected by the board on a competitive basis; and

(2) the food and supplies are purchased by the professional food services management company in accordance with the terms of the management contract. Neither the professional food services management company nor the school district is required to comply with Subsection (a) or (d) of this section for the purpose of purchasing the food and supplies.

SECTION 3.05. Subchapter Z, Chapter 21, Education Code, is amended by adding Section 21.9013 to read as follows:

Sec. 21.9013. PURCHASES UNDER $15,000. (a) A school district shall purchase personal property for each of the six-month periods beginning September 1 and March 1 as provided by this section if the value of the property is at least $10,000 but less than $15,000, unless the district elects to submit a contract for the purchase to competitive bidding.

(b) Each six-month period, the district shall publish a notice in a newspaper with general circulation in the county in which the district is located specifying the categories of personal property to be purchased and soliciting the names, addresses, and telephone numbers of vendors that are interested in supplying any of those categories to the district. For each category, the district shall create a vendor list consisting of each vendor that responded to the published notice and any additional vendors the district elects to include.

(c) Before the district makes a purchase from a category of personal property, the district must contact at least three vendors from the list regarding pricing information for that category. If fewer than three vendors are on the list, the district shall contact each vendor on the list.

SECTION 3.06. Subchapter Z, Chapter 21, Education Code, is amended by adding Section 21.9104 to read as follows:

Sec. 21.9014. ADJUSTMENT OF DOLLAR LIMITS OVER WHICH COMPETITIVE BIDDING IS REQUIRED. (a) The $15,000 limit over which competitive bidding is required that is specified in subsections (a) and (b) of Section 21.901 of this code and Section 21.9013 of this code shall remain in effect until the 1993-94 school year. Beginning in that school year, and annually thereafter, the dollar limitation shall be adjusted in accordance with this section.

(b)(1) The Comptroller of Public Accounts shall determine the percentage increase in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for the 12 month period ending the November 30th preceding the start of the 1993-94 school year.

(2) The Comptroller of Public Accounts shall calculate the dollar amount that results if the $15,000 amount is increased by the same percentage increase in the Consumer Price Index calculated in (1) above.

(3) This new amount rounded up to the nearest $100, or $16,000, whichever is less, shall be the new dollar amount replacing the $15,000 dollar limitation in the sections referenced in Subsection (a) of this section for the 1993-94 school year. The Comptroller of Public Accounts shall publish in the Texas Register in the February before the 1993-94 school year what the adjusted dollar amount will be for the 1993-94 school year.

(4) For each subsequent school year, the annual percentage increase in the Consumer Price Index will continue to be calculated by the Comptroller in January before the next school year. The increase will be applied to the dollar limitations covered by this section in effect at that time. The dollar amount, rounded up to the nearest $100, resulting from application of the percentage increase in the Consumer Price Index shall become the new adjusted amount, provided that in no year can the adjusted amount exceed the prior year limitation by more than $1,000. In that case, the adjustment shall be limited to $1,000 more that the prior year's limitation. The Comptroller of Public Accounts shall continue to publish in February before the next school year what the adjusted dollar amount will be for that school year.

PART 4. ARCHITECTURAL BARRIERS

SECTION 4.01. Article 7, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is transferred to Title 132A, Revised Statutes, redesignated as Article 9101, Revised Statutes, and amended to read as follows:

Art. 9101 [~~ARTICLE 7~~]. ARCHITECTURAL BARRIERS

Sec. 1 [~~7.01~~]. POLICY. The provisions of this article are to further the policy of the State of Texas to encourage and promote the rehabilitation of persons with disabilities [~~handicapped or disabled citizens~~] and to eliminate, insofar as possible, unnecessary barriers encountered by [~~aged, handicapped, or disabled~~] persons with disabilities, whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted when such persons cannot readily use public buildings.

Sec. 2 [~~7.02~~]. APPLICATION. (a) The standards and specifications adopted under this article shall apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state. To such extent as is not contraindicated by federal law or beyond the state's power of regulation, these

standards shall also apply to buildings and facilities constructed in this state through partial or total use of federal funds. All buildings and facilities constructed in this state, or substantially renovated, modified, or altered, after the effective date of this article from any one of these funds or any combination thereof shall conform to each of the standards and specifications adopted under this article except where the governmental department, agency, or unit concerned shall determine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable. Where it is determined that full compliance with any particular standard or specification is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the department [~~commission~~]. If it is determined that full compliance is not practicable, there shall be substantial compliance as determined by the department with the standard or specification to the maximum extent practical, and the file system maintained by the department shall include the written record of the determination that it is impractical to comply fully with a particular standard or specification and shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

(b) These standards and specifications shall be adhered to in those buildings and facilities under construction on the effective date of this article, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical. This article shall apply to temporary or emergency construction as well as permanent buildings.

(c) These standards and specifications shall be adhered to in all buildings leased or rented in whole or in part for use by the state under any lease or rental agreement entered into on or after January 1, 1972. To such extent as is not contraindicated by federal law or beyond the power of the state's regulation, these standards shall also apply to buildings or facilities leased or rented for use by the state through partial or total use of federal funds. Facilities which are the subject of lease or rental agreements on January 1, 1972, will not be required to meet standards and specifications for the term of the existing lease or rental agreement but must be brought into compliance before a lease or rental agreement is renewed. Where it is determined by the governmental department, agency, or unit concerned that full compliance with any particular standard is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the department [~~commission~~]. If it is determined that full compliance is not practical, there shall be substantial compliance as determined by the department with the standard or specification to the maximum extent practical, and the file system maintained by the department shall include the written record of the determination that it is impractical to comply fully with a particular standard or specification and shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

(d) Except as otherwise provided in Subsection (e) of this section, these standards and specifications shall be adhered to in buildings defined as "public accomodation" by section 301(7) of the Americans with Disabilities Act (ADA) of 1990 [P.L. 101-336] which are constructed or substantially renovated, modified, or altered on or after the January 1, 1992 [~~shopping centers which contain in excess of five separate mercantile establishments, compliance with accessibility standards and specifications relative to toilet rooms shall not apply unless the shopping center elects to have public toilet rooms;~~

[~~(2) passenger transportation terminals;~~

[~~(3) theaters and auditoriums having a seating capacity for 200 or more patrons;~~

[~~(4) hospitals and related medical facilities which provide direct medical service to patients;~~

[~~(5) nursing homes and convalescent centers;~~

[~~(6) buildings containing an aggregate total of 20,000 or more square feet of recognizable office floor space;~~

[~~(7) funeral homes; and~~

[~~(8) commercial business and trade schools~~].

(e) The commissioner [~~commission~~] shall have the authority to waive or modify accessibility standards and specifications when application of such standards and specifications is considered by the commissioner [~~commission~~] to be irrelevant to the nature, use, or function of a building or facility covered by this article. The commissioner [~~commission~~] shall not waive or modify any standard or specification when such action would result in a significant impairment of the acquisition of goods and services by [~~handicapped~~] persons with disabilities or substantially reduce the potential for employment of [~~handicapped~~] persons with disabilities. All evidence supporting waiver or modification determinations made by the commissioner [~~commission~~] shall be made a matter of record and become part of the file system maintained by the department [~~commission~~].

(f) All buildings and facilities covered by this article shall provide restroom facilities in conformance with the minimum plumbing facilities standards set forth in Appendix C of the Uniform Plumbing Code.

Sec. 3 [~~7.03~~]. SCOPE. (a) This article is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of coordination, and aging.

(b) It is intended to make all buildings and facilities covered by this article accessible to, and functional for, persons with disabilities [~~the physically handicapped~~] to, through, and within their doors, without loss of function, space, or facilities where the general public is concerned.

Sec. 4 [~~7.04~~]. DEFINITIONS. For the purpose of this article the following terms have the meanings as herein set forth:

(1) "Nonambulatory disabilities" means impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs.

(2) "Semiambulatory disabilities" means impairments that cause individuals to walk with difficulty or insecurity. Individuals using braces or crutches, amputees, arthritics, spastics, and those with pulmonary and cardiac ills may be semiambulatory. The listing here made is illustrative and shall not be construed as being exhaustive.

(3) "Sight disabilities" means total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger.

(4) "Hearing disabilities" means deafness or hearing handicaps that might make an individual insecure in a public area because he is unable to communicate or hear warning signals.

(5) "Disabilities of coordination" means faulty coordination or palsy from brain, spinal, or peripheral nerve injury.

(6) "Aging" means those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination, and perceptiveness but are not accounted for in the aforementioned categories.

(7) "Commission" means the Texas Commission of Licensing and Regulation.

(8) "Commissioner" means the commissioner of licensing and regulation.

(9) "Department" means the Texas Department of Licensing and Regulation.

(10) "Architect" means a person registered as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(11) "Engineer" means a person registered as an engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

Sec. 5 [~~7.05~~]. RESPONSIBILITIES FOR ENFORCEMENT. (a) In the [~~The responsibility for~~] administration and enforcement of this article [~~shall reside primarily in the commission~~], [~~but~~] the commissioner [~~commission~~] shall have the assistance of appropriate state rehabilitation agencies in carrying out commissioner [~~its~~] responsibilities [~~under this article~~]. State agencies involved in extending direct services to [~~disabled or handicapped~~] persons with disabilities are authorized to enter into interagency contracts with the department [~~commission~~] to provide such additional funding as might be required to insure that service objectives and responsibilities of such agencies are achieved through the administration of this article. In enforcing this article the commissioner [~~commission~~] shall also receive the assistance of all appropriate elective or appointive state officials. The commissioner may contract with other state agencies, political subdivisions, nonprofit organizations, and private independent contractors to perform the commissioner's review and inspection functions for privately financed buildings that are not leased by the state or a political subdivision and may terminate those contracts for cause. The department [~~commission~~] shall from time to time inform professional organizations and others, including persons with disabilities, architects, engineers, and other building professionals, of this law and its application. Information disseminated by the department about the program shall include the types of buildings and leases covered by this article, the procedures for submitting plans and specifications for review, complaint procedures, and the address and phone number of the department's program. The department may enter into cooperative agreements to integrate information about the program with information produced or distributed by other public entities or by private entities.

(b) The commissioner [~~commission~~] shall have all necessary powers to require compliance with the commissioner's [~~its~~] rules and regulations and modifications thereof and substitutions therefor, including powers to institute and prosecute proceedings under Section 18, Article 9100, Revised Statutes [~~in the district court to compel such compliance~~], and shall not be required to pay any entry or filing fee in connection with the institution of such proceedings. The commission may also impose an administrative penalty under Section 17, Article 9100, Revised Statutes, on a building owner for a violation of this article or a rule adopted under this article. Each day that the violation is not corrected constitutes a separate violation. The commissioner [~~commission~~] or a [~~handicapped~~] person with disabilities who seeks injunctive relief to obtain compliance with the rules and regulations, and the commissioner when the commission considers imposing an administrative penalty under this section, shall first notify a person responsible for the building and allow that person 90 days to bring the building into compliance. The commissioner [~~commission~~] shall have the authority to extend the 90-day period when circumstances justify such extension.

(c) [~~The commission is authorized to promulgate such rules and regulations as might reasonably be required to implement and enforce this article.~~] The standards and specifications to be adopted by the commissioner [~~commission~~] under this article shall be consistent in effect to those adopted by the American National Standards Institute, Inc. (or its federally recognized successor in function), and the department [~~commission~~] shall publish the standards and specifications in a readily accessible form for the use of interested parties.

(d) All plans and specifications for construction or for the substantial renovation, modification, or alteration of buildings subject to the provisions of this

article shall be submitted to the department [~~commission~~] for review and approval prior to the time that construction or that substantial renovation, modification, or alteration on the building begins [~~bidding and award of contract~~] in accordance with rules and regulations adopted by the commissioner [~~commission~~]. The plans and specifications shall be submitted to the department by the architect or engineer who has overall responsibility for the design of the constructed or reconstructed building. The building owner shall submit the plans and specifications to the department if there is no architect or engineer with that responsibility. Likewise, any substantial modification of approved plans shall be resubmitted to the department [~~commission~~] for review and approval. If an architect or engineer required to submit or resubmit plans and specifications to the department fails to do so in a timely manner, the commissioner shall report the fact to the Texas Board of Architectural Examiners or the State Board of Registration for Professional Engineers, as appropriate.

(c) The commissioner [~~commission~~] may review plans and specifications, make inspections, and issue certifications that structures not otherwise covered by this article are free of architectural barriers and in compliance with the provisions of this article. The department shall inspect each building subject to this article within the first year after the date that construction or substantial renovation, modification, or alteration of the building is completed. The department shall inspect each building that is subject to this article because of a lease to the state during the first year of the lease [~~commission is authorized to charge a fee, not to exceed $100, for review of plans and specifications, inspection, and certification of each privately owned building or facility.~~

[~~(f) With respect to buildings and facilities that are under the jurisdiction and control of The University of Texas Board of Regents, the responsibility for administration and enforcement of this article shall reside in such governing board, and in the discharge of such responsibility the governing board shall have the same responsibilities, duties, powers, and authority that are herein imposed on and delegated to the commission with respect to all other buildings and facilities covered by this article~~].

Sec. 6. The commission shall set and charge, in accordance with Section 12, Article 9100, Revised Statutes, fees for performing its functions under this article. The fees shall be paid by the owner of a building when the department performs a function related to the building under this article. The fees must include a fee for:

(1) reviewing the plans or specifications of a building;

(2) inspecting a building; and

(3) processing a request to waive or modify accessibility standards for a building.

Sec. 7. (a) The commission shall appoint an advisory committee for the architectural barriers program. The committee shall be composed of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. The committee shall be composed of at least eight members. Persons with disabilities must make up a majority of the membership.

(b) A committee member serves at the will of the commission. A member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member.

(c) The committee shall elect a member of the committee as chair. The committee shall meet at least twice each calendar year at the call of the committee chair or at the call of the commissioner.

(d) The committee periodically shall review the rules relating to the architectural barriers program and recommend changes in the rules to the commission and the commissioner. The commissioner shall submit all proposed

changes to rules and procedures that relate to the architectural barriers program to the committee for review and comment before adoption or implementation of the new or amended rule or procedure.

Sec. 8. All references in law to the former architectural barriers statute, Article 7, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), mean this article.

SECTION 4.02. Section 11, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. REVOCATION OR CANCELLATION OF CERTIFICATE. Registration certificates of architects issued in accordance with this Act shall remain in full force and effect until expiration date unless revoked or suspended for cause as herein provided. The registration certificate and right of any person to practice architecture in this State may be revoked or cancelled or a fine not to exceed One Thousand Dollars ($1,000.00) may be levied against that person, or any combination thereof, by the Texas Board of Architectural Examiners after due notice and hearing and upon the proof of the violation of the law in any respect in regard thereto, or for any cause for which the Texas Board of Architectural Examiners is authorized to refuse to grant registration certificates, or for proof of gross incompetency, or for recklessness in the construction of buildings on the part of the architect designing, planning, or observing or supervising the construction or alteration of same, or for dishonest practice on the part of the holder of such registration certificate, or for failing to timely provide plans and specifications to the Texas Department of Licensing and Regulation as required by Article 9101, Revised Statutes. The action of the Board in revoking or cancelling such registration certificate, refusing to grant a certificate, or assessing a fine may be appealed in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 4.03. Subsection (a), Section 22, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Board shall revoke, suspend, or refuse to renew a registration, shall reprimand a registrant, may deny an application for registration, or may probate any suspension of any registrant who is determined by the Board to be censurable for:

(1) The practice of any fraud or deceit in obtaining a certificate of registration;

(2) Any gross negligence, incompetency, or misconduct in the practice of professional engineering as a registered professional engineer;

(3) Any documented instance of retaliation by an applicant against an individual who has served as a reference for that applicant; [or]

(4) A violation of this Act or a Board rule; or

(5) A failure to timely provide plans and specifications to the Texas Department of Licensing and Regulation as required by Article 9101, Revised Statutes.

PART 5. OTHER MATTERS RELATING TO STATE ACQUISITION OF PROPERTY AND SERVICES

SECTION 5.01. Section 497.027(a), Government Code, is amended to read as follows:

(a) An agency of the state that purchases articles and products under this subchapter must requisition the purchase through the [~~State Purchasing and~~] General Services Commission except for purchases of items or services not included in an established contract. The purchase of items not included in an established contract and that do not exceed the dollar limits established under Section 3.08(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil

Statutes), may be acquired directly from the department on the agency's obtaining an informal or a formal quotation for the item and issuing a proper purchase order to the department.

SECTION 5.02. Section 9, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. ISSUANCE OF BONDS. (a) The board may issue and sell bonds in the name of the authority to finance projects that consist of the acquisition or construction of buildings in Travis County, Texas. Upon receiving a request described in Section 5.34, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), the board may issue bonds in amounts up to the previously authorized amount of bonds plus five percent of the acquisition cost of the property, all as described in the request.

(b) When the acquisition or construction of a building has been authorized in accordance with this Act or under Section 5.34, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), the board shall promptly issue and sell bonds in the name of the authority under this Act, including Sections 10B and 16 of this Act, to finance the acquisition or construction of the building. When the proceeds from the bond issuance are available, the board shall promptly deposit the proceeds in the state treasury under Section 23 of this Act and shall promptly make the determinations that are to be made by the board under Section 23 of this Act.

(c) The commission or other state agency involved in acquiring or constructing a building financed by the issuance of bonds under this Act shall carry out its statutory authority as if the building were financed by legislative appropriation. The board and either the commission or another state agency involved in the acquisition or construction of a building shall adopt a memorandum of understanding that defines the division of authority between the board and the commission or agency.

SECTION 5.03. Section 27, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), as amended by Chapters 786 and 1042, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 27. PURCHASE AND RENOVATION OF TEXAS EMPLOYMENT COMMISSION PROPERTY. (a) The Texas Employment Commission shall sell to the commission office buildings and parking facilities in its possession in or near the Capitol Complex, and the commission shall purchase the buildings and parking facilities, at a sales price that shall not exceed the maximum amount of funds authorized for the acquisition and renovation in Chapter 700, Acts of the 68th Legislature, Regular Session, 1983. ~~[The sale shall be under an agreement between the Texas Employment Commission and the commission on a price sufficient to provide the Texas Employment Commission adequate, alternative office and parking space outside the Capitol Complex and with the necessary concurrence of the United States government.]~~

(b) ~~[The commission shall, under an agreement with the Texas Employment Commission and subject to the availability of funds authorized by this Act, purchase the office buildings and parking facilities of the Texas Employment Commission located in or near the Capitol Complex.]~~ After the office buildings have been acquired, the commission may, from funds made available by the authority, renovate the facilities as necessary for occupancy by other state agencies. In negotiating the price for the Texas Employment Commission facilities, the commission shall consider the cost to the Texas Employment Commission of alternative space outside the Capitol Complex. The commission shall also consider the price in the context of the reasonable rates that might otherwise be paid by prospective occupying state agencies for rent in comparable space.

~~[Sec. 27. (a) The State Purchasing and General Services Commission may take possession of the office buildings and parking facilities in or near the Capitol~~

~~Complex occupied by the Texas Employment Commission. To take possession the State Purchasing and General Services Commission must provide the Texas Employment Commission adequate, alternative office and parking space in the city of Austin and obtain the necessary concurrence that may be required by the United States government. On receiving that concurrence, title to the property is in the State Purchasing and General Services Commission, and the employment commission and purchasing commission shall execute the documents necessary to show title in the purchasing commission.~~

~~[(b) If the State Purchasing and General Services Commission takes possession of the office buildings and parking facilities of the Texas Employment Commission located in or near the Capitol Complex, the State Purchasing and General Services Commission may, from funds made available by the authority or from other available funds, renovate the facilities as necessary for occupancy by other state agencies or by the legislature of legislative agencies. Before renovating the facilities or making the facilities available for occupancy to a state agency, the purchasing commission shall offer the space to the legislature for its use and occupancy. For that purpose, the purchasing commission shall notify the lieutenant governor and the speaker of the house in writing, who may claim the property for the use and occupancy of the legislature and legislative agencies by delivering a written notice signed by both officers to the executive director of the commission. The notice must be delivered to the executive director of the commission. The notice must be delivered to the executive director before the 120th day after the date on which those officers receive notice of the availability of the property.~~

~~[(c) If at any time the lieutenant governor and the speaker deliver a written notice, signed by each, to the executive director of the purchasing commission stating that the employment commission facilities in or near the Capitol Complex are necessary for legislative use and occupancy, the property shall be made available for that use and occupancy as soon as possible but not later than the second anniversary of the date on which the executive director of the purchasing commission receives the notice from the lieutenant governor and the speaker. If the employment commission is at that time in possession of the property:~~

~~[(1) the purchasing commission shall take possession of the property and the employment commission shall vacate the property;~~

~~[(2) from funds made available by the authority or from funds appropriated for that purpose, the purchasing commission shall purchase or construct adequate, alternative office and parking space in the city of Austin for the employment commission and shall obtain the necessary concurrence that may be required by the United States government; and~~

~~[(3) on receiving that concurrence, title to the property is in the purchasing commission and the purchasing commission and employment commission shall execute the documents necessary to show title in the purchasing commission.~~

~~[(d) Subject to the availability of funds, the purchasing commission may renovate facilities purchased for the employment commission as necessary for occupancy by the employment commission. Any available funds remaining after purchase and renovation of the facilities for the employment commission may be used by the purchasing commission to renovate the facilities of the employment commission transferred under this section as necessary for occupancy by state agencies or the legislature and legislative agencies.]~~

SECTION 5.04. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.926 to read as follows:

Sec. 51.926. WRITTEN CONTRACTS OR AGREEMENTS BETWEEN CERTAIN INSTITUTIONS. (a) In this section, "governing board" and "institution of higher education" have the meanings assigned by Section 61.003 of this code.

(b) A written contract or agreement for the furnishing of resources or services that is between institutions of higher education with a common governing board is not subject to the requirements of Chapter 771, Government Code, if the governing board has adopted rules providing for governing board review and approval of those contracts.

SECTION 5.05. Subchapter E, Chapter 12, Health and Safety Code is amended by adding Section 12.053 to read as follows:

Sec. 12.053. INVENTORY REQUIREMENTS. All equipment and supplies which are purchased through a program, contract, or grant with the department by or for qualified entities, including but not limited to individuals, corporations, local units of government and other state agencies and that are used to promote and maintain public health are exempt from the statewide personal property accounting system administered by the comptroller of public accounts described in Subchapter K, Chapter 403, Government Code. The qualified entities shall maintain complete equipment and supply records. The department may request the return of any usable equipment or supplies purchased with funds provided by the department upon the termination of the program, contract, or grant.

SECTION 5.06. Section 481.027, Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (e) and (f) to read as follows:

(a) The department shall maintain and operate offices in foreign countries for the purposes of promoting investment that generates jobs in Texas, exporting of Texas products, tourism, and international relations for Texas. The offices shall be named "The State of Texas" offices. To the extent permitted by law, other state agencies that conduct business in foreign countries may place staff in the offices established by the department and share the overhead and operating expenses of the offices. Other state agencies and the department may enter interagency contracts for this purpose. Chapter 771 does not apply to those contracts. Any purchase for local procurement or contract in excess of $5,000 shall be approved by the executive director prior to its execution.

(b) The offices shall be accessible to Texas-based institutions of higher education and their nonprofit affiliates for the purposes of fostering Texas science, technology, and research development, international trade and investment, and cultural exchange. The department and the institutions may enter contracts for this purpose. Chapter 771 does no apply to those contracts.

(e) Articles 8 and 9, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), apply to the operation and maintenance of the offices. No other provisions of that Act apply to the operation and maintenance of the offices, or to transactions of the department that are authorized by this section.

(f) The General Services Commission may, at the request of a state agency, provide to the agency services exempted from the application of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) under Subsection (e). Chapter 771 does not apply to services provided under this subsection. The commission shall establish a system of charges and billings that ensures recovery of the cost of providing the services and shall submit a purchase voucher or a journal voucher, after the close of each month, to the agency for which services were performed.

SECTION 5.061. Section 496.026(b), Government Code, is amended to read as follows:

(b) If the [~~State Purchasing and~~] General Services Commission determines that an article or product produced by the department under this subchapter does not meet the requirements of an agency of the state or a political subdivision, or that the institutional division of the Texas Department of Criminal Justice determines that the division [~~department~~] is unable to fill a requisition for an article or product, the agency or subdivision may purchase the article or product from another source.

SECTION 5.062. Section 496.027, Government Code, is amended by adding 496.027 (c) to read as follows:

(c) If an agency or political subdivision purchasing goods under this subchapter desires to purchase goods or articles from the division, it may do so without complying with any other state law otherwise requiring the agency or political subdivision to request competitive bids for the article or product. Nothing herein shall be interpreted to require a political subdivision to purchase goods or articles from the division if the political subdivision determines that the goods or articles can be purchased elsewhere at a lower price or an agency to purchase goods or articles from the division if the agency determines, and the General Services Commission certifies that the goods or articles can be purchased elsewhere at a lower price.

SECTION 5.07. Section 9(i), Information Resources Management Act (Article 4413(32j), Vernon's Texas Civil Statutes), is amended to read as follows:

(i) The department shall establish an information resources technology evaluation center for use by the department and other state agencies. The powers, objectives, and duties of the center shall include the following:

(1) to conduct technology-related research;

(2) to support the appropriate use of technology to deliver publicly needed services;

(3) to collect, analyze, and assimilate information on all areas of communications and computing;

(4) to expedite the creation of advance networking and computing system services;

(5) to improve the state's research and economic competitiveness;

(6) to conduct studies, investigations, and research designed to produce strategic plans for the use of technology in public services;

(7) to use research generated in the private sector to accomplish the objectives and perform the duties of this subsection;

(8) to contract with other state agencies to accomplish the purposes of this subsection, and all state agencies are authorized to execute contracts with the department to accomplish the objectives and perform the duties of this subsection in accordance with the Interagency Cooperation Act (Article 4413 (32) Vernon's Texas Civil Statutes);

(9) to contract with or award grants to persons or entities outside the government in order to achieve the objectives and perform the duties listed in this subsection on the terms and conditions determined by the governing board of the department. Research contracts and grants awarded under this subsection are subject to the terms of Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes). Purchases made under an awarded research contract or grant are subject to the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). Purchases or contracts made or awarded subsequent to the conclusion of a successful research project, as determined by the department, shall be subject to the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), and the provisions of this Act; and

(10) to receive state appropriations and grants from any source to be allocated at the discretion of the department to accomplish the objectives and to perform the duties of the department under this subsection or this Act.

SECTION 5.08. Section 6, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 6. GOVERNING BOARD. (a) The department is governed by a board composed of six [~~nine~~] members appointed by the governor with the advice and

consent of the senate. Two [~~Three~~] members must be appointed from a list of persons submitted to the governor by the speaker of the house of representatives[~~; and at least one of the persons appointed from that list must be a member of the house of representatives who serves on the board ex officio as a voting member~~]. Two [~~Three~~] members must be appointed from a list of persons submitted to the governor by the lieutenant governor[~~, and at least one of the persons appointed from that list must be a member of the senate who serves on the board ex officio as a voting member. One of the nine members must be employed by an institution of higher education as defined by Section 61.003, Education Code. In addition to the members of the legislature that must be appointed from the lists submitted by the lieutenant governor and the speaker of the house of representatives, the governor may appoint other members of the legislature to serve on the board ex officio as voting members~~].

(b) Members of the board serve for staggered six-year terms with two [~~three~~] members' terms expiring February 1 of each odd-numbered year.

(c) The governor shall designate the chairman of the board from among the members. The chairman serves as chairman at the will of the governor. The chairman may vote on all matters before the board.

(d) An appointment to fill a vacancy of a board member shall be made under the same procedure that applied to the original appointment for that position. If the chair is vacant, the executive director shall perform all nonvoting duties of the chairman until the governor designates a new chairman. [~~If it is held as a final result of an action first brought in a court of competent jurisdiction that an ex officio or other member of the board may not serve on the board under the Texas Constitution, the appropriate person shall promptly submit a list to the governor for the appointment of a replacement who may serve.~~]

(e) A member of the board may not receive compensation for services as a board member. A member is entitled to reimbursement for actual and necessary expenses reasonably incurred in connection with the performance of those services, subject to any applicable limitation on reimbursement provided by the General Appropriations Act. [~~An ex officio member is entitled to reimbursement for those expenses under the rules of the member's office.~~]

(f) A member of the board is not liable to civil action for any act performed in good faith in the performance of duties as a board member.

(g) [~~Five or more members of the board constitute a quorum. A quorum must be present to conduct business. An affirmative vote of a majority of the members of the board present is necessary for an action of the board.~~]

[~~(h)~~] The board shall meet at least once in each quarter of the state fiscal year and may meet at other times at the call of the chairman or as provided by department rule.

(h) [~~(i)~~] The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

SECTION 5.09. Section 7(a), Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

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

(1) does not have at the time of appointment the [~~qualifications or~~] status required for appointment to the board;

(2) [~~does not maintain during service on the board the qualifications or status required for initial appointment to the board;~~]

[~~(3)~~] violates a prohibition established by Section 8 of this article;

(3) [~~(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

(4) [~~(5)~~] is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a state fiscal year unless the absence is excused by majority vote of the board.

SECTION 5.10. Section 8(a), Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

(a) A member of the board or an employee of the department may not:

(1) be a person required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry;

(2) be an officer, employee, or paid consultant of a business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government;

(3) directly own, control, or have[~~, directly or indirectly,~~] more than a 10 percent interest in a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

(4) have a direct financial interest [~~receive more than 25 percent of the person's income from a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;~~

[~~(5) be interested~~] in [~~or connected with~~] a contract or bid for furnishing a state agency with information resources technologies;

(5) [~~(6)~~] be paid [~~employed~~] by a state agency as a consultant on information resources technologies; or

(6) [~~(7)~~] accept or solicit any gift or service that would reasonably tend to influence the person in the discharge of official duties or that the person knows or should know is being offered with the intent to influence official conduct [~~receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise~~].

SECTION 5.11. Section 9, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended by amending Subsection (i) and adding Subsections (m) and (n) to read as follows:

(i) The department shall establish an information resources technology evaluation center for use by the department and other state agencies. The department may accept the loan of information resources technologies and may use loaned technologies for not more than one year after the date of acceptance for the purpose of evaluation and presentations.

(m) The department may issue requests for information and requests for proposals relating to all existing or proposed interagency projects, interagency use of a common application, or other interagency use of information resources technologies. When the department issues a request for information or request for proposals to entities outside of government, the department must comply with applicable procedures that govern such a request under Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), or under Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), as appropriate.

(n) The department shall develop a disaster recovery plan for state agency information resources and information resources technologies for consideration by the division of emergency management in the office of the governor. The division may include all or part of the plan in the state emergency management plan. The department may provide training and technical assistance to state agency personnel

related to disaster recovery procedures for information resources and information resources technologies.

SECTION 5.12 The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 9A to read as follows:

Sec. 9A. COMPUTER SECURITY. (a) The department may adopt rules that govern state agency procedures related to the security of information contained in or accessible by state agency information resources technologies. Rules adopted under this section must include provisions to prevent the loss, unauthorized modification, and unauthorized disclosure of the information.

(b) The department may provide training and technical assistance in information security to state agency personnel who are responsible for working with information contained in or accessible by state agency information resources technologies.

(c) A state agency may take appropriate measures related to the security of its information that are in addition to the measures taken by the agency as prescribed by department rule.

SECTION 5.13. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 9B to read as follows:

Sec. 9B. SHARED USE OF RESOURCES. (a) A state agency shall respond to the department's requests for information and requests for proposals relating to an existing or proposed interagency project, interagency use of a common application, or other interagency use of information resources technologies.

(b) The department may determine that a state agency should make available to one or more other state agencies for specified uses information resources technologies that are in the possession of the agency. The department shall inform the state agencies concerned of its determination.

(c) The department may determine that a state agency should modify its information resources practices in a way that allows the agency to accomplish a specified application, project, or other function performed by the agency by using information resources technologies in the possession of another agency. The department shall inform the state agency concerned of its determination.

(d) If a state agency does not act in accordance with a determination of the department under Subsection (b) or (c) of this section, the department may inform the governor and the Legislative Budget Board of that fact.

(e) The governor may direct a state agency to act in accordance with all or part of a determination of the department under Subsection (b) or (c) of this section. The governor may require a state agency to provide more information relating to the subject matter of the department's determination or the department's request for information or request for proposals. The state agency shall act in accordance with the governor's direction on the matter.

SECTION 5.14. Section 12(a), Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

(a) The executive director shall prepare a state strategic plan for information resources management for the board's review and approval. The plan must:

(1) provide a strategic direction for information resources management in state government for the five fiscal years following adoption of the plan, and provide guidance to state agencies in the development of the agency strategic plans;

(2) establish goals and objectives relating to information resources management;

(3) provide long-range policy guidelines for information resources in state government, including the implementation of national and international standards for information resources technologies;

(4) identify major issues relating to improved information resources management, including the identification of needed procurement policy initiatives

to encourage competition between providers of information resources technologies and a consideration of the comparative costs and advantages to the state when state agency needs are met within the agency, on an interagency basis, and through a contract with the private sector; [and]

(5) identify functions that may be accomplished more cost-effectively through contracts with the private sector; and

(6) identify priorities for the implementation of information resources technologies based on the relative economic and social impact on the state.

SECTION 5.15. Sections 14(a) and (c), Information Resources Management Act (Article 4413(32j), Revised Statutes), are amended to read as follows:

(a) Each state agency shall prepare and submit to its governing body for approval an agency strategic plan for information resources management. After the governing body has approved the plan, the [~~The~~] plan shall be signed by the governing officer or chairman of the governing body of the agency if the agency is governed by one or more fully paid full-time state officials, and otherwise by the executive director of the agency. The agency strategic plan shall be prepared in a format prescribed by the department and shall be submitted to the department for review and approval not later than January 1 of each even-numbered [~~odd-numbered~~] year.

(c) Each agency strategic plan must be consistent with the state strategic plan and include:

(1) a statement of the agency's goals, objectives, and current programs as found in the agency's legislative appropriations request;

(2) a description of the agency's major data bases and their applications;

(3) a description of the agency's current information resources management organizations, policies, and practices;

(4) a description of interagency computer networks in which the agency participates;

(5) an assessment of the extent to which the agency could achieve its objectives through a contract with another agency or with the private sector;

(6) [~~(5)~~] a statement of the strategic objectives of the agency relating to information resources management for the next five fiscal years, beginning with the fiscal year during which the plan is submitted, with a description of how those objectives help achieve the agency's programs and goals, and a description of how those objectives support and further the goals and policies of the state strategic plan; and

(7) [~~(6)~~] other planning components that the department may prescribe.

SECTION 5.16. Section 15, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 15. INITIAL OPERATING PLANS. (a) Once each biennium, each state agency's information resources manager shall prepare an initial operating plan. The plan must include the information required under Subsection (b) of this section with the specificity required by the department [~~An agency is not required to identify specific acquisitions or the method of acquisition in the plan~~]. The plan must be [~~approved by the governing body of the agency and~~] submitted to the department for approval not later than the date that the agency is required to submit its first legislative appropriations request. An amended plan consistent with the changes in the agency's legislative appropriations request shall be submitted for approval to the department on the date that the agency submits an amended legislative appropriations request.

(b) A state agency's initial operating plan must, for each request under each Legislative Budget Board assumption:

(1) state how the agency's requested appropriations for the management, operation, and procurement of information resources would be spent;

(2) contain a summary of the agency's needs for information resources technologies and the estimated cost of meeting those needs during the next biennium within the agency, on an interagency basis, and through a contract with the private sector;

(3) list the existing and proposed projects, including internal development projects, for the agency during the next biennium, including:

(A) the anticipated measurable benefits of those projects and the measurement standards used to determine those benefits;

(B) the major resources required to conduct the projects;

(C) the agency's estimated total cost of each project by legislative program as found in the agency's legislative appropriations request;

(D) the cost and implementation schedule for each stage of each project;

(E) the number, type, approximate cost, schedule, and, if known, the planned method of acquisition for all procurements associated with each project that are subject to review under department rules; and

(F) the estimated internal development costs for each project, including an allocation of costs for the use of fixed assets and an allocation for administrative costs;

(4) provide an estimate, given the estimated work loan, of the percentage of existing and proposed information resources technologies that will be required after all existing and proposed projects are implemented; and

(5) provide any other information the department considers necessary.

SECTION 5.17. Section 16, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended by amending Subsections (b) and (d) and adding Subsections (e) and (f) to read as follows:

(b) At a minimum, the plan must include, in addition to the information required in the initial operating plan, the following:

(1) the amount of money related to information resources actually appropriated to the agency for the biennium beginning September 1; [and]

(2) an identification of changes, if any, in the agency's priorities for projects and associated procurements as set forth in the initial operating plan;

(3) an update of the estimated costs required under Section 15(b)(2) of this article; and

(4) any additional information required for projects under Section 18 of this article.

(d) A state agency shall amend its final operating plan:

(1) when necessary to reflect changes in the plan during a biennium;

(2) [~~: The plan shall also be amended~~] if necessary to show the impact of a consulting services contract or report that may affect software development, hardware configuration, or changes in the agency's management of information resources;

(3) at the direction of the department, when a significant phase of the systems development life cycle of a project is completed; and

(4) at the direction of the department, before a significant phase of the systems development life cycle of a project is commenced.

(e) An amendment required under Subsection (d)(3) or (4) of this section must include the cost of accomplishing the application or proposed project under the method of implementation proposed by the agency.

(f) The substance of any amendment submitted to the plan must also be included in an appropriate approved agency strategic plan or approved agency strategic plan amendment.

SECTION 5.18. Sections 17(b), (c), (d), (e), (g), and (i), Information Resources Management Act (Article 4413(32j), Revised Statutes), are amended to read as follows:

(b) The department shall notify a state agency in writing of the department's approval or disapproval of an initial operating plan. The department may approve or conditionally approve all or part of a plan or disapprove all or part of a plan. The notification shall be sent not later than 120 days after the date the department receives the plan.

(c) The department shall notify a state agency in writing of the department's approval or disapproval of a final operating plan. The department may approve or conditionally approve all or part of a plan or disapprove all or part of a plan. The notification shall be sent not later than 30 days after the date the department receives the plan. If the department's determination is due after September 1 of an odd-numbered year, a state agency may operate as if the plan had been approved until the department actually makes its determination.

(d) If the department disapproves all or part of a state agency's initial operating plan or final operating plan, the department shall provide to the agency in writing the reasons for the disapproval. If the agency cannot resolve the problems that caused disapproval within 30 days after the date the notice of disapproval is received, the agency shall notify the department in writing of the reasons why the problems cannot be resolved. The notification shall be sent to the department not later than 30 days after the date that the agency receives notice of the department's disapproval.

(e) Before a state agency may amend its final operating plan, the agency must submit the proposed amendment to the department for approval. All amendments affecting operations during a fiscal year must be submitted not later than June 1 of that fiscal year. The department may approve or conditionally approve all or part of a proposed plan amendment or disapprove all or part of a proposed plan amendment. The department shall notify the agency of the department's approval or disapproval not later than the 30th day after the date the proposed amendment is received. If the department disapproves all or part of a proposed amendment, the department shall state the reasons for the disapproval in writing to the agency's information resources manager. The department shall adopt rules for the procedures a state agency must follow when submitting a revision of proposed amendments to the department after the department has disapproved the amendments.

(g) A state agency that disagrees with the department's disapproval of all or part of an initial operating plan, final operating plan, or an amendment to either of those plans may submit a written request to the department for special review. On receipt of a request, the executive director shall inform the board. The board shall consider the merits of the agency's position and make its decision on the matter at the next regularly scheduled board meeting. The state agency may appear and present its position at that meeting. The decision of the board is final. The board shall adopt rules for the fair and efficient administration of this subsection.

(i) As a consequence of evaluating an initial operating plan, [or] a final operating plan, or an amendment to either of those plans, the department may require a state agency to submit or obtain comprehensive [certain] information and documentation required by the department in the format prescribed by the department [~~as part of its procurement process. This may be required when:~~

[~~(1) an agency is planning a noncompetitive procurement;~~

[~~(2) an agency is planning a system conversion; or~~

[~~(3) the department determines that the information would be necessary or appropriate~~].

SECTION 5.19. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 17A to read as follows:

Sec. 17A. COMPARATIVE COST REVIEW FOR INTERNALLY DEVELOPED APPLICATION OR PROJECT. (a) The department may conduct a comparative cost review for an application or project that a state agency has developed or implemented or proposes to develop or implement internally. In conducting the review, the department may:

(1) base its estimate of the cost to the state of the agency's future internal development or implementation of the application or project on information it receives under Sections 14-17 of this article;

(2) seek and obtain information from other state agencies and from nongovernmental entities on the probable cost to the state of the future development or implementation of the application or project through a contract with a state agency or with a nongovernmental entity; and

(3) require further information from the agency on the cost to the state of future internal development or implementation by the agency of the application or project.

(b) If the department determines that the probable total future cost to the state of accomplishing the application or project through a contract with another state agency or with a nongovernmental entity would be less than 90 percent of the total probable future cost to the state of continued internal development or implementation of the application or project by the agency, the department may require the agency to issue a request for bids or a request for proposals, as provided by law, for the accomplishment of the application or project through a contract with another state agency or a nongovernmental entity.

(c) If a bid or proposal is received under Subsection (b) of this section that would allow the agency to accomplish the application or project at an acceptable level of quality and for an acceptable period for a total cost to the state of less than 90 percent of the total cost to the state of continued internal development or implementation, as that cost is determined by the department, a contract for the accomplishment of the application or project shall be awarded to the bidder with the lowest and best bid, or the offeror whose proposal is most advantageous to the state as determined from competitive sealed proposals.

(d) Not later than January 31 of each year, the department shall provide an annual report of the comparative cost reviews it performed during the previous calendar year, including its findings and recommendations, to the Legislative Budget Board.

SECTION 5.20. Section 18, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 18. AUTHORIZATION FOR PROJECT DEVELOPMENT AND IMPLEMENTATION [~~ACQUISITION SPECIFICATIONS~~]. (a) A state agency may not spend appropriated money to take an action related to project development or project implementation [~~acquire information resources technologies~~] unless the action is consistent with an appropriate final operating plan or plan amendment that has already received final approval from the department or the agency first submits [~~the specifications for the proposed acquisition~~] to the department a project update, in the form of a final operating plan amendment, that includes the proposed action, and the department approves the project update plan amendment. The agency must submit specifications and documentation to the department relating to a proposed project that are sufficiently detailed and complete to allow the department to perform a meaningful and thorough review. The department shall

adopt rules relating to the form and content of the specifications and documentation that must be submitted to the department. [~~If the agency determines that the acquisition may be obtained from only one source, the agency shall state the reasons for that determination.~~] The department shall determine whether:

(1) the [~~specifications of the~~] proposed project complies with statewide standards and policies contained in the state strategic plan;

(2) the form and content of the specifications and documentation submitted to the department substantially comply with department rules;

(3) the proposed project is cost effective and technically valid;

(4) there has been performed an adequate analysis of alternatives to the proposed project or to the method of developing or implementing the proposed project, including a comparative cost analysis of the probable cost to the state of development or implementation of the project through a contract with a state agency or with a nongovernmental entity; and

(5) the proposed project is [~~acquisition are~~] consistent with the appropriate final operating plan and plan amendments submitted by the agency and approved by the department.

(b) If the department finds that a proposed action related to a project as [~~the acquisition of information resources technologies~~] described by the project update plan amendment and the supporting specifications and documentation does not meet the criteria prescribed by Subsection (a) of this section [~~would be inconsistent with the appropriate plan and plan amendments~~], the department shall notify the state agency and, for actions taken [~~acquisitions made~~] through the State Purchasing and General Services Commission, the commission in writing of the finding and of the specific reasons for the finding. A state agency [~~The acquisition~~] may not then spend appropriated money to take the action [~~be made~~] unless the department overturns its finding.

(c) [~~If the department finds that the proposed acquisition is consistent with the appropriate plan and plan amendments, or if the department does not issue the notification of its finding of inconsistency on or before the 30th day after the date that the department receives the specifications for the proposed acquisition, the acquisition may be made.~~]

[~~(d)~~] The department by rule may establish procedures to exempt certain projects [~~procurements~~] from the requirements of this section and to expedite the requirements of this section for certain projects [~~procurements~~]. The exempted projects [~~procurements~~] shall include technologies that are acquired through contracts and grants by an institution of higher education as defined by Section 61.003, Education Code, for [~~instruction or~~] research purposes.

(d) [~~(e)~~] A state agency may take an action described in this article without first complying with the procedures prescribed by this article if the agency finds that a situation caused by fire, natural disaster, or other actual emergency requires the action to be taken. A report explaining the emergency action must be filed with the department not later than the 30th day after the date the action is taken.

(e) If a state agency determines that a project action will include making an acquisition that may be obtained from only one source, the agency shall state the reasons for that determination to the department.

SECTION 5.21. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 18A to read as follows:

Sec. 18A. PROCEDURE FOR CERTAIN CONTRACTS. (a) A state agency may not enter into an interagency contract for the receipt of information resources technologies, including a contract for services and a contract under Section 21 of this article, unless the agency complies with this section.

(b) A state agency that proposes to receive information resources technologies under a contract with another state agency must first give public notice of a request for proposals or a request for bids.

(c) A state agency may not enter into an interagency contract to receive information resources technologies if the agency receives a bid or proposal under Subsection (b) of this section under which the agency can receive the same or substantially the same technologies from a private vendor for less than 90 percent of the cost that would be incurred by the agency under the interagency contract. If a bid or proposal is received under Subsection (b) of this section that would allow the agency to accomplish the application or project at an acceptable level of quality and for an acceptable period for a total cost to the state of less than 90 percent of the total cost to the state of the best proposed interagency contract, as that cost is determined by the department, a contract for the accomplishment of the application or project shall be awarded to the bidder with the lowest and best bid, or the offeror whose proposal is most advantageous to the state as determined from competitive sealed proposals.

SECTION 5.22. Section 19, Information Resources Management Act (Article 4413(32j), Revised Statutes), is amended to read as follows:

Sec. 19. INFORMATION RESOURCES MANAGERS. (a) The person required to sign an agency's strategic plan, or a senior staff member designated by that person [~~person's designee~~], shall serve as the agency's information resources manager. A member of the board of the department may not also serve as the information resources manager of a state agency.

(b) If the department agrees, [~~performs substantially all information processing for~~] a state [~~agency, the~~] agency may designate the department as the agency's information resources manager. The department may by rule define the circumstances in which it may serve as an agency's information resources manager.

(c) Each state agency shall cooperate as necessary with its information resources manager to enable that person to perform the duties required of the information resources manager by law.

(d) The department shall adopt rules [~~provide guidelines to state agencies~~] regarding the initial and continuing education and training requirements [~~needed~~] for information resources managers [~~not later than September 1, 1990, to be effective on September 1, 1992~~]. The department may create a certification program for information resources managers and require that information resources managers be certified as prescribed by the department. Any person who is appointed the information resources manager of a state agency before September 1, 1992, is exempt from the requirements of the department regarding initial education needed for that position. The department may provide educational materials and seminars for state agencies and information resources managers.

(e) The information resources manager is responsible for the preparation of the [~~operating~~] plans under Sections 14 [~~15~~]-17 of this article, and the annual performance report under Section 20 of this article.

SECTION 5.23. Title 20, Revised Statutes, is amended by adding Article 601i to read as follows:

Art. 601i. INFORMATION TECHNOLOGIES CONSULTING SERVICES

Sec. 1. DEFINITIONS. In this article:

(1) "Consulting services" means the human service of studying or advising a state agency.

(2) "Department" means the Department of Information Resources.

(3) "Information resources technologies" has the meaning assigned by Section 3, Information Resources Management Act (Article 4413(32j), Revised Statutes).

(4) "State agency" has the meaning assigned by Section 1.02(2), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

Sec. 2. APPLICABILITY. (a) This article applies to the receipt of consulting services relating to information resources technologies by a state agency under a

contract that does not involve the traditional relationship of employer and employee. This article, including rules adopted by the department or governor under this article and the requirement of a finding of need by the governor, also applies to an amendment to or an extension of such a contract.

(b) Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), and the Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes) do not apply to a contract to which this article applies.

Sec. 3. CERTAIN SERVICES EXCEPTED FROM ARTICLE. The department by rule may define circumstances in which state agency procurement of certain services relating to information resources technologies that will cost less than a minimum amount established by the department are excepted from the requirements of this article, if the department determines that it would be more cost-effective for the state.

Sec. 4. CONTRACTS VOID. (a) A contract made by a state agency for the receipt of a service that is subject to this article is void if the contract or the procedures under which the contract was awarded violate this article or a rule adopted under this article.

(b) If a contract is void under this section, the comptroller of public accounts or a state agency may not make any payments under the contract.

Sec. 5. FINDING OF NEED. (a) A state agency may not contract to receive consulting services relating to information resources technologies unless:

(1) the governor issues a written finding of need for the agency to obtain the service under a contract to which this article applies; or

(2) the contract is excepted from this article under Section 3 of this article.

(b) The governor may adopt rules for the procedures a state agency must follow when requesting a finding of need and demonstrating the need to the governor.

Sec. 6. REQUIRED PROCEDURES. (a) The department shall adopt rules that govern the procedures for making a contract for services under this article. The department's rules under this section:

(1) must require adequate advance public notice of requests for bids and proposals;

(2) may determine the form of notice required as appropriate in difference circumstances;

(3) may determine the extent to which bids, proposals, or opportunities for negotiation are most advantageous to the state and required as appropriate in different circumstances and determine the procedures for bids, proposals, and negotiations leading to the award of a contract;

(4) may determine, based on what is most advantageous to the state, the extent to which demonstrated competence and qualifications should be taken into account when a state agency evaluates a bid or proposal in different circumstances; and

(5) may be modeled in part on other state laws that govern bids and proposals in public contracting to the extent appropriate.

(b) The governor may exempt a state agency from all or part of the department's rules under this section if the governor determines that an unforeseen emergency has arisen that makes compliance with all or part of the rules infeasible. For purposes of this subsection, an unforeseen emergency is an emergency that the agency could not reasonably be expected to foresee. The governor shall adopt rules for the administration of this subsection.

Sec. 7. CONFLICTS OF INTEREST. An officer or employee of a state agency who has a financial interest in a firm or corporation that provides contracted services under this article and that submits an offer to provide services under this

article to the agency or who is related within the second degree by consanguinity or affinity to a person having that financial interest shall report the financial interest to the executive head of the state agency not later than the 10th day after the date on which the contractor submits the contracted services offer.

Sec. 8. PROCUREMENT THROUGH GENERAL SERVICES COMMISSION. (a) At the request of a state agency, the General Services Commission shall procure services that are covered by this article for the agency.

(b) Either house of the legislature and any committee or agency of the legislature may use the services of the General Services Commission to procure consulting services.

(c) The commission may require reimbursement for the cost it incurs when it performs a service under this section.

SECTION 5.24. Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes) is reenacted and amended to read as follows:

Sec. 1. In this Act: (1) "Consulting service" means the human service of studying or advising a [an] state agency under a [an independent] contract that does not involve the traditional relationship of employer and employee. [~~The term includes routine work provided to an agency under an independent contract that is necessary to the functioning of the agency's programs. The term includes only services for which payment is made from funds:~~]

[~~(A) that are appropriated by the legislature;~~]

[~~(B) that are generated by statutory functions of the agency; or~~]

[~~(C) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.~~]

(2) "Private consultant" means an individual or entity that performs or proposes to perform consulting services.

(3) "State agency" means a [~~any~~] state department, commission, board, office, institution, facility, or other agency[;] the jurisdiction of which is not limited to a geographical portion of the state. The term includes [~~including~~] a university system and [or] an institution of higher education as defined in Section 61.003, [~~Texas~~] Education Code [~~, as amended,~~]. The term does not include [~~other than~~] a public junior college.

Sec. 2. (a) This Act does not apply to and is not intended to discourage the use of consulting services provided by:

(1) professions listed under the Professional Services Procurement Act (Art. 664-4, Vernon's Texas Civil Statutes) [~~employment of registered professional engineers or registered architects for architectural or engineering studies or for the design or construction of state facilities;~~]

(2) private legal counsel,

(3) investment counselors,

(4) actuaries, [or]

(5) [~~physicians, dentists, or~~] other medical or dental services providers, or

(6) other consultants whose services are determined by the governing board of a retirement system trust fund to be necessary for the performance of its fiduciary duties under the state constitution, provided however, the governing board shall comply with Section 6 of this Act. Contracts made under this subsection shall not be void for failure to comply with the requirements of the article [~~and is not intended to discourage their use~~].

(b) This Act applies to consulting services that a state agency purchases with funds:

(1) appropriated by the legislature;

(2) generated by the statutory duties of a state agency; or

(3) received from the federal government to the extent that federal laws or regulations do not conflict with this Act.

Sec. 3. (a) A state agency may use a private consultant only if:

(1) there if a substantial need for the consulting services; and

(2) the state agency cannot adequately perform the consulting services with its own personnel or through a contract with another state agency.

(b) In selecting a private consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services; and

(2) when other considerations are equal, give a preference to a private consultant whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

Sec. 4. (a) Before [~~At least 30 days before~~] contracting with [~~to use~~] a private consultant whose total [~~anticipated~~] fee is reasonably foreseeable to exceed [~~exceeds~~] $10,000, a state agency shall:

(1) notify the Legislative Budget Board and the governor's [~~Governor's~~] Budget and Planning Office of the agency's intent to contract with [use] a private consultant; [~~and~~]

(2) [~~shall~~] supply the Legislative Budget Board and the governor's [~~Governor's~~] Budget and Planning Office with information demonstrating that the agency has complied or will comply with [~~the policies of~~] Section 3; [~~of this Act;~~] and;[~~.~~]

(3) obtain a finding of fact from the governor's Budget and Planning Office that the consulting services are necessary.

(b) A consulting services contract that a state agency executes without first obtaining the required finding of fact from the governor's Budget and Planning Office is voidable.

Sec. 5. [~~(a) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the Legislative Budget Board and the Governor's Budget and Planning Office with copies of all documents, films, recordings, or reports of intangible results of the consultant service that are developed by the private consultant.~~]

[~~(b) Copies of all documents, films, recordings, or reports of intangible results shall be filed with the Texas State Library and shall be retained by the library at least five years after receipt.~~]

[~~(c) As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the Governor's Budget and Planning Office, a state agency shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency.~~]

[~~Sec. 6.~~] (a) No later than the thirtieth day before entering into a consulting services contract with a reasonably foreseeable value of more than $10,000, [~~If it is reasonably foreseeable that a proposed use of a private consultant may involve a contract with a value in excess of $10,000,~~] a state agency [~~or a regional council of government created under Chapter 570, Act of the 59th Legislature, Regular Session, 1965, as amended (Article 1011m, Vernon's Texas Civil Statutes), that proposes the use of a private consultant~~] shall file [~~file, at least 40 days before contracting with a private consultant, the following information~~] with the secretary of state [~~Secretary of State~~] for publication in the Texas Register:

(1) an [~~a notice of~~] invitation for private consultants to provide offers of consulting services;

(2) the individual [~~person~~] who should be contacted by a private consultant who intends [~~wants~~] to make an offer;

(3) the closing date for the receipt of offers [~~of consulting services~~]; and

(4) the procedure by which the state agency [~~or council of government~~] will award the [~~contract for~~] consulting services contract.

(b) If the consulting service desired by a state agency relates to a service previously performed by a private consultant, the agency shall disclose that fact in the invitation for offers filed with the secretary of state under Subsection (a) of this section. If the state agency intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted, the agency shall disclose this intention in the invitation for offers.

Sec. 6. (a) [~~(b)~~] No later than the tenth day after executing a consulting services contract, a [~~A~~] state agency [~~or regional council of government~~] that is subject to the requirements of Section 5 [~~complies with Subsection (a) of this section~~] shall file [~~within 10 days after contracting with the private consultant the following information~~] with the secretary of state [~~Secretary of State for publication in the Texas Register~~]:

(1) a description of the activities [~~study~~] that the private consultant will [~~is to~~] conduct;

(2) the name and business address of the private consultant;

(3) the total value and the beginning and ending dates of the contract; and

(4) the due dates of documents, films, recordings, or reports [~~of intangible results~~] that the private consultant is required to present to the agency [~~or council of government~~].

(b) Upon receipt of the information described in Subsection (a) of this section, the secretary of state shall publish the information in the Texas Register.

[~~(c) The Texas State Library shall compile a list of documents, films, recordings, and reports of intangible results submitted to it under Section 5(b) of this Act and shall file the list in each quarter of the calendar year with the Secretary of State for publication in the Texas Register.~~]

[~~(d) If the consulting service desired by a state agency is a continuation of a service previously performed by a private consultant, the agency shall state this in the invitation for offers filed with the Secretary of State under Subsection (a) of this section. If the state agency intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted, it shall state this in the invitation for offers.~~]

Sec. 7. (a) When a state agency intends to renew a consulting services contract, the original value of which was reasonably foreseeable to be greater than $10,000, the agency shall:

(1) file with the secretary of state for publication in the Texas Register the information required by Section 6 no later than the tenth day after the renewal is executed if the renewal will have a reasonably foreseeable value of $10,000 or less; or

(2) comply with the requirements of Sections 4 and 5 if the value of the renewal will have a reasonably foreseeable value of more than $10,000.

(b) When a state agency intends to renew a consulting services contract, the original value of which was reasonably foreseeable to be $10,000 or less, the agency shall comply with the requirements of Sections 4 and 5 if the total value of the original contract and the renewal is reasonably foreseeable to exceed $10,000.

(c) When a state agency intends to amend or extend a consulting services contract, the original value of which was reasonably foreseeable to be greater than $10,000, the agency shall:

(1) file the information required by Section 6, no later than the tenth day after the amendment or extension is executed, with the secretary of state for publication in the Texas Register if the value of the amendment or extension is reasonably foreseeable to be $10,000 or less; or

(2) comply with Sections 4 and 5 if the value of the amendment or extension is reasonably foreseeable to exceed $10,000.

(d) When a state agency intends to amend or extend a consulting services contract, the original value of which was reasonably foreseeable as $10,000 or less, the agency shall comply with the requirements of Sections 4 and 5 if the total value of the original contract and the amendment or extension is reasonably foreseeable to exceed $10,000.

Sec. 8 [~~6A~~]. (a) An officer or employee of a state agency who has a financial interest in an [a] association, partnership, firm or corporation [~~that is a private consultant and~~] that submits an offer to provide consulting services to the agency or who is related within the second degree by consanguinity or affinity to an individual [~~a person~~] having the financial interest shall report the financial interest to the executive head of the state agency not later than the tenth [~~10th~~] day after the day on which the association, partnership, firm, or corporation [~~private consultant~~] submits the [~~consulting services~~] offer.

(b) This section applies to all consulting services contracts, including renewals, amendments, and extensions of those contracts.

Sec. 9 [~~6B~~]. (a) An individual [~~A person~~] who offers to perform a consulting service for a state agency and who has been employed by that [~~the~~] agency or by another [~~state~~] agency at any time during the two years preceding the making of the offer shall disclose in the offer:

(1) the nature of the previous employment with the agency or the other [~~state~~] agency;[~~;~~]

(2) the date of termination of the employment;[~~;~~] and

(3) the annual rate of compensation for the employment at the time of its termination.

(b) A state agency that accepts an [~~the~~] offer from an individual described in Subsection (a) of this section shall include in the information filed under Section 6 [~~Subsection (b) of Section 6 of this Act~~] a statement about the individual's previous employment and the nature of that [~~the~~] employment.

Sec. 10. (a) If an unforeseen emergency causes a state agency to need the services of a private consultant in a time frame that makes compliance with all or part of this Act infeasible, then this section applies. This section applies regardless of whether the needed services necessitate a new contract or the renewal, amendment, or extension of an existing contract.

(b) The state agency shall request from the governor a limited waiver from the requirements of this Act. The governor may grant the limited waiver only after the agency has provided information concerning the nature of the emergency, the reason that the emergency was unforeseen, the identity of the private consultant with whom the agency wishes to contract, the amount of the proposed contract, and the other information the governor deems necessary.

(c) For the purpose of this section, the term "unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a private consultant. The term includes, but is not limited to, the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is unforeseen only to the extent that a state agency was not negligent in foreseeing the occurrence of the emergency.

(d) As soon as possible after the governor grants a limited waiver to a state agency, the agency shall fulfill the requirements of this Act to the extent that those requirements are not made superfluous or ineffective by the governor's limited

waiver. The notice published in the Texas Register shall contain a detailed description of the emergency that necessitated the governor's temporary waiver.

(e) The governor shall adopt rules for the efficient administration of this section.

Sec. 11 [6C]. (a) If a state agency contracts for consulting services or renews, amends, or extends a consulting services contract [to use a private consultant] without complying with the requirements of Sections 5 through 7, [Section 6 of this Act or if a person contracts to perform a consulting service for a state agency without complying with the requirements of Section 6B of this Act,] then the contract, renewal, amendment, or extension is voidable [void].

(b) If a private consultant contracts with a state agency without complying with the requirements of Section 9, then the contract is voidable.

(c) [(b)] When [If] a contract, renewal, amendment, or extension is voidable [void] under this section: [;]

(1) the comptroller of public accounts may not draw a warrant or transmit funds to satisfy an obligation under the contract, renewal, amendment, or extension; and [or]

(2) a state agency may not make any payments under the contract, renewal, amendment, or extension from any state or federal funds held in or outside the state treasury[; State Treasury]. until the state agency has complied with Sections 5 through 7 of this Act.

Sec. 12. A state agency may not divide a consulting services contract or a renewal, amendment, or extension of a consulting services contract into more than one contract, renewal, amendment, or extension in order to avoid the requirements of this Act.

Sec. 13. (a) After a state agency's contract with a private consultant has ended, the state agency shall, upon request, supply the Legislative Budget Board and the governor's Budget and Planning Office with copies of all documents, films, recordings, or reports developed by the private consultant.

(b) Copies of all documents, films, recordings, or reports developed by the private consultant shall be filed with the Texas State Library and shall be retained by the library for at least five years after receipt.

(c) The Texas State Library shall compile a list of documents, films, recordings, and reports submitted to it under Subsection (b) and shall file the list at the end of each calendar quarter with the secretary of state for publication in the Texas Register.

Sec. 14. As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the governor's Budget and Planning Office, a state agency shall supply the Legislative Budget Board and the governor's Budget and Planning Office with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency during the previous biennium.

Sec. 15. If a contract involves both consulting services and other types of services, then this Act applies if the primary objective of the contract is the purchase of consulting services.

Sec. 16 [6D]. (a) It is the intent of the legislature that this Act be interpreted in a manner than ensures:

(1) [assures] the greatest and fairest [fair] competition in the selection by state agencies [and regional councils of government] of private consultants; [under contracts covered by this Act] and

(2) [that assures] that all potential private consultants [providers of consulting services] are afforded notice of the need for and opportunity to provide consulting [the] services.

(b) This Act is not intended to discourage [the use by] state agencies from using [or regional councils of government of] private consultants if the agencies

reasonably foresee their use will [~~may reasonably be expected to~~] result in a more efficient and less costly operation or project. This Act is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this Act have been followed.

(c) This Act neither requires nor prohibits the use of competitive bidding procedures to purchase consulting services.

Sec. 17. The comptroller shall adopt rules for the efficient and effective implementation and administration of this Act. The comptroller's rules may not conflict with or cover the same subject matter concerning which this Act authorizes the governor to adopt rules.

PART 6. REPEALER

SECTION 6.01. (a) Section 3.27, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is repealed.

(b) Subsection (b), Section 6.051, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by Section 4, Chapter 779, Acts of the 71st Legislature, Regular Session, 1989, is repealed.

(c) Article 99, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is repealed.

(d) Article 8, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is repealed on certification by the comptroller of the implementation of the fixed asset component of the uniform statewide accounting system.

PART 7. TRANSITIONAL MATTERS

SECTION 7.01. Sections 2.051 and 2.061, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, do not apply to a person who is a member of the State Purchasing and General Services Commission immediately before September 1, 1991, during the term the person is serving at that time.

SECTION 7.02. (a) To the extent appropriate, the General Services Commission shall exhaust its supplies of forms, publications, documents, and other consumable property bearing its former name before using new consumable property bearing the name "General Services Commission."

(b) The first policy statement required to be filed under Subsection (j), Section 2.06, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1991.

(c) The change in law to Subsection (c), Section 5.20, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), made by this Act that relates to allowing bidders at least 30 days to respond to an invitation to bid, and the change in law to Subsection (b), Section 5.22, State Purchasing and General Services Act, made by this Act that relates to allowing each private architect/engineer at least 30 days to prepare for an interview, apply only in relation to a contract for which the commission issues bid documents on or after September 1, 1991.

(d) The General Services Commission is required to identify only one of its own commercial activities for competitive cost review under Section 13.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by this Act, for the biennium ending August 31, 1993.

SECTION 7.03. (a) The school bus revolving fund formerly established under Section 21.180, Education Code, is abolished subject to the satisfaction of any valid outstanding obligations against the fund. The General Services Commission shall transfer any money remaining in the fund after the satisfaction of all valid outstanding obligations against the fund to the state treasury for deposit in the General Revenue Fund. The commission shall transfer any money received by the

commission after the date the fund was abolished that was owed to the fund before the date the fund was abolished to the state treasury for deposit in the General Revenue Fund.

(b) The changes in law made by this Act relating to a contract for the lease of one or more school buses under Section 21.182, Education Code, and other law apply only to a contract made on or after September 1, 1991, except that the reporting requirements added to Subsection (h), Section 21.182, Education Code, by this Act apply according to their terms to any contract under Section 21.182. Otherwise, a contract for the lease of one or more school buses that was made under Section 21.182, Education Code, before September 1, 1991, is governed by the law relating to a contract for the lease of one or more school buses by a county or local district school board in effect on the date that the contract was made, and that law is continued in effect for this purpose.

SECTION 7.04. (a) The changes in law made by Part 4 of this Act relating to the dissemination of information about the architectural barriers program, the setting and collecting of fees to recover program costs, and the transfer of that program from the General Services Commission to the Texas Department of Licensing and Regulation apply beginning September 1, 1991. All other changes in law made by Part 4 of this Act relating to the architectural barriers program do not apply until January 1, 1992, and until that date the former law governs the program and is continued in effect for this purpose.

(b) On September 1, 1991, all powers, duties, and obligations relating to the architectural barriers program are transferred from the General Services Commission to the Texas Department of Licensing and Regulation as provided by this Act. All records and property in the custody of the commission that relate to the program are transferred to the department. All appropriations to the commission for the operation of the program and all employees of the commission employed to operate the program are transferred to the department. All investigations and all filed complaints relating to the program are transferred without change in status from the commission to the department. All commission rules, standards, and specifications relating to the program remain in effect as department rules, standards, and specifications unless superseded by proper authority of the department.

SECTION 7.05. (a) A contract that was made before September 1, 1991, to which Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), applied is neither void nor voidable solely for a failure to comply with that law's requirements, if the contract was made in compliance with that law either as it was originally enacted in 1977 or as it was amended by Article 98, Chapter 773, Acts of the 66th Legislature, 1979.

(b) The changes in law made by Part 5 of this Act relating to consulting, professional, and routine services apply only to a contract or a contract extension, amendment, or renewal made on or after the effective date of this Act. A contract relating to those services that was made before the effective date of this Act is governed by the law in effect at the time the contract was made, except for matters relating to an extension, amendment, or renewal of such a contract on or after the effective date of this Act, and the prior law is continued in effect for this purpose.

SECTION 7.06. The changes made by Subchapter K, Chapter 403, Government Code, as added by this Act, take effect on certification by the comptroller of the implementation of the fixed asset component of the uniform statewide accounting system.

SECTION 7.07. (a) Each member of the board of the Department of Information Resources who is serving on the board on the effective date of this Act or on the first day after the end of the Regular Session of the 72nd Legislature, whichever date is later, and who is not a member of the legislature remains a

member of the board for the duration of the term for which the person was appointed except as provided by this section. An appointment to fill any remaining vacancy on the board shall be filled in accordance with Section 6, Information Resources Management Act (Article 4413(32j), Revised Statutes), as amended by this Act. If the chairman of the board on the effective date of this Act remains on the board under this section, that person remains chairman unless the governor designates a new chairman.

(b) If under Subsection (a) of this section three persons who serve for terms that expire on the same date or three persons who were not appointed from a list submitted by the lieutenant governor or the speaker of the house of representatives would remain on the board of the Department of Information Resources, the affected persons by unanimous agreement or by lot shall determine which two of the affected persons shall remain members of the board under Subsection (a) of this section.

PART 8. EFFECTIVE DATE; EMERGENCY CLAUSE

SECTION 8.01. This Act takes effect September 1, 1991.

SECTION 8.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2482 ADOPTED

Senator Parker called from the President's table the Conference Committee Report on **H.B. 2482**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Parker, the Conference Committee Report was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House has adopted the Conference Committee Report on **H.B. 546** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2110** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 1034** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 1129** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 1412** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 430** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 625** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 977** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 359** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2657** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 772** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1126

Senator Turner submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1126** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BROOKS	McCOLLOUGH
BIVINS	BLACK
JOHNSON	BLACKWOOD
	CRAWFORD
	B. TURNER
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1596 ADOPTED

Senator Turner called from the President's table the Conference Committee Report on **S.B. 1596**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Turner, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTES

Senators Tejeda and Zaffirini asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House has adopted the Conference Committee Report on **S.B. 1436** by a non-record vote.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1203**: Eckels, Chair; Craddick, Shea, S. Thompson, A. Hill.

The House has adopted the Conference Committee Report on **H.B. 749** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 1596** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1126 ADOPTED

Senator Turner called from the President's table the Conference Committee Report on **H.B. 1126**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Turner, the Conference Committee Report was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House has adopted the Conference Committee Report on **S.B. 352** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 432** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 831** by a non-record vote.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

MOTION TO ADOPT CONFERENCE COMMITTEE REPORT ON SENATE BILL 831

Senator Barrientos called from the President's table the Conference Committee Report on **S.B. 831**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

Senator Barrientos moved to adopt the Conference Committee Report.

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

(President in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 8

Senator Glasgow submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.J.R. 8** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GLASGOW	GIBSON
CARRIKER	LANEY
MONCRIEF	WOLENS
RATLIFF	HURY
TURNER	CRAWFORD
On the part of the Senate	On the part of the House

SENATE JOINT RESOLUTION

proposing a constitutional amendment to establish the Texas Ethics Commission and to authorize the commission to recommend the salary of members of the legislature and the lieutenant governor, subject to voter approval, and to set the per diem for those officials, subject to a limit.

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

SECTION 1. Article III of the Texas Constitution is amended by adding Section 24a to read as follows:

Sec. 24a. (a) The Texas Ethics Commission is a state agency consisting of the following eight members:

(1) two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the house of representatives from each political party required by law to hold a primary;

(2) two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary;

(3) two members of different political parties appointed by the speaker of the house of representatives from a list of at least 10 names submitted by the members of the house from each political party required by law to hold a primary; and

(4) two members of different political parties appointed by the lieutenant governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary.

(b) The governor may reject all names on any list submitted under Subsection (a)(1) or (2) of this section and require a new list to be submitted. The members of the commission shall elect annually the chairman of the commission.

(c) With the exception of the initial appointees, commission members serve for four-year terms. Each appointing official will make one initial appointment for a two-year term and one initial appointment for a four-year term. A vacancy on the commission shall be filled for the unexpired portion of the term in the same manner as the original appointment. A member who has served for one term and any part of a second term is not eligible for reappointment.

(d) The commission has the powers and duties provided by law.

(e) The commission may recommend the salary of the members of the legislature and may recommend that the salary of the speaker of the house of representatives and the lieutenant governor be set at an amount higher than that of other members. The commission shall set the per diem of members of the legislature and the lieutenant governor, and the per diem shall reflect reasonable estimates of costs and may be raised or lowered biennially as necessary to pay those costs, but the per diem may not exceed during a calendar year the amount allowed as of January 1 of that year for federal income tax purposes as a deduction for living expenses incurred in a legislative day by a state legislator in connection with the legislator's business as a legislator, disregarding any exception in federal law for legislators residing near the Capitol.

(f) At each general election for state and county officers following a proposed change in salary, the voters shall approve or disapprove the salary recommended by the commission if the commission recommends a change in salary. If the voters disapprove the salary, the salary continues at the amount paid immediately before disapproval until another amount is recommended by the commission and approved by the voters. If the voters approve the salary, the approved salary takes effect January 1 of the next odd-numbered year.

SECTION 2. Article III, Section 24, of the Texas Constitution is amended to read as follows:

Sec. 24. (a) Members of the Legislature shall receive from the Public Treasury a salary of Six Hundred Dollars ($600) per month, unless a greater amount is recommended by the Texas Ethics Commission and approved by the voters of this State in which case the salary is that amount. Each member shall also receive a per diem set by the Texas Ethics Commission [~~of Thirty Dollars ($30)~~] for each day during each Regular and Special Session of the Legislature.

(b) No Regular Session shall be of longer duration than one hundred and forty (140) days.

(c) In addition to the per diem the Members of each House shall be entitled to mileage at the same rate as prescribed by law for employees of the State of Texas. [~~This amendment takes effect on April 22, 1975.~~]

SECTION 3. Article IV, Section 17, of the Texas Constitution is amended to read as follows:

Sec. 17. (a) If, during the vacancy in the office of Governor, the Lieutenant Governor should die, resign, refuse to serve, or be removed from office, or be unable to serve; or if he shall be impeached or absent from the State, the President of the Senate, for the time being, shall, in like manner, administer the Government until he shall be superseded by a Governor or Lieutenant Governor.

(b) The Lieutenant Governor shall, while he acts as President of the Senate, receive for his services the same compensation and mileage which shall be allowed to the members of the Senate, and no more unless the Texas Ethics Commission recommends and the voters approve a higher salary in which case the salary is that amount; and during the time he administers the Government, as Governor, he shall receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. An increase in the emoluments of the office of Lieutenant Governor does not make a member of the Legislature ineligible to serve in the office of Lieutenant Governor.

(c) The President, for the time being, of the Senate, shall, during the time he administers the Government, receive in like manner the same compensation, which the Governor would have received had he been employed in the duties of his office.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 1991. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment creating the Texas Ethics Commission and authorizing the commission to recommend the salary for members of the legislature and the lieutenant governor, subject to voter approval, and to set the per diem for those officials, subject to a limit."

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

CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 8 ADOPTED

Senator Glasgow called from the President's table the Conference Committee Report on **S.J.R. 8**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Glasgow, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays:Harris of Dallas.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1

Senator Glasgow submitted the following Conference Committee Report:

Austin, Texas
May 27, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GLASGOW	LANEY
CARRIKER	CRAWFORD
MONCRIEF	HURY
RATLIFF	SEIDLITS
TURNER	WOLENS
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to ethics of public servants, including the composition, powers, and duties of the Texas Ethics Commission; to registration, reporting, and restrictions concerning expenditures made to influence legislation or administrative action; to personal financial statements filed by public officers and employees; to the giving or acceptance of certain benefits; to restrictions and reporting concerning political contributions and expenditures; and providing penalties.

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

ARTICLE 1

SECTION 1.01. PURPOSE. It is the policy of the Legislature of the State of Texas to protect the constitutional privilege of free suffrage by regulating elections and prohibiting undue influence, while also protecting the constitutional right of the governed to apply to their government for the redress of grievances. To these ends, the provisions of this Act are intended, and shall be construed, to achieve the following objectives:

(1) to control and reduce the cost of elections;

(2) to eliminate opportunities for undue influence over elections and governmental actions;

(3) to fully disclose information related to expenditures and contributions for elections and for petitioning the government;

(4) to enhance the potential for individual participation in electoral and governmental processes; and

(5) to ensure the public's confidence and trust in its government.

SECTION 1.02. DEFINITIONS. In this article:

(1) "Commission" means the Texas Ethics Commission.

(2) "Complainant" means a person who files a sworn complaint with the commission.

(3) "Political party" means a political party required to hold a primary election under Section 172.001, Election Code.

(4) "Respondent" means a person who is alleged to have committed a violation of a rule adopted by or a law administered and enforced by the Texas Ethics Commission.

SECTION 1.03. TEXAS ETHICS COMMISSION. The Texas Ethics Commission is created.

SECTION 1.04. COMPOSITION. (a) The commission is composed of the following eight members:

(1) two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the house of representatives from each political party required by law to hold a primary;

(2) two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary;

(3) two members of different political parties appointed by the lieutenant governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary; and

(4) two members of different political parties appointed by the governor from a list of 10 names submitted by the speaker of the house of representatives from a list of at least 20 names submitted by the members of the house of representatives from each political party required by law to hold a primary.

(b) A person who is nominated or appointed to the commission may not at the time of appointment or during service on the commission be:

(1) an officer of the state in a capacity other than as a member of the commission or an officer of a political subdivision, political party, or political committee;

(2) a member of the legislature;

(3) a candidate or campaign treasurer subject to Title 15, Election Code; or

(4) a person required to be registered under Chapter 305, Government Code.

(c) An appointment to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

SECTION 1.05. TERMS; VACANCY. (a) Appointed members serve for two-year terms. The terms of two members of the commission expire February 1 of each odd-numbered year.

(b) An appointed member who has served for one term and any part of a second term is not eligible for reappointment.

(c) In the event of a vacancy during a term, the appropriate appointing authority shall appoint a person to fill the unexpired portion of the term in the same manner as the original appointment was made.

SECTION 1.06. QUORUM; VOTE REQUIRED. (a) A majority of the membership of the commission constitutes a quorum. Except as otherwise provided by this article, an action or recommendation of the commission requiring a vote of the commission is not valid unless:

(1) the vote is taken at a meeting of the commission with a quorum present; and

(2) the action receives a majority vote of the membership of the commission.

(b) A vacancy on the commission may not be considered in determining the membership of the commission for the purpose of a quorum.

SECTION 1.07. CHAIRMAN; MEETINGS. (a) The members of the commission shall elect annually the chairman of the commission.

(b) The commission shall meet at least once each calendar quarter and at other times at the call of the chairman.

SECTION 1.08. EXPENSES. A member of the commission is entitled to travel expenses incurred in performing official duties and to a per diem equal to the maximum amount allowed as of January 1 of that year for federal employees per diem for federal income tax purposes, subject to the same limitations as provided for members of state boards and commissions in the General Appropriations Act.

SECTION 1.09. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal of a member from the commission if the member:

(1) is ineligible under Subsection (b), Section 1.04 of this article;

(2) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability;

(3) is absent from two consecutive 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; or

(4) has a final conviction for a violation of Chapter 36, Penal Code.

(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 chairman of the commission has knowledge that a potential ground for removal of a member exists, the chairman shall notify the appropriate appointing authority of the ground.

(d) If any two commission members have knowledge that a potential ground for removal of the chairman exists, the members shall notify the appropriate appointing authority of the ground.

SECTION 1.10. STAFF. (a) The commission may employ staff necessary to administer the commission's functions, including an executive director and a general counsel.

(b) The commission may not employ a person, and an employee of the commission may not continue in employment with the commission, if the person at the time of employment or while employed by the commission is:

(1) an officer of a political party, a political subdivision, or a political committee;

(2) a person required to be registered under Chapter 305, Government Code;

(3) a candidate or campaign treasurer subject to Title 15, Election Code; or

(4) a member of the legislature.

SECTION 1.11. POWERS AND DUTIES. (a) The commission shall:

(1) administer and enforce Chapters 302 and 305, Government Code; Title 15, Election Code; and Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes); and perform any other powers or duties given to the commission under those laws;

(2) prescribe forms for statements and reports required to be filed with the commission and provide for the distribution of the forms;

(3) adopt by rule and publish a manual that establishes uniform methods of accounting and reporting for use by persons required to file statements and reports with the commission and that includes a digest of each advisory opinion issued by the commission under Section 1.29 of this article;

(4) make a report by December 31 of each even-numbered year to the governor and legislature that includes each advisory opinion issued by the commission under Section 1.29 of this article in the preceding two years and that recommends any necessary statutory changes;

(5) provide training by January of each odd-numbered year for members and members-elect of the legislature concerning compliance with the laws administered and enforced by the commission;

(6) provide a program of ethics training for state employees in cooperation with state agencies;

(7) require each regulatory executive branch agency to develop rules limiting the acceptance of gifts or other benefits from persons appearing before or regulated by the agency that are at least as restrictive as the rules of the commission and provide for the submission of the rules to the commission for approval; and

(8) assign an account number to each person required to file a statement or report with the commission under a law administered and enforced by the commission.

(b) The commission may:

(1) issue subpoenas to compel the attendance of witnesses and the production of documents under Section 1.14 of this article;

(2) hold hearings, on its own motion adopted by a record vote of at least six commission members or on a sworn complaint, and render decisions on complaints or reports of violations as provided by this article;

(3) agree to the settlement of issues;

(4) on motion adopted by a record vote of at least six commission members, initiate civil enforcement actions and refer matters to the appropriate prosecuting attorney for criminal prosecution;

(5) disseminate, through pamphlets and seminars, explanations and compliance guidelines concerning any law administered and enforced by the commission;

(6) develop computer software to facilitate the discharge of statutory duties of the commission;

(7) contract with persons and agencies to administer and carry out this article and rules, standards, and orders adopted under this article, but excluding any enforcement authority;

(8) accept gifts, grants, and donations for the administration of its duties; and

(9) adopt rules to administer this article or any law administered and enforced by the commission, provided that a rule must be adopted on the affirmative vote of at least six members of the commission.

(c) If a law administered and enforced by the commission authorizes the commission to determine dollar amounts as reporting or registration thresholds, the commission shall set those thresholds in amounts that are reasonable, are in the public interest, and further the purposes of the reporting or registration law involved.

(d) If a law administered and enforced by the commission sets dollar amounts or categories of amounts as reporting thresholds or if the commission sets those amounts, the commission shall adjust those thresholds annually upward to the nearest multiple of $10 in accordance with a percentage increase for the previous year in the Consumer Price Index for Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor.

(e) The commission by rule may delegate any power conferred on it by this article or a law administered by the commission, except that the commission may not delegate:

(1) any power requiring a vote of the commission;

(2) rule-making authority; or

(3) authority to issue an advisory opinion under Section 1.29 of this article.

(f) The commission may not consider a complaint or vote to investigate a matter outside the commission's jurisdiction.

SECTION 1.12. ELECTRONIC DATA BASE. (a) The Department of Information Resources shall study the implementation of the most appropriate electronic data base to enhance the commission's abilities to administer this article.

(b) Effective January 1, 1993, the commission shall establish an electronic data base composed of statements and reports filed with the commission, provide the public with access to that data, establish a system to provide access by electronic data transmittal processes to that data, set and charge a fee for electronic access to the data base in an amount reasonable and necessary to cover the costs of access, and ensure that entries entered on multiple reports may be electronically cross-referenced in the data base.

SECTION 1.13. AUDITS. (a) The commission may review for facial compliance a statement or report filed with the commission and review any available documents and may return for resubmission with corrections or additional documentation a statement or report that does not, in the opinion of the commission, comply with the law requiring the statement or report.

(b) The commission may by record vote of at least six commission members perform a complete audit only at an informal and formal hearing.

(c) Any audited statement, report, document, or material, other than a statement, report, document, or material that was previously public information,

is confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding. The party who is the subject of the audit may waive confidentiality by sending written notice to the commission.

(d) The commission may not audit statements or reports filed before January 1, 1992, under a law previously administered and enforced by the secretary of state.

SECTION 1.14. SUBPOENAS. In connection with an informal hearing or a formal hearing, the commission may subpoena and examine witnesses and documents as authorized by this article that directly relate to a sworn complaint. A copy of a subpoena of the commission must be delivered to the respondent. At the written request of at least six members of the commission, a peace officer shall serve a subpoena of the commission in the manner prescribed for service of a district court subpoena. If a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the demand was made, the commission shall report that fact to a district court in Travis County. The district court shall enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court. A respondent has the right to quash a subpoena as provided by law. A subpoenaed witness who attends a commission hearing is entitled to the same mileage and per diem as a witness who appears before a grand jury.

SECTION 1.15. FILING OF COMPLAINTS. (a) An individual may file with the commission a sworn complaint on a form prescribed by the commission, alleging that a person subject to a law administered and enforced by the commission has violated a rule adopted by or a law administered and enforced by the commission.

(b) A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

(1) the name and street or mailing address of the complainant;

(2) the name and position or title of each respondent;

(3) the nature of the alleged violation, including if possible the specific rule or provision of law alleged to have been violated;

(4) a statement of the facts alleged to constitute the alleged violation and the dates on which or period of time in which the alleged violation occurred; and

(5) all documents or other material available to the complainant that are relevant to the allegation, a list of all documents or other material within the knowledge of the complainant and available to the complainant that are relevant to the allegation but that are not in the possession of the complainant, including the location of the documents, if known, and a list of all documents or other material within the knowledge of the complainant that are unavailable to the complainant and that are relevant to the complaint, including the location of the documents, if known.

(c) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the violation occurred. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant may swear to the facts either by oath or by affirmation before a notary public or other authorized official.

(d) The complaint must state on its face an allegation that, if true, constitutes a violation of a rule adopted by or a law administered and enforced by the commission.

SECTION 1.16. PROCESSING OF SWORN COMPLAINTS. (a) On receipt of a sworn complaint filed with the commission, the commission shall

determine whether the complaint complies with the form requirements of Section 1.15 of this article.

(b) Not later than the 14th business day after the date a complaint is filed, the commission shall send written notice to the complainant and the respondent. The notice must state whether the complaint complies with the form requirements of this article.

(c) If the commission determines that the complaint does not comply with the form requirements, the commission shall send to the complainant with the written notice the complaint, a statement explaining how the complaint fails to comply, and a copy of the rules for filing sworn complaints. The complainant may resubmit the complaint, but must do so not later than the 21st day after the date the notice under Subsection (b) of this section is mailed. If the commission determines that the complaint is not resubmitted within the 21-day period, the commission shall:

(1) dismiss the complaint; and

(2) not later than the fifth business day after the date of the dismissal, send written notice to the complainant and the respondent of the dismissal and the grounds for dismissal.

(d) If the commission determines that a complaint under Subsection (c) of this section is resubmitted within the 21-day period but is not in proper form, the commission shall send the notice required under Subsection (c) of this section, and the complainant may resubmit the complaint under that subsection.

(e) If the commission determines that a complaint returned to the complainant under Subsection (c) or (d) of this section is resubmitted within the 21-day period and that the complaint complies with the form requirements, the commission shall send the written notice under Subsection (b) of this section and promptly conduct a preliminary review.

SECTION 1.17. PRELIMINARY REVIEW. (a) By a record vote of at least six members, the commission, without a sworn complaint, may initiate a preliminary review of the matter that is the subject of the motion.

(b) On receipt of a written complaint that is in compliance with the form requirements of Section 1.15 of this article, or on a motion under Subsection (a) of this section, the commission shall conduct a preliminary review.

(c) The commission by record vote shall determine whether the commission has jurisdiction over the violation of law alleged in a sworn complaint processed under Section 1.16 of this article.

(d) Not later than the fifth business day after the date of the commission's determination under Subsection (c) of this section, the commission shall send written notice to the complainant and the respondent as to whether the commission has jurisdiction over the violation alleged in the complaint. If the commission determines that the commission has jurisdiction, the notice shall include a copy of the complaint and the rules of procedure of the commission, a statement of the rights of the respondent, a statement inviting the respondent to provide any information relevant to the complaint to the commission, and the date the commission will begin a preliminary review of the complaint.

(e) If the commission determines that the commission does not have jurisdiction over the violation alleged in the complaint, the commission shall:

(1) dismiss the complaint; and

(2) not later than the fifth business day after the date of the dismissal, send to the complainant and the respondent written notice of the dismissal and the grounds for the dismissal.

(f) During a preliminary review:

(1) the commission:

(A) may consider all submitted evidence related to the complaint or to the subject matter of a motion under Subsection (a) of this section;

(B) may review any documents or material related to the complaint or to the motion; and

(C) shall determine whether there is credible evidence that provides cause for the commission to conclude that a violation within the jurisdiction of the commission has occurred; and

(2) the respondent may appear before the commission with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

SECTION 1.18. RESOLUTION OF PRELIMINARY REVIEW. (a) As soon as practicable after the completion of a preliminary review under Section 1.17 of this article, the commission by record vote shall issue a decision stating:

(1) whether there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred; or

(2) that there is insufficient evidence for the commission to determine whether a violation within the jurisdiction of the commission has occurred.

(b) If the commission determines that there is credible evidence for the commission to determine that a violation has occurred, the commission shall resolve and settle the complaint or motion to the extent possible. If the commission successfully resolves and settles the complaint or motion, not later than the fifth business day after the date of the final resolution of the complaint or motion, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the resolution and the terms of the resolution. If the commission is unsuccessful in resolving and settling the complaint or motion, the commission in its discretion shall:

(1) order an informal hearing to be held in accordance with Section 1.19 of this article; and

(2) not later than the fifth business day after the date of the decision, send to the complainant, if any, and the respondent a copy of the decision and written notice of the date, time, and place of the informal hearing.

(c) If the commission determines that there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has not occurred, the commission shall:

(1) dismiss the complaint or motion; and

(2) not later than the fifth business day after the date of the dismissal, send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the dismissal and the grounds for dismissal.

(d) If the commission determines that there is insufficient credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred, the commission may dismiss the complaint or motion or promptly conduct an informal hearing under Section 1.19 of this article. Not later than the fifth business day after the date of the commission's determination under this subsection, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the grounds for the determination.

SECTION 1.19. INFORMAL HEARING. (a) During an informal hearing, the commission:

(1) may consider all evidence related to a sworn complaint or to a motion under Subsection (a) of Section 1.17 of this article;

(2) may review any documents or materials related to the sworn complaint or motion;

(3) may submit written questions and require those questions to be answered under oath;

(4) may subpoena documents or materials related to the sworn complaint or motion; and

(5) shall determine by credible evidence for the commission to determine whether a violation within the jurisdiction of the commission has occurred.

(b) During an informal hearing, the respondent may appear before the commission with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

SECTION 1.20. RESOLUTION OF INFORMAL HEARING. (a) As soon as practicable after the completion of an informal hearing under Section 1.19 of this article, the commission by record vote shall issue a decision stating whether there is credible evidence for the commission to determine that a violation has occurred and whether the violation is technical or de minimis.

(b) If the commission determines that there is credible evidence for the commission to determine that a violation has not occurred, the commission shall:

(1) dismiss the complaint or motion; and

(2) not later than the fifth business day after the date of the dismissal, send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the dismissal and the grounds for dismissal.

(c) If the commission determines that there is credible evidence for the commission to determine that a violation has occurred, the commission shall resolve and settle the complaint or motion to the extent possible. If the commission successfully resolves and settles the complaint or motion, not later than the fifth business day after the date of the final resolution of the complaint or motion, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the resolution and the terms of the resolution. If the commission is unsuccessful in resolving and settling the complaint or motion, the commission shall:

(1) order a formal hearing to be held in accordance with Section 1.22 of this article; and

(2) not later than the fifth business day after the date of the decision, send to the complainant, if any, and the respondent a copy of the decision and written notice of the date, time, and place of the formal hearing, a statement of the nature of the alleged violation, and a description of the evidence of the alleged violation. A copy of the complaint or motion, the rules of procedure of the commission, and a statement of the rights of the respondent shall be sent with the notice.

SECTION 1.21. CONFIDENTIALITY; OFFENSE. (a) Except as provided by Subsection (c) of this section, proceedings at a preliminary review or informal hearing performed by the commission, a sworn complaint, and documents relating to and any additional evidence relating to the processing, preliminary review, informal hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) Except as provided by Subsection (c) of this section, the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), does not apply to documents or any additional evidence relating to the processing, preliminary review, informal hearing, or resolution of sworn complaints or motions. The open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's

Texas Civil Statutes), does not apply to the processing, preliminary review, informal hearing, or resolution of sworn complaints or motions.

(c) An order issued by the commission after the completion of a preliminary review or an informal hearing determining that a violation other than a technical violation or de minimis has occurred is not confidential.

(d) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class A misdemeanor.

(e) In addition to other penalties, a person who files a frivolous complaint or discloses information made confidential by this section is civilly liable to the respondent in an amount equal to the greater of $10,000 or the amount of actual damages incurred by the respondent, including court costs and attorney fees.

SECTION 1.22. FORMAL HEARING. (a) During a formal hearing, the commission shall determine by clear and convincing evidence whether a violation within the jurisdiction of the commission has occurred.

(b) A subpoena or other request to testify shall be served sufficiently in advance of the scheduled appearance at a formal hearing to allow a reasonable period, as determined by the commission, for the person subpoenaed to prepare for the hearing and to employ counsel if desired.

(c) Except as provided by Subsection (f)(1) of this section, the commission may order that a person may not, except as specifically authorized by the chairman, make public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

(d) A witness may read a written statement or present a brief oral opening statement at a formal hearing.

(e) A person whose name is mentioned or who is identified or referred to in testimony or in statements made by a commission member, staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation may:

(1) request to appear personally before the commission to testify in the person's own behalf; or

(2) file a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.

(f) Not later than the fifth business day before the date of a scheduled formal hearing or on the granting of motion for discovery by the respondent, the commission shall provide the following information and documents, if any, to the complainant, if any, and the respondent:

(1) a list of proposed witnesses to be called at the hearing;

(2) copies of all documents expected to be introduced as exhibits at the hearing; and

(3) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(g) The respondent may not be compelled to give evidence or testimony that violates the respondent's right against self-incrimination under the United States Constitution or the Texas Constitution.

(h) A witness who testifies at a formal hearing must be sworn.

(i) The commission shall adopt rules governing discovery, hearings, and related procedures consistent with this article and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 1.23. RESOLUTION OF FORMAL HEARING. (a) Not later than the 30th business day after the date the formal hearing is completed, the commission by a motion adopted by record vote of at least six members, if the final decision is that a violation has occurred, or by five members if the final decision is that a violation has not occurred shall issue:

(1) a final decision stating the resolution of the formal hearing; and

(2) a written report stating in detail the commission's findings of fact, conclusions of law, and recommendation of criminal referral or imposition of civil penalty, if any.

(b) Not later than the fifth business day after the date the commission issues the final decision and written report, the commission shall:

(1) send a copy of the decision and report to the complainant, if any, and respondent; and

(2) make a copy of the decision and report available to the public during reasonable business hours.

SECTION 1.24. APPEAL OF FINAL DECISION. (a) To appeal a final decision of the commission, a person may file a petition in a district court in Travis County or in the county in which the respondent resides. The petition must be filed not later than the 30th business day after the date the person received the decision.

(b) Not later than the 30th day after the date on which the petition is filed, the respondent may request that the appeal be transferred to a district court in Travis County or in the county in which the respondent resides, as appropriate. The court in which the appeal is originally filed shall transfer the appeal to a district court in the other county on receipt of the request.

(c) An appeal brought under this section is not limited to questions of law, and the substantial evidence rule does not apply. The action shall be determined by trial de novo. The reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior action by the commission or the nature of that action, except to the limited extent necessary to show compliance with statutory provisions that vest jurisdiction in the court. A party is entitled, on demand, to a jury determination of any issue of fact on which a jury determination is available in other civil suits in this state.

SECTION 1.25. NOTICE; DEADLINES; STATUS OF COMPLAINT. (a) Each written notice, decision, and report required to be sent under this article shall be sent by registered or certified mail, restricted delivery, return receipt requested.

(b) The commission may, on its own motion or on the reasonable request of the respondent, extend any deadline for action relating to a sworn complaint, motion, preliminary review, informal hearing, or formal hearing.

(c) The complainant is not party to a preliminary review, informal hearing, or a formal hearing under this article.

SECTION 1.26. DEFERRAL OF INVESTIGATION. If an alleged violation involves an election in which the accused is a candidate, a candidate's campaign treasurer, or the campaign treasurer of a political committee supporting or opposing a candidate and the complaint is filed within 60 days before the date of the election, the commission shall delay referral until the day after election day or, if an ensuing runoff involving the accused is held, until the day after runoff election day. However, if the election involved in the violation is a primary election and the accused is involved in the succeeding general election, the referral shall be delayed until the day after general election day.

SECTION 1.27. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and the procedures by which sworn or other complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall keep an information file about each sworn or other complaint filed with the commission. In addition to the notice required by Sections 1.17 through 1.25 of this article, the commission, at least quarterly and until final disposition of a complaint, shall notify the complainant and the respondent, if any, of the status of the sworn or other complaint.

SECTION 1.28. SANCTIONS. (a) The commission may:

(1) impose a civil penalty of not more than $5,000, or triple the amount at issue under a law administered and enforced by the commission, whichever amount is greater, for a delay in complying with a commission order or for a violation of a law administered and enforced by the commission;

(2) impose a civil penalty of not more than $10,000 for the filing of a frivolous or bad-faith complaint;

(3) following a criminal conviction for an offense under Chapter 36, Penal Code, or Chapter 305, Government Code, deny, suspend, or revoke the registration of a person required to be registered under Chapter 305, Government Code;

(4) notify the appropriate regulatory or supervisory entity, including any agency, the State Commission on Judicial Conduct, the senate, the house of representatives, or the State Bar of Texas, of a violation of a law administered and enforced by the commission;

(5) issue and enforce cease and desist orders to stop violations; and

(6) issue affirmative orders to require compliance with the laws administered and enforced by the commission.

(b) In this section, "frivolous complaint" means a complaint that is groundless and brought in bad faith or is groundless and brought for the purpose of harassment.

(c) The commission shall consider the following factors in assessing a sanction:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;

(2) the history and extent of previous violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation;

(4) the penalty necessary to deter future violations; and

(5) any other matters that justice may require.

SECTION 1.29. ADVISORY OPINIONS. (a) If a person subject to any of the following laws requests in writing a commission opinion about the application of any of these laws to the person in regard to a specified factual situation, whether existing or hypothetical, the commission shall prepare a written opinion answering the request:

(1) Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes);

(2) Chapter 302, Government Code;

(3) Chapter 305, Government Code;

(4) Title 15, Election Code;

(5) Chapter 36, Penal Code; or

(6) Chapter 39, Penal Code.

(b) The commission shall issue a written advisory opinion not later than the 60th day after the date the commission receives the written request. The commission by vote may extend the time available to issue an opinion by 30 days. There may not be more than two extensions.

(c) The commission shall maintain the confidentiality of the name of any person requesting an advisory opinion and shall issue opinions in a form necessary to maintain the confidentiality of the person making the opinion request, unless the requesting party files written notice to the commission waiving the confidentiality of identity.

(d) On its own initiative, the commission may issue a written advisory opinion about the application of a law listed in Subsection (a) of this section when a majority of the commission determines that an opinion would be in the public interest or in the interest of any person or persons within the jurisdiction of the commission. Except as provided by Subsection (c) of this section, the commission may not issue

an opinion that includes the name of any person who may be affected by the opinion.

(e) The commission shall number and categorize each advisory opinion issued and shall annually compile a summary of its advisory opinions in a single reference document.

(f) The authority of the commission to issue an opinion does not affect the authority of the attorney general to issue an opinion as authorized by law.

(g) In issuing its opinions under this article, the commission shall consider the opinions issued by the State Ethics Advisory Commission and the secretary of state, unless the opinion is overruled by statute or rule of the commission. The commission shall rely on opinions issued by the attorney general and the courts of this state.

SECTION 1.30. DEFENSE. (a) It is a defense to prosecution or to imposition of a civil penalty that the person reasonably relied on a written advisory opinion of the commission relating to the provision of the law the person is alleged to have violated or relating to a fact situation that is substantially similar to the fact situation in which the person is involved.

(b) If the commission issues an advisory opinion concluding that a transaction or activity constitutes the conversion of a contribution to personal use in violation of Section 253.035, Election Code, the person involved in the conversion that is the subject of the advisory opinion is not civilly liable to the state if:

(1) before receiving the opinion, the person reasonably believed the transaction or activity did not constitute a conversion, taking into account prior opinions and rules of the commission; and

(2) on or before the 30th day after the date the opinion is published, the person:

(A) returns an amount equal to the amount converted to the political fund from which it was removed; and

(B) notifies the commission by certified mail that the person has returned the converted contribution as required by this subsection.

SECTION 1.301. STUDY OF CAMPAIGN FINANCE LAWS. (a) The commission shall study the following issues relating to the reporting of and restrictions on political contributions and expenditures:

(1) reporting of and restrictions on reimbursement of personal funds from political contributions;

(2) reporting of loans made for campaign or officeholder purposes;

(3) reporting of and restrictions on repayment of loans from political contributions;

(4) restrictions on the amount of political contributions to candidates, officeholders, and political committees;

(5) restrictions on the expenditures of political funds by candidates, officeholders, and political committees;

(6) repayment of debts from political contributions;

(7) reporting of political contributions accepted during a special legislative session;

(8) reporting of contributions accepted and expenditures made by the state chairman of a political party in connection with party activities;

(9) reporting of contributions and expenditures by a candidate for election to the state executive committee of a political party;

(10) late filings and reporting to appropriate prosecuting authorities; and

(11) exploring ways to limit spending in political campaigns through public financing.

(b) Not later than January 15, 1993, the commission shall submit to the governor and the 73rd Legislature a written report containing the results of the study

under this section and suggested legislation on the reporting of and restrictions on political contributions and expenditures.

(c) This section expires June 1, 1993.

SECTION 1.302. STUDY OF JUDICIAL CAMPAIGNS. (a) The commission shall conduct a study of issues relating to the financing of campaigns for judicial offices. The study shall include the following issues:

(1) limitations on political contributions to candidates for judicial office, including restrictions designed to prevent circumvention of those limitations;

(2) limitations on or prohibitions of officeholder contributions to judicial officeholders and of officeholder expenditures by judicial officeholders;

(3) limitations on or prohibitions of political expenditures, including direct campaign expenditures, made on behalf of candidates for judicial office;

(4) disclosure of political expenditures, including direct campaign expenditures, made by certain persons on behalf of candidates for judicial office;

(5) open access to information relating to political contributions to judicial officeholders and political expenditures made on behalf of those officeholders; and

(6) standards for determining conflicts of interest involving a judicial officeholder and procedures for disqualifying a judicial officeholder on the basis of judicial bias, with specific consideration of the appropriate standards for disqualification based on the amount of political contributions and expenditures made by attorneys and litigants to or on behalf of a judicial officeholder.

(b) Not later than January 1, 1993, the commission shall complete its study and make recommendations to the 73rd Legislature and the Supreme Court of Texas concerning the results of the study.

(c) This section expires June 1, 1993.

SECTION 1.303. STUDY OF JUDICIAL RELATIONSHIPS. (a) The commission shall conduct a study of issues relating to the disclosure of a special relationship between a judge and a party or attorney.

(b) The commission shall study the relevant issues relating to disclosure of a special relationship, including:

(1) whether a judge should, at the earliest opportunity, disclose to the parties any special relationship that the judge has with a party or an attorney representing a party;

(2) whether a complaint of judicial bias based on a special relationship must be raised at the earliest opportunity after the party learns of the special relationship, and whether it must be raised and determined in the manner provided by Rule 18a, Texas Rules of Civil Procedure; and

(3) whether disclosure of a special relationship should be required if the relationship does not constitute grounds for disqualification or recusal under Section 21.005, Government Code; Article V, Section 11, of the Texas Constitution; or Rule 18b, Texas Rules of Civil Procedure.

(c) For purposes of the study:

(1) "Special relationship" means a connection that:

(A) existed or exists between a judge hearing a case and:

(i) a party to the case; or

(ii) an attorney representing a party to the case; and

(B) might reasonably result in the judge's impartiality being questioned.

(2) "Special relationship" includes:

(A) a present legal relationship, including the representation of the judge in unrelated litigation by a law firm that represents a party to the case;

(B) a financial or business relationship, including:

(i) membership by the judge in a law firm that represents a party to the case;

(ii) an investment partnership in which the judge and a party or an attorney are partners; or

(iii) a privately held corporation in which the judge and a party or an attorney are shareholders; or

(C) a political relationship, including a political contribution made by a party or an attorney or law firm representing a party to the judge or the judge's campaign committee.

(d) Not later than January 1, 1993, the commission shall complete its study and make recommendations to the 73rd Legislature and the supreme court concerning the results of the study.

(e) This section expires June 1, 1993.

SECTION 1.31. PROHIBITED PARTICIPATION. (a) A member of the commission who is the subject of a formal investigation by the commission, of a sworn complaint filed with the commission or a motion, or of a motion by record vote of at least six members of the commission may not participate in commission proceedings relating to the investigation, complaint, or motion.

(b) A member of the commission may not participate in or vote on any matter before the commission if the matter concerns the member directly or a person related to the member within the second degree by affinity or consanguinity.

SECTION 1.32. PROHIBITED CANDIDACY. For 12 months after the date on which a member of the commission terminates service on the commission, the member may not be a candidate for any elective public office.

SECTION 1.33. DISCRIMINATION PROHIBITED. Nothing in this article shall be applied to discriminate on the basis of race, sex, national origin, or religion.

SECTION 1.34. PUBLIC ACCESS. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on issues under the general jurisdiction of the commission.

(b) The commission 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 handicap may be provided reasonable access to commission proceedings.

SECTION 1.35. STATE ETHICS FUND. (a) The state ethics fund is established in the state treasury.

(b) The state ethics fund consists of that part of the unclaimed money fund as provided by Section 74.602, Property Code, and fees collected under Section 305.005, Government Code.

(c) Money in the fund may be appropriated only to the commission to administer and enforce this article, Chapters 302 and 305, Government Code, Title 15, Election Code, and Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

(d) At the request of the commission, the state treasurer shall transfer funds to the commission under Section 74.602(b)(2), Property Code.

SECTION 1.36. APPLICATION OF OTHER ACTS; SUNSET ACT. (a) Sections 13 through 20, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), apply only to a formal hearing under this article, the resolution of a formal hearing, and the appeal of a final order of the commission, and only to the extent consistent with this article. The provisions of that Act relating to rules and rule making apply to the commission to the extent consistent with this article.

(b) The open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to formal hearings held under Section 1.22 of this article.

(c) Except as provided by Section 1.21 of this article, the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), applies to all records of the commission.

(d) The commission is subject to Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The commission shall be reviewed under that chapter during the period in which state agencies abolished September 1, 1999, and every 12th year after that date are reviewed.

SECTION 1.37. REFERENDUM. (a) The commission may propose and submit to the voters of this state, in a binding referendum, a measure on the salaries for members of the legislature and for the lieutenant governor as provided by the Texas Constitution.

(b) A referendum under this section must be held in conjunction with a general election for state and county officers following the recommended change of salary.

(c) The commission shall prescribe the wording of the ballot proposition. The proposition shall be printed on the ballot beneath the proposed constitutional amendments under the heading: "Referendum Proposition." Beneath the heading shall be printed the following: "This referendum has binding effect as law."

(d) The commission shall submit notification of any recommended change in salaries to the secretary of state not later than the 120th day before the date of the election at which the recommended change is to be voted on. The same procedures for placing a proposed constitutional amendment on the ballot shall be followed in placing the proposition on the ballot.

(e) Returns of the votes cast on the proposition shall be made and canvassed in the same manner as the returns on proposed constitutional amendments.

(f) Immediately after the results of the election are certified by the governor, the secretary of state shall transmit a copy of the certification to the commission, lieutenant governor, and speaker of the house of representatives.

SECTION 1.38. TRANSFER FROM STATE ETHICS ADVISORY COMMISSION; REPEALER. (a) The State Ethics Advisory Commission is abolished and Article 6252-9d, Revised Statutes, is repealed.

(b) On the effective date of this Act all records, programs, contracts, assets, and personnel of the State Ethics Advisory Commission are transferred to the Texas Ethics Commission.

(c) All of the obligations of the State Ethics Advisory Commission are transferred to the Texas Ethics Commission on the effective date of this Act.

SECTION 1.39. TRANSFER FROM SECRETARY OF STATE; REFERENCES TO SECRETARY OF STATE. (a) On the effective date of this Act all records, programs, contracts, reports, and statements of the secretary of state relating to laws administered by the Texas Ethics Commission under Subdivision (1) of Subsection (a) of Section 1.11 of this article are transferred to the Texas Ethics Commission.

(b) All references to the secretary of state in the following laws are considered to be references to the Texas Ethics Commission:

(1) Chapters 302 and 305, Government Code;

(2) Title 15, Election Code; and

(3) Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

SECTION 1.40. AMENDMENT. Section 74.602, Property Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Each fiscal year after deducting funds sufficient to pay anticipated expenses and claims of the unclaimed money fund, the state treasurer shall transfer:

(1) half of the balance of the unclaimed money fund to the foundation school fund;

(2) $1.2 million to the state ethics fund; and

(3) the remainder to the General Revenue Fund [~~Any funds remaining in the unclaimed money fund shall be transferred, at least once each fiscal year, in an amount that in the State Treasurer's judgment would leave a balance sufficient to pay the anticipated expenses and claims of the fund, to the foundation school fund and to the General Revenue Fund in equal amounts~~].

(d) On the effective date of this Act, the state treasurer shall transfer $1.5 million from the unclaimed money fund to the state ethics fund.

SECTION 1.41. ELECTRONIC FILING OF STATEMENTS OR REPORTS. If the commission adopts a rule requiring electronic filing of a statement or report for inclusion in the electronic data base established under Section 1.12 of this article, a report filed before June 1, 1993, may be filed in the manner provided by the commission for reports filed before January 1, 1993.

SECTION 1.42. CONTINGENT PROVISIONS. If the constitutional amendment proposed by **S.J.R. 8**, 72nd Legislature, Regular Session, 1991, is approved by the voters, Sections 1.03, 1.04, 1.05, 1.09, and 1.37 of this article have no effect.

ARTICLE 2

SECTION 2.01. Chapter 305, Government Code, is amended by adding Section 305.0011 to read as follows:

Sec. 305.0011. CODE OF CONDUCT. (a) A registrant shall decline proffered employment if the exercise of the registrant's independent judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the employment, except as provided by Subsection (c).

(b) A registrant may not continue multiple employment if the exercise of the registrant's independent judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client, except as provided by Subsection (c).

(c) A registrant may represent multiple clients in situations covered by Subsection (a) or (b) only with the consent of the clients after full disclosure of the possible effects of that representation on the registrant's professional judgment.

(d) If a registrant is required to decline employment or to withdraw from employment under this section, a partner or other person associated with that registrant may not accept or continue that employment.

(e) The commission may adopt rules for the implementation of this section consistent with this chapter, the Code of Professional Responsibility, and the common law of agency.

SECTION 2.02. Section 305.002, Government Code, is amended by amending Subdivision (10) and adding Subdivision (11) to read as follows:

(10) "Commission" means the Texas Ethics Commission [~~"Secretary" means the Texas Secretary of State~~].

(11) "Immediate family" means a spouse or dependent child.

SECTION 2.03. Section 305.003, Government Code, is amended to read as follows:

Sec. 305.003. PERSONS REQUIRED TO REGISTER. (a) A person must register with the commission [~~secretary~~] under this chapter if the person:

(1) makes a total expenditure of an amount determined by commission rule but not less than [~~of more than~~] $200 in a calendar quarter, not including the person's own travel, food, or lodging expenses or the person's own membership dues, on activities described in Section 305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action; or [~~and~~]

(2) receives compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of more than an amount determined by commission rule but not less than $200 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) Subsection (a)(2) requires a person[~~, other than a member of the judicial, legislative, or executive branch,~~] to register if the person, as part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for that regular employment. However, Subsection (a)(2) does not require a member of the judicial, legislative, or executive branch of state government or an officer or employee of a political subdivision of the state to register.

(c) A person who communicates directly with a member of the executive branch to influence administrative action is not required to register under Subsection (a)(2) if the person is an attorney of record or pro se, the person enters his appearance in a public record through pleadings or other written documents in a docketed case pending before a state agency, and that communication is the only activity that would otherwise require the person to register.

SECTION 2.04. Section 305.004, Government Code, is amended to read as follows:

Sec. 305.004. EXCEPTIONS. The following persons are not required to register under this chapter:

(1) a person who owns, publishes, or is employed by a newspaper, any other regularly published periodical, a radio station, a television station, a wire service, or any other bona fide news medium that in the ordinary course of business disseminates news, letters to the editors, editorial or other comment, or paid advertisements that directly or indirectly oppose or promote legislation or administrative action, if the person does not engage in further or other activities that require registration under this chapter and does not represent another person in connection with influencing legislation or administrative action;

(2) a person whose only direct communication with a member of the legislative or executive branch to influence legislation or administrative action is an appearance before or testimony to one or more members of the legislative or executive branch in a hearing conducted by or on behalf of either the legislative or the executive branch and who does not receive special or extra compensation for the appearance other than actual expenses incurred in attending the hearing;

(3) a person whose only activity is to encourage or solicit members, employees, or stockholders of an entity by whom the person is reimbursed, employed, or retained to communicate directly with members of the legislative or executive branch to influence legislation or administrative action;

(4) a person whose only activity to influence legislation or administrative action is to compensate or reimburse an individual registrant to act in the person's behalf to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action;

(5) a person whose only activity to influence legislation or administrative action is attendance at a meeting or entertainment event attended by a member of the legislative or executive branch if the total cost of the meeting or entertainment event is paid by a business entity, union, or association; [~~and~~]

(6) a person whose only compensation subject to Section 305.003(a)(2) consists of reimbursement for any wages not earned due to attendance at a meeting or entertainment event, travel to and from the meeting or

entertainment event, admission to the meeting or entertainment event, and any food and beverage consumed at the meeting or entertainment event if the meeting or entertainment event is attended by a member of the legislative or executive branch and if the total cost of the meeting or entertainment event is paid by a business entity, union, or association; and

(7) a person who communicates directly with a member of the legislative or executive branch on behalf of a political party concerning legislation or administrative action, and whose expenditures and compensation, as described in Section 305.003, combined do not exceed $5,000 a calendar year.

SECTION 2.05. Section 305.005, Government Code, is amended to read as follows:

Sec. 305.005. REGISTRATION. (a) Each person required to register under this chapter shall file a registration form with the commission [secretary] on a form prescribed by the commission [secretary] and shall submit a registration fee.

(b) A registration filed under this chapter expires at midnight, December 31, of each [~~odd-numbered~~] year unless the registrant submits a registration renewal form to the commission [secretary] on a form prescribed by the commission [secretary] and submits the registration renewal fee. The registrant may file the registration renewal form and the fee anytime in December of the year in which the registration expires.

(c) The registration fee and registration renewal fee are:

(1) $100 for a registrant employed by an organization exempt from federal income tax under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986; or

(2) $300 for any other registrant.

(d) Fees collected under this section shall be deposited in the state ethics fund [~~to the credit of a special fund in the State Treasury to be known as the lobbyist registration fund and may be used only to administer this chapter~~].

(e) A person required to register under this chapter who has not registered or whose registration has expired shall file the registration form and submit the registration fee not later than the fifth day after the date on which the person or the person's employee makes the first direct communication with a member of the legislative or executive branch that requires the person's registration.

(f) The registration must be written and verified and must contain:

(1) the registrant's full name and address;

(2) the registrant's normal business, business phone number, and business address;

(3) the full name and address of each person:

(A) who reimburses, retains, or employs the registrant to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action; and

(B) on whose behalf the registrant has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action; [~~and~~]

(4) the subject matter and, if applicable, the bill number, docket number, or other legislative or administrative designation of the legislation or administrative action that is the subject of the registrant's direct communication with a member of the legislative or executive branch;

(5) for each person employed or retained by the registrant for the purpose of assisting in direct communication with a member of the legislative or executive branch to influence legislation or administrative action:

(A) the full name, business address, occupation, and date of employment or retention of the person by the registrant; and

(B) the subject matter and, if applicable, the bill number, docket number, or other administrative designation of the legislation or

administrative action to which the person's activities reportable under this section were related; and

(6) the amount of compensation or reimbursement paid by each person who reimburses, retains, or employs the registrant for the purpose of communicating directly with a member of the legislative or executive branch or on whose behalf the registrant communicates directly with a member of the legislative or executive branch [~~a list of the specific categories of subject matters about which the registrant has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action~~].

(g) Compensation or reimbursement required to be reported under Subsection (f)(6) shall be reported in the following categories unless reported as an exact amount:

(1) less than $10,000;

(2) at least $10,000 but less than $25,000;

(3) at least $25,000 but less than $50,000;

(4) at least $50,000 but less than $100,000;

(5) at least $100,000 but less than $150,000;

(6) at least $150,000 but less than $200,000; and

(7) $200,000 or more.

(h) [~~(g)~~] If a registrant's activities are done on behalf of the members of a group or organization, including a business, trade, or consumer interest association but excluding [~~other than~~] a corporation, the registration form must include:

(1) a statement of the number of members in the group;

(2) [;] the name of each person in the group or organization who determines the policy of the group or organization relating to influencing legislative or administrative action;

(3) [~~, and~~] a full description of the methods by which the registrant develops and makes decisions about positions on policy; and

(4) a list of those persons making a grant or contribution, in addition to or instead of dues or fees, that exceeds $250 per year.

(i) If a registrant's activities are done on behalf of a corporation the shares of which are not publicly traded, the registration form must include:

(1) the number of shareholders in the corporation;

(2) the name and address of each officer or member of the board of directors; and

(3) the name of each person owning 10 percent or more shares of the corporation.

(j) If the person described by Subsection (f)(3) is a business entity engaged in the representation of clients for the purpose of influencing legislation or administrative action, the registrant shall give the information required by that subdivision for each client on whose behalf the registrant communicated directly with a member of the legislative or executive branch.

(k) [~~(h)~~] If there is a change in the information required to be reported by a registrant under this section, the registrant shall file an amended statement reflecting the change with the commission [~~secretary~~] not later than the date on which the next report is due under Section 305.007.

SECTION 2.05. Subchapter A, Chapter 305, Government Code, is amended by adding Section 305.0051 to read as follows:

Sec. 305.0051. LISTING OF PUBLIC OFFICERS AND EMPLOYEES. (a) Except as provided by Subsection (b), the commission by rule may require an officer or employee of a political subdivision or other governmental entity created under the Texas Constitution or laws of this state who communicates directly with a member of the legislative or executive branch concerning legislation or administrative action, other than routine matters, to file with the commission the

officer's or employee's name, the name of the entity represented, the subject matter of the communication, and other information the commission considers relevant.

(b) The commission may not require a member of the legislative branch to file with the commission under this section.

SECTION 2.06. Section 305.006, Government Code, is amended to read as follows:

Sec. 305.006. [~~SUPPLEMENTAL REGISTRATION AND~~] ACTIVITIES REPORT. (a) Each registrant shall file with the commission [~~secretary~~] a written, verified report on a form prescribed by the commission [~~secretary~~] concerning the activities described by this section.

(b) The report must contain the total expenditures under a category listed in this subsection that the registrant made to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. The report must also include expenditures for the direct communications under a category listed in this subsection that other people made on the registrant's behalf if the expenditures were made with the registrant's consent or were ratified by the registrant. The expenditures must be reported [~~stated~~] in the following categories:

(1) transportation and lodging;

(2) food and beverages;

(3) entertainment;

(4) gifts, other than awards and mementos;

(5) awards and mementos; and

(6) expenditures made for the attendance of members of the legislative or executive branch at political fund-raisers or charity events [~~entertainment, including food, beverages, maintenance of a hospitality room, sporting events, theatrical and musical events, and any transportation, lodging, or admission expenses incurred in connection with the entertainment; and~~

[~~(2) gifts, awards, or loans, other than contributions as defined by Section 251.001, Election Code~~].

(c) The report must also list the total expenditures made by the registrant or by others on the registrant's behalf and with the registrant's consent or ratification for broadcast or print advertisements, direct mailings, and other mass media communications if:

(1) the communications are made to a person other than a member, employee, or stockholder of an entity that reimburses, retains, or employs the registrant; and

(2) the communications support or oppose or encourage another to support or oppose pending legislation or administrative action.

(d) The report must also contain a list of the specific categories of subject matters about which the registrant, any person the registrant retains or employs to appear on the registrant's behalf, or any other person appearing on the registrant's behalf communicated directly with a member of the legislative or executive branch. The list must include the number or other designation assigned to the legislation or administrative action, if known.

(e) A registrant who reports an expenditure under one category provided by Subsection (b) may not report the same expenditure under another category of Subsection (b).

(f) An expenditure described by Subsection (b)(1), (2), (3), or (6) may not be made or accepted unless the registrant is present at the event [~~A registrant or other person may request an advisory opinion from the secretary under Section 305.041 to determine if an event is an entertainment event~~].

SECTION 2.07. Subchapter A, Chapter 305, Government Code, is amended by adding Section 305.0061 to read as follows:

Sec. 305.0061. DETAILED REPORTS. (a) If a registrant or a person on the registrant's behalf and with the registrant's consent or ratification makes

expenditures that exceed $50 a day for transportation or lodging for a member of the legislative or executive branch, the registrant shall also state the following on the report filed under Section 305.006:

(1) the name of the member of the legislative or executive branch in whose behalf the expenditure is made;

(2) the place and date of the transportation or lodging; and

(3) the purpose of the transportation or lodging.

(b) If a registrant or a person on the registrant's behalf and with the registrant's consent or ratification makes expenditures that exceed $50 a day for food and beverages for a member of the legislative or executive branch or makes expenditures that exceed $50 a day for entertainment for a member of the legislative or executive branch or for the immediate family of a member of the legislative or executive branch, the registrant shall also state the following on the report filed under Section 305.006:

(1) the name of the member of the legislative or executive branch in whose behalf the expenditure is made;

(2) the place and date of the expenditure; and

(3) the amount of the expenditure by the appropriate category of the amount, as determined by the commission.

(c) If a registrant or a person on the registrant's behalf and with the registrant's consent or ratification gives to a member of the legislative or executive branch a gift or an award or memento, the value of which exceeds $50 per gift, award, or memento, the registrant shall also state the following on the report filed under Section 305.006:

(1) the name of the member of the legislative or executive branch in whose behalf the expenditure is made;

(2) a general description of the gift, award, or memento; and

(3) the amount of the expenditure by the appropriate category of the amount, as determined by the commission.

(d) If a registrant or a person on the registrant's behalf and with the registrant's consent or ratification makes expenditures for the attendance of a member of the legislative or executive branch at a political fund-raiser or charity event, the registrant shall also state the following on the report filed under Section 305.006:

(1) the name of the member of the legislative or executive branch in whose behalf the expenditure is made;

(2) the name of the charity or the name of the candidate or officeholder for whom the political fund-raiser was held, as applicable; and

(3) the date of the fund-raiser or event.

(e) If a registrant or a person on the registrant's behalf and with the registrant's consent or ratification makes an expenditure for a gift, award, or memento for a member of the legislative or executive branch in conjunction with an expenditure for the attendance of that member at a political fund-raiser or charity event, the registrant shall report the expenditure for the gift, award, or memento under Subsection (c), if required, and not under Subsection (d).

(f) If a registrant or a person on the registrant's behalf with the registrant's consent or ratification makes an expenditure described by Section 305.006(b)(1), (2), or (3) to communicate directly with more than one member of the legislative or executive branch to influence legislation or administrative action and if the registrant cannot reasonably determine the amount that is directly attributable to a member, the registrant shall apportion the expenditure made by that registrant according to the number of persons in attendance. The registrant shall report as required by Subsection (a), (b), or (c) if the expenditure for each person exceeds the amount provided under Subsection (a), (b), or (c).

SECTION 2.08. Subchapter A, Chapter 305, Government Code, is amended by adding Section 305.0062 to read as follows:

Sec. 305.0062. EXPENDITURES ATTRIBUTABLE TO GROUPS. (a) The report filed under Section 305.006 must also contain the total expenditures described by Section 305.006(b) that are directly attributable to members of the legislative or executive branch and those that are directly attributable to the registrant. The expenditures must be stated in only one of the following categories:

(1) state senators;

(2) state representatives;

(3) elected or appointed state officers, other than those described by Subdivision (1) or (2);

(4) legislative agency employees;

(5) executive agency employees;

(6) the immediate family of a member of the legislative or executive branch;

(7) the registrant; and

(8) events to which all legislators are invited.

(b) For purposes of Subsection (a), an expenditure is directly attributable to the person who consumed the food or beverage, to the person for whom admission, transportation, or lodging expenses were paid, or to the person to whom the gift, award, or memento was given.

(c) All expenditures made by a registrant or a person on the registrant's behalf and with the registrant's consent or ratification that benefit members of the immediate family of members of the legislative or executive branch shall be aggregated and reported under Subsection (a)(6).

(d) If a registrant cannot reasonably determine the amount of an expenditure under Section 305.006(b) that is directly attributable to a member of the legislative or executive branch or to the registrant as required by Subsection (a), the registrant shall apportion the expenditure made by that registrant or by others on the registrant's behalf and with the registrant's consent or ratification according to the total number of persons in attendance. However, if an expenditure is for an event to which all legislators are invited, the registrant shall report the expenditure under Subsection (a)(8) and not under any other subdivision of that subsection or any other provision of this chapter.

SECTION 2.09. Subchapter A, Chapter 305, Government Code, is amended by adding Section 305.0063 to read as follows:

Sec. 305.0063. MODIFIED REPORTING. (a) A person required to register under this chapter may, when filing the registration form or registration renewal form, elect to file an activities report under this section instead of Section 305.006 if the person does not intend to make expenditures reportable under Section 305.006(b) of more than $1,000 during a calendar year, not including the person's own travel, food, or lodging expenses or the person's own membership dues.

(b) To be entitled to file reports under this section, the registrant must file with the registration form or registration renewal form a written declaration of intent not to exceed $1,000 in expenditures during each calendar year in which that registration or registration renewal is effective.

(c) A registrant filing under this section shall annually file the report required by Section 305.006. The report must be filed not later than January 10 and must cover the activities occurring during the previous calendar year.

(d) A registrant who exceeds $1,000 in expenditures shall file monthly reports as required by Section 305.007. The first report filed after exceeding $1,000 covers the period beginning January 1 through the date on which the next reporting period ends.

SECTION 2.10. Section 305.007, Government Code, is amended to read as follows:

Sec. 305.007. FILING DATES FOR SUPPLEMENTAL REPORTS. (a) The registrant must file the report required by Section 305.006 between the 1st and 10th day of each month [~~following a month in which the legislature is in session~~]. The report must cover the activities occurring during the previous month.

(b) [~~When the legislature is not in session, the registrant must file the report covering the activities occurring during the preceding calendar quarter between the 1st and 10th day of April, July, October, and January.~~

[~~(c)~~] A person who made expenditures on the registrant's behalf that are required to be reported under Section 305.006 or a person who has other information that is required to be reported by the registrant under this chapter shall provide a full, verified account of the expenditures to the registrant not later than the seventh day before the date on which the registrant's report is due.

[~~(d) The first quarterly report following a legislative session may omit an expenditure previously reported under this chapter.~~]

SECTION 2.11. Section 305.009, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The commission shall retain a report filed under this chapter for at least four years after the date the report is filed.

(d) A registrant shall keep any records necessary to the reports required under this chapter for at least four years after the date the report is filed.

SECTION 2.12. Subchapter A, Chapter 305, Government Code, is amended by adding Section 305.011 to read as follows:

Sec. 305.011. LIST OF REGISTRANTS AND EMPLOYERS. (a) Not later than February 1 of each odd-numbered year, the commission shall prepare a list of the names of registrants and shall indicate by each registrant's name each employer or concern employing the registrant.

(b) In addition to the list required under Subsection (a), the commission shall prepare a list of the names of any employer or concern employing a registrant and shall indicate each registrant compensated by the employer or concern.

(c) The commission shall send the lists prepared under this section to each member of the legislature. During a regular legislative session, the secretary shall send a monthly update of the lists to each member of the legislature and to any person required to file under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), who requests one.

SECTION 2.13. Section 305.022, Government Code, is amended to read as follows:

Sec. 305.022. CONTINGENT FEES. (a) A person may not retain or employ another person to influence legislation or administrative action for compensation that is totally or partially contingent on the passage or defeat of any legislation, [or] the governor's approval or veto of any legislation, or the outcome of any administrative action.

(b) A person may not accept any employment or render any service to influence legislation or administrative action for compensation contingent on the passage or defeat of any legislation, [or] the governor's approval or veto of any legislation, or the outcome of any administrative action.

(c) For purposes of this section, a sales commission payable to an employee of a vendor of a product is not considered compensation contingent on the outcome of administrative action.

(d) This section does not prohibit the payment or acceptance of contingent fees:

(1) expressly authorized by other law; or

(2) for legal representation before state administrative agencies in contested hearings or similar adversarial proceedings prescribed by law or administrative rules.

SECTION 2.14. (a) Subchapter B, Chapter 305, Government Code, is amended by adding Sections 305.024, 305.025, 305.026, and 305.027 to read as follows:

Sec. 305.024. RESTRICTIONS ON EXPENDITURES. (a) Except as provided by Section 305.025, a person registered under Section 305.005 or a person on the registrant's behalf and with the registrant's consent or ratification may not offer, confer, or agree to confer to a member of the legislative or executive branch:

(1) a loan, including the guarantee or endorsement of a loan;

(2) a gift of cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;

(3) an expenditure for transportation and lodging;

(4) an expenditure or series of expenditures for entertainment that in the aggregate exceed $500 in a calendar year;

(5) an expenditure or series of expenditures for gifts that in the aggregate exceed $500 in a calendar year;

(6) an expenditure for an award or memento that exceeds $500; or

(7) an expenditure described by Section 305.006(b)(1), (2), (3), or (6) unless the registrant is present at the event.

(b) Except as provided by Section 305.025, a member of the legislative or executive branch may not solicit, accept, or agree to accept from a person registered under Section 305.005 or from a person on the registrant's behalf and with the registrant's consent or ratification an item listed in Subsection (a).

Sec. 305.025. EXCEPTIONS. Section 305.024 does not prohibit:

(1) a loan in the due course of business from a corporation or other business entity that is legally engaged in the business of lending money and that has conducted that business continuously for more than one year before the loan is made;

(2) a loan or guarantee of a loan or a gift made or given by a person related within the second degree by affinity or consanguinity to the member of the legislative or executive branch;

(3) necessary expenditures for transportation and lodging when the purpose of the travel is to explore matters directly related to the duties of a member of the legislative or executive branch, such as fact-finding trips, but not including attendance at merely ceremonial events or pleasure trips;

(4) necessary expenditures for transportation and lodging provided in connection with a conference or similar event in which the member renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory; or

(5) a political contribution as defined by Section 251.001, Election Code.

Sec. 305.026. PROHIBITION ON USE OF CERTAIN PUBLIC FUNDS. (a) Public funds available to a political subdivision may not be used to compensate or reimburse the expenses over $50 of any person for the purpose of communicating directly with a member of the legislative branch to influence legislation, unless the person being compensated or reimbursed resides in the district of the member with whom the person communicates or files a written statement with the secretary of state that includes the person's name, the amount of compensation or reimbursement, and the name of the affected political subdivision.

(b) In this section, "political subdivision" includes:

(1) a municipality;

(2) a county; and

(3) a special district created under the constitution or laws of this state, including:

(A) a school district;

(B) a junior college district;
(C) a water district;
(D) a hospital district;
(E) a municipal utility district;
(F) a metropolitan transit authority; and
(G) any other governmental entity that embraces a geographic area within a definite boundary and exists for the purpose of discharging functions of government and possesses authority for subordinate self-government through officers selected by it.

(c) This section does not apply to a person who is registered under this chapter, to a person who holds an elective or appointive public office, or to a full-time employee of the affected political subdivision.

(d) This section does not prohibit a political subdivision from making an expenditure of public funds to a statewide association with a minimum membership of at least 25 percent of eligible political subdivisions that contract with or employ a registrant for the purpose of communicating directly with a member of the legislative branch to influence legislation.

Sec. 305.027. REQUIRED DISCLOSURE ON LEGISLATIVE ADVERTISING. (a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast legislative advertising that does not indicate in the advertising:

(1) that it is legislative advertising;

(2) the full name of the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster and the name of the person, if any, that the individual represents; and

(3) in the case of advertising that is printed or published, the address of the individual who personally entered into the agreement with the printer or publisher and the address of the person, if any, that the individual represents.

(b) It is an exception to the application of Subsection (a) to a broadcaster, printer, or publisher of legislative advertising or to an agent or employee of the broadcaster, printer, or publisher that:

(1) the person entering into the contract or agreement with the broadcaster, printer, or publisher is not the actual sponsor of the advertising but is the sponsor's professional advertising agent conducting business in this state; or

(2) the advertising is procured by the actual sponsor of the legislative advertising and, before the performance of the contract or agreement, the sponsor is given written notice as provided by Subsection (d).

(c) A professional advertising agent conducting business in this state who seeks to procure the broadcasting, printing, or publication of legislative advertising on behalf of the sponsor of the advertising commits an offense if the agent enters into a contract or agreement for the broadcasting, printing, or publication of legislative advertising and does not, before the performance of the contract or agreement, give the sponsor written notice as provided by Subsection (d).

(d) The notice required by Subsections (b) and (c) must be substantially as follows:

> Section 305.027, Government Code, requires legislative advertising to disclose certain information. A person who knowingly enters into a contract or other agreement to print, publish, or broadcast legislative advertising that does not contain the information required under that section commits an offense that is a Class A misdemeanor.

(e) In this section, "legislative advertising" means a communication that supports, opposes, or proposes legislation and that:

(1) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(2) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, button, or similar form of written communication.

(b) Section 305.027, Government Code, as added by this section, applies only to contracts or other agreements for legislative advertising entered into on or after the effective date of this Act.

SECTION 2.15. Section 305.031, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) A person commits an offense if the person intentionally or knowingly violates a provision of this chapter other than Section 305.022. An offense under this subsection is a Class A misdemeanor.

(b) A person commits an offense if the person intentionally or knowingly violates Section 305.022. An offense under this subsection is a felony of the third degree.

(d) This section does not prohibit the commission from imposing a civil penalty for a violation.

SECTION 2.16. Section 305.032, Government Code, is amended to read as follows:

Sec. 305.032. CIVIL PENALTY FOR FAILURE TO REGISTER. In addition to the criminal penalties prescribed by Section 305.031, a person who receives compensation or reimbursement or makes an expenditure for engaging in direct communication to influence legislation or administrative action and who fails to file a registration form or activities report required to be filed under this chapter shall pay a civil penalty in an amount determined by commission rule, but not to exceed [~~to the state~~] an amount equal to three times the compensation, reimbursement, or expenditure.

SECTION 2.17. Section 305.033, Government Code, is amended to read as follows:

Sec. 305.033. CIVIL PENALTY FOR LATE FILING. (a) The commission [~~secretary~~] shall determine from any available evidence whether a registration or report required to be filed with the commission [~~secretary~~] under this chapter is late. A registration filed without the fee required by Section 305.005 is considered to be late. On making a determination that a required registration or report is late, the commission [~~secretary~~] shall immediately mail a notice of the determination to the person responsible for the filing, [~~and~~] to the commission, and to the appropriate attorney for the state.

(b) If a registration or report is determined to be late, the person responsible for the filing is liable to the state for payment of a civil penalty in an amount determined by commission rule, but not to exceed $100 for each day that the registration or report is late [~~of $100~~].

(c) If a registration or report is more than 30 days late, the secretary shall issue a warning of liability by registered mail to the person responsible for the filing. If the penalty is not paid before the 10th day after the date on which the warning is received, the person is liable for a penalty in an amount determined by commission rule, but not to exceed $10,000 [~~The appropriate attorney for the state may not initiate suit for the penalty until the 10th day after the date on which the notice is mailed under Subsection (a). If the penalty is paid before the 10th day after the mailing, the secretary shall notify the appropriate attorney for the state, and the civil suit under this section may not be initiated~~].

(d) A penalty paid voluntarily under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

(e) This section is in addition to any other available sanctions for late filings of registrations or reports.

SECTION 2.18. Subsections (a) and (c), Section 305.035, Government Code, are amended to read as follows:

(a) The commission [secretary], the attorney general, or any county or district attorney may enforce this chapter.

(c) A person may file with the appropriate prosecuting attorney or with the commission a written, sworn statement alleging a violation of this chapter.

SECTION 2.19. Subchapter D, Chapter 305, Government Code, is repealed.

SECTION 2.20. (a) A person required to register under Section 305.003, Government Code, as amended by this Act, shall reregister with the Texas Ethics Commission in compliance with Chapter 305, Government Code, as amended by this Act, not later than January 31, 1992.

(b) Until the Texas Ethics Commission adopts rules setting amounts for registration purposes under Section 305.003, Government Code, as amended by this Act, those amounts are as they existed on December 31, 1991.

ARTICLE 3

SECTION 3.01. Subdivision (1), Section 2, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "State officer" means an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency as defined in this section.

SECTION 3.02. Paragraph (A), Subdivision (5), Section 2, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Department of Commerce;

(iii) a member of the Texas Board of Aviation;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Purchasing and General Services Commission;

(viii) a member of the Texas Board of Criminal Justice;

(ix) a member of the Board of Trustees of the Employees Retirement System of Texas;

(x) a member of the State Highway and Public Transportation Commission;

(xi) a member of the Texas Workers' Compensation Commission;

(xii) a member of the State Board of Insurance;

(xiii) a member of the Parks and Wildlife Commission;

(xiv) a member of the Public Safety Commission;

(xv) the Secretary of State;

(xvi) a member of the State Securities Board;

(xvii) a member of the Texas Amusement Machine Commission;

(xviii) a member of the Texas Water Development Board;

(xix) a member of the Texas Water Commission;

(xx) a member of the governing board of a state senior college or university as defined by Section 61.003, Education Code, including The University of Texas at Arlington; The University of Texas at Austin; The University of Texas at Dallas; The University of Texas at El Paso; The University of Texas - Pan American; The University of Texas - Pan American - Brownsville; The University of Texas of the Permian Basin; The University of Texas at San Antonio; The University of Texas at Tyler; The University of Texas Southwestern Medical Center at Dallas; The University of Texas Medical Branch at Galveston; The University of Texas Health Science Center at Houston; The University of Texas Health Science Center at San Antonio; The University of Texas System Cancer Center; The University of Texas Health Science Center at Tyler; Texas A&M University; Texas A&M University at Galveston; Prairie View A&M University; Tarleton State University; Corpus Christi State University; Texas A&I University; Laredo State University; East Texas State University; East Texas State University at Texarkana; University of Houston; University of Houston - Clear Lake; University of Houston - Downtown; University of Houston - Victoria; Lamar University at Beaumont; Lamar University at Orange; Lamar University at Port Arthur; Midwestern State University; University of North Texas; Texas College of Osteopathic Medicine; Stephen F. Austin State University; Texas Southern University; Texas Tech University; Texas Tech University Health Sciences Center; Texas Woman's University; West Texas State University; Angelo State University; Sam Houston State University; Southwest Texas State University; Sul Ross State University; Sul Ross State University - Uvalde Center; Texas State Technical Institute - Amarillo; Texas State Technical Institute - Harlingen; Texas State Technical Institute - Sweetwater; and Texas State Technical Institute - Waco;

(xxi) a member of the Texas Higher Education Coordinating Board;

(xxii) a member of the Texas Employment Commission;

(xxiii) a member of the State Banking Board;

(xxiv) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxv) a member of the Credit Union Commission; [or]

(xxvi) a member of the School Land Board;

(xxvii) a member of the Texas Racing Commission;

(xxviii) a member of the State Board of Dental Examiners;

(xxix) a member of the Texas Board of Licensure for Nursing Home Administrators;

(xxx) a member of the Texas State Board of Medical Examiners;

(xxxi) a member of the Board of Pardons and Paroles;

(xxxii) a member of the Texas State Board of Pharmacy;

(xxxiii) the Banking Commissioner of the Banking Department of Texas;

(xxxiv) a member of the Department of Information Resources Governing Board;

(xxxv) the fire fighters' pension commissioner;

(xxxvi) a member of the Texas Motor Vehicle Commission;

(xxxvii) the director of the Office of Court Administration of the Texas Judicial System;

(xxxviii) the chief executive of the Office of Public Utility Counsel;

(xxxix) a member of the Texas Real Estate Commission;

(xl) a member of the board of directors and the executive director of the State Bar of Texas;

(xli) a member of the Bond Review Board;

(xlii) a member of the Texas Board of Health;

(xliii) a member of the Texas Board of Mental Health and Mental Retardation;

(xliv) a member of the Texas Board on Aging;

(xlv) a member of the Texas Board of Human Services;

(xlvi) a member of the Texas Funeral Service Commission; or

(xlvii) a member of the board of directors of a river authority created under the constitution or laws of this state.

SECTION 3.03. Section 2, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended by amending Subdivision (8) and adding Subdivisions (15) and (16) to read as follows:

(8) "State agency" means:

(A) any department, commission, board, office, or other agency that:

(i) is in the executive branch of state government;

(ii) has authority that is not limited to a geographical portion of the state; and

(iii) was created by the constitution or a statute of this state; [or]

(B) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college; or

(C) a river authority created under the constitution or laws of this state.

(15) "Commission" means the Texas Ethics Commission.

(16) "Party chairman" means the state chairman of any political party receiving more than two percent of the vote for governor in the most recent general election.

SECTION 3.04. Subsection (a), Section 3, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) On or before [~~the last Friday in~~] April 30th of each year, every state [~~elected~~] officer and every party chairman[~~, salaried appointed officer, appointed officer of a major state agency, and executive head of a state agency~~] shall file with the commission [~~secretary of state~~] a financial statement complying with the requirements of Section 4 of this Act.

SECTION 3.05. Section 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (c) and adding Subsections (f) through (h) to read as follows:

(b) Where an amount is required to be reported by category, the person filing the statement shall report whether the amount is (1) less than [~~$1,000, (2) at least $1,000 but less than~~] $5,000, (2) at least $5,000 but less than $10,000, (3) at least $10,000 but less than $25,000, or (4) $25,000 [~~or (3) $5,000~~] or more. An amount of stock shall be reported by category of number of shares instead of by category of dollar value. Where an amount of stock is required to be reported by category, it shall be reported whether the amount is (1) less than 100 shares, (2) at least 100 but less than 500 shares, (3) at least 500 but less than 1,000 shares, (4) at least 1,000 but less than 5,000 shares, (5) at least 5,000 but less than 10,000 shares, or (6) 10,000 [~~or (3) 500~~] shares or more. Where a description of real property is required to be reported, it shall be reported by number of lots or number of acres, as applicable, in each county and the name of the county and the names of all persons retaining an interest in the property, except for an interest which is a severed mineral interest.

(c) The account of financial activity referred to in Subsection (a) of this section shall consist of:

(1) a list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation, including identification of any person, business entity, or other organization from whom the person or a business in which he has a substantial interest received a fee as a retainer for a claim on future services in case of need (as opposed to a fee for services on a matter specified at the time of contracting for or receiving the fee), whenever professional or occupational services were not actually performed during the reporting period commensurate to or in excess of the amount of the retainer, and the category of the amount of the fee;

(2) identification by name and category of number of shares of stock of any business entity held or acquired, and if sold the category of the amount of net gain or loss realized from such sale;

(3) a list of all bonds, notes, and other commercial paper held or acquired, and if sold the category of the amount of net gain or loss realized from such sale;

(4) identification of each source and the category of the amount of income in excess of $500 derived per source from interest, dividends, royalties, and rents;

(5) identification of each guarantor of a loan and identification of each person or financial institution to whom a personal note or notes or lease agreement for a total financial liability in excess of $1,000 existed at any time during the year, and the category of the amount of the liability;

(6) identification by description of all beneficial interests in real property and business entities held or acquired, and if sold the category of the amount of the net gain or loss realized from such sale;

(7) identification of any person, business entity, or other organization from whom the person or his spouse or dependent children received a gift of anything of value [~~money or property~~] in excess of $250 in value [~~or a series of gifts of money or property, the total of which exceeds $250 in value received from the same source;~~] and a description of each gift, except:

(A) gifts received from persons related to the person at any time within the second degree of consanguinity or affinity;

(B) political [~~and campaign~~] contributions that [~~which~~] were reported as required by law; and

(C) expenditures required to be reported by a person required to be registered under Chapter 305, Government Code;

(8) identification of the source and the category of the amount of all income received as beneficiary of a trust and identification of each asset, if known to the beneficiary, from which income was received by the beneficiary in excess of $500;

(9) identification by description and category of the amount of all assets and liabilities of any corporation or partnership in which 50 percent or more of the outstanding ownership [~~stock~~] was held, acquired, or sold;

(10) a list of all boards of directors of which the person is a member and executive positions which the person [~~he~~] holds in corporations, firms, partnerships, and proprietorships, stating the name of each corporation, firm, partnership, or proprietorship and the position held;

(11) identification of any person providing transportation, meals, or lodging expenses permitted under Section 36.07(b), Penal Code, and the amount of those expenses, other than expenditures required to be reported under Chapter 305, Government Code; and

(12) any partnership, joint venture, or other business association, excluding a publicly held corporation, in which both the state officer and a person registered under Chapter 305, Government Code, have an interest.

(f) A state officer who receives a fee for services rendered by the officer to or on behalf of a person required to be registered under Chapter 305, Government Code, or to or on behalf of a person or entity that the officer actually knows directly compensates or reimburses a person required to be registered under Chapter 305, Government Code, shall report on the financial statement the name of each person or entity for which the services were rendered and the category of the amount of each fee.

(g) A member of the legislature who represents another person for compensation before an executive state agency shall report on the financial statement:

(1) the name of the agency;

(2) the person represented by the member; and

(3) the category of the amount of compensation received by the member for that representation.

SECTION 3.06. Section 7, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. PROHIBITED ACTS. (a) No member of the legislature shall, for compensation, represent another person before a state agency in the executive branch of state government unless:

(1) the representation is made in a proceeding that is adversary in nature or other public hearing which is a matter of record; or

(2) the representation involves the filing of documents, contacts with such agency, or other relations, which involve only ministerial acts on the part of the commission, agency, board, department, or officer.

(b) A member of the legislature may not vote on a measure or a bill that will directly benefit a specific business transaction of a business entity in which the member has a controlling interest.

(c) In Subsection (b) of this section, "controlling interest" includes:

(1) an ownership interest or participating interest by virtue of shares, stock, or otherwise that exceeds 10 percent;

(2) membership on the board of directors or other governing body of the business entity; or

(3) serving as an officer of the business entity.

(d) Subsection (b) of this section does not apply to a measure that will affect an entire class of business entities.

(e) A member of the legislature who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

SECTION 3.07. Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended by adding Sections 7A, 7B, and 7C to read as follows:

Sec. 7A. REPRESENTATION BY FORMER OFFICER OR EMPLOYEE OF REGULATORY AGENCY PROHIBITED. (a) A member of the governing body or executive head of a regulatory agency may not make, with the intent to influence, any communication to or appearance before an officer or employee of the agency in which the person served, before the second anniversary of the date the person ceases to be a member of the governing body or executive head of the agency, on behalf of any person in connection with any matter on which the person seeks official action.

(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility. This subsection does not apply to a rule-making proceeding that was concluded before the officer's or employee's service or employment ceased.

(c) Subsection (b) of this section applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.

(d) If other law restricts the representation of a person before a particular state agency by a former state officer or employee of that agency, the other law prevails over this section.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

(f) In this section:

(1) "Regulatory agency" means any department, commission, board, or other agency that:

(A) is in the executive branch of state government;

(B) has authority that is not limited to a geographical portion of the state;

(C) was created by the constitution or a statute of this state; and

(D) has constitutional or statutory authority to engage in rule making, adjudication, or licensing.

(2) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(3) "Particular matter" means a specific investigation, application, request for a ruling or determination, rule-making proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

Sec. 7B. CERTAIN SOLICITATIONS OF REGULATED BUSINESS ENTITIES PROHIBITED. (a) An association or organization of employees of one regulatory agency, other than an agency regulating the operation of motor vehicles or the inspection thereof or an agency charged with enforcing the parks and wildlife laws of this state, may not solicit, accept, or agree to accept any thing of value from any business entity regulated by that agency and from which the business entity must obtain a permit to operate that business in this state or from an individual directly or indirectly connected with that business entity.

(b) A business entity regulated by one regulatory agency, other than an agency regulating the operation of motor vehicles or the inspection thereof or an agency charged with enforcing the parks and wildlife laws of this state, and required to obtain a permit from that agency to operate that business in this state, or an individual directly or indirectly connected with that business entity, may not offer, confer, or agree to confer on an association or organization of employees of that agency any thing of value.

(c) A person commits an offense if the person intentionally or knowingly violates this section. An offense under this section is a Class A misdemeanor.

Sec. 7C. CONTRACTS WITH GOVERNMENTAL ENTITIES. (a) A state officer may not solicit or accept from the state, a political subdivision of the state, or a governmental entity created under the constitution or laws of the state a commission, fee, bonus, retainer, or rebate that is compensation for the officer's personal solicitation for the award of a contract for services or sale of goods to the state, a political subdivision of the state, or a governmental entity created under the constitution or laws of the state, excluding contracts that are awarded by competitive bid as provided by law and that are not otherwise prohibited by law and all court appointments.

(b) A state officer who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(c) This section applies only to a person who is a state officer on or after January 1, 1993. This subsection expires January 2, 1993.

SECTION 3.08. Subsection (a), Section 10, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A state officer, candidate, [or] appointee, or party chairman commits an offense if he knowingly and wilfully fails to file a financial statement or an affidavit as required by this Act. However, in a prosecution for failure to file a financial statement under this section, it is a defense that the defendant did not receive copies of the financial statement form required to be mailed to him by this Act.

SECTION 3.09. Subsection (b), Section 12A, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If a statement is determined to be late, the person responsible for filing the statement is civilly liable to the state for an amount determined by commission rule, but not to exceed $100 for each day that the statement is late. If a statement is more than 30 days late, the commission shall issue a warning of liability by registered mail to the person responsible for the filing. If the penalty is not paid before the 10th day after the date on which the warning is received, the person is liable for a penalty in an amount determined by commission rule, but not to exceed $10,000 [~~$100. The~~

~~appropriate attorney for the state may not initiate suit for the penalty until the 10th day after the date the notice is mailed under Subsection (a) of this section. If the penalty is paid before the 10th day after the mailing, the secretary of state shall notify the appropriate attorney for the state, and the civil suit under this section may not be initiated~~].

SECTION 3.10. Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended by adding Section 12B to read as follows:

Sec. 12B. CIVIL PENALTIES. This Act does not prohibit the imposition of civil penalties by the commission in addition to criminal penalties or other sanctions imposed by law.

SECTION 3.11. Section 5, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is repealed.

SECTION 3.12. (a) Subsections (b) through (h), Section 81.031, Government Code, as added by Section 14, **H.B. 1186**, Acts of the 72nd Legislature, Regular Session, 1991, are repealed.

(b) Subsection (i), Section 81.031, Government Code, as added by Section 14, **H.B. 1186**, Acts of the 72nd Legislature, Regular Session, 1991, is relettered as Subsection (b), Section 81.031, Government Code.

(c) This Act prevails over **H.B. 1186**, Acts of the 72nd Legislature, Regular Session, 1991, to the extent of any conflict, regardless of the relative dates of enactment.

SECTION 3.13. Subsection (e), Section 30.003, Civil Practice and Remedies Code, is amended to read as follows:

(e) If the member of the legislature is an attorney for a party, the affidavit must contain a declaration that it is the attorney's intention to participate actively in the preparation or presentation of the case and that the attorney has not taken the case for the purpose of obtaining a continuance under this section.

ARTICLE 4

SECTION 4.01. Subdivision (5), Section 36.01, Penal Code, is amended to read as follows:

(5) "Benefit" means anything reasonably regarded as pecuniary [~~economic~~] gain or pecuniary [~~economic~~] advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest [~~is interested, but does not include a contribution or expenditure made and reported in accordance with law~~].

SECTION 4.02. Section 36.02, Penal Code, is amended by amending Subsections (a) and (d) to read as follows:

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; [~~or~~]

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) of this section that the benefit is a political contribution accepted as defined by Title 15, Election Code.

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

SECTION 4.03. Chapter 36, Penal Code, is amended by adding Section 36.07 to read as follows:

Sec. 36.07. ACCEPTANCE OF HONORARIUM. (a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses permitted under Section 305.025(b)(2), Government Code, in connection with a conference or similar event or from accepting meals in connection with such an event.

(c) An offense under this section is a Class A misdemeanor.

SECTION 4.04. Section 36.08, Penal Code, is amended by amending Subsection (f), adding a new Subsection (g), and redesignating existing Subsection (g) to read as follows:

(f) A [~~public servant who is a~~] member of [~~or employed by~~] the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. The exception provided by Section 36.10(b) of this code does not apply to a benefit under this subsection.

(h) An offense under this section is a Class A misdemeanor.

SECTION 4.05. Section 36.10, Penal Code, is amended to read as follows:

Sec. 36.10. NON-APPLICABLE. (a)Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) of this code do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

(3) [~~an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:~~

[~~(A) not more than one honorarium is received from the same person in a calendar year;~~

[~~(B) not more than one honorarium is received for the same service; and~~

[~~(C) the honorarium and expenses, regardless of amount, are reported in the financial statement filed under Chapter 421, Acts of the 63rd Legislature, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), if the recipient is required to file a financial statement under that Act;~~

[~~(4) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest and reported as required by law; or~~

[~~(5)~~] a benefit to a public servant required to file a statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b,

Vernon's Texas Civil Statutes), or a report under Title 15, Election Code [~~Section 243, Texas Election Code (Article 14.07, Vernon's Texas Election Code)~~], that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of $50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code; or

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code.

[~~(6) Subsection (5) of Section 36.10 of this Act does not apply to those public servants designated in Section 36.08(f) of this Act 30 days prior to or during a regular session of the Texas Legislature.~~]

(b) Section 36.08 (Gift to Public Servant) of this code does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

(c) Section 36.09 (Offering Gift to Public Servant) of this code does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

ARTICLE 5

SECTION 5.01. Section 251.001, Election Code, is amended by amending Subdivisions (2), (13), and (14) and adding Subdivision (20) to read as follows:

(2) "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. The term does not include:

(A) [~~an honorarium to a public servant that is excluded from the application of penal sanctions by Section 36.10(3), Penal Code; or~~

[~~(B)~~] a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or

(B) an expenditure required to be reported under Section 305.006(b), Government Code.

(13) "Specific-purpose committee" means a political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known; or

(ii) measures, all of which are identified; [or]

(B) assisting one or more officeholders, all of whom are identified; or

(C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

(14) "General-purpose committee" means a political committee that has among its principal purposes:

(A) supporting or opposing [~~one or more~~]:

(i) two or more candidates who are unidentified or are seeking offices that are unknown; or

(ii) one or more measures that are unidentified; or

(B) assisting two [~~one~~] or more officeholders who are unidentified.

(20) "Commission" means the Texas Ethics Commission.

SECTION 5.02. Section 252.003, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In addition to the information required by Section 252.002, a campaign treasurer appointment by a general-purpose committee must include:

(1) the full name, and any acronym of the name that will be used in the name of the committee as provided by Subsection (d), of each corporation, labor organization, or other association or legal entity that directly establishes, administers, or controls the committee, if applicable, or the name of each person who determines to whom the committee makes contributions or the name of each person who determines for what purposes the committee makes expenditures;

(2) the full name and address of each general-purpose committee to whom the committee intends to make political contributions; and

(3) the name of the committee and, if the name is an acronym, the words the acronym represents.

(d) The name of a general-purpose committee must include the name of each corporation, labor organization, or other association or legal entity other than an individual that directly establishes, administers, or controls the committee. The name of an entity that is required to be included in the name of the committee may be a commonly recognized acronym by which the entity is known.

SECTION 5.03. Section 252.0031, Election Code, is amended to read as follows:

Sec. 252.0031. CONTENTS OF APPOINTMENT BY SPECIFIC-PURPOSE COMMITTEE. (a) In addition to the information required by Section 252.002, a campaign treasurer appointment by a specific-purpose committee for supporting or opposing a candidate for an office specified by Section 252.005(1) must include the name of and the office sought by the candidate. If that information changes, the committee shall immediately file an amended appointment reflecting the change.

(b) The name of a specific-purpose committee for supporting a candidate for an office specified by Section 252.005(1) must include the name of the candidate that the committee supports.

SECTION 5.04. Section 253.031, Election Code, is amended to read as follows:

Sec. 253.031. CONTRIBUTION AND EXPENDITURE WITHOUT CAMPAIGN TREASURER PROHIBITED. (a) A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect.

(b) A political committee may not knowingly accept a political contribution or make or authorize a political expenditure at a time when a campaign treasurer appointment for the committee is not in effect.

(c) A political committee may not knowingly make or authorize a campaign contribution or campaign expenditure supporting or opposing a candidate for an office specified by Section 252.005(1) in a primary or general election unless the committee's campaign treasurer appointment has been filed not later than the 30th day before the appropriate election day.

(d) This section does not apply to a political party's county executive committee that accepts political contributions or makes political expenditures, except that:

(1) a county executive committee that accepts political contributions or makes political expenditures shall maintain the records required by Section 254.001; and

(2) a county executive committee that accepts political contributions or makes political expenditures that, in the aggregate, exceed $5,000 in a calendar year shall file:

(A) a campaign treasurer appointment as required by Section 252.001 not later than the 15th day after the date that amount is exceeded; and

(B) the reports required by Subchapter F, Chapter 254, including in the political committee's first report all political contributions accepted and all political expenditures made before the effective date of the campaign treasurer appointment.

(e) This section does not apply to an out-of-state political committee unless the committee is subject to Chapter 252 under Section 251.005.

(f) [~~(e)~~] A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

SECTION 5.05. Subsection (b), Section 253.034, Election Code, is amended to read as follows:

(b) A statewide officeholder, a member of the legislature, or a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature may not knowingly accept a political contribution, and shall refuse a political contribution that is received, during the period prescribed by Subsection (a). A political contribution that is received and refused during that period shall be returned to the contributor not later than the 30th day after the date of receipt. A contribution made by mail is not considered received during that period if it was placed with postage prepaid and properly addressed in the United States mail before the beginning of the period. The date indicated by the post office cancellation mark is considered to be the date the contribution was placed in the mail unless proven otherwise.

SECTION 5.06. Section 253.035, Election Code, is amended by amending Subsections (d), (h), and (i) to read as follows:

(d) In this section, "personal use" means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. The term does not include:

(1) payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, [~~interest;~~] utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County, but excluding payments prohibited under Section 253.038; or

(2) payments of federal income taxes due on interest and other income earned on political contributions.

(h) Except as provided by Section 253.042, a [~~A~~] candidate or officeholder who makes political expenditures from his personal funds [~~for campaign or officeholder purposes~~] may reimburse his personal funds from political contributions in the amount of those expenditures only if:

(1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made; and

(2) the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement.

(i) "Personal use" [~~Except as provided by Subsection (j), "personal use"~~] does not include the use of contributions for:

(1) defending a criminal action or prosecuting or defending a civil action brought by or against the person in his status as a candidate or officeholder; or

(2) participating in an election contest or participating in a civil action to determine a person's eligibility to be a candidate for, or elected or appointed to, a public office in this state.

SECTION 5.07. Subchapter B, Chapter 253, Election Code, is amended by adding Sections 253.038 through 253.042 to read as follows:

Sec. 253.038. PAYMENTS MADE TO PURCHASE REAL PROPERTY PROHIBITED. (a) A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution to purchase real property or to pay the interest on or principal of a note for the purchase of real property.

(b) A person who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.

(c) This section does not apply to a payment made in connection with real property that was purchased before January 1, 1992.

Sec. 253.039. CONTRIBUTIONS IN CERTAIN PUBLIC BUILDINGS PROHIBITED. (a) A person may not knowingly make or authorize a political contribution while in the Capitol to:

(1) a candidate or officeholder;

(2) a political committee; or

(3) a person acting on behalf of a candidate, officeholder, or political committee.

(b) A candidate, officeholder, or political committee or a person acting on behalf of a candidate, officeholder, or political committee may not knowingly accept a political contribution, and shall refuse a political contribution that is received, in the Capitol.

(c) This section does not prohibit contributions made in the Capitol through the United States postal service or a common or contract carrier.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 253.040. SEPARATE OFFICEHOLDER ACCOUNT PROHIBITED. A candidate or officeholder may not maintain officeholder contributions accepted by that person in an account separate from campaign contributions accepted by that person.

Sec. 253.041. RESTRICTIONS ON CERTAIN PAYMENTS. (a) A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to:

(1) a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business; or

(2) the candidate or officeholder or the spouse or dependent child of the candidate or officeholder.

(b) A payment that is made from a political contribution to a business described by Subsection (a) and that is not prohibited by that subsection may not exceed the

amount necessary to reimburse the business for actual expenditures made by the business.

(c) A person who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.

Sec. 253.042. RESTRICTIONS ON REIMBURSEMENT OF PERSONAL FUNDS AND PAYMENTS ON CERTAIN LOANS. (a) A candidate or officeholder who makes political expenditures from his personal funds may not reimburse his personal funds from political contributions in amounts that in the aggregate exceed the following amounts for each election in which the person's name appears on the ballot:

(1) for a statewide office other than governor, $250,000; and

(2) for governor, $500,000.

(b) A candidate or officeholder who accepts one or more political contributions in the form of loans, including an extension of credit or a guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree by affinity or consanguinity may not use political contributions to repay the loans in amounts that in the aggregate exceed the amount prescribed by Subsection (a).

(c) The total amount of both reimbursements and repayments made by a candidate or officeholder under this section may not exceed the amount prescribed by Subsection (a).

(d) A person who is both a candidate and an officeholder covered by Subsection (a) may reimburse the person's personal funds or repay loans from political contributions only in one capacity.

(e) This section does not prohibit the payment of interest on loans covered by this section at a commercially reasonable rate, except that interest on loans from a candidate's or officeholder's personal funds or on loans from the personal funds of any person related to the candidate or officeholder within the second degree by affinity or consanguinity is included in the amount prescribed by Subsection (a), (b), or (c).

(f) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(g) The commission shall study possible restrictions on amounts of reimbursements under Subsection (a) in connection with the offices of state senator and state representative and shall make appropriate recommendations to the legislature on those matters.

SECTION 5.08. Subchapter D, Chapter 253, Election Code, is amended by adding Section 253.104 to read as follows:

Sec. 253.104. CONTRIBUTION TO POLITICAL PARTY. (a) A corporation or labor organization may make a contribution from its own property to a political party to be used as provided by Chapter 257.

(b) A corporation or labor organization may not knowingly make a contribution authorized by Subsection (a) during a period beginning on the 60th day before the date of a general election for state and county officers and continuing through the day of the election.

(c) A corporation or labor organization that knowingly makes a contribution in violation of this section commits an offense. An offense under this section is a felony of the third degree.

SECTION 5.09. Subchapter E, Chapter 253, Election Code, is amended by adding Section 253.134 to read as follows:

Sec. 253.134. CIVIL PENALTIES IMPOSED BY COMMISSION. This title does not prohibit the imposition of civil penalties by the commission in addition to criminal penalties or other sanctions imposed by law.

SECTION 5.10. Section 254.031, Election Code, is amended to read as follows:

Sec. 254.031. GENERAL CONTENTS OF REPORTS. (a) Except as otherwise provided by this chapter, each report filed under this chapter must include:

(1) the amount of political contributions from each person that in the aggregate exceed $50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions;

(2) the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed $50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, [~~that rate is below prime on the day the loan is made, and~~] the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer [~~and~~] of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period;

(3) the amount of political expenditures that in the aggregate exceed $50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures;

(4) the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment;

(5) the total amount or a specific listing of the political contributions of $50 or less accepted and the total amount or a specific listing of the political expenditures of $50 or less made during the reporting period; [and]

(6) the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; and

(7) the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period by the person or committee required to file the report, and the office sought or held, excluding a direct campaign expenditure that is made by the principal political committee of a political party on behalf of a slate of two or more nominees of that party.

(b) If no reportable activity occurs during a reporting period, the person required to file a report shall indicate that fact in the report.

SECTION 5.11. Section 254.036, Election Code, is amended to read as follows:

Sec. 254.036. FORM OF REPORT; AFFIDAVIT; MAILING OF FORMS. (a) Each report filed under this chapter must be on a form prescribed by the commission [~~secretary of state~~] and must be written in black ink or typed with black typewriter ribbon unless the report is a computer printout. If the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the commission [~~secretary of state~~].

(b) Each report filed under this chapter must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

(c) As part of the notification required by Section 251.033, the commission shall mail the appropriate forms to each person required to file a report with the commission during that reporting period.

SECTION 5.12. Subchapter B, Chapter 254, Election Code, is amended by adding Section 254.0391 to read as follows:

Sec. 254.0391. REPORT DURING SPECIAL LEGISLATIVE SESSION. (a) A statewide officeholder, a member of the legislature, or a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature, or a candidate for statewide office or the legislature or a specific-purpose committee for supporting or opposing the candidate, that accepts a political contribution during the period beginning on the date the governor signs the proclamation calling a special legislative session and continuing through the date of final adjournment shall report the contribution to the commission not later than the 30th day after the date of final adjournment.

(b) A determination to accept or refuse the political contribution shall be made not later than the third day after the date the contribution is received.

(c) Each report required by this section must include the amount of the political contribution, the full name and address of the person making the contribution, and the date of the contribution.

(d) A report is not required under this section if a person covered by Subsection (a) is required to file another report under this chapter not later than the 10th day after the date a report required under this section would be due.

SECTION 5.13. Subsection (b), Section 254.042, Election Code, is amended to read as follows:

(b) If a report is determined to be late, the person required to file the report is civilly liable to the state for an amount determined by commission rule, but not to exceed $100 for each day that the report is late. If a report is more than 30 days late, the commission shall issue a warning of liability by registered mail to the person required to file the report. If the penalty is not paid before the 10th day after the date on which the warning is received, the person is liable for a penalty in an amount determined by commission rule, but not to exceed $10,000 [~~$100. If the penalty is not paid by the 10th day after the date the notice is mailed under Subsection (a), the secretary of state shall notify the attorney general to initiate suit to recover the civil penalty~~].

SECTION 5.14. Section 254.061, Election Code, is amended to read as follows:

Sec. 254.061. ADDITIONAL CONTENTS OF REPORTS. In addition to the contents required by Section 254.031, each report by a candidate must include:

(1) the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed;

(2) the campaign treasurer's name, residence or business street address, and telephone number;

(3) for each political committee from which the candidate received notice under Section 254.128 or 254.161:

(A) the committee's full name and address;

(B) an indication of whether the committee is a general-purpose committee or a specific-purpose committee; and

(C) the full name and address of the committee's campaign treasurer; [~~and~~]

(4) the full name and address of each individual acting as a campaign treasurer of a political committee under Section 253.062 from whom the candidate received notice under Section 254.128 or 254.161; and

(5) on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which the candidate has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business.

SECTION 5.15. Section 254.091, Election Code, is amended to read as follows:

Sec. 254.091. ADDITIONAL CONTENTS OF REPORTS. In addition to the contents required by Section 254.031, each report by an officeholder must include:

(1) the officeholder's full name and address and the office held; [and]

(2) for each political committee from which the officeholder received notice under Section 254.128 or 254.161:

(A) the committee's full name and address;

(B) an indication of whether the committee is a general-purpose committee or a specific-purpose committee; and

(C) the full name and address of the committee's campaign treasurer; and

(3) on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which the officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business.

SECTION 5.16. Section 254.092, Election Code, is amended to read as follows:

Sec. 254.092. CERTAIN OFFICEHOLDER EXPENDITURES EXCLUDED. An officeholder is not required to report officeholder expenditures made from the officeholder's personal funds, except as provided by Section 253.035(h).

SECTION 5.17. Section 254.121, Election Code, is amended to read as follows:

Sec. 254.121. ADDITIONAL CONTENTS OF REPORTS. In addition to the contents required by Section 254.031, each report by a campaign treasurer of a specific-purpose committee must include:

(1) the committee's full name and address;

(2) the full name, residence or business street address, and telephone number of the committee's campaign treasurer;

(3) the identity and date of the election for which the report is filed, if applicable;

(4) the name of each candidate and each measure supported or opposed by the committee, indicating for each whether the committee supports or opposes;

(5) the name of each officeholder assisted by the committee; [and]

(6) the amount of each political expenditure in the form of a political contribution that is made to a candidate, officeholder, or another political committee and that is returned to the committee during the reporting period, the name of the person to whom the expenditure was originally made, and the date it is returned;

(7) on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business; and

(8) on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted under Subchapter D, Chapter 253.

SECTION 5.18. Section 254.151, Election Code, is amended to read as follows:

Sec. 254.151. ADDITIONAL CONTENTS OF REPORTS. In addition to the contents required by Section 254.031, each report by a campaign treasurer of a general-purpose committee must include:

(1) the committee's full name and address;

(2) the full name, residence or business street address, and telephone number of the committee's campaign treasurer;

(3) the identity and date of the election for which the report is filed, if applicable;

(4) the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates;

(5) the name of each identified officeholder or classification by party of officeholders assisted by the committee;

(6) the principal occupation of each person from whom political contributions that in the aggregate exceed $50 are accepted during the reporting period; [and]

(7) the amount of each political expenditure in the form of a political contribution made to a candidate, officeholder, or another political committee that is returned to the committee during the reporting period, the name of the person to whom the expenditure was originally made, and the date it is returned; and

(8) on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted under Subchapter D, Chapter 253.

SECTION 5.19. Title 15, Election Code, is amended by adding Chapter 257 to read as follows:

CHAPTER 257. POLITICAL PARTIES

Sec. 257.001. PRINCIPAL POLITICAL COMMITTEE OF POLITICAL PARTY. The state or county executive committee of a political party may designate a general-purpose committee as the principal political committee for that party in the state or county, as applicable.

Sec. 257.002. REQUIREMENTS RELATING TO CORPORATE OR LABOR UNION CONTRIBUTIONS. (a) A political party that accepts a contribution authorized by Section 253.104 may use the contribution only to:

(1) defray normal overhead and administrative or operating costs incurred by the party; or

(2) administer a primary election or convention held by the party.

(b) A political party that accepts contributions authorized by Section 253.104 shall maintain the contributions in a separate account.

Sec. 257.003. REPORT REQUIRED. (a) A political party that accepts contributions authorized by Section 253.104 shall report all contributions and expenditures made to and from the account required by Section 257.002.

(b) The report must be filed with the commission and must include the information required under Section 254.031 as if the contributions or expenditures were political contributions or political expenditures.

(c) Sections 254.001 and 254.032-254.037 apply to a report required by this section as if the party chairman were a campaign treasurer of a political committee and as if the contributions or expenditures were political contributions or political expenditures.

(d) The commission shall prescribe by rule reporting schedules for each primary election held by the political party and for the general election for state and county officers.

Sec. 257.004. RESTRICTIONS ON CONTRIBUTIONS BEFORE GENERAL ELECTION. (a) Beginning on the 60th day before the date of the general election for state and county officers and continuing through the day of the election, a political party may not knowingly accept a contribution authorized by Section 253.104 or make an expenditure from the account required by Section 257.002.

(b) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

Sec. 257.005. CANDIDATE FOR STATE CHAIRMAN OF POLITICAL PARTY. (a) A candidate for state chairman of a political party with a nominee on the ballot in the most recent gubernatorial general election is subject to the requirements of this title that apply to a candidate for public office, except as provided by this section.

(b) A political committee that supports or opposes a candidate covered by Subsection (a) is subject to the provisions of this title that apply to any other committee that supports or opposes candidates for public office, except as provided by this section.

(c) The reporting schedules for a candidate covered by Subsection (a) or a political committee supporting or opposing the candidate shall be prescribed by commission rule.

(d) Except as provided by this section, each contribution to and expenditure by a candidate covered by Subsection (a) is subject to the same requirements of this title as a political contribution to or a political expenditure by a candidate for public office. Each contribution to and expenditure by a political committee supporting or opposing a candidate covered by Subsection (a) is subject to the same requirements of this title as a political contribution to or political expenditure by any other specific-purpose committee.

(e) Section 251.001(1) does not apply to this section.

Sec. 257.006. CRIMINAL PENALTY FOR FAILURE TO COMPLY. (a) Except as provided by Section 257.004, a person who knowingly uses a contribution in violation of Section 257.002 or who knowingly fails to otherwise comply with this chapter commits an offense.

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

Sec. 257.007. RULES. The commission shall adopt rules to implement this chapter.

SECTION 5.20. Sections 251.031, 251.034, and 251.035, Subsections (j) and (k), Section 253.035, Subsection (d), Section 254.042, and Chapter 256, Election Code, are repealed.

ARTICLE 6

SECTION 6.01. Title 117, Revised Statutes, is amended by adding Article 6823b to read as follows:

Art. 6823b. RESTRICTIONS ON LODGING AND MEAL REIMBURSEMENT WITH CERTAIN PUBLIC FUNDS

Sec. 1. GUIDELINES. An officer or employee of the state or of a political subdivision, including any special-purpose district or authority, may be reimbursed with public funds for lodging or meal expenses only to the extent those expenses are determined to be reasonable and necessary under guidelines issued by the Texas Ethics Commission. This subsection does not apply if restrictions on those expenses are established by other law.

Sec. 2. COMMON CARRIER FARES. The officer or employee may not be reimbursed for transportation expenses on a common carrier in an amount exceeding the lowest available fare.

ARTICLE 7

SECTION 7.01. Chapter 159, Local Government Code, is amended to read as follows:

CHAPTER 159. FINANCIAL DISCLOSURE BY COUNTY OR DISTRICT OFFICERS AND COUNTY EMPLOYEES

SUBCHAPTER A. FINANCIAL DISCLOSURE BY CERTAIN COUNTY OR DISTRICT OFFICERS

Sec. 159.001. COUNTY COVERED BY SUBCHAPTER. This subchapter applies only to a county with a population of 500,000 or more.

Sec. 159.002. DEFINITIONS. In this subchapter:

(1) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized by law through which business for profit is conducted.

(2) "County or district officer" means a county judge, county commissioner, county attorney, district attorney, or criminal district attorney.

Sec. 159.003. DETERMINATION OF SUBSTANTIAL INTEREST. A person has a substantial interest in a business entity if the person:

(1) has controlling interest in the business entity;

(2) has ownership in excess of 10 percent of the voting interest in the business entity or in excess of $25,000 of the fair market value of the business entity;

(3) has any participating interest, either direct or indirect, by shares, stock, or otherwise, whether or not voting rights are included, in the profits, proceeds, or capital gains of the business entity in excess of 10 percent of them;

(4) holds the position of a member of the board of directors or other governing board of the business entity;

(5) serves as an elected officer of the business entity; or

(6) is an employee of the business entity.

Sec. 159.004. FINANCIAL STATEMENT REQUIRED. (a) A county or district officer or a candidate for a county or district office shall file a financial statement as required by this subchapter.

(b) The statement must be:

(1) filed with the county auditor of the county in which the officer or candidate resides;

(2) filed on the form provided by the county auditor; and

(3) verified.

Sec. 159.005. CONTENTS OF FINANCIAL STATEMENT. (a) The financial statement must include an account of the financial activity of the county or district officer or candidate for a county or district office and an account of the financial activity of the person's spouse and dependent children if the person had actual control over that activity for the preceding calendar year.

(b) The account of financial activity consists of:

(1) a list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation, including identification of any person, business entity, or other organization from which the person or a business in which the person has a substantial interest received a fee as a retainer for a claim on future services in case of need, as opposed to a fee for services on a matter specified at the time of contracting for or receiving the fee, whenever professional or occupational services were not actually performed during the reporting period equal to or in excess of the amount of the retainer, and the category of the amount of the fee;

(2) identification by name and category of the number of shares of stock of any business entity held or acquired and, if sold, the category of the amount of net gain or loss realized from the sale;

(3) a list of all bonds, notes, and other commercial paper held or acquired and, if sold, the category of the amount of net gain or loss realized from the sale;

(4) identification of each source and the category of the amount of income in excess of $500 derived per source from interest, dividends, royalties, and rents;

(5) identification of each person or financial institution to whom a personal note or notes for a total financial liability in excess of $1,000 existed at any time during the year, and the category of the amount of the liability;

(6) identification by description of all beneficial interests in real property and business entities held or acquired and, if sold, the category of the amount of the net gain or loss realized from the sale;

(7) identification of any person, business entity, or other organization from which the person or the person's spouse or dependent children received a gift of money or property in excess of $250 in value or a series of gifts of money or property, the total of which exceeds $250 in value received from the same source, and a description of each gift, except gifts received from persons related to the person at any time within the second degree by consanguinity or affinity and campaign contributions that were reported as required by law;

(8) identification of the source and the category of the amount of all income received as beneficiary of a trust and identification of each asset, if known to the beneficiary, from which income was received by the beneficiary in excess of $500;

(9) identification by description and category of the amount of all assets and liabilities of any corporation in which 50 percent or more of the outstanding stock was held, acquired, or sold; and

(10) a list of all boards of directors of which the person is a member and executive positions that the person holds in corporations, firms, partnerships, and proprietorships, stating the name of each corporation, firm, partnership, or proprietorship and the position held.

Sec. 159.006. REPORTING CATEGORIES. (a) If an amount is required to be reported by category, the person filing the statement shall report whether the amount is less than $1,000, at least $1,000 but less than $5,000, or $5,000 or more.

(b) The person filing the statement shall report an amount of stock by category of number of shares instead of by category of dollar value and shall report whether the amount is less than 100 shares, at least 100 but less than 500 shares, or 500 shares or more.

(c) The person filing the statement shall report a description of real property by the number of lots or number of acres, as applicable, in each county and the name of the county.

Sec. 159.007. DETERMINATION OF DEPENDENT CHILD. A person's natural child, adopted child, or stepchild is the person's dependent child during a calendar year if the person provides over 50 percent of the child's support during the year.

Sec. 159.008. FILING DATES FOR OFFICERS. (a) Not later than the last Friday in April of each year, a county or district officer shall file the financial statement required by this subchapter.

(b) A person who is appointed to a county or district office or to fill a vacancy in a county or district office shall file the first financial statement not later than the 30th day after the date of appointment.

(c) A county or district officer may request the county auditor to grant an extension of time of not more than 60 days for filing the statement. The county auditor shall grant the request if it is received before the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. The county auditor may not grant more than one extension to a person in one year except for good cause shown.

Sec. 159.009. FILING DATES FOR CANDIDATES. (a) Not later than the 40th day after the date of the regular filing deadline for an application for a place on the ballot in the general primary election, a person who is a candidate for a county or district office, whether partisan or independent, shall file the financial statement required by this subchapter.

(b) If the deadline, other than the regular filing deadline for an independent candidate, under which a candidate files an application for a place on the ballot or a declaration of write-in candidacy falls after the date of the regular filing deadline for candidates in the general primary election, the candidate shall file the financial statement not later than the 30th day after that later deadline. However, if that deadline falls within 35 days of the date of the election in which the candidate is running, the candidate shall file the statement not later than the fifth day before that election.

(c) A person nominated as a replacement candidate to fill a vacancy in a party nomination for a county or district office shall file the financial statement not later than the 15th day after the date the certificate of the replacement nomination is filed.

(d) The county auditor may not grant an extension for a person required to file under this section.

Sec. 159.010. DUPLICATE STATEMENTS. If a person has filed a financial statement under one provision of this subchapter covering the preceding calendar year, the person is not required to file a financial statement required under another provision of this subchapter to cover that same year if, before the deadline for filing the statement under the other provision, the person notifies the county auditor in writing that the person has already filed a financial statement under this subchapter to cover that year.

Sec. 159.011. TIMELINESS OF FILING. (a) The deadline for filing a financial statement required by this subchapter is 5 p.m. of the last day designated in the applicable provision for filing the statement.

(b) If the last day for filing the financial statement is a Saturday, Sunday, or legal state or national holiday, the statement is timely if filed on the next regular business day.

(c) A financial statement is timely filed if it is properly addressed and placed in the United States Post Office or in the hands of a common or contract carrier not later than the last day for filing the financial statement. The post office cancellation mark or the receipt mark of a common or contract carrier is prima facie evidence of the date the statement was deposited with the post office or carrier. The person filing the statement may show by competent evidence that the actual date of posting was different from that shown by the marks.

Sec. 159.012. DUTIES OF COUNTY AUDITOR. (a) The county auditor shall prepare forms to be used for filing the financial statement under this subchapter that are substantially similar to the financial statement forms prepared by the secretary of state under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

(b) Except as otherwise provided by this section, the county auditor shall mail two copies of the financial statement form to each person in the county required to file under this subchapter.

(c) The forms must be mailed not later than:

(1) the 30th day before the deadline for filing the financial statement under Section 159.008(a);

(2) the seventh day after the date of appointment for persons required to file under Section 159.008(b);

(3) the 15th day after the deadline for filing an application for a place on the ballot or a declaration of write-in candidacy for candidates required to file under Sections 159.009(a) and (b); and

(4) the fifth day after the date the certificate of the replacement nomination is filed for candidates required to file under Section 159.009(c).

(d) The county auditor shall conduct a continuing survey to determine whether all persons required to file financial statements under this subchapter have actually filed statements in compliance with this subchapter.

(e) If the county auditor determines that a person has failed to file the statement in compliance with this subchapter, the auditor shall send a written statement of the auditor's determination to the county attorney or to the district or criminal district attorney.

Sec. 159.013. PUBLIC ACCESS TO STATEMENTS. (a) Financial statements filed under this subchapter are public records. The county auditor shall maintain the statements in separate alphabetical files and in a manner that is accessible to the public during regular office hours.

(b) During the one-year period following the date of filing of a financial statement, each time a person, other than the county auditor or an employee of the county auditor who is acting on official business, requests to see the financial statement, the county auditor shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The county auditor shall retain that statement in the file for one year after the date the requested financial statement is filed.

(c) The county auditor may, and on notification from a former officer or candidate shall, destroy any financial statements filed by the officer or candidate two years after the date the person ceases to be an officer or candidate, as applicable.

Sec. 159.014. CRIMINAL PENALTY. (a) A county or district officer or candidate commits an offense if the officer knowingly fails to file a financial statement as required by this subchapter.

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

(c) It is a defense to prosecution under this section that the officer did not receive copies of the financial statement form required to be mailed to the officer by this subchapter.

Sec. 159.015. VENUE. An offense under this subchapter, including perjury, may be prosecuted in any county in which it may be prosecuted under the Code of Criminal Procedure.

Sec. 159.016. CIVIL PENALTY. (a) The county auditor shall determine from any available evidence whether a statement required to be filed under this subchapter is late. On making that determination, the county auditor shall immediately mail a notice of the determination to the person responsible for filing the statement and to the county attorney or to the district or criminal district attorney.

(b) If a statement is determined to be late, the person responsible for filing the statement is civilly liable to the county for $100. The county attorney or the district or criminal district attorney may not initiate suit for the penalty until the 10th day after the date the notice is mailed under this section. If the penalty is paid before the 10th day after the mailing, the county auditor shall notify the county attorney or the district or criminal district attorney, and the civil suit under this section may not be initiated.

(c) A penalty paid under this section shall be deposited to the credit of the general fund of the county.

(d) This section is cumulative of any other available sanctions for late filings of statements.

[Sections 159.017-159.030 reserved for expansion]

SUBCHAPTER B. FINANCIAL DISCLOSURE BY OTHER COUNTY OFFICERS AND EMPLOYEES

Sec. 159.031. COUNTY COVERED BY SUBCHAPTER [~~CHAPTER~~]. This subchapter [~~chapter~~] applies only to a county with a population of 125,000 or more.

Sec. 159.032 [~~159.002~~]. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) "County officer" means a [~~county judge, county commissioner,~~] sheriff, [~~county attorney, district attorney, criminal district attorney,~~] county tax assessor-collector, county clerk, district clerk, county treasurer, county auditor, or [~~and~~] county purchasing agent. The term does not include a county or district officer as defined by Section 159.002.

(2) "Precinct officer" means a constable.

(3) "County judicial officer" means a judge of a statutory county court, justice of the peace, or [~~and~~] a master, magistrate, or referee appointed by one of those judges.

(4) "County employee" does not include a person covered by Subdivision (1), (2), or (3).

Sec. 159.033 [~~159.003~~]. FINANCIAL DISCLOSURE REPORTING SYSTEM. (a) The commissioners court of the county may adopt by order a financial disclosure reporting system for county officers, precinct officers, county judicial officers, candidates for those offices, and county employees.

(b) The commissioners court shall prescribe the items required to be reported and the times the report is due.

(c) If reporting is required, the commissioners court may [~~not restrict the reporting requirement to a limited part of each class of officers defined by this chapter but must require reporting by all persons included in that class of officers. However, the commissioners court may~~] restrict the reporting requirement to a limited part of county employees if all employees with similar jobs are required to report.

Sec. 159.034 [~~159.004~~]. FILING REQUIREMENT. (a) The commissioners court may require the report to be filed with the clerk of the commissioners court, the county auditor, or any other county officer. However, the commissioners court may require the report to be filed with the county clerk or other elected county officer only if the county clerk or elected county officer consents to the imposition of that duty. The commissioners court may contract with the secretary of state for the filing of reports under this subchapter [~~chapter~~].

(b) The commissioners court may not require records filed under this subchapter [~~chapter~~] to be maintained for more than one year and may require the authority with whom the records are filed to destroy the records after one year.

(c) A person required by order of the commissioners court to file a report under this subchapter [~~chapter~~] is considered to have complied with the order if the person files with the authority prescribed by the commissioners court a report that complies with the requirements of Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

Sec. 159.035 [~~159.005~~]. CIVIL PENALTY. (a) If a report is determined to be late, the person responsible for filing the report is civilly liable to the county for $100. The county attorney or the district or criminal district attorney with civil jurisdiction may not initiate suit for the penalty until the 10th day after the date a notice concerning the late report is mailed to the person. If the report is filed and the penalty is paid before the 10th day after the date of the mailing, the authority with whom the report is filed shall notify the county attorney or the district or criminal district attorney, and the civil suit under this section may not be initiated.

(b) A penalty paid under this section shall be deposited to the credit of the general fund of the county.

Sec. 159.036 [~~159.006~~]. CRIMINAL PENALTY. (a) An officer, candidate, or employee required to file a report by an order adopted under this subchapter

[~~chapter~~] commits an offense if the person knowingly fails to file the report as required by the order.

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

(c) It is a defense to prosecution under this section that the person has filed the required report and paid a civil penalty as provided by this subchapter [~~chapter~~].

SECTION 7.02. A person who is a county or district officer under Section 159.002, Local Government Code, as amended by this Act, or a candidate for a county or district office on the effective date of this Act is not required to file the financial statement required by Subchapter A, Chapter 159, Local Government Code, as added by this Act, until the first applicable financial statement filing deadline that falls after the effective date of this Act.

ARTICLE 8

SECTION 8.01. (a) Except as provided by Subsection (d) of this section, this Act takes effect January 1, 1992, and applies only to a gift, contribution, expenditure, honorarium, compensation, reimbursement, benefit, or other thing of value offered, made, received, or accepted on or after that date.

(b) A gift, contribution, expenditure, honorarium, compensation, reimbursement, benefit, or other thing of value offered, made, received, or accepted before the effective date of this Act is governed by the law in effect on the date that it was offered, made, received, or accepted, and that law is continued in effect for that purpose.

(c) Any unexpended and unobligated balance of the lobby registration fund is transferred to the state ethics fund.

(d) Section 1.38 of this Act takes effect January 1, 1993.

SECTION 8.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1 ADOPTED

Senator Glasgow called from the President's table the Conference Committee Report on **S.B. 1**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Glasgow, the Conference Committee Report was adopted by a viva voce vote.

RECORD OF VOTES

Senators Brown and Harris of Dallas asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

RECORD OF VOTE

Senator Krier asked to be recorded as voting "Present-not voting" on the adoption of the Conference Committee Report.

MESSAGE FROM THE HOUSE

House Chamber
May 27, 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:

The House has adopted the Conference Committee Report on **S.B. 1** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 2482** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1126** by a non-record vote.

The House has discharged the conferees on **H.B. 2065** and has concurred in Senate amendments by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 907** by a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 935** by a non-record vote.

The House has refused to suspend the rules to adopt the Conference Committee Report on **S.B. 958** by a non-record vote.

The House failed to suspend all necessary rules and adopt the Conference Committee Report by a record vote of 90 Ayes, 3 Noes, 3 Present-not voting, on **H.B. 1020.**

The House has adopted the Conference Committee Report on **H.B. 341** by a record vote of 101 Ayes, 32 Noes, 13 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 1099** by a record vote of 144 Ayes, 0 Noes, 3 Present-not voting.

The House has adopted the Conference Committee Report on **S.J.R. 8** by a record vote of 147 Ayes, 0 Noes, 1 Present-not voting.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 907 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on **H.B. 907**. (The Conference Committee Report having been filed with the Senate and read on Monday, May 27, 1991.)

On motion of Senator Barrientos, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays:Harris of Dallas.

SENATE RESOLUTION 868

Senator Brooks offered the following resolution:

WHEREAS, The work of the Texas Senate during the regular session of the 72nd Legislature has been immeasurably enhanced by the outstanding support provided by this chamber's fine officers and staff; and

WHEREAS, Over the course of the past five months, these individuals have shown themselves to be the mainstay of the legislative process, often working long hours with little recognition to ensure the smooth and efficient operation of this body; and

WHEREAS, No matter the size or complexity of the task, each officer and staff member has consistently demonstrated the willingness to work to the best of his or her ability, frequently under the additional pressure of adverse or politically charged circumstances; and

WHEREAS, These exceptional men and women have displayed a rare degree of intelligence, determination, and professionalism in discharging the myriad duties required for the successful operation of the Texas Senate, and the members of this

body would like to take this opportunity to express our deepest appreciation for their exemplary efforts in this regard; now, therefore, be it

RESOLVED, That the Senate of the State of Texas hereby honor its officers and staff for their outstanding work during the regular session of the 72nd Legislature and extend heartfelt thanks to each of these individuals for their personal contributions toward a job well done.

The resolution was read.

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

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

MOTION IN WRITING

Senator Brooks offered the following Motion in Writing:

Mr. President:

I move that the President be authorized to appoint a committee of five (5) Members to notify the Governor that the Senate has completed its labors and is ready to adjourn sine die.

BROOKS

The Motion in Writing was read and was adopted by a viva voce vote.

Accordingly, the President appointed the following Committee to Notify the Governor: Senators Johnson, Turner, Whitmire, Harris of Dallas and Rosson.

MOTION IN WRITING

Senator Brooks offered the following Motion in Writing:

Mr. President:

I move that the President be authorized to appoint a committee of five (5) Members to notify the House of Representatives that the Senate has completed its labors and is ready to adjourn sine die.

BROOKS

The Motion in Writing was read and was adopted by a viva voce vote.

Accordingly, the President appointed the following Committee to Notify the House: Senators Brooks, Ellis, Henderson, Barrientos and Zaffirini.

MOTION TO ADJOURN SINE DIE

At 12:00 midnight Senator Brooks moved that the Senate of the Seventy-Second Legislature, Regular Session, adjourn sine die, upon the completion of administrative duties.

The motion prevailed by a viva voce vote.

BILLS AND RESOLUTIONS SIGNED

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

S.C.R. 155	S.B. 1	S.B. 614	S.B. 1034
S.C.R. 156	S.B. 314	S.B. 625	S.B. 1099
S.C.R. 159	S.B. 352	S.B. 757	S.B. 1129
S.C.R. 162	S.B. 359	S.B. 772	S.B. 1135
S.C.R. 163	S.B. 383	S.B. 858	S.B. 1397
S.C.R. 164	S.B. 430	S.B. 887	S.B. 1412
S.J.R. 6	S.B. 432	S.B. 935	S.B. 1436

S.J.R. 8	S.B. 543	S.B. 977	S.B. 1480
S.J.R. 42	S.B. 582	S.B. 992	S.B. 1566
		S.B. 1000	S.B. 1596

S.B. 16 (Signed subject to Art. III, Sec. 49a of the Constitution)

S.B. 873 (Signed subject to Art. III, Sec. 49a of the Constitution)

H.C.R. 7	H.B. 50	H.B. 1030	H.B. 1771	H.B. 2454
H.C.R. 58	H.B. 66	H.B. 1107	H.B. 1773	H.B. 2482
H.C.R. 91	H.B. 201	H.B. 1126	H.B. 1800	H.B. 2502
H.C.R. 99	H.B. 260	H.B. 1143	H.B. 1816	H.B. 2518
H.C.R. 103	H.B. 263	H.B. 1257	H.B. 1877	H.B. 2552
H.C.R. 112	H.B. 271	H.B. 1258	H.B. 1939	H.B. 2555
H.C.R. 153	H.B. 333	H.B. 1314	H.B. 1986	H.B. 2561
H.C.R. 160	H.B. 341	H.B. 1367	H.B. 2004	H.B. 2578
H.C.R. 162	H.B. 451	H.B. 1373	H.B. 2009	H.B. 2625
H.C.R. 174	H.B. 454	H.B. 1400	H.B. 2054	H.B. 2638
H.C.R. 177	H.B. 546	H.B. 1417	H.B. 2065	H.B. 2657
H.C.R. 180	H.B. 549	H.B. 1421	H.B. 2069	H.B. 2658
H.C.R. 197	H.B. 591	H.B. 1426	H.B. 2110	H.B. 2662
H.C.R. 203	H.B. 598	H.B. 1548	H.B. 2111	H.B. 2665
H.C.R. 228	H.B. 734	H.B. 1563	H.B. 2138	H.B. 2719
H.C.R. 234	H.B. 749	H.B. 1598	H.B. 2140	H.B. 2731
H.C.R. 236	H.B. 784	H.B. 1621	H.B. 2197	H.B. 2783
H.C.R. 237	H.B. 806	H.B. 1629	H.B. 2252	H.B. 2787
H.C.R. 245	H.B. 827	H.B. 1637	H.B. 2259	H.B. 2788
H.C.R. 250	H.B. 841	H.B. 1652	H.B. 2265	H.B. 2802
H.C.R. 251	H.B. 850	H.B. 1664	H.B. 2269	H.B. 2804
H.C.R. 252	H.B. 853	H.B. 1679	H.B. 2277	H.B. 2822
H.C.R. 253	H.B. 864	H.B. 1704	H.B. 2300	H.B. 2831
H.C.R. 256	H.B. 879	H.B. 1715	H.B. 2330	H.B. 2840
H.C.R. 257	H.B. 907	H.B. 1718	H.B. 2362	H.B. 2847
H.C.R. 258	H.B. 914	H.B. 1719	H.B. 2378	H.B. 2863
H.B. 2	H.B. 962	H.B. 1744	H.B. 2411	H.B. 2866
H.B. 9	H.B. 985	H.B. 1756	H.B. 2424	H.B. 2876
H.B. 42	H.B. 1004	H.B. 1770	H.B. 2430	H.B. 2884
				H.B. 2885
				H.B. 2902

MEMORIAL RESOLUTIONS

H.C.R. 162 - (Moncrief): In memory of Jack Lawrence Butler of Fort Worth.

S.R. 883 - By Barrientos: In memory of Joe Roddy, Jr., of Austin.

S.R. 894 - By Zaffirini: In memory of Tomas Flores of Laredo.

CONGRATULATORY RESOLUTIONS

H.C.R. 58 - (Dickson): Honoring Ray Silva and radio station KMXO.

H.C.R. 99 - (Lucio): Saluting Morris Atlas for his contributions to the Valley and Texas.

H.C.R. 174 - (Brooks): Honoring Galveston County and the entities participating in the Galveston County Emergency Communication District for their joint efforts in the implementation of enhanced 9-1-1 for Galveston County.

H.C.R. 236 - (Barrientos): Honoring Birdie Artelia Mackey Caldwell on her exceptional career in education.

H.C.R. 245 - (Ratliff): Extending best wishes to Superintendent Roy W. Cagle on the occasion of his retirement.

H.C.R. 250 - (Ratliff): Honoring Lowry M. Carpenter on the occasion of his retirement.

H.C.R. 252 - (Sims): Designating the first full week in May of each year as Energy Appreciation Week.

H.C.R. 253 - (Truan): Expressing support for the City of Corpus Christi in its efforts to become the permanent home of the replicas of the Christopher Columbus caravels.

S.R. 879 - By Lucio: Recognizing Brownsville Police Chief Victor Rodriguez, who has been selected for special acclaim on Mary Yturria Day.

S.R. 880 - By Lucio: Recognizing San Juanita Vasquez Rutledge of Mission for her many significant contributions to the people of South Texas.

S.R. 881 - By Barrientos: Joining with the citizens of Uhland in commemorating the 300th anniversary of the Old Spanish Trail.

S.R. 882 - By Barrientos: Recognizing the Austin Area Translators and Interpreters Association on the occasion of their first regional conference in Austin.

S.R. 884 - By Barrientos: Recognizing and honoring Mrs. Nancy Jane Jackson Barker on the occasion of her retirement after 20 years of distinguished service at the Texas Department of Mental Health and Mental Retardation.

S.R. 889 - By Harris of Tarrant: Extending congratulations to Ty Scott Martinez on his graduation from The University of Texas at Arlington.

S.R. 890 - By Green: Recognizing Virginia Perryman for her 31 years of loyal service as a schoolteacher with the Aldine Independent School District.

S.R. 891 - By Green: Honoring the American Baptist State Congress of Christian Workers of Texas.

S.R. 892 - By Turner: Honoring Dr. Roemer Orell Best of Corpus Christi on the occasion of his 89th birthday.

S.R. 893 - By Zaffirini: Joining with the Webb County Heritage Foundation and members of the Benavides family in honoring the memory of Jose del Refugio Benavides.

S.R. 895 - By Sims: Extending congratulations to Sharon and Dennis Brown on the birth of their son Brodie Allen Brown, May 26, 1991.

ADJOURNMENT SINE DIE

The President announced that the hour for final adjournment of the Regular Session of the Seventy-Second Legislature had arrived and, in accordance with a motion previously adopted, declared the Regular Session of the Seventy-Second Legislature adjourned sine die at 10:48 a.m. on May 28, 1991.

In Memory

of

Eugene W. Parrish III

(Senate Concurrent Resolution 125)

Senator Brooks offered the following resolution:

WHEREAS, The Legislature of the State of Texas joins with the citizens of Galveston and Santa Fe, Texas, in mourning the loss of Eugene W. Parrish III who died on April 6, 1991; and

WHEREAS, Born in Houston, Texas, on July 19, 1910, Mr. Parrish was well known and respected for his many accomplishments; and

WHEREAS, An aviation pioneer on Galveston Island, he gladly shared his expertise with others; and

WHEREAS, Renowned for his outstanding ability, he was a flight instructor in Galveston for 38 years and was held in high esteem by all who knew him; and

WHEREAS, Imbued with a deep love of country, Mr. Parrish served as a civilian instructor for the military for several years; and

WHEREAS, This distinguished gentleman was devoted to his community and its welfare and was a vital member of Eagles Lodge Santa Fe Aerie Number 3789, the Loyal Order of Moose Lodge Number 1537, and the OX-5 Club; and

WHEREAS, Mr. Parrish's boundless knowledge and his congeniality made him a warm and resourceful companion; and

WHEREAS, His humor, generosity of spirit, and valued counsel will not be forgotten by those who knew him; and

WHEREAS, He leaves behind a legacy of memories that will be forever treasured by his family and many friends; now, therefore, be it

RESOLVED, That the 72nd Legislature of the State of Texas hereby extend sincere condolences to the bereaved family of Eugene W. Parrish III: his wife, Rachel M. Parrish; his daughter, Gloria Van Zandt; his sons, Eugene W. Parrish IV, Elmo Martin Parrish, Jim Byrket, Gerald Byrket, Larry Byrket, and Charlie Byrket; his sisters, Belle B. Sanders and Mary G. Penny; and his brother, Dudley M. Parrish; and, be it further

RESOLVED, That a copy of this resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Legislature, and that when the legislature adjourns this day, it do so in memory of Eugene W. Parrish III.

The resolution was read.

Senator Brooks introduced to the Senate Rachel M. Parrish, the wife of Eugene W. Parrish III; his son, Eugene W. Parrish IV and his wife, Rita; their sons, Walt and Zach; and Representative Kent Grusendorf and his wife, Barbara.

An enrolled copy of the resolution, previously adopted by the Senate on Tuesday, May 7, 1991, was presented to the family by Senator Brooks.

APPENDIX

Signed by Governor
(January 31, 1991)

S.B. 111 (Effective immediately)

(February 4, 1991)

S.C.R. 7
S.C.R. 9
S.C.R. 12
S.C.R. 13
H.C.R. 20
H.C.R. 23
H.C.R. 24
H.C.R. 40

(February 6, 1991)

S.C.R. 5
H.C.R. 8
H.C.R. 11

(February 8, 1991)

S.C.R. 16
S.C.R. 21
S.C.R. 25
H.C.R. 13
H.C.R. 38

(February 15, 1991)

S.C.R. 10
S.C.R. 15
S.C.R. 17
S.C.R. 22

(February 20, 1991)

H.C.R. 4
H.C.R. 62
H.C.R. 63
H.C.R. 64

(February 21, 1991)

S.C.R. 6
S.C.R. 23
S.C.R. 28

(February 25, 1991)

H.C.R. 39
H.C.R. 49
H.C.R. 51
H.C.R. 73

(February 28, 1991)

S.B. 103 (Effective immediately)
S.B. 104 (Effective immediately; Sections 1, 3 and 4 effective upon passage of Constitutional amendment)

S.B. 165 (Effective immediately)
S.B. 188 (Effective immediately)

(March 1, 1991)

H.C.R. 55
H.C.R. 56
H.C.R. 74
S.C.R. 32
S.C.R. 33
S.C.R. 35
S.C.R. 37
S.C.R. 44
S.C.R. 45

(March 5, 1991)

H.C.R. 93
H.C.R. 94
H.C.R. 95

(March 12, 1991)

H.C.R. 87

(March 14, 1991)

S.C.R. 19
S.C.R. 24
S.C.R. 27
S.C.R. 43
S.C.R. 49
S.C.R. 51
S.C.R. 54
H.C.R. 81
H.C.R. 97
H.C.R. 105

(March 19, 1991)

S.B. 262 (Effective immediately)
H.C.R. 19

(March 25, 1991)

S.C.R. 38
S.C.R. 50
S.C.R. 56
S.C.R. 72
S.C.R. 73
S.B. 61 (Effective September 1, 1991)
H.C.R. 75
H.C.R. 98
H.C.R. 113
H.B. 723 (Effective August 26, 1991)
H.B. 724 (Effective August 26, 1991)

(March 27, 1991)

S.C.R. 81
H.C.R. 151

(March 28, 1991)

S.C.R. 48
S.C.R. 58
S.C.R. 59
S.C.R. 64
S.C.R. 65
S.C.R. 76
S.C.R. 77
S.C.R. 78
S.B. 14 (Effective immediately)
S.B. 376 (Effective March 29, 1991)

(April 1, 1991)

H.B. 169 (Effective immediately)

(April 2, 1991)

S.B. 278 (Effective immediately)

(April 3, 1991)

S.C.R. 80
H.C.R. 84
H.C.R. 104
H.C.R. 132
H.C.R. 145
H.C.R. 146
H.C.R. 158
H.C.R. 159

Filed without Signature of Governor
(April 3, 1991)

S.B. 559 (Effective May 3, 1991)

Signed by Governor
(April 5, 1991)

S.B. 63 (Effective immediately)
S.B. 404 (Effective September 1, 1991)

(April 10, 1991)

H.C.R. 140
H.C.R. 166
H.C.R. 171

(April 11, 1991)

H.B. 435 (Effective immediately)
H.B. 1879 (Effective immediately)

Filed without Signature of Governor
(April 11, 1991)

S.B. 232 (Effective August 26, 1991)

Signed by Governor
(April 12, 1991)

H.B. 484 (Effective immediately)

(April 14, 1991)

S.B. 34 (Effective immediately)
S.C.R. 84
S.C.R. 86
S.C.R. 87
S.C.R. 88
S.C.R. 89
S.C.R. 92
H.C.R. 18
H.C.R. 30
H.C.R. 37
H.C.R. 46
H.C.R. 47
H.C.R. 147
H.C.R. 165

(April 15, 1991)

S.B. 351 (Effective August 26, 1991)

(April 16, 1991)

S.B. 124 (Effective September 1, 1991)
S.B. 170 (Effective immediately)
H.B. 155 (Effective immediately)
H.B. 156 (Effective immediately)
H.B. 820 (Effective immediately)

(April 19, 1991)

S.C.R. 82
S.B. 107 (Effective immediately)
S.B. 121 (Effective immediately)
S.B. 126 (Effective immediately)
S.B. 127 (Effective immediately)
S.B. 169 (Effective August 26, 1991)
S.B. 172 (Effective immediately)
S.B. 206 (Effective immediately)
S.B. 254 (Effective immediately)
S.B. 264 (Effective August 1, 1991)
S.B. 310 (Effective immediately)
S.B. 369 (Effective immediately)
H.B. 398 (Effective immediately)

Filed without Signature of Governor
(April 19, 1991)

S.B. 59 (Effective immediately)
S.B. 448 (Effective September 1, 1991)

Signed by Governor
(April 22, 1991)

H.C.R. 36
H.C.R. 110
H.C.R. 176
H.C.R. 185

(April 23, 1991)

S.C.R. 26
S.C.R. 91
S.B. 152 (Effective September 1, 1991)
S.B. 247 (Effective August 26, 1991)
S.B. 449 (Effective immediately)
H.B. 281 (Effective immediately)
H.B. 876 (Effective immediately)

(April 25, 1991)

S.B. 862 (Effective immediately)

Filed without Signature of Governor
(April 26, 1991)

S.B. 114 (Effective September 1, 1991)

Signed by Governor
(April 29, 1991)

S.B. 275 (Effective September 1, 1991)
S.C.R. 39
S.C.R. 62
S.C.R. 95
S.C.R. 96
S.C.R. 97
S.C.R. 101
S.C.R. 106
H.C.R. 83
H.C.R. 90
H.C.R. 111
H.C.R. 155
H.C.R. 173
H.C.R. 187
H.C.R. 195
H.C.R. 199
H.C.R. 200
H.B. 750 (Effective immediately)
H.B. 828 (Effective August 26, 1991)

(May 1, 1991)

S.B. 529 (Effective September 1, 1991)
S.B. 653 (Effective immediately)
S.B. 1062 (Effective immediately)
S.B. 1117 (Effective immediately)
H.B. 722 (Effective August 26, 1991)

(May 2, 1991)

S.C.R. 98
S.B. 647 (Effective August 26, 1991)
H.C.R. 6
H.C.R. 133
H.C.R. 175
H.C.R. 186
H.C.R. 193
H.C.R. 206
H.C.R. 208
H.B. 175 (Effective August 26, 1991)
H.B. 596 (Effective immediately)
H.B. 717 (Effective September 1, 1991)
H.B. 936 (Effective September 1, 1991)

Filed with Secretary of State
(May 2, 1991)

H.C.R. 218

Signed by Governor
(May 7, 1991)

S.C.R. 11
S.C.R. 79
S.C.R. 102
S.C.R. 103
S.C.R. 104
S.C.R. 105
S.C.R. 107
S.C.R. 109
S.C.R. 110
S.C.R. 116

(May 8, 1991)

H.B. 153 (Effective August 26, 1991)
H.B. 199 (Effective August 26, 1991)
H.B. 627 (Effective September 1, 1991)
H.B. 721 (Effective August 26, 1991)
H.B. 729 (Effective immediately)
H.B. 885 (Effective September 1, 1991)
H.B. 1000 (Effective September 1, 1991)
H.B. 1093 (Effective September 1, 1991)
H.B. 1266 (Effective August 26, 1991)
H.B. 1487 (Effective September 1, 1991)

(May 9, 1991)

S.B. 294 (Effective immediately)
H.B. 277 (Effective September 1, 1991)
H.B. 597 (Effective immediately)
H.B. 626 (Effective September 1, 1991)

(May 10, 1991)

H.B. 861 (Effective September 1, 1991)
H.C.R. 225
H.C.R. 229

Filed without Signature of Governor
(May 10, 1991)

S.B. 17 (Effective August 26, 1991)
H.B. 902 (Effective September 1, 1991)

Signed by Governor
(May 11, 1991)

H.B. 176 (Effective immediately)

(May 12, 1991)

S.B. 76 (Effective September 1, 1991)
S.B. 54 (Effective September 1, 1991)
S.B. 211 (Effective immediately)
S.B. 438 (Effective September 1, 1991)
S.B. 883 (Effective September 1, 1991)
S.B. 1166 (Effective immediately)

(May 13, 1991)

S.C.R. 122

(May 14, 1991)

S.B. 516 (Effective immediately)
S.B. 604 (Effective September 1, 1991)
S.B. 755 (Effective August 26, 1991)
S.B. 878 (Effective August 26, 1991)
S.B. 1343 (Effective September 1, 1991)
H.C.R. 72
H.C.R. 161
H.C.R. 178
H.C.R. 189
H.C.R. 198
H.C.R. 202
H.C.R. 204
H.C.R. 209
H.C.R. 214
H.C.R. 215
H.C.R. 220
H.C.R. 221
H.C.R. 222
H.C.R. 223
H.B. 407 (Effective September 1, 1991)
H.B. 571 (Effective August 26, 1991)
H.B. 903 (Effective August 26, 1991)
H.B. 1063 (Effective January 1, 1992)
H.B. 1198 (Effective immediately)

(May 15, 1991)

S.B. 94 (Effective immediately)

S.B. 100 (Effective immediately)
S.B. 164 (Effective immediately)
S.B. 243 (Effective September 1, 1991)
S.B. 299 (Effective immediately)
S.B. 526 (Effective immediately)
S.B. 744 (Effective September 1, 1991)
S.B. 751 (Effective September 1, 1991)
S.B. 811 (Effective September 1, 1991)
S.B. 1096 (Effective August 26, 1991)
S.B. 1126 (Effective immediately)
H.B. 79 (Effective August 26, 1991)
H.B. 1448 (Effective August 26, 1991)
H.C.R. 184
H.C.R. 82
H.C.R. 227
S.C.R. 119
H.B. 1897 (Effective August 26, 1991)
H.B. 670 (Effective immediately)

Filed without Signature of Governor
(May 15, 1991)

S.B. 1120 (Effective immediately)

Signed by Governor
(May 16, 1991)

S.B. 843 (Effective immediately)
S.B. 195 (Effective September 1, 1991)
H.B. 46 (Effective September 1, 1991)
H.B. 409 (Effective August 26, 1991)
H.B. 448 (Effective January 1, 1992)

Filed without Signature of Governor
(May 16, 1991)

S.B. 589 (Effective September 1, 1991)

Signed by Governor
(May 17, 1991)

H.B. 1135 (Effective September 1, 1991)

Filed without Signature of Governor
(May 17, 1991)

H.B. 70 (Effective August 26, 1991)
H.B. 384 (Effective August 26, 1991)
H.B. 998 (Effective immediately)

Signed by Governor
(May 19, 1991)

S.B. 106 (Effective September 1, 1991)
S.B. 144 (Effective August 26, 1991)
S.B. 401 (Effective September 1, 1991)
S.B. 490 (Effective immediately)
S.B. 506 (Effective September 1, 1991)
S.B. 732 (Effective August 26, 1991)
S.B. 756 (Effective immediately)

S.B. 1232 (Effective September 1, 1991)
H.B. 290 (Effective September 1, 1991)
H.B. 961 (Effective immediately)
H.B. 991 (Effective September 1, 1991)
H.B. 1694 (Effective immediately)
H.B. 1873 (Effective August 26, 1991)

(May 21, 1991)

S.C.R. 108
S.C.R. 113
S.C.R. 120
S.C.R. 149
S.B. 1131 (Effective September 1, 1991)
S.B. 1290 (Effective August 26, 1991)
H.B. 957 (Effective August 26, 1991)
S.B. 116 (Effective September 1, 1991)
S.B. 239 (Effective immediately)
S.B. 241 (Effective September 1, 1991)

(May 22, 1991)

S.B. 11 (Effective September 1, 1991)
S.B. 32 (Effective September 1, 1991)
S.B. 177 (Effective August 26, 1991)
S.B. 190 (Effective September 1, 1991)
S.B. 215 (Effective August 26, 1991)
S.B. 312 (Effective immediately)
S.B. 356 (Effective September 1, 1991)
S.B. 420 (Effective August 26, 1991)
S.B. 481 (Effective August 26, 1991)
S.B. 603 (Effective immediately)
S.B. 825 (Effective September 1, 1991)
S.B. 932 (Effective September 1, 1991)
H.B. 202 (Effective September 1, 1991)
H.B. 214 (Effective September 1, 1991)
H.B. 1128 (Effective August 26, 1991)
H.B. 1166 (Effective August 26, 1991)
H.B. 1668 (Effective September 1, 1991)
H.B. 1725 (Effective immediately)
H.B. 1743 (Effective September 1, 1991)

Filed without Signature of Governor
(May 22, 1991)

S.B. 645 (Effective September 1, 1991)
S.B. 861 (Effective August 26, 1991)
S.B. 994 (Effective September 1, 1991)
S.B. 1109 (Effective immediately)

Signed by Governor
(May 23, 1991)

S.B. 615 (Effective immediately)
S.B. 729 (Effective immediately)

Filed without Signature of Governor
(May 23, 1991)

H.B. 982 (Effective August 26, 1991)

Signed by Governor
(May 24, 1991)

S.C.R. 111
S.B. 406 (Effective immediately)
S.B. 523 (Effective immediately)
S.B. 595 (Effective immediately)
S.B. 654 (Effective immediately)
S.B. 870 (Effective September 1, 1991)
S.B. 1058 (Effective August 26, 1991)
S.B. 1197 (Effective September 1, 1991)
S.B. 1237 (Effective immediately)
S.B. 1465 (Effective August 26, 1991)
S.B. 187 (Effective August 26, 1991)
S.B. 346 (Effective September 1, 1991)
S.B. 366 (Effective August 26, 1991)
S.B. 648 (Effective August 26, 1991)
S.B. 687 (Effective September 1, 1991)
H.B. 30 (Effective August 26, 1991)
H.B. 2183 (Effective September 1, 1991)
H.B. 139 (Effective immediately)
H.B. 486 (Effective September 1, 1991)
H.B. 530 (Effective immediately)
H.B. 916 (Effective immediately)
H.B. 1176 (Effective immediately)

Filed without Signature of Governor
(May 24, 1991)

S.B. 38 (Effective immediately)
S.B. 443 (Effective September 1, 1991)
H.B. 509 (Effective September 1, 1991)
H.B. 944 (Effective September 1, 1991)
H.B. 1772 (Effective September 1, 1991)

Signed by Governor
(May 25, 1991)

S.C.R. 52
S.C.R. 137
S.C.R. 139
S.B. 42 (Effective 1991-1992 school year)
S.B. 148 (Effective September 1, 1991)
S.B. 345 (Effective immediately)
H.B. 43 (Effective September 1, 1991)
H.B. 148 (Effective September 1, 1991)
H.B. 393 (Effective September 1, 1991)
H.B. 960 (Effective September 1, 1991)
H.B. 1184 (Effective immediately)
H.B. 1506 (Effective immediately)

(May 26, 1991)

S.C.R. 124
S.C.R. 125
S.C.R. 126
S.C.R. 127
S.C.R. 128
S.C.R. 129
S.C.R. 130
S.C.R. 131
S.C.R. 132
S.C.R. 133
S.C.R. 135
S.C.R. 142
S.C.R. 144
S.B. 823 (Effective September 1, 1991)
S.B. 1407 (Effective September 1, 1991)
S.B. 1234 (Effective September 1, 1991)
H.C.R. 31
H.C.R. 61
H.C.R. 224
H.C.R. 232
H.C.R. 242
H.B. 219 (Effective September 1, 1991)
H.B. 264 (Effective August 26, 1991)
H.B. 355 (Effective immediately)
H.B. 628 (Effective immediately)
H.B. 650 (Effective September 1, 1991)
H.B. 683 (Effective September 1, 1991)
H.B. 776 (Effective immediately)
H.B. 954 (Effective August 26, 1991)
H.B. 1578 (Effective September 1, 1991)
H.B. 2271 (Effective September 1, 1991)

Filed with Secretary of State
(May 27, 1991)

H.J.R. 114

Sent to Governor
(May 27, 1991)

S.C.R. 31
S.C.R. 46
S.C.R. 68
S.C.R. 85
S.C.R. 141
S.B. 31
S.B. 64
S.B. 134
S.B. 337
S.B. 377
S.B. 409
S.B. 410
S.B. 460
S.B. 461
S.B. 1369
S.B. 1426
S.B. 1497
S.B. 1509
S.B. 1517
S.B. 1550
S.B. 1605
S.B. 44
S.B. 101
S.B. 142
S.B. 151
S.B. 180
S.B. 183
S.B. 201
S.B. 513
S.B. 557
S.B. 592
S.B. 608
S.B. 642
S.B. 658
S.B. 659
S.B. 669
S.B. 693
S.B. 700
S.B. 746
S.B. 750
S.B. 769
S.B. 787
S.B. 1115
S.B. 1119
S.B. 1127
S.B. 1165
S.B. 1169
S.B. 1175
S.B. 1246
S.B. 1247
S.B. 1249
S.B. 1287
S.B. 1302
S.B. 1306
S.B. 1359
S.B. 1360

S.B. 661
S.B. 834
S.B. 928
S.B. 945
S.B. 952
S.B. 954
S.B. 1041
S.B. 1046
S.B. 1186
S.B. 1200
S.B. 1204
S.B. 1280
S.B. 1282
S.B. 1337
S.B. 1358
S.B. 218
S.B. 240
S.B. 246
S.B. 249
S.B. 291
S.B. 303
S.B. 364
S.B. 381
S.B. 411
S.B. 422
S.B. 437
S.B. 445
S.B. 483
S.B. 493
S.B. 508
S.B. 791
S.B. 797
S.B. 857
S.B. 876
S.B. 911
S.B. 912
S.B. 933
S.B. 967
S.B. 980
S.B. 997
S.B. 1032
S.B. 1042
S.B. 1049
S.B. 1083
S.B. 1105
S.B. 1389
S.B. 1415
S.B. 1418
S.B. 1428
S.B. 1451
S.B. 1456
S.B. 1468
S.B. 1481
S.B. 1508
S.B. 1554
S.B. 1570
S.B. 1578
S.B. 1590
S.B. 1612

Sent to Comptroller
(May 28, 1991)

S.B. 16
S.B. 181
S.B. 219
S.B. 1123
S.B. 1543

Signed by Governor
(May 28, 1991)

S.B. 521 (Effective September 1, 1991)
H.B. 1495 (Effective September 1, 1991)
H.B. 1581 (Effective September 1, 1991)
H.B. 426 (Effective September 1, 1991)

Sent to Comptroller
(May 29, 1991)

S.B. 873

Filed with Secretary of State
(May 29, 1991)

S.J.R. 6
S.J.R. 8

Sent to Governor
(May 29, 1991)

S.B. 26
S.B. 33
S.B. 52
S.B. 75
S.B. 112
S.B. 123
S.B. 140
S.B. 259
S.B. 270
S.B. 284
S.B. 293
S.B. 311
S.B. 610
S.B. 614
S.B. 637
S.B. 691
S.B. 692
S.B. 747
S.B. 770
S.B. 828
S.B. 856
S.B. 858
S.B. 884
S.B. 885
S.B. 1048
S.B. 1097
S.B. 1230
S.B. 1245
S.B. 1273
S.B. 1333
S.B. 1397
S.B. 1412
S.B. 1436
S.B. 1480
S.B. 1520
S.C.R. 155
S.B. 277
S.B. 518
S.B. 532
S.B. 757
S.B. 830
S.B. 837
S.B. 865
S.B. 992
S.B. 1217
S.B. 1267
S.B. 1314
S.B. 1331

S.B. 323	**S.B. 887**	**S.C.R. 156**	**S.B. 1341**
S.B. 333	**S.B. 978**	**S.C.R. 159**	**S.B. 1357**
S.B. 359	**S.B. 981**	**S.C.R. 160**	**S.B. 1375**
S.B. 428	**S.B. 1004**	**S.C.R. 162**	**S.B. 1445**
S.B. 470	**S.B. 1033**	**S.C.R. 163**	**S.B. 1459**
S.B. 545	**S.B. 1034**	**S.C.R. 164**	**S.B. 1462**
S.B. 582			**S.B. 1539**

Signed by Governor
(May 29, 1991)

S.B. 402 (Effective September 1, 1991)
S.B. 876 (Effective immediately)
S.B. 1149 (Effective September 1, 1991)
H.B. 173 (Effective September 1, 1991)
H.B. 195 (Effective September 1, 1991)
H.B. 675 (Effective September 1, 1991)
H.B. 693 (Effective September 1, 1991)
H.B. 816 (Effective September 1, 1991)
H.B. 873 (Effective immediately)
H.B. 1022 (Effective September 1, 1991)
H.B. 1066 (Effective August 26, 1991)
H.B. 2103 (Effective immediately)

Filed without Signature of Governor
(May 29, 1991)

S.B. 784 (Effective immediately)
S.B. 1161 (Effective September 1, 1991)
H.B. 37 (Effective September 1, 1991)
H.B. 1340 (Effective September 1, 1991)
H.B. 1882 (Effective immediately)
H.B. 2322 (Effective August 26, 1991)
H.B. 2382 (Effective August 26, 1991)
H.B. 2383 (Effective August 26, 1991)
H.B. 2399 (Effective August 26, 1991)
H.B. 2465 (Effective August 26, 1991)

Signed by Governor
(May 30, 1991)

H.C.R. 153

Sent to Governor
(May 31, 1991)

S.C.R. 152	**S.B. 818**	**S.B. 307**
S.B. 1	**S.B. 873**	**S.B. 378**
S.B. 16	**S.B. 1000**	**S.B. 379**
S.B. 181	**S.B. 1035**	**S.B. 543**
S.B. 219	**S.B. 1092**	**S.B. 587**
S.B. 314	**S.B. 1123**	**S.B. 923**
S.B. 334	**S.B. 1135**	**S.B. 935**
S.B. 355	**S.B. 1514**	**S.B. 1106**
S.B. 380	**S.B. 1538**	**S.B. 1129**
S.B. 432	**S.B. 1543**	**S.B. 1340**
S.B. 625	**S.B. 1566**	**S.B. 1596**

Signed by Governor
(June 2, 1991)

H.B. 2110 (Effective August 26, 1991)

Sent to Governor
(June 4, 1991)

S.B. 352
S.B. 383
S.B. 429
S.B. 430
S.B. 546
S.B. 772
S.B. 977
S.B. 1070
S.B. 1095
S.B. 1099
S.B. 1103
S.B. 1409
S.B. 1490

Filed with Secretary of State
(June 4, 1991)

S.J.R. 42

Signed by Governor
(June 5, 1991)

H.B. 103 (Effective August 26, 1991)
H.B. 490 (Effective January 1, 1992)
H.B. 545 (Effective immediately)
H.B. 622 (Effective immediately)
H.B. 651 (Effective August 26, 1991)
H.B. 676 (Effective September 1, 1991)
H.B. 686 (Effective immediately)
H.B. 897 (Effective September 1, 1991)
H.B. 1029 (Effective immediately)
H.B. 1132 (Effective September 1, 1991)
H.B. 1188 (Effective September 1, 1991)
H.B. 1400 (Effective September 1, 1991)
H.B. 1444 (Effective September 1, 1991)
H.B. 1469 (Effective September 1, 1991)
H.B. 1485 (Effective August 26, 1991)
H.B. 1558 (Effective September 1, 1991)
H.B. 1577 (Effective January 1, 1992)
H.B. 1586 (Effective immediately)
H.B. 1666 (Effective September 1, 1991)
H.B. 1674 (Effective August 26, 1991)
H.B. 1675 (Effective immediately)
H.B. 1679 (Effective September 1, 1991)
H.B. 1803 (Effective September 1, 1991)
H.B. 1858 (Effective September 1, 1991)
H.B. 1902 (Effective August 26, 1991)
H.B. 1976 (Effective immediately)
H.B. 2004 (Effective August 26, 1991)

H.B. 2063 (Effective September 1, 1991)
H.B. 2144 (Effective August 26, 1991)
H.B. 2353 (Effective September 1, 1991)
H.B. 2429 (Effective September 1, 1991)
H.B. 2542 (Effective August 26, 1991)
H.B. 2570 (Effective August 26, 1991)
H.B. 2571 (Effective August 26, 1991)
H.B. 2572 (Effective August 26, 1991)
H.B. 2573 (Effective August 26, 1991)
H.B. 2760 (Effective September 1, 1991)
H.B. 2825 (Effective immediately)
H.B. 2841 (Effective August 26, 1991)
S.B. 972 (Effective immediately)
S.B. 1283 (Effective September 1, 1991)
S.B. 1424 (Effective September 1, 1991)
S.B. 1533 (Effective immediately)
H.B. 877 (Effective August 26, 1991)
H.B. 2231 (Effective August 26, 1991)
S.B. 240 (Effective immediately)
S.B. 253 (Effective September 1, 1991)
S.B. 276 (Effective immediately)
S.B. 382 (Effective September 1, 1991)
S.B. 422 (Effective immediately)
S.B. 445 (Effective immediately)
S.B. 552 (Effective immediately)
S.B. 573 (Effective August 26, 1991)
S.B. 583 (Effective August 26, 1991)
S.B. 616 (Effective September 1, 1991)
S.B. 642 (Effective September 1, 1991)
S.B. 746 (Effective August 26, 1991)
S.B. 912 (Effective immediately)
S.B. 934 (Effective immediately)
S.B. 944 (Effective September 1, 1991)
S.B. 1054 (Effective immediately)
S.B. 1083 (Effective September 1, 1991)
S.B. 1306 (Effective immediately)
S.B. 1460 (Effective September 1, 1991)
S.B. 1468 (Effective immediately)
S.B. 1531 (Effective immediately)
S.B. 1570 (Effective September 1, 1991)
H.B. 54 (Effective August 26, 1991)
H.B. 268 (Effective September 1, 1991)
H.B. 493 (Effective immediately)
H.B. 496 (Effective immediately)
H.B. 504 (Effective September 1, 1991)
H.B. 520 (Effective immediately)

(June 6, 1991)

H.B. 413 (Effective September 1, 1991)
H.B. 598 (Effective September 1, 1991)
H.B. 1107 (Effective September 1, 1991)
H.B. 1741 (Effective September 1, 1991)
H.B. 2502 (Effective August 26, 1991)

S.B. 1340 (Effective September 1, 1991)
H.B. 2 (Effective September 1, 1991)
H.B. 640 (Effective immediately)
S.B. 1357 (Effective August 26, 1991)
H.B. 1192 (Effective immediately)

Filed without Signature of Governor
(June 6, 1991)

S.B. 142 (Effective September 1, 1991)
S.B. 183 (Effective immediately)
S.B. 658 (Effective August 26, 1991)
S.B. 663 (Effective immediately)
S.B. 669 (Effective August 26, 1991)
S.B. 693 (Effective September 1, 1991)
S.B. 853 (Effective September 1, 1991)
S.B. 1108 (Effective September 1, 1991)
S.B. 1222 (Effective September 1, 1991)
S.B. 1267 (Effective September 1, 1991)
S.B. 1445 (Effective August 26, 1991)
S.B. 1590 (Effective August 26, 1991)
H.B. 271 (Effective September 1, 1991)
H.B. 541 (Effective September 1, 1991)

Signed by Governor
(June 7, 1991)

S.B. 1 (Effective January 1, 1992)
S.B. 123 (Effective September 1, 1991)
S.B. 587 (Effective September 1, 1991)
S.B. 608 (Effective September 1, 1991)
S.B. 670 (Effective January 1, 1992)
S.B. 679 (Effective August 26, 1991)
S.B. 689 (Effective immediately)
S.B. 834 (Effective immediately)
S.B. 857 (Effective August 26, 1991)
S.B. 1032 (Effective immediately)
S.B. 1041 (Effective August 26, 1991)
S.B. 1042 (Effective August 26, 1991)
S.B. 1115 (Effective September 1, 1991)
S.B. 1127 (Effective August 26, 1991)
S.B. 1189 (Effective September 1, 1991)
S.B. 1204 (Effective September 1, 1991)
S.B. 1217 (Effective September 1, 1991)
S.B. 1249 (Effective August 26, 1991)
S.B. 1337 (Effective August 26, 1991)
S.B. 1359 (Effective immediately)
S.B. 1401 (Effective September 1, 1991)
S.B. 1550 (Effective September 1, 1991)
S.B. 246 (Effective September 1, 1991)
S.B. 1369 (Effective August 26, 1991)
S.B. 1511 (Effective immediately)
S.B. 293 (Effective January 1, 1992)
S.B. 333 (Effective August 26, 1991)
S.B. 479 (Effective August 26, 1991)
S.B. 763 (Effective September 1, 1991)

S.B. 769 (Effective September 1, 1991)
S.B. 783 (Effective August 26, 1991)
S.B. 945 (Effective August 26, 1991)
S.B. 986 (Effective September 1, 1991)
S.B. 818 (Effective immediately)
S.B. 1053 (Effective immediately)
S.B. 1099 (Effective immediately)
S.B. 1193 (Effective August 26, 1991)
H.B. 201 (Effective January 1, 1992)
H.B. 272 (Effective September 1, 1991)
H.B. 391 (Effective September 1, 1991)
H.B. 507 (Effective January 1, 1992)
H.B. 546 (Effective September 1, 1991)
H.B. 813 (Effective August 26, 1991)
H.B. 847 (Effective September 1, 1991)
H.B. 864 (Effective September 1, 1991)
H.B. 925 (Effective September 1, 1991)
H.B. 948 (Effective January 1, 1992)
H.B. 1101 (Effective September 1, 1991)
H.B. 1111 (Effective September 1, 1991)
H.B. 1313 (Effective September 1, 1991)
H.B. 1328 (Effective immediately)
H.B. 1458 (Effective October 1, 1991)
H.B. 1486 (Effective September 1, 1991)
H.B. 1548 (Effective August 26, 1991)
H.B. 1629 (Effective August 26, 1991)
H.B. 1766 (Effective immediately)
H.B. 1851 (Effective immediately)
H.B. 2009 (Effective August 26, 1991)
H.B. 2263 (Effective August 26, 1991)
H.B. 2224 (Effective September 1, 1991)
H.B. 2300 (Effective immediately)
H.B. 2327 (Effective September 1, 1991)
H.B. 2552 (Effective September 1, 1991)
H.B. 2724 (Effective immediately)
H.B. 2885 (Effective September 1, 1992)
H.C.R. 257

Filed without Signature of Governor
(June 7, 1991)

S.B. 325 (Effective January 1, 1992)
S.B. 1389 (Effective September 1, 1991)
H.B. 50 (Effective September 1, 1991)
H.B. 529 (Effective September 1, 1991)
H.B. 962 (Effective January 1, 1992)
H.B. 1036 (Effective immediately)
H.B. 1185 (Effective September 1, 1991)
H.B. 1227 (Effective September 1, 1991)
H.B. 1432 (Effective August 26, 1991)
H.B. 1715 (Effective September 1, 1991)
H.B. 1761 (Effective immediately)
H.B. 1779 (Effective immediately)
H.B. 2049 (Effective immediately)

H.B. 2229 (Effective immediately)
H.B. 2563 (Effective immediately)
H.B. 2792 (Effective September 1, 1991)
H.B. 2862 (Effective August 26, 1991)
H.B. 2902 (Effective September 1, 1991)

Signed by Governor
(June 8, 1991)

S.B. 16 (Effective September 1, 1991)
S.B. 933 (Effective August 26, 1991)
S.B. 1200 (Effective immediately)
S.B. 1050 (Effective September 1, 1991)
S.B. 1520 (Effective September 1, 1991 and January 1, 1992)
H.B. 1973 (Effective immediately)
H.B. 2057 (Effective August 26, 1991)
H.B. 2266 (Effective September 1, 1991)
H.B. 2595 (Effective September 1, 1992)
S.C.R. 117
S.C.R. 136
S.C.R. 143
S.C.R. 148
S.C.R. 153
S.C.R. 160
H.B. 44 (Effective September 1, 1991)
H.B. 1652 (Effective August 26, 1991)
H.B. 1756 (Effective August 26, 1991)
H.B. 1847 (Effective August 26, 1991)
H.B. 1984 (Effective September 1, 1991)
H.B. 2102 (Effective September 1, 1991)
H.B. 2338 (Effective September 1, 1991)
H.B. 2489 (Effective immediately)
H.B. 2786 (Effective September 1, 1991)
H.C.R. 22
H.C.R. 154
H.C.R. 163
H.C.R. 179
H.C.R. 192
H.C.R. 235
H.C.R. 239
H.C.R. 246
H.C.R. 258

Filed without Signature of Governor
(June 10, 1991)

S.B. 514 (Effective immediately)
S.B. 542 (Effective August 26, 1991)
S.B. 1119 (Effective immediately)
H.B. 703 (Effective September 1, 1991)
H.B. 1079 (Effective immediately)
H.B. 1175 (Effective September 1, 1991)
H.B. 1412 (Effective September 1, 1991)
H.B. 1637 (Effective September 1, 1991)

H.B. 1877 (Effective August 26, 1991)
H.B. 2269 (Effective September 1, 1991)

Signed by Governor
(June 11, 1991)

S.B. 52 (Effective August 26, 1991)
S.B. 85 (Effective September 1, 1991)
S.B. 87 (Effective September 1, 1991)
S.B. 134 (Effective immediately)
S.B. 411 (Effective immediately)
S.B. 483 (Effective immediately)
S.B. 493 (Effective September 1, 1991)
S.B. 614 (Effective September 1, 1991)
S.B. 692 (Effective August 26, 1991)
S.B. 737 (Effective August 26, 1991)
S.B. 738 (Effective August 26, 1991)
S.B. 816 (Effective September 1, 1991)
S.B. 858 (Effective September 1, 1991)
S.B. 1048 (Effective September 1, 1991)
S.B. 1057 (Effective September 1, 1991)
S.B. 1175 (Effective September 1, 1991)
S.B. 1333 (Effective September 1, 1991)
S.B. 1335 (Effective August 26, 1991)
S.B. 1459 (Effective January 1, 1992 and August 26, 1991)
S.B. 1554 (Effective immediately)
H.B. 76 (Effective August 26, 1991)
H.B. 235 (Effective September 1, 1991)
H.B. 463 (Effective August 26, 1991)
H.B. 478 (Effective August 26, 1991)
H.B. 538 (Effective August 26, 1991)
H.B. 769 (Effective September 1, 1991)
H.B. 844 (Effective September 1, 1991)
H.B. 1489 (Effective immediately)
H.B. 1496 (Effective September 1, 1991)
H.B. 1739 (Effective August 26, 1991)
H.B. 1767 (Effective August 26, 1991)
H.B. 1774 (Effective September 1, 1991)
H.B. 2066 (Effective immediately)
H.B. 2214 (Effective September 1, 1991)
H.B. 2250 (Effective August 26, 1991)
H.B. 2553 (Effective immediately)
H.B. 2625 (Effective September 1, 1991)
H.B. 2811 (Effective September 1, 1991)

(June 12, 1991)

S.B. 747 (Effective immediately and June 1, 1993)

(June 13, 1991)

S.B. 277 (Effective August 26, 1991)
S.B. 364 (Effective September 1, 1991)
S.B. 508 (Effective September 1, 1991)

S.B. 518 (Effective September 1, 1991)
S.B. 828 (Effective September 1, 1993)
S.B. 977 (Effective September 1, 1991)
S.B. 981 (Effective immediately)
S.B. 1049 (Effective August 26, 1991)
S.B. 1169 (Effective January 1, 1992)
S.B. 1230 (Effective September 1, 1991)
S.B. 1262 (Effective September 1, 1991)
S.B. 1436 (Effective September 1, 1991)
H.B. 41 (Effective August 26, 1991)
H.B. 356 (Effective September 1, 1991)
H.B. 452 (Effective September 1, 1991)
H.B. 524 (Effective immediately)
H.B. 616 (Effective immediately)
H.B. 734 (Effective August 26, 1991)
H.B. 1859 (Effective immediately)
H.B. 2259 (Effective August 26, 1991)
H.B. 2277 (Effective September 1, 1991; Section 2 effective September 1, 1993)
H.B. 2420 (Effective immediately)
H.B. 2694 (Effective immediately)
H.B. 2719 (Effective September 1, 1991)
H.B. 2782 (Effective August 26, 1991)
H.B. 2803 (Effective August 26, 1991)
H.B. 2830 (Effective immediately)

(June 14, 1991)

S.C.R. 46
S.C.R. 47
S.C.R. 68
S.C.R. 85
S.C.R. 93
S.C.R. 123
S.C.R. 141
S.C.R. 145
S.C.R. 147
S.C.R. 151
S.C.R. 155
S.C.R. 156
S.C.R. 159
S.C.R. 162
H.C.R. 7
H.C.R. 168
H.C.R. 210
H.C.R. 216
H.C.R. 217
H.C.R. 219
H.C.R. 228
H.C.R. 233
H.C.R. 234
H.C.R. 243
H.C.R. 253
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H.C.R. 112
H.C.R. 160
H.C.R. 162
H.C.R. 174
H.C.R. 177
H.C.R. 180
H.C.R. 197
H.C.R. 203
H.C.R. 236
H.C.R. 237
H.C.R. 58
H.C.R. 91
H.C.R. 99
H.C.R. 251
H.C.R. 250
H.C.R. 252
H.C.R. 245

(June 15, 1991)

S.B. 4 (Effective September 1, 1991)
S.B. 26 (Effective September 1, 1991)
S.B. 33 (Effective September 1, 1991)
S.B. 101 (Effective immediately)
S.B. 112 (Effective September 1, 1991)
S.B. 201 (Effective immediately)
S.B. 219 (Effective immediately)
S.B. 259 (Effective September 1, 1991)
S.B. 284 (Effective August 26, 1991)
S.B. 303 (Effective September 1, 1991)
S.B. 355 (Effective September 1, 1991)
S.B. 359 (Effective September 1, 1991)
S.B. 381 (Effective September 1, 1991)
S.B. 410 (Effective September 1, 1991)
S.B. 429 (Effective September 1, 1991)
S.B. 470 (Effective August 26, 1991)
S.B. 478 (Effective September 1, 1991)
S.B. 553 (Effective August 26, 1991)
S.B. 543 (Effective September 1, 1991 and January 1, 1992)
S.B. 582 (Effective August 26, 1991)
S.B. 661 (Effective September 1, 1991)
S.B. 726 (Effective September 1, 1991)
S.B. 770 (Effective September 1, 1991)
S.B. 774 (Effective September 1, 1991)
S.B. 798 (Effective immediately)
S.B. 830 (Effective immediately)
S.B. 892 (Effective immediately)
S.B. 884 (Effective August 26, 1991)
S.B. 885 (Effective August 26, 1991)
S.B. 923 (Effective September 1, 1991)
S.B. 946 (Effective August 26, 1991)
S.B. 978 (Effective September 1, 1991)
S.B. 992 (Effective September 1, 1991)

S.B. 993 (Effective September 1, 1991)
S.B. 1004 (Effective September 1, 1991)
S.B. 1035 (Effective immediately)
S.B. 1046 (Effective immediately)
S.B. 1070 (Effective September 1, 1991)
S.B. 1103 (Effective September 1, 1991)
S.B. 1105 (Effective September 1, 1991)
S.B. 1129 (Effective September 1, 1991)
S.B. 1245 (Effective August 26, 1991)
S.B. 1246 (Effective September 1, 1991)
S.B. 1247 (Effective September 1, 1991)
S.B. 1261 (Effective immediately)
S.B. 1341 (Effective September 1, 1991)
S.B. 1342 (Effective August 26, 1991)
S.B. 1360 (Effective August 26, 1991)
S.B. 1418 (Effective immediately)
S.B. 1428 (Effective August 26, 1991)
S.B. 1497 (Effective September 1, 1991 and January 1, 1992)
S.B. 1514 (Effective immediately)
S.B. 1539 (Effective August 26, 1991)
S.B. 1566 (Effective immediately)
S.B. 1612 (Effective immediately)
S.B. 151 (Effective immediately)
S.B. 249 (Effective immediately)
S.B. 710 (Effective immediately)
S.B. 1059 (Effective September 1, 1991)
S.B. 1165 (Effective September 1, 1991)
S.B. 1491 (Effective September 1, 1991)
S.B. 428 (Effective September 1, 1991)
S.B. 788 (Effective immediately)
H.B. 84 (Effective immediately)
H.B. 333 (Effective September 1, 1991)
H.B. 396 (Effective immediately)
H.B. 1552 (Effective September 1, 1991)
H.B. 2046 (Effective September 1, 1991)
H.B. 2197 (Effective September 1, 1991)
H.B. 2362 (Effective September 1, 1991)
H.B. 2662 (Effective September 1, 1991)
H.B. 2779 (Effective immediately)
H.B. 2787 (Effective August 26, 1991)
H.B. 1901 (Effective August 26, 1991)
H.B. 2819 (Effective immediately)
H.B. 2855 (Effective immediately)
H.B. 2863 (Effective immediately and September 1, 1991)
H.B. 69 (Effective September 1, 1991)
H.B. 1436 (Effective August 26, 1991)
H.B. 1846 (Effective August 26, 1991)
S.B. 1596 (Effective September 1, 1991)

Filed without Signature of Governor
(June 15, 1991)

S.B. 75 (Effective September 1, 1991)

S.B. 437 (Effective September 1, 1991)
S.B. 461 (Effective August 26, 1991)
S.B. 513 (Effective August 26, 1991)
S.B. 545 (Effective September 1, 1991)
S.B. 750 (Effective immediately)
S.B. 873 (Effective September 1, 1991)
S.B. 1302 (Effective August 26, 1991)
H.B. 1459 (Effective September 1, 1991)
H.B. 1563 (Effective September 1, 1991)
H.B. 1801 (Effective September 1, 1991)
H.B. 1816 (Effective August 26, 1991)
H.B. 2140 (Effective August 26, 1991)
H.B. 2769 (Effective September 1, 1991)
H.B. 2783 (Effective immediately)
H.B. 2804 (Effective immediately)
H.B. 2866 (Effective August 26, 1991)
H.C.R. 256

Signed by Governor
(June 16, 1991)

S.B. 44 (Effective immediately)
S.B. 191 (Effective September 1, 1991)
S.B. 270 (Effective September 1, 1991)
S.B. 307 (Effective September 1, 1991)
S.B. 323 (Effective September 1, 1991)
S.B. 377 (Effective September 1, 1991)
S.B. 378 (Effective September 1, 1991)
S.B. 379 (Effective September 1, 1991)
S.B. 383 (Effective September 1, 1991)
S.B. 430 (Effective September 1, 1991)
S.B. 532 (Effective August 26, 1991)
S.B. 625 (Effective September 1, 1991)
S.B. 643 (Effective September 1, 1991)
S.B. 700 (Effective August 26, 1991)
S.B. 787 (Effective immediately)
S.B. 837 (Effective September 1, 1991 and January 1, 1992)
S.B. 856 (Effective September 1, 1991)
S.B. 865 (Effective September 1, 1991)
S.B. 911 (Effective August 26, 1991)
S.B. 980 (Effective immediately)
S.B. 997 (Effective August 26, 1991)
S.B. 1095 (Effective September 1, 1991)
S.B. 1106 (Effective August 26, 1991)
S.B. 1123 (Effective immediately)
S.B. 1220 (Effective August 26, 1991)
S.B. 1375 (Effective immediately)
S.B. 1456 (Effective August 26, 1991)
S.B. 1484 (Effective August 26, 1991)
S.B. 1481 (Effective September 1, 1991)
S.B. 1508 (Effective August 26, 1991)
S.B. 1605 (Effective August 26, 1991)
S.B. 610 (Effective September 1, 1991)

S.B. 380 (Effective September 1, 1991)
S.B. 1037 (Effective September 1, 1991)
S.B. 1274 (Effective August 26, 1991)
S.B. 1280 (Effective September 1, 1991)
S.B. 1358 (Effective September 1, 1991)
S.B. 314 (Effective September 1, 1991)
S.B. 546 (Effective September 1, 1991)
S.B. 637 (Effective immediately and January 1, 1992)
S.B. 815 (Effective September 1, 1991)
S.B. 311 (Effective August 26, 1991)
S.B. 592 (Effective August 26, 1991)
S.B. 793 (Effective October 1, 1991)
S.B. 1282 (Effective immediately)
S.B. 709 (Effective August 26, 1991)
S.B. 1415 (Effective September 1, 1991)
H.B. 9 (Effective September 1, 1991)
H.B. 53 (Effective September 1, 1991)
H.B. 63 (Effective immediately)
H.B. 124 (Effective immediately)
H.B. 134 (Effective September 1, 1991)
H.B. 166 (Effective September 1, 1991)
H.B. 191 (Effective immediately)
H.B. 220 (Effective immediately)
H.B. 233 (Effective immediately)
H.B. 260 (Effective September 1, 1991)
H.B. 263 (Effective September 1, 1991)
H.B. 270 (Effective immediately)
H.B. 319 (Effective immediately)
H.B. 338 (Effective immediately)
H.B. 341 (Effective August 26, 1991)
H.B. 399 (Effective August 26, 1991)
H.B. 451 (Effective August 26, 1991)
H.B. 454 (Effective immediately)
H.B. 456 (Effective immediately)
H.B. 480 (Effective August 26, 1991)
H.B. 548 (Effective August 26, 1991)
H.B. 582 (Effective August 26, 1991)
H.B. 629 (Effective September 1, 1991)
H.B. 736 (Effective September 1, 1991)
H.B. 772 (Effective August 26, 1991)
H.B. 799 (Effective September 1, 1991)
H.B. 827 (Effective September 1, 1991)
H.B. 851 (Effective immediately)
H.B. 889 (Effective September 1, 1991)
H.B. 1004 (Effective August 26, 1991)
H.B. 1050 (Effective September 1, 1991)
H.B. 1061 (Effective immediately)
H.B. 1083 (Effective August 26, 1991)
H.B. 1143 (Effective September 1, 1991)
H.B. 1204 (Effective August 26, 1991)
H.B. 1258 (Effective August 26, 1991)
H.B. 1354 (Effective immediately)
H.B. 1356 (Effective September 1, 1991)

H.B. 1367 (Effective August 26, 1991)
H.B. 1393 (Effective immediately)
H.B. 1421 (Effective August 26, 1991)
H.B. 1463 (Effective August 26, 1991)
H.B. 1519 (Effective immediately)
H.B. 1621 (Effective August 26, 1991)
H.B. 1627 (Effective September 1, 1991)
H.B. 1648 (Effective September 1, 1991)
H.B. 1683 (Effective August 26, 1991)
H.B. 1688 (Effective August 26, 1991)
H.B. 1693 (Effective immediately)
H.B. 1744 (Effective September 1, 1991)
H.B. 1762 (Effective August 26, 1991)
H.B. 1763 (Effective August 26, 1991)
H.B. 1771 (Effective September 1, 1991)
H.B. 1814 (Effective September 1, 1991)
H.B. 1900 (Effective immediately)
H.B. 2454 (Effective immediately)
H.B. 2478 (Effective September 1, 1991)
H.B. 2482 (Effective September 1, 1991)
H.B. 2494 (Effective September 1, 1991)
H.B. 2503 (Effective September 1, 1991)
H.B. 2505 (Effective immediately)
H.B. 2555 (Effective September 1, 1991)
H.B. 2578 (Effective September 1, 1991)
H.B. 2665 (Effective September 1, 1991)
H.B. 2674 (Effective September 1, 1991)
H.B. 2758 (Effective September 1, 1991)
H.B. 2778 (Effective immediately)
H.B. 2795 (Effective August 26, 1991)
H.B. 2864 (Effective September 1, 1991)
H.B. 2884 (Effective August 26, 1991)
H.B. 1906 (Effective August 26, 1991)
H.B. 1927 (Effective August 26, 1991)
H.B. 1985 (Effective August 26, 1991)
H.B. 1986 (Effective August 26, 1991)
H.B. 2059 (Effective August 26, 1991)
H.B. 2069 (Effective September 1, 1991)
H.B. 2181 (Effective September 1, 1991)
H.B. 2252 (Effective September 1, 1991)
H.B. 2265 (Effective September 1, 1991)
H.B. 2330 (Effective September 1, 1991)
H.B. 2336 (Effective September 1, 1991)
H.B. 2378 (Effective August 26, 1991)
H.B. 2426 (Effective September 1, 1991)
H.B. 42 (Effective August 26, 1991)
H.B. 66 (Effective August 26, 1991 and September 1, 1991)
H.B. 180 (Effective September 1, 1991)
H.B. 377 (Effective September 1, 1991)
H.B. 553 (Effective August 26, 1991)
H.B. 1583 (Effective September 1, 1991)
H.B. 1598 (Effective November 1, 1991)

H.B. 1718 (Effective August 26, 1991)
H.B. 1839 (Effective immediately)
H.B. 2136 (Effective September 1, 1991)
H.B. 2561 (Effective immediately)
H.B. 2802 (Effective August 26, 1991)
H.B. 2831 (Effective September 1, 1991)
H.B. 2834 (Effective August 26, 1991)
H.B. 2840 (Effective immediately)
H.B. 2845 (Effective August 26, 1991)
H.B. 225 (Effective September 1, 1991)
H.B. 749 (Effective September 1, 1991)
H.B. 754 (Effective immediately)
H.B. 817 (Effective August 26, 1991)
H.B. 846 (Effective August 26, 1991)
H.B. 853 (Effective September 1, 1991)
H.B. 850 (Effective September 1, 1991)
H.B. 1126 (Effective September 1, 1991)
H.B. 1290 (Effective August 26, 1991)
H.B. 1333 (Effective September 1, 1991)
H.B. 1342 (Effective September 1, 1991)
H.B. 1431 (Effective September 1, 1991)
H.B. 1607 (Effective August 26, 1991)
H.B. 1704 (Effective September 1, 1991)
H.B. 1747 (Effective September 1, 1993)
H.B. 1809 (Effective September 1, 1991)
H.B. 2195 (Effective September 1, 1991)
H.B. 2424 (Effective immediately)
H.B. 2556 (Effective immediately)
H.B. 1065 (Effective September 1, 1991)
H.B. 1414 (Effective September 1, 1991)
H.B. 725 (Effective August 26, 1991)
H.B. 907 (Effective September 1, 1991 and September 1, 2001)
H.B. 1207 (Effective September 1, 1991)
H.B. 1314 (Effective August 26, 1991)
H.B. 1682 (Effective August 26, 1991)
H.B. 2138 (Effective immediately)
H.B. 2395 (Effective September 1, 1991)
H.B. 2638 (Effective August 26, 1991)
H.C.R. 207
H.C.R. 138

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(June 16, 1991)

S.B. 291 (Effective September 1, 1991)
S.B. 352 (Effective September 1, 1991)
S.B. 409 (Effective immediately)
S.B. 432 (Effective September 1, 1991)
S.B. 1186 (Effective September 1, 1991)
H.B. 549 (Effective September 1, 1991)
H.B. 595 (Effective September 1, 1991)
H.B. 653 (Effective September 1, 1991)
H.B. 784 (Effective September 1, 1991)
H.B. 879 (Effective September 1, 1991)

H.B. 1298 (Effective August 26, 1991)
H.B. 1345 (Effective August 26, 1991)
H.B. 2411 (Effective August 26, 1991)
H.B. 2731 (Effective September 1, 1991)
H.B. 2772 (Effective August 26, 1991)
H.B. 434 (Effective September 1, 1991)
H.B. 555 (Effective September 1, 1991)
H.B. 591 (Effective August 26, 1991)
H.B. 617 (Effective immediately)
H.B. 662 (Effective immediately)
H.B. 894 (Effective September 1, 1991)
H.B. 952 (Effective September 1, 1991)
H.B. 989 (Effective immediately)
H.B. 1030 (Effective August 26, 1991)
H.B. 1057 (Effective August 26, 1991)
H.B. 1181 (Effective immediately)
H.B. 1186 (Effective September 1, 1991)
H.B. 1257 (Effective September 1, 1991)
H.B. 1376 (Effective immediately)
H.B. 1392 (Effective September 1, 1991)
H.B. 1417 (Effective September 1, 1991)
H.B. 1477 (Effective August 26, 1991)
H.B. 1494 (Effective September 1, 1991)
H.B. 1719 (Effective August 26, 1991)
H.B. 1753 (Effective immediately)
H.B. 1757 (Effective September 1, 1991)
H.B. 1769 (Effective September 1, 1991)
H.B. 1894 (Effective immediately)
H.B. 1966 (Effective September 1, 1991)
H.B. 1931 (Effective August 26, 1991)
H.B. 2430 (Effective August 26, 1991)
H.B. 2518 (Effective August 26, 1991)
H.B. 2658 (Effective September 1, 1991)
H.B. 2667 (Effective immediately)
H.B. 2728 (Effective immediately)
H.B. 2777 (Effective August 26, 1991)
H.B. 2788 (Effective September 1, 1991)
H.B. 2818 (Effective immediately)
H.B. 2822 (Effective August 26, 1991)
H.B. 2837 (Effective immediately)
H.B. 2847 (Effective September 1, 1991)
H.B. 2876 (Effective August 26, 1991)
S.B. 64 (Effective September 1, 1991)
S.B. 80 (Effective September 1, 1991)
S.B. 180 (Effective immediately)
S.B. 181 (Effective August 26, 1991)
S.B. 186 (Effective September 1, 1991)
S.B. 324 (Effective immediately)
S.B. 334 (Effective September 1, 1991)
S.B. 330 (Effective September 1, 1991)
S.B. 408 (Effective September 1, 1991)
S.B. 460 (Effective July 1, 1991)
S.B. 544 (Effective September 1, 1991)

S.B. 557 (Effective September 1, 1991)
S.B. 659 (Effective immediately)
S.B. 695 (Effective September 1, 1991 and January 1, 1993)
S.B. 757 (Effective September 1, 1991)
S.B. 772 (Effective August 26, 1991)
S.B. 797 (Effective August 26, 1991)
S.B. 880 (Effective September 1, 1991)
S.B. 887 (Effective August 26, 1991)
S.B. 935 (Effective August 26, 1991)
S.B. 954 (Effective September 1, 1991)
S.B. 967 (Effective September 1, 1991)
S.B. 984 (Effective September 1, 1991)
S.B. 1000 (Effective August 26, 1991)
S.B. 1034 (Effective August 26, 1991)
S.B. 1092 (Effective immediately)
S.B. 1097 (Effective immediately)
S.B. 1135 (Effective August 26, 1991)
S.B. 1314 (Effective August 26, 1991)
S.B. 1331 (Effective September 1, 1991)
S.B. 1397 (Effective September 1, 1991)
S.B. 1409 (Effective immediately)
S.B. 1412 (Effective September 1, 1991)
S.B. 1426 (Effective immediately)
S.B. 1451 (Effective August 26, 1991)
S.B. 1480 (Effective August 26, 1991)
S.B. 1490 (Effective August 26, 1991)
S.B. 1543 (Effective September 1, 1991)
S.B. 1578 (Effective September 1, 1991)
H.B. 922 (Effective September 1, 1991)
S.B. 140 (Effective immediately)
S.B. 218 (Effective August 26, 1991)
S.B. 773 (Effective September 1, 1991)
S.B. 951 (Effective September 1, 1991)
S.B. 1033 (Effective immediately)
S.B. 1287 (Effective immediately)
H.B. 550 (Effective August 26, 1991)
H.B. 1147 (Effective immediately)
H.B. 1289 (Effective September 1, 1991)
H.B. 1587 (Effective immediately)
H.B. 1777 (Effective August 26, 1991)
H.B. 2817 (Effective August 26, 1991)
S.B. 81 (Effective September 1, 1991)
S.B. 952 (Effective September 1, 1991)
S.B. 1273 (Effective September 1, 1991)
S.B. 1457 (Effective immediately)
S.B. 691 (Effective August 26, 1991)
S.B. 1517 (Effective September 1, 1991)
H.B. 154 (Effective August 26, 1991)
H.B. 806 (Effective September 1, 1991)
H.B. 985 (Effective August 26, 1991)
H.B. 1214 (Effective immediately)
H.B. 1373 (Effective August 26, 1991)
H.B. 1425 (Effective September 1, 1991)

H.B. 1770 (Effective September 1, 1991)
H.B. 1773 (Effective September 1, 1991)
H.B. 1826 (Effective January 1, 1992)
H.B. 1828 (Effective immediately)
H.B. 1941 (Effective September 1, 1991)
H.B. 2065 (Effective September 1, 1991)
H.B. 2111 (Effective immediately)
H.B. 2161 (Effective September 1, 1991)
H.B. 2175 (Effective August 26, 1991)
H.B. 2680 (Effective immediately)
H.B. 2727 (Effective September 1, 1991)
H.B. 278 (Effective August 26, 1991)
H.B. 531 (Effective immediately)
H.B. 1246 (Effective September 1, 1991)
H.B. 1630 (Effective August 26, 1991)
H.B. 1822 (Effective September 1, 1991)
H.B. 150 (Effective August 26, 1991)
H.B. 2699 (Effective immediately)
S.B. 31 (Effective August 26, 1991)
S.C.R. 31
S.C.R. 152
S.C.R. 163
S.C.R. 164
H.C.R. 212

BILLS VETOED BY THE GOVERNOR

The following bills were vetoed by the Governor. Proclamations stating reasons for these vetoes follow.

H.B. 142
H.B. 289
H.B. 376
H.B. 378
H.B. 521
H.B. 552
H.B. 739
H.B. 779
H.B. 841
H.B. 891
H.B. 914
H.B. 996
H.B. 1007
H.B. 1144
H.B. 1219
H.B. 1361
H.B. 1426
H.B. 1584
H.B. 1664
H.B. 1800
H.B. 1939
H.B. 1979
H.B. 2054
H.B. 2056
H.B. 2153
H.B. 2368
H.B. 2404
H.B. 2657
H.B. 2793
H.B. 2835
S.B. 337
S.B. 791
S.B. 928
S.B. 1462
S.B. 1509
S.B. 1538

PROCLAMATIONS BY THE GOVERNOR OF THE STATE OF TEXAS

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 142** because of the following objections:

In our society, the ever-diminishing rights of the individual to privacy in their private lives competes with the right of the public to know specific information about a given individual in the interest of public safety and order. This legislation fails that necessary balancing test in that the public's right to know, in this instance, does not outweigh the individual's right to privacy in his private affairs. If this bill required information on applicants that had been offered employment, it would have been more acceptable.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 289** because of the following objections:

This bill is overly broad and punishes activity that may be innocuous. Other remedies are readily available on issues sought to be addressed by this legislation. Specifically, the alternative education programs should be a source of relief, especially coupled with the local board's rule making authority.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 376** because of the following objections:

It is not in the state's best interest to use scarce state resources to prosecute juveniles for violation of federal law. The United States of America, acting through its duly constituted law enforcement agencies, is well able to determine when and if juvenile conduct on federal land should be the subject of prosecutorial activity and there is no compelling need for the state to take on that responsibility and expense.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 378** because of the following objections:

The adequacy or inadequacy of bond amount is solely a judicial function and the already crowded dockets of the courts of this state should not be further burdened by the requirement of a hearing. If a hearing is appropriate or if a judge needs testimony, he or she may set

the matter for hearing but should be under no additional obligation to do so.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 521** because of the following objections:

This bill would require the payment of expenses to subpoenaed witnesses in criminal trials if they live 50 miles or more from the place where the proceeding is held. There is no estimate of the amount that this bill will cost the state. At a time when the state treasury is in a deficit, this should not become law.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 552** because of the following objections:

Counties may dedicate up to $0.05 per $100.00 of valuation in property tax to a board of development for advertising and promoting growth and development in the county with the approval of a majority of the voters of the county. This bill would delete the requirement for an election. The creation of this board and the dedication of a portion of tax revenue are significant issues that should require a popular vote. If the voters do not approve of the action, counties have other avenues available to pursue economic development projects.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 10th day of May, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 739** because of the following objections:

The increase in interest rates on small consumer loans contained in this bill is not warranted. At a time of historically low interest rates, raising the cost of borrowing money to those unable to obtain credit from any other source cannot be justified.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 24th day of May, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 779** because of the following objections:

This bill contains several amendments to the Texas Alcoholic Beverage Code, some of which are needed and acceptable. However, another provision of the bill requires a veto. **H.B. 779** contains an "indemnity provision" which overextends a brewery's or distiller's indemnification of sellers (i.e. non-manufacturers) of alcoholic beverages. The intent of the section was to secure indemnification and attorney's fees as they relate to product liability lawsuits; however, the drafters concede the language was overly broad. In 1987, the Legislature passed a law allowing a person who serves an alcoholic beverage to an obviously intoxicated person to be held liable for damages caused by the intoxicated person. The purpose of this so-called "Dram Shop Act" is to reduce the number of intoxicated persons driving home from bars. **H.B. 779** would completely undercut this purpose by requiring the manufacturer or importer of the beverage to indemnify the retailer for any legal action brought against the retailer. To prevent undoing the progress that has been made in the war against drunk drivers, I am vetoing **H.B. 779**.

I have said publicly that I have no preconceived opinion as to whether or not alcoholic beverages should or should not be sold in Texas Stadium. I am told that many people in Irving oppose the issue; on the other hand, I am told that the regulated and controlled sale of alcoholic beverages in the stadium is preferable to the current system of allowing persons to carry their own beverages into the stadium. I make no judgment on the matter.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 7th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 841** because of the following objections:

It is not good public policy to accept prisoners from other states at a time when the State of Texas is not able efficiently to handle its own state prisoners. County jails built upon speculation appear to have been the motivating factor in this legislation. Allowing this bill to become law would have the effect of encouraging further speculative jail building, and one would assume, added pressure to accept more out-of-state prisoners.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 891** because of the following objections:

> The appointment of a Commissioner of Education for the State of Texas is uniquely a function of the Governor's office and this legislation would unnecessarily interfere with that function and prerogative.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 914** because of the following objections:

> This bill raises the threshold amount for purchases at which a city must seek competitive bids to $15,000. Currently, the state must seek competitive bids for purchases of more than $10,000. The amount that cities save through the decreased administrative expense is not likely to outweigh their loss through the failure to seek competitive bids.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 996** because of the following objections:

> Entities providing services for the repair and servicing of motor vehicles, boats, and motors should be able to collect their fees; however, current law amply provides protection. This legislation would encourage costs to be incurred in repossession efforts under circumstances where abuses could result.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1007** because of the following objections:

> This bill provides penalties for overweight violators, but permits counties no financial recovery from owners and operators who damage their roads. The intent of the legislation is to devise a way for overweight vehicles to use public roadways in county jurisdiction. The goal is laudable, but the interests of county citizens are not protected by adequate assurance that their roadways will remain in useable condition.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1144** because of the following objections:

> This bill would allow retired agents of the Texas Alcoholic Beverage Commission to continue to serve as peace officers without pay. I am concerned that these retired agents would not be as attentive to the direction and control of their former superiors at the TABC as they were when they were employees. The power over the life, health, and safety of other that is given to commissioned peace officers must continue to be under the strictest supervision and control.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1219** because of the following objections:

> The language in this bill appears to be in fatal conflict with the Federal Job Training Partnership Act, which requires a competitive process in procurement and selection of service providers. The net result of this bill becoming law would be loss of job training funds for the State of Texas.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1361** because of the following objections:

> This bill is vetoed at the request of the sponsors.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1426** because of the following objections:

> This bill provides for a restricted permit to sell certain alcoholic beverages. No clear and convincing evidence has been presented to

indicate a need for a new and creative way to obtain a license to sell alcohol. Enforcement efforts of the alcoholic beverage sales and consumption laws of the state would be hindered by the passage of this bill.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1584** because of the following objections:

The need for this legislation was eliminated by the passage of **H.B. 651**.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1664** because of the following objections:

This bill would allow the Executive Director of the Texas Department of Corrections, Institutional Division, to have an effective veto power over the use of shock probation by local district courts. While there is a true need to enhance the Texas Department of Correction's ability to effectuate prison management techniques, this legislation runs counter to the desired result of expansion of community corrections and diversion programs and is ultimately not in the best interest of the criminal justice system of the State of Texas.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1800** because of the following objections:

The interests of returning local control to school districts mandate that a given district be allowed to make an independent decision concerning the criteria necessary to determine the qualifications of any person or persons hired to administer the business of the district. It must be assumed that the district trustees will be as capable and qualified in the setting of such criteria as would be the State Board of Education.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1939** because of the following objections:

This bill would prohibit the contest of an election if one candidate wins by more than ten percent. While this might eliminate some frivolous contests, the right to insure fair elections in this state would not be so arbitrarily limited.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 1979** because of the following objections:

This bill is so weak that it is unlikely that it will ever take effect but just in case, the bill should not become law for the following reasons:

1. There are no pesticide spraying safeguards;

2. No justification or proof of necessity for pesticide spraying is required;

3. This violates the appointments tradition of the Governor's office; and

4. This costs the state $156,000.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 2054** because of the following objections:

This bill addresses a legitimate concern. However, as a result of drafting shortcomings, the bill has a fatal flaw that removes the ability of the Texas Department of Health to inspect hospitals other than when a disagreement has arisen concerning a Medicaid inspection. The loss of the department's ability to inspect hospitals at other times is unacceptable.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 2056** because of the following objections:

> This bill attempts to grant to the Tarrant County Water Control and Improvement District powers of inspection that should be performed by the state. The bill would allow the district to have significant and extraordinary powers outside the district limits, including the right to intrude upon private lands. The benefits to be gained by the district could be accomplished by intergovernmental contract with the Texas Water Commission.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 2153** because of the following objections:

> No sufficient justification exists for the carving out of a special niche in the liability laws of this state for personnel of the Texas Department of Parks and Wildlife.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 2368** because of the following objections:

> This bill was prompted by the suggestion that there is an increased danger of terroristic activity because of the Persian Gulf Crisis. Other methods exist to protect the confidentiality of security systems without eliminating the need for competitive bidding and the dangers posed by that elimination appear to be at least as great as those the bill seeks to address.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 2404** because of the following objections:

> There is no compelling reason to single the vehicles covered in this legislation out from other vehicles driven upon the streets and highways of this state.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 2657** because of the following objections:

> This bill makes minor revisions to the Local Government Code, including allowing a least cost review program for county expenditures. Unfortunately, an amendment was added to the bill in violation of the constitution. It attempts to allow the creation of the local office of staff council to the County Commissioners Court of Denton County in violation of Article 3, Section 56 of the Texas Constitution, which prohibits the adoption of a local law creating county offices.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 2793** because of the following objections:

> This bill is somewhat unusual in that it would effectively defeat the rollback provisions of Sec. 26.141, Tax Code, and it allows for sales tax revenue to be an additional revenue to property tax revenue. The intent of the sales tax option was to allow that revenue source in lieu of property taxes. This bill would circumvent that intention and eliminate the property tax relief provision intended by the sales tax option extended to governmental subdivisions.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **H.B. 2835** because of the following objections:

> This bill would allow the DeWitt County Hospital District to make grants to nonprofit entities for the promotion of economic development. Hospital districts were not created for purposes of economic development and should not have their funds diverted for those purposes. There are other mechanisms in the law that allow tax revenues to be raised for economic development purposes, and they offer more appropriate methods of promoting economic development.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **S.B. 337** because of the following objections:

> A person charged with an offense in the State of Texas has a state constitutional right to be admitted to bail. It would appear that this legislation would work to unconstitutionally deny that right to bail.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **S.B. 791** because of the following objections:

> The liability issue addressed in this legislation has been addressed more comprehensively in **H.B. 154**, already passed into law. This bill is not as conducive to the operations of the community work service programs and singles out county sheriffs for protection from liability in instances where there is no demonstrable showing of a public need for that removal of liability.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **S.B. 928** because of the following objections:

> This bill authorizes the commissioning of law enforcement officers by the comptroller of public accounts. There is no demonstrated need for the comptroller's office to have this power.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **S.B. 1462** because of the following objections:

> This legislation impermissibly penalizes persons promoted within the ranks of the Houston Police Department. In many instances these same persons have been held back in their career progress by discrimination in one form or other. This bill would institutionalize that

unacceptable condition. An inordinate amount of legislative and executive energies are regularly consumed by internecine struggles originating in Houston and Harris County. These continuing issues should be attended to in Houston and Harris County and should not continue to occupy the time of the state government. "Local" issues from Harris County and Houston are greater in number in legislative sessions than all other communities of the state combined.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **S.B. 1509** because of the following objections:

The right of citizens in this state to be secure against unwarranted governmental intrusion is one of the most fundamental rights of our democratic form of government. In this bill, it is unclear why a domestic relations office should have access to private information when in the normal judicial process the information can be readily obtained.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby veto **S.B. 1538** because of the following objections:

This bill is vetoed at the request of the sponsors.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 16th day of June, 1991.

/s/Ann W. Richards
Governor of Texas

/s/John Hannah, Jr.
Secretary of State